SPLITTING HAIRS

THE HISTORY, LAW, AND FUTURE OF JEWISH LAWS OF MODESTY AND WOMEN'S HEAD COVERING

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The History, Law, and Future of Jewish Laws of Modesty and Women's Head Covering

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BenYehuda Press
Teaneck, New Jersey

This book is a publication of
Ben Yehuda Press
Teaneck, NJ 07666

ISBN 978-1-953829-20-7

Set in Arno Pro by Raphaël Freeman MISTD, Renana Typesetting

We are proud to enable the publication of this important new study by Rabbi Prof. Broyde, and do so in the confidence that it will have a profound impact on our beloved Modern Orthodox community for many years to come. In doing so we are deeply aware that this book appears at a time of great change with regard to the roles of women in learning Torah, teaching Torah, and indeed in taking Halakhic leadership. It is our belief that these changes carry with them the possibility of inestimable benefit to Orthodoxy and the Jewish people as a whole.

With that in mind, we dedicate this book to all the Orthodox women who study and teach Torah in an honest search for Truth. We do this with full confidence that their unshakeable commitment to Halakha and Orthodoxy will soon give rise to new generations of Halakhic and Hashkafic works distinguished by novel perspectives and insights, while yet reflecting the authenticity, integrity, and deep awareness of God's commanding presence that this work itself so plentifully exhibits.

Rabbi Bob Carroll and Ruthie Levi

Quotes from Rabbinic Works on Justifying Communal Practices

Let me begin with an important rule: . . . All which is widely done even only in one large community of Israel is not in error since certainly it was done based on the rulings of one exceptional Sage, since it is a community of people who observe Torah and its commandments; one must find a reason why they conducted themselves this way, so they should not be considered in error, even if other communities do not engage in this practice . . .

– Rabbi Moshe Feinstein, *Iggerot Moshe Orach Chaim 4:17*

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 HaShulchan OC 345:18

All is dependent on the wisdom 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 from his inclination more, he must do so, even such that he not look at women's colorful [garments even when they are being washed], as was stated in Avodah Zarah (20b). *So too if he sees in himself that his inclination is under control and has no erotic thoughts, he can look at and speak with a woman prohibited to him sexually and can greet a married woman. . . . However, one should not be lenient on these matters unless one is a greatly pious person and acutely aware of one's own desires.*

– Ritva, Kiddushin 82a

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] 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 HaEzer* 89

Know, my child, that the prohibition of married women uncovering their hair used to be quite strong in our community by default, as it was in all the Arab lands, before the influx of the French.…Now all women go out with uncovered heads and loose hair.…Consequently, I have devoted myself to finding 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 available writings of the legal decisors, only to find stringency upon stringency and prohibition upon prohibition. I decided to seek a higher authority, to draw directly from the source – Mishna, Talmud and available commentaries: perhaps for [these women,] 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 [*Otzar HaMikhtavim*]
of R. Yosef Messas, no. 1884

Author's Dedication

THIS VOLUME IS DEDICATED TO THE MANY WOMEN WHO HAVE made my life so happy and pleasant over these many, many years:

First, to my wife, Channah S. Broyde, Esq., without whom nothing I have accomplished would be of value. After many years of marriage, there are many more adventures to look forward to.

Second, to my daughters, Rachel Irene Broyde and Deborah Malka Broyde-Katzir, who have grown into young women whom I love so much. I look forward to watching you as wonderful adults.

Third, to my daughter-in-law, Dr. Suzanne Bodian Broyde, who has added so much joy and love to our family. You have blessed the Broyde family in so many ways.

Fourth, to my granddaughters, Ruth Margalit Broyde, Naomi Batya Broyde and Ella Weiner Broyde, who are the most recent women to add joy in my life. May you all be a blessing to us.

To my sister, Dr. Linda Broyde Haramati, who was a constant source of love growing up and still is.

To my grandmothers, now both deceased:

To my Oma, Irene Schloss Buehler, who was a refugee from Nazi Germany and who lived with us for many years as I was growing up.

To my Grandma, Deborah Last Broyde, who was a constant delight to me as a child with her magnificent stories of life.

I note as well the sadness in the passing of my mother-in-law, Pneena Sageev, whose loss more than a decade ago still pains my heart.

Most importantly to my mother, Dr. Suse Buehler Broyde, who has always served as a role model to so many for her professional accomplishments, and who is still an active biochemistry professor at NYU. Over the past many years she struggled to balance caring for my father (Rabbi Dr. Barret Broyde זצ"ל, who passed away in 2018, to our sadness) with

caring for the rest of her family – and yet achieved so much professionally. I am in awe.

Additionally, as with all my recent works, I would like to add a brief dedication to the many people who offered their support when I needed it the most, many years ago. Family, colleagues and friends, and even a few strangers came to my aid and assistance. You know who you are, and you know how indebted I am to you. Thank you to each of you and please give me the opportunity to return the favor.

A Simplified Table of Contents

CHAPTER 8

Uncovered Hair and Modern Jewish Law: The Objective School Dominates, but Some Modern Authorities Endorse the Subjective Approach

CHAPTER 8 COLLECTS AND SUMMARIZES THE VIEW OF many authorities of the last generations who endorse the subjective approach, while exploring and explaining their view. After noting that the dominant view in contemporary Jewish law endorses a standard that does not bend to subjective societal norms, this collection of authorities provides an additional layer of textual understanding of the Jewish law of modesty.

The Dominant Contemporary View: Hair Covering in Some Form Is Always Mandatory in Public for Married Women

Since the early 1900s (and perhaps even before) it has been the deep and wide consensus of mainstream Jewish law authorities that the obligation for married women to cover their hair is biblical and objective, at least in public. This is the prevalent view of Ashkenazic and Sephardic poskim, whether they live in Israel or in the Diaspora.

This consensus is well demonstrated by simply turning to the *Mishnah Berura* and the *Arukh HaShulchan.* These works were seen as the leading Jewish law authorities of the late 19th and early 20th centuries, and each was compiling his legal code at a time when Orthodox Jewish women generally ceased covering their hair.[1] Both discuss the problem of married

1. This is the reality that the *Mishnah Berura, Arukh HaShulchan, Ben Ish Chai,* and many of the other commentaries mentioned in this chapter are responding to.

women who come to synagogue with their hair uncovered, and while they reached different conclusions on the question of prayer in such cases, their analyses are quite germane to our discussion.

As discussed in Chapter 6, *Shulchan Arukh* rules that a man may not recite the Shema while standing in view of a woman's hair which she is accustomed to covering. He may, however, recite the Shema in front of the hair of a single woman when it is normal for her to uncover her hair. Faced with the reality that many married women no longer cover their hair, these two Jewish law giants discuss the obvious problem that emerges: how can a man recite Shema in the presence of these women?

In this context, Rabbi Epstein in the *Arukh HaShulchan* laments[2] that for many years married women have been ignoring the halakhic requirement to cover their hair. He decries the fact that in his own day this shameful state of affairs has become endemic. Despite this change in social norms (for the worse, in his view), Rabbi Epstein rules that men may now pray and recite Shema in front of a married woman's uncovered hair, since seeing such hair is no longer erotic. To support this contention, Rabbi Epstein cites the 13th-century authority Mordechai ben Hillel HaKohen (known as the Mordechai) who quotes Rabbi Eliezer ben Yoel HaLevi (known as the Ra'aviah): The Mordechai rules that an unmarried woman's hair is not considered a form of *erva* which would normally prevent men from being able to recite the Shema. This is because men are so accustomed to seeing it that it does not lead to improper thoughts, and the common custom is for unmarried women to uncover their hair.[3] The *Arukh HaShulchan* extends this logic to the hair of married women as well. Because men are long-accustomed to seeing uncovered hair of

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Rabbi Yaakov Brecher, in his *Katuv Yosher Divrei Emet* p. 87, writing in this period, attests to the fact that women were not covering their hair in France, Germany, Italy, Austria, Bukovina, half of Galicia, many other European countries, and America.

2. See:

ועתה בואו ונצווח על פרצות דורינו בעוונותינו הרבים שזה שנים רבות שנפרצו בנות ישראל בעון זה והולכות בגילוי הראש וכל מה שצעקו על זה הוא לא לעזר ולא להועיל ועתה פשתה המספחת שהנשואות הולכות בשערותן כמו הבתולות אוי לנו שעלתה בימינו כך מיהו עכ״פ לדינא נראה שמותר לנו להתפלל ולברך נגד ראשיהן המגולות כיון שעתה רובן הולכות כך והוה כמקומות המגולים בגופה וכמ״ש המרדכי בשם ראבי״ה בספ״ג וז״ל כל הדברים שהזכרנו לערוה דוקא בדבר שאין רגילות להגלות אבל בתולה הרגילה בגילוי שיער לא חיישינן דליכא הרהור עכ״ל וכיון שאצלינו גם הנשואות כן ממילא דליכא הרהור [והרי״ף והרמב״ם השמיטו לגמרי דין שיער וקול משום דס״ל דלאו לק״ש איתמר עב״י]:

3. Mordekhai on Berachot, end of the third chapter, quoted above in Chapter 5.

even married women, there is no fear of improper thoughts upon seeing such sights during prayer. Thus, a married woman's hair is not considered nakedness, and prayers may be said while in sight of it. However, Rabbi Epstein holds that uncovering remains a sin.

The exact opposite approach is taken by the *Mishnah Berura*. Indeed, quoting his words might help highlight his approach. He states:

ודע עוד דאפילו אם דרך אשה זו וחברותיה באותו מקום לילך בגילוי הראש בשוק כדרך הפרוצות אסור וכמו לענין גילוי שוקה דאסור בכל גווני וכנ"ל בסק"ב כיון שצריכות לכסות השערות מצד הדין [ויש בזה איסור תורה מדכתיב ופרע את ראש האשה מכלל שהיא מכוסה] וגם כל בנות ישראל המחזיקות בדת משה נזהרות מזה מימות אבותינו מעולם ועד עתה בכלל ערוה היא ואסור לקרות כנגדן ולא בא למעט רק בתולות שמותרות לילך בראש פרוע או כגון שער היוצא מחוץ לצמתן שזה תלוי במנהג המקומות שאם מנהג בנות ישראל בזה המקום ליזהר שלא לצאת אפילו מעט מן המעט חוץ לקישוריה ממילא בכלל ערוה היא ואסור לקרות כנגדן וא"ל מותר דכיון שרגילין בהן ליכא הרהורא וכדלקמיה

And you should further know that even if this woman and her friends in that place have a practice of going out with their hair [literally "head"] uncovered in public in the way of those who are immodest, it is still forbidden [to pray in their presence] no different than the case of uncovered calf [thigh][4] which is forbidden under all circumstances. As we have explained in note 2 above, since this woman is required to cover her hair by operation of Jewish law (and this involves a Torah prohibition, because the verse says "And he shall uncover the woman's head," which implies that her hair was covered initially), and also all Jewish women who observe Torah law have been careful about this from the time of our ancestors a long time ago until the present day, uncovered hair is considered a nakedness and it is forbidden to pray in its presence. The *Shulchan Arukh* does not mean to imply [otherwise] by mentioning single women who are permitted to go with their heads uncovered no matter what or [that even married women] can have some exposed hair outside their covering, since whether this is permissible or not all depends on the custom of the place. If the

4. The Talmud defines the *shok* as an *erva* in b. Berachot 24a. The commentaries debate whether the *shok* refers to the thigh or the calf. I have translated *shok* as thigh here in accordance with the position of the *Mishnah Berura* himself in 75:2 following the opinion of the *Pri Megadim Orach Chayyim* 75:1. See, however, *Bach Orach Chayyim* 75 s.v. *vi-khen*, who defines it as calf. The *Chazon Ish Orach Chayyim*

> custom in this place is that all Jewish women are careful not to reveal even the tiniest part of their hair, then, when revealed, it is considered as a form of nakedness and it is forbidden to pray in its presence. Do not say that such is permitted since once one is used to it exposed it does not generate erotic thoughts as I explain later on.[5]

Whatever the merits of this dispute – and most Jewish law authorities side with the *Arukh HaShulchan* on this narrow dispute[6] – what is clear is that nearly all post–1850 Jewish law decisors rule that married women are required to cover their hair in public. One is hard-pressed to find a leading Jewish law authority who disagrees with the views of these two great authorities of Jewish law.

In the last generation, the list of Jewish law authorities who rule that married women must cover their hair in public includes almost a *who's who* of normative Jewish law as well as almost every other Jewish law authority of any important renown in the last century.[7] Included on this list:

1. Rabbi Moshe Feinstein[8]
2. Rabbi Ovadia Yosef[9]
3. Rabbi Shlomo Zalman Auerbach[10]
4. Rabbi Eliezer Yehuda Waldenberg[11]
5. Rabbi Yitzchak Weiss[12]
6. Rabbi Yechiel Yaakov Weinberg[13]

16:8 leaves the debate unresolved. Some contemporary authorities have accepted the strict view. See, for example, Rabbi Shmuel Wosner in *Shevet HaLevi* 1:1. See my comments on pages 195 and 393 as well as many other places in the book.

5. *Mishnah Berura* 75:10. The final reference is to 75:13.
6. See, for example, *Yabia Omer Orach Chayyim* 6:13, *Iggerot Moshe Orach Chayyim* 1:39 and 1:42.
7. For a fuller list, see *Otzar HaPoskim*, *Even HaEzer* 21:4.
8. *Iggerot Moshe*, *Even HaEzer* 1:53, 57
9. See, e.g., *Yechaveh Daat* 5:62; see also *Yabia Omer*, *Even HaEzer* 3:21 and 4:3.
10. In *Aleihu Lo Yibol* (*OC* 59) and as cited in *Halichot Shlomo* 2:17, and *Ohr LeTzion* 2.
11. *Tzitz Eliezer* 6:48 and 7:48.
12. *Minchat Yitzchak* 6:106.
13. *Seridei Eish* 3:30.

Indeed, the modern classical work on Jewish family law, *Otzar HaPoskim*, does not cite any Jewish law authorities who disagree with this view.[14] Nevertheless, they are out there, and their existence is a driving force behind this book as a whole and this chapter in particular.

There are, in my view, a plethora of Rishonim, codifiers, and Acharonim who advance rationales that permit married women to uncover their hair in a society where such is not immodest; in fact, these authorities and their views were discussed at length in the previous chapters. However, these authorities were dealing with theory and were thus merely advancing rationales that could explain such behavior, rather than discussing the contemporary reality of uncovering.

Their theoretical construct, which was made clear repeatedly in previous chapters, is that the obligation for married women to cover their hair derives from custom alone. Yet, this position has not been cited (and was, one could argue, ignored) by most Jewish law authorities in the last two hundred years.

I believe this is unfortunate and perhaps even misguided. A careful analysis of the primary sources supports exactly such a view, and this is why the majority of this work has been dedicated to constructing an argument from the primary sources of halakha. Due to the importance of these primary sources, each was divided into sections and elucidated. We also explored the positions of several major Acharonim, such as Maharam Al-Ashkar and *Shevut Yaakov*, who propounded the position that the obligation for married women to cover their hair is driven by custom and not by objective, unchanging standards.

In the remainder of this chapter, we cite many modern authorities who came to similar views. While their interpretations are significant, this group alone cannot challenge a century's worth of leading poskim who rule to the contrary. Nevertheless, the fact that some modern authorities have reached similar conclusions as those we presented above, whether for the same reasons as we did or not, does lend a measure of support to the practical acceptance of our argument.

We will try to frame the positions of what we might call these counter consensus authorities, but we will not elucidate them in detail (in some cases, barely at all). Rather, we will collect their positions with minimal comment and thus leave it for the reader to complete his or her picture of

14. So too, popular works of Jewish law almost never cite any view that hair covering is not mandatory.

the modern halakhic landscape, bearing in mind that these voices, even if they are in the minority, are a part of it.

There is, however, one major authority on a par with the *Mishnah Berura* and *Arukh HaShulchan* who did accept the lenient position. He wrote this not in his main works of halakha, but in a work aimed at the laity. This insight is found in a recently discovered comment of the *Ben Ish Chai*, one of the most important halakhic authorities for many Sephardim and members of *Edot HaMizrach*. The next sections will frame this position.

Ben Ish Chai: The Important Authority Who Permits Married Women Not to Cover Their Hair When Modest Women Do Not

The spread of colonialism into the Sephardic lands and the introduction of Western dress that accompanied it forced 19th- and 20th-century Sephardic poskim to address issues which had heretofore been theoretical. This encompasses a variety of women's issues, including the obligation of married women to cover their hair.[15]

Primary among them was Rabbi Yosef Chayyim of Baghdad (1835–1909), known by the name of one of his works, the *Ben Ish Chai.* Rabbi Chayyim was known throughout the Middle East, East Asia, and Europe as one of the leading halakhists and kabbalists in the world. Born in 1835 into a leading rabbinic family and marrying into another, he was recognized as a leading scholar at a very young age. For a sense of the stature of the *Ben Ish Chai*, see Rabbi Mordechai Eliyahu in his Introduction to *Kitzur Shulchan Arukh* (an edition containing his emendations for Sephardic practice) he notes that the *Ben Ish Chai* is the last great authority of Jewish law for Sephardim (*posek acharon*) and should be followed.

Chayyim was a prolific author. He wrote over one hundred works covering the entire gamut of Jewish rabbinic thought. Among the changes to women's daily life he addressed were abortion, increased education, and hair covering, rendering a "lenient" judgment on each.[16] Furthermore,

15. See, for example, Yaron Harel, *Syrian Jewry in Transition 1840–1880*, Littman Library of Jewish Civilization, 2014.

16. For his view of abortion, see *Responsa Rav Pealim* (1: EH4) and *Responsa Tzitz Eliezer* (13:102). For his attitude toward women's education, see Ilan H. Fuchs, "'Sephardic' Halakhah? The Attitude of Sephardic Decisors to Women's Torah Study: A Test Case," in Leib Moscovitz, ed., *The Manchester Conference Volume* [=*Jewish Law Association Studies* 20] (The Jewish Law Association, 2010), 43–74. Nonetheless, on most matters of ritual, he tended to be stringent.

he became a significant authority on matters of halakha for the Sephardic community generally.

Ben Ish Chai's treatment of women's hair covering can be found in his work *Sefer Kanun-al-Nissa* (קאנון אל נסא), first published in 1906. What distinguishes this work from all the others previously cited is that it was written for the masses and in the Judeo-Arabic vernacular. In this work, the Ben Ish Chai makes it clear that the obligation for women to cover their hair in public is sociologically dependent. While the general tenor of the work is one which advocates for modesty and covering consistent with the prevailing practice of turn-of-the-century Baghdad,[17] the discussion of sociological changes to the prevailing practice accepted by Jew and gentile alike make clear that as a matter of law, absent licentiousness, societal norms dictate. *Tzniut* thus becomes a matter of propriety and orderliness. What follows is a line-by-line translation of the original Judeo-Arabic. The new translation reads:

Look at the women of Europe whose custom is not to hide themselves from strangers. Nonetheless their clothes are orderly; they do not reveal their bodies except only their faces, necks, palms, and heads. It is true that their hair is uncovered and this custom of theirs is not possible according to our laws. But, they have one justification. They say, "Yet still, this custom (of having their hair uncovered) was accepted by all their women – both Jewish and gentile – to go with their hair uncovered like the revealing of their faces and hands. It does not cause sexual thoughts in men when they see it with their eyes." These are their words which they answer for this custom and we do not have an answer to push away this answer of theirs.

ושופו נסוואן אהל אירופא. סלוכהום מא יתכבון מן אל גרבא. ומע האדה חוואסהום מרתבא. מא יביין מן גסמהום. גיר פקט וגהום וחלקהום. וכפופהום וראסהום. וצחיח מכשוף שערהום. ומוגב דייאנתנא לם יגוז הל מסלך להום. לאכן אכו פרד עצר ענדהום. יקולון מא זאל האדה מסלך גמיע נסוואן בלאדהום. במלתהום וכארג מלתהום. סאר שוף שערהום. מתל שוף וגהום ואידיהום. מא בקאלו שעשעה ענד אל רייאגיל. בשוף עינהום. **האדא כלאמהום. אלדי יגאוובון עלא האדה מסלכהום. ומא ענדנא גוואב נגרח להאדא גוואבהום.**

17. See for example the next few paragraphs in the same chapter cited below praising those who remain covered from head to heel even in the extreme heat of the Baghdadi summer, as well as those who veil their faces.

Until recently, this position was not widely known and copies of the original *Kanun* were difficult to find.[18] The most widely circulated Hebrew translation, compiled by Rabbi Ben Tzion Mutzafi and published in 1950 by Machon Ben Ish Chai, has an edited/censored version of the paragraph above. Significantly, he removes the final sentence approving of the rationale set forth by European women for uncovering their hair which makes it clear that the rationale was more than just a *limmud zekhut.*[19]

The ambiguities in the mistranslation caused various translators and interpreters to struggle with the Hebrew "*lo nityashev*." On the one hand, "this custom" must mean the custom to go with hair uncovered as this is the custom under discussion. Yet, it makes little sense to say that the custom to go with hair uncovered was not accepted by the general population. That would run contrary to the argument ostensibly put forth by European women in their own defense. Hence, the ambiguity. The Arabic portion reads: *Ma Zal hada*.... The Arabic *ma* plays a role similar to the Hebrew *lo* which may have caused Mutzafi to translate it as *lo nityashev*. Nonetheless, the expression *ma zal* literally means, "has not ceased," or colloquially, "yet, still." Translated correctly, the paragraph makes sense.

An English translation (presumably based on the aforementioned Hebrew version) of the *Kanun* appeared a few years ago. It diverges from the original to a greater degree than R. Mutzafi's version and actually amends the text to transform the Ben Ish Chai's lenient position into a rather forceful denunciation of the practice.

> One should not think that this law [to dress modestly] is only binding in Islamic countries, where custom dictates that women must

18. The material on the Ben Ish Chai was aided by the thoughtful work of Jacob Sasson, entitled "The Ben Ish Hai and Women's Hair Covering: An Interesting Case of Censorship" which can be found at http://text.rcarabbis.org/the-ben-ish-hai-and-women%E2%80%99s-hair-covering-an-interesting-case-of-censorship-by-jacob-sasson/ as well as many conversations with the author, who graciously gave me of his time. This material is derivative of his, and the translations of Judeo-Arabic are his, and I am grateful.

19. This work is entitled *Sefer Chukei HaNashim* and it reads:

> והביטו הנשים על אנשי אירופה, מנהגם לא להסתר מפני זרים, ובכל זאת מלבושיהם מסודרים, לא מתגלה מגופם, רק פניהם וצוארם, כפות ידיהם וראשם. ואמת נכון מגולה שערם, ולפי הדין שלנו אסור הדבר, אבל יש להם איזה התנצלות, כי אומרים לא נתיישב המנהג הזה אצל כל נשותיהם, מבנות אומתם וחוץ לאומתם, נעשה גילוי השער, כמו גילוי פניהם וכפות ידיהם, ואינו גורם הרהור אצל האנשים, במבט עיניהם

Otzar HaMizrach 1979 (page 55) available at http://rcarabbis.org/pdf/Sasson_Ben_Ish_Hai_Hebrew.pdf

not be seen by strangers. Even in Europe, where it is acceptable for women to speak to strangers, Jewish women, nevertheless, dress in accordance with the above-mentioned guidelines. And although it is true that many of their women do not cover their hair, which is strictly prohibited according to Torah law, they claim in their defense that uncovered hair is not considered any more immodest than the hands or the feet, since it does not cause Jewish men in Europe to think unclean thoughts. Thus, we see that even those who are lenient about covering the hair agree in principle that a woman must dress modestly, and that other parts of her body must remain covered.[20]

Indeed, a phrase by phrase translation makes it abundantly clear that *Ben Ish Chai* is providing a justification for women to not cover their hair when other modest women do not. He states:

Look at the women of Europe	ושופו נסוואן אהל אירופא.
whose custom is not to hide themselves from strangers.	סלוכהום מא יתכבון מן אל גרבא.
Nonetheless their clothes are orderly; they do not reveal their bodies except only their faces, necks, palms, and heads.	ומע האדה חוואסהום מרתבא. מא יביין מן גסמהום. גיר פקט וגהום וחלקהום. וכפופהום וראסהום.
It is true that their hair is uncovered and this custom of theirs is not possible according to our laws. But, they have one justification.	וצחיח מכשוף שערהום. ומוגב דייאנתנא לם יגוז הל מסלך להום. לאכן אכו פרד עצר ענדהום.
They say "Yet still, this custom (of having their hair *uncovered*) was accepted by all their women – both Jewish and gentile – to go with their hair uncovered like the revealing of their faces and hands.	יקולון מא זאל האדה מסלך גמיע נסוואן בלאדהום. במלתהום וכארג מלתהום. סאר שוף שערהום. מתל שוף וגהום ואידיהום.
It does not cause sexual thoughts in men when they see it with their eyes."	מא בקאלו שעשעה ענד אל רייאגיל. בשוף עינהום.
These are their words which they answer for this custom and we do not have an answer to respond to this answer of theirs. [Omitted from Hebrew]	האדא כלאמהום. אלדי יגאוובון עלא האדה מסלכהום. ומא ענדנא גוואב נגרח להאדא גוואבהום.

20. Rabbi Yosef Chaim, *Laws for Women*, translated into English by Moshe Schapiro, edited by S.D. Kaplan, Yeshoua Salem [sic], Salem Books, 5771, p. 96.

Thus, we see that Ben Ish Chai accepted in practice that in a society where women regularly uncovered their hair, such as Europe in his time, it would be permitted to do so. However, it should be noted that his audience was a community where the norm was to be extremely strict about issues of modesty, including hair covering, and thus his ruling was not meant to be practically implemented by the audience to whom it was directed.

Framing Those Who Are Lenient in Practice

Many of the Acharonim who contend that hair covering is subject to communal custom emerge from analysis of the comments of Rashi to Ketubot. To understand their views, we must briefly review Rashi.

As cited above, Rashi explains how the derasha from Numbers works according to the baraita as follows.

אזהרה -	A warning –
א. מדעבדינן לה הכי לנוולה מדה כנגד מדה כמו שעשתה להתנאות על בועלה מכלל דאסור	a. From the fact that we do this to sully her looks, a tit for tat since she did the same in order to improve her looks for her lover, we can deduce that doing so [for any purpose] is forbidden.
ב. א"נ מדכתיב ופרע מכלל דההוא שעתא לאו פרועה הות שמע מינה אין דרך בנות ישראל לצאת פרועות ראש וכן עיקר.	b. Alternatively, since the verse states "and he shall expose," one can deduce that up until that point [her hair] was not exposed. One learns from this that it was not the way of Israelite women to go out with their hair exposed – this is the main point.

Rashi offers two interpretations of how this derasha functions. The first assumes that the humiliating punishment of the woman is intended to be measure for measure by mimicking some forbidden behavior on her part. Her hair is made unattractive because she had beautified herself to seduce her lover. The second explanation argues that the derasha focuses not on why the kohen is uncovering her hair, but rather on the simple fact that he is exposing her. The derasha derives the norm from the exception – if the kohen uncovering the woman's hair is noteworthy, that must be because it is an aberration. Thus, we can conclude that in general Jewish women did cover their hair. Whether that is because this was obligatory, or merely because that was the custom, is the subject of dispute, as we will see.

WHY THE NEED FOR THE TWO EXPLANATIONS?

Many Acharonim were bothered by Rashi's need to present his *first* argument, considering that the second is accepted as primary. Rabbi Pinchas Horowitz (1731–1805, Frankfurt) writes as follows in his commentary to b. Ketubot 72a in his *Sefer Haflaah:*

נראה דבלשון ראשון ס"ל דמהא דמשמע דההיא שעתא לאו פרוע הוא אין זה נקרא דאורייתא דאע"ג דמנהג הוא כן וכתיב המנהג בקרא אינו דאורייתא . . .

It seems that in [Rashi's] first formulation, the implication that at that time she was not *parua,* does not make [hair covering] biblical; even though this custom was thus, and the custom was written in the verse, it is not biblical . . .

ותו דילמא בעזרה שאני דהא אפי' בהר הבית היו צריכין להתנהג באימה יתירה כדאי' במשנה לא יכנס אדם להר הבית וכו', והרי אפי' בבית הכנסת איתא בשו"ע או"ח סי' [צא סע' ג] דלא יכנס בראש מגולה אפי' באנשים ומנ"ל במקום אחר, ולפי' הראשון א"ש דמוכח מהעונש שעשתה עבירה בתחלה בגילוי ראשה.

Furthermore, perhaps it is different in the Temple courtyard, for even on the Temple Mount there was a need to act with added awe, as it says in the Mishnah, "a person should not enter the Temple Mount etc." Even in a synagogue, it is brought in *Shulchan Arukh* (*Orach Chayyim* 91:3) that one should not enter with an uncovered head, even men. [If so,] how could we derive this for other places? According to the first explanation, it makes sense, as the punishment indicates that she sinned originally by uncovering her hair.

Rabbi Horowitz assumes that there must have been some inherent weakness in Rashi's second (and accepted) interpretation, which drove Rashi to at least offer an alternative. Rabbi Horowitz offers two reasons regarding why Rashi was not fully convinced by his second explanation:

First, Rabbi Horowitz understands that according to the second explanation of Rashi, the fact that the Torah records the custom of married women to cover their hair grants that custom biblical status. However, Rabbi Horowitz suggests that Rashi entertained the possibility that a custom, even when recorded in the Torah, does not reach the level of law. Assuming this was the case, it would be possible that uncovering hair is not biblically forbidden. Thus, one would need another reason to explain why the Torah included the uncovering of the sotah's hair as part of her punishment process. To explain this, Rashi posits that the adulteress has beautified herself to attract her lover and needed to be

punished for that act. Thus, the Torah has the priest make her hair less attractive.

Second, Rabbi Horowitz suggests that Rashi was not convinced one could conclude from the fact that the priest uncovered the sotah's hair in the *Temple* that this indicated that women were *always* required to cover their hair. One could have understood that the obligation for married women to cover their hair was unique to the Temple. If this was the case, again, the verse about the priest uncovering the head of the sotah could not be used to generate a biblical obligation for married women to uncover their hair, thus requiring Rashi to offer an explanation that focused on the punishment aspect of the kohen's actions.

This latter argument was rejected by several later Acharonim. R. David b. Isaac Bonan, in his *Dei Hashev* (Livorno 1846), *Even HaEzer* 4, as well as Rabbi Yehuda Herzl Henkin[21] reject the second suggestion of Rabbi Horowitz. They note that the purpose of the sotah process is to humiliate the adulteress. However, they argue, the humiliation is only caused by uncovering a part of the body that is normally private. If the obligation to cover hair was only in the Temple, but outside the Temple women regularly uncovered their hair, this act of uncovering would not cause shame. It would be the modern equivalent of a woman who only covers her hair in synagogue, but wears her hair uncovered at all other times, accidentally being seen with her hair uncovered in synagogue. Such a situation, even if abnormal for her, is unlikely to generate embarrassment. Consequently, Rabbis Bonan and Henkin argue that Rabbi Horowitz's construction is untenable as it would not explain why the uncovering of the hair was part of the humiliation of the sotah.

Even without this rejection, however, the first position of Rashi within this analysis is not relevant for legal purposes, as Rashi rejects it. The above was only needed to explain why Rashi was less than convinced of his final explanation. However, despite his hesitations, Rashi did accept the latter explanation. According to Rabbi Horowitz, based on Rashi's second and preferred interpretation, there would indeed be a biblical obligation for a married woman to cover her hair.[22]

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21. See "*Shi'ur Kisui Rosh Shel Nashim*," note 31 on page 288.

22. The simplest understanding of *Haflaah* is that he is explaining why Rashi was not fully convinced by his second and preferred obligation but would still accept that for halakhic purposes the second explanation is primary. However, Rabbi Yosef

NETZIV

Rabbi Naftali Tzvi Yehuda Berlin (Netziv) grants the first explanation in Rashi more halakhic weight. In his *Emek HaNetziv* commentary to the *Sifre* (*Nasso* 11) he writes:

לימד. מדעבדינן הכי כדי לנוולה מדה כנגד מדה, כמו שעשתה להתנאות על בועלה מכלל דאסור, א"נ מדכתיב ופרע מכלל דבההיא שעתא לאו פריעה הוית, ש"מ אין דרך ב"י לצאת פרועות ראש, וכן עיקר, רש"י כתובות ד' ע"ב א'. ותלוי במחלוקת ראב"ד ורא"ש במ"ק פ"ג סי' ג'. דהראב"ד ז"ל סובר דפריעת ראש באבל מה"ת, מתכתיב בבני אהרן ראשיכם אל תפרעו ולא תמותו, מכלל דאחר שלא פרע חייב מיתה בידי שמים מה"ת, והיינו כפי' הב'. והרא"ש ז"ל חולק וכ' דאיצטריך לגופי' דהם אסורים לפרוע, אבל אחר רשות.

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, b. Ketubot 72a. These [two explanations] are dependent on the dispute between Raavad and Rosh, Moed Katan 3:3. According to Raavad, 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 subject 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.[23]

Messas (*Collected Letters* 1884) understood that Rabbi Horowitz was accepting Rashi's first answer as primary. Rabbi Moshe Feinstein (*Iggerot Moshe Even HaEzer* 1:57) rules that we must be stringent for the first explanation and treat it as a *safek deorayta,* a doubtful case of a biblical law. Thus, under normal circumstances he will take the stringencies that accompany a prohibition.

23. On the line in the Sifre "though there is no explicit proof to the matter . . . ," the Netziv comments, "that it should be a legal obligation, but rather *dat Yehudit*, as the Mishnah in Ketubot (7:6) states, 'One who goes out with uncovered head.'"

According to Netziv, the dispute with regard to hair covering is a manifestation of a fundamental dispute between Rosh and Raavad. Raavad 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 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, everyone else is biblically permitted to do so; only Aaron and his sons are required.

What is most important is that Netziv has opened the possibility that the first position in Rashi, while not accepted by Rashi himself, may be correct according to other Rishonim. Thus, according to Netziv, a perspective based on the Rosh in combination with an understanding of the Gemara similar to Rashi's first interpretation would generate a legal position that there is no biblical obligation for married women to cover their hair. [24]

RABBI YERUCHAM FISHEL PERLOW

A student of Netziv, Rabbi Yerucham Fishel Perlow had an even more radical reading, arguing that it is the *second* interpretation offered by Rashi that relegates hair covering to the realm of custom rather than law. In other words, it would be the *accepted legal position* of Rashi that married women need only cover their hair due to custom.

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24. The rationale of the Netziv can also be found in R. Moshe Zev HaCohen, *Tiferet LeMoshe* 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 habetulot*] 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 Yaakov*, *Even HaEzer* 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, m. Ketubot 72a, as we will see below.

Rabbi Perlow (Commentary to *Sefer HaMitzvot* of Rabbi Saadiah Gaon, *Aseh* 96) first suggests that according to all opinions, the obligation for a married woman to cover her hair is of biblical origin. The dispute, he suggests, is simply whether it is formally counted as a mitzvah, as the technical rules for what is counted in the 613 mitzvot is the subject of much debate among the Rishonim.

However, he then moves to an argument that assumes the issue at hand is indeed the question of the existence of and extent of the obligation. He understands the first interpretation of Rashi as follows:

איברא דבעיקר הדבר צ״ע לכאורה מהיכא משמע להו שיש איסור בדבר. ובשלמא לפירוש הראשון של רש״י אפשר לומר. דביאור הדבר הוא דכיון דעבדינן לה הכי לנוולה מדה כנגד מדה כמו שעשתה להתנאות על בועלה מכלל דאסור. דאין עונש בלא אזהרה. וכיון שהעונש מפורש בקרא הרי זה כאילו האזהרה מפורשת בקרא. וכמו שביאר הרמב״ם ז״ל (בסה״מ שורש י״ד) עייש״ה. ועכ״פ מיהת כיון דחזינן שענש הכתוב עלה ש״מ דאסור לעשות כן

However, it seems that the essence of this issue requires investigation. Where does it imply that there is a prohibition in this? It makes sense according to the first interpretation of Rashi, "that one could say." For the explanation of this issue is that since [uncovering her hair] is done to her to make her disgusting, measure for measure, as she did to make herself beautiful for her adulterer, it implies [that in general, having her hair uncovered] is forbidden. For there can be no punishment without warning, and since the punishment is explicit in the verse, it is as if the warning were written explicitly in the Torah, as Rambam explains (*Shoresh* 14 in *Sefer HaMitzvot*), see there. At any rate, since we see that the Torah punished her for it, we can conclude that it was forbidden to do this.

Rabbi Perlow understands that the fact that the Torah would punish her by having her hair uncovered implies that under any other circumstance she would be obligated to cover her hair. However, this is only according to Rashi's *rejected first opinion*. According to the second explanation, which Rashi accepts, there would be only a custom, not an obligation, for a married woman to cover her hair.

אבל לפי׳ שני של רש״י שכתב עליו שהוא העיקר קשה טובא. וכי משום שכן נהגו בנות ישראל נימא דאית בה איסור דאורייתא. **ודילמא אין**

However, according to Rashi's second explanation, which he indicated to be the main explanation, there is a great difficulty: Just because [not going with their heads uncovered] was the practice

בה אלא תורת מנהג שנהגו בו בנות ישראל מדעתן. ואף על פי שנזכר מנהג זה בתורה. מכל מקום לא משום זה יש בו איסור דאורייתא שהרי בעל בנכסי מלוג של אשתו תקנתא דרבנן. כמבואר בכמה דוכתי אף על פי שנזכר בקרא. כדדרשינן (סו"פ השולח מ"ז ע"ב) מדכתיב ולביתך מלמד שאדם מביא ביכורי אשתו וקורא... הרי דאע"ג שנזכר המנהג בקרא. מכל מקום אין לו אלא תורת מנהג בעלמא

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 that 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, since a husband's ownership rights to the dowry assets [*nichsei melog*] of his wife is only a rabbinic decree, as mentioned in several places, even though it is mentioned in the Torah... Thus, even though the custom is mentioned in the verse, nevertheless, it only has the status of a mere custom.

According to this analysis, Rashi's *accepted opinion* would be that a married woman covering her hair only has the *status of a custom*, albeit one that was prevalent in the biblical period.[25] However, while Rabbi Perlow notes that this reading is tenable in the Sifre, he thinks it is against the simplest understanding of the Talmud which does seem to assume an obligation for married women to cover their hair. To explain how it could be biblical, even without an explicit source, he propounds the following argument:

וא"כ מנ"ל איסורא בפריעת ראש. כיון שאין לנו ראיה מקרא אלא שכך הי' מנהג בנות ישראל. וצ"ע בזה. ובאמת דלפי לשון הספרי (נשא פיסקא האשה לימד על בנות ישראל שהן מכסותי"א) ופרע את ראש ראשיהן. ואף על פי שאין ראיה לדבר זכר לדבר. ותקח תמר אפר על ראשה עיין שם. משמע שאין

If so, from where is it derived that uncovering hair is a prohibition, as from the verse we only have evidence that this was the custom of Jewish women? This requires investigation. In truth, according to the language of the *Sifre* (*Nasso*, section *HaIsha – limed al benot yisrael she-hein mechasot*): "Alternatively: this teaches that the daughters of Israel cover their heads. And although there is no explicit proof to the matter, there is an indication: 'And

25. It is worth noting that Rabbi Moshe Feinstein *(Iggerot Moshe, Even HaEzer* 1:57) also understood the first explanation of Rashi as implying there was a prohibition. However, unlike Rabbi Perlow, while he maintains that the first explanation of Rashi expresses a prohibition, he believes that the second delineates a negative corollary of a positive biblical obligation. While both are biblical, the latter is not prohibited in the face of a monetary loss greater than twenty percent of one's wealth.

בה איסור דאורייתא. ולא למד מקרא אלא שכן נהגו.

אבל בתלמודין מבואר דאיסורא דאורייתא יליף מהך קרא. וכמו שהבאתי לעיל. ואולי אפשר לומר דלא מהך קרא גופי' יליף איסורא. **אלא דכיון דשמעינן מקרא דדרך בנות ישראל בכך. ש"מ דדבר פריצות הוא ומביא לידי גילוי עריות. וא"כ ממילא יש בו איסור דאורייתא.** דהו"ל בכלל לאו דלפני עור לא תתן מכשול. ועפ"ז שוב ממילא אין מקום כלל לקושית הרשב"ץ ז"ל גם זולת מה שביארנו לעיל. משום דכיון דאין לנו בזה איסור מצד עצמו כלל. אלא שזה הוא בכלל לאו דלפני עור. א"כ אין מקום למנותה מצוה בפ"ע. שהרי לאו דלפני עור כבר מנו הרמב"ם וכל שאר מוני המצות:

Tamar placed ashes (*epher*) upon her head,'" see there. This implies that there is not biblical prohibition, and it only learned from the verse that this was the custom.

However, in the Talmud it is clear that a biblical prohibition was derived from this verse, as I brought above. 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." Based on this, there would be no room at all for the question of Rashbatz of blessed memory, even without that which we explained above, for we have no intrinsic prohibition. Rather it is included in the prohibition of "before the blind." If so, there is no room to count it as its own commandment, for the prohibition of "before the blind" was already counted by Rambam and the other enumerators of mitzvot.

Rabbi Perlow accepts the possibility that for the Sifre there is no biblical obligation for a married woman to cover her hair. Conversely, for the Talmud he does not. He accepts the possibility that there is no *intrinsic* prohibition. He argues, therefore, that it is promiscuous for a married woman to leave her hair uncovered because it will cause men who see her to sin, thus violating *lifnei iver,* which is rabbinically understood to forbid people from causing others to sin.

While Rabbi Perlow does not argue that it is permitted for a married woman to leave her hair uncovered, he does open the logical possibility that in a society where men are not sexually enticed by a woman's uncovered hair, it would be permitted for a woman to uncover her hair.

This argument, one that agrees with the second position of Rashi, also

appears in the Novellae of R. Dov Beresh Meisels (Mahardam, 1798–1870, Cracow) to Rambam's *Sefer HaMitzvot* (*Aseh* 175) who states:

ומה דלא חשבו פריעת הראש באשה דאסרה התורה, כמו שאמרו שם בפרק המדיר ראשה פרוע דאורייתא היא דכתיב ופרע את ראש האשה, ותנא דבי ר' ישמעאל אזהרה לבנות ישראל שלא תצאנה בפרוע ראש, צ"ל דס"ל בפירוש הב' שכתב רש"י ז"ל מדכתיב ופרע מכלל דההוא שעתא לאו פרועה הות, ש"מ אין דרך בנות ישראל לצאת פרועות ראש. ועל פירוש הזה כתב רש"י, וכן עיקר. ולפי פירוש הזה לאו איסור גמור הוא, אלא *מנהג בנות ישראל* מה"ת, ומש"ה לא חישב ליה במנין המצות.

> Regarding that which [Rambam] did not count a woman's going out with uncovered head, which is biblically prohibited, as the Talmud in b. 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.*

Per Rabbi Meisels' 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 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.*)[26]

YASHIV MOSHE

Rabbi Moshe Turetsky (*Responsa Yashiv Moshe, EH* 3), a modern Israeli authority, takes this line of argumentation one step further. He was asked

26. See note 31 on page 288.

whether a married woman may have her hair uncovered if only non-Jewish men will see her. In his response, he makes the following set of arguments, which are essentially an embrace of the position of Ra'aviah as explained above in Chapter 6, namely that the *ervot* described in b. Berachot are to be defined in context. Rabbi Turestsky's view aligns with the argument made by Rabbi Perlow (following the second position of Rashi):

1. The *ervot* described in b. Berachot are contextually defined, due to the effect they will have on men. Thus, they are in truth manifestations of the prohibition of *lifnei iver,* placing a stumbling block before those men.
2. This prohibition will only apply when the men who will see the woman's hair, or other parts of her body enumerated in b. Berachot, will have improper thoughts.
3. If men are desensitized such that they will not have such thoughts, there is no prohibition on the woman to have those body parts uncovered.
4. Non-Jewish men are presumed to be exposed to so much that they are not affected by the sight of uncovered hair. (He also has a discussion about Torah scholars who are in full control of their passions.)
5. He notes that the above argument could be true even if non-Jews are forbidden by Jewish law to have sexual thoughts, though that issue is subject to dispute.

Rabbi Turetsky outlines two possible rationales for the obligation of a married woman to cover her hair, neither of which assumes an objective obligation unique to hair.

אם מה שאסורה לאשה להתגלות לפני יהודי הוא משום איסור האשי שהיא מכשילה אותו באיסורי הסתכלות המבוארים באבן העזר הל' אישות סימן כ"א סעיף א', דהיינו איסור לפני עיוור, שהאיש יעבור על איסור תורה של ונשמרת מכל דבר רע, שלא יהרהר ביום ויבוא לידי טומאה בלילה (עבודה זרה דף כ'). או משום איסור

If the prohibition on women exposing [her hair] to a Jewish man is due to the man's prohibition, in that she may cause him to stumble in the prohibition on looking [at forbidden sexual matters] as explained in the laws of marriage, *Even HaEzer* 21:1, which is a violation of *lifnei iver,* 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

האשה שיש חיוב עליה להיות צנועה בפני בני אדם, ואיסור זה שעליה מלמהיות פרוצה הוי כעין דברי השו״ע שם סעיף ב.

(Avodah Zarah 20b)? Or, alternatively, if it is due to a woman's prohibition, in that she has an obligation to be modest in the presence of others, and her prohibition against behaving in a promiscuous manner is similar to that which the *Shulchan 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"]?

Since he rules that these two prohibitions do not apply in a place where there are only gentiles, Rabbi Turetsky concludes that it is permissible for a woman to uncover her hair in such a place. In his view, there is no independent prohibition for a woman to go with her hair uncovered; it only falls under the rubric of other prohibitions (e.g., not to put a stumbling block before the blind).

While Rabbi Turetsky does not expand on it, what emerges from his argument is that in a culture where all men, Jewish or not, are accustomed to seeing women with uncovered hair, the prohibition would not apply. He entertains this possibility in a short comment:

וממילא אין טפח עור של אשה הגדר פריצות לפני גוי וכמו שרגיל בשערות ובקול כמו כן כאן. ביהודים בזמן הזה בעוה״ר מצינו גם כן מקום להקל קצת.

From this it emerges that a handbreadth [of skin] on a woman is not considered promiscuous in front of a non-Jew. For just as he is accustomed to hair and voice, the same is true here. And nowadays, with regard to Jews in our great iniquity, there is room to be a bit lenient.

A similar argument, though not explicitly applied to hair, is presented by R. Yom Tov Lipman Heller, in his *Divrei Chamudot* commentary on the Rosh, where he writes that according to Rosh (Berachot 3:37):

ומסתבר דכל מקום ומקום לפי מנהגו דמידי הוא טעמא אלא דדברים שרגילה שלא לכסותם לא מקרי ערוה משום דלא אתי בהו לידי וכו׳ כיון דרגיל בהו וכדלקמן גבי קול ושער:

. . . 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 *erva*, for men are not aroused by looking at them, as later regarding voice and hair . . .

R. Heller's view is quite straightforward: Wherever the custom of modest religious women is to uncover a particular part of their body (such as forearms, and certainly hair), according to Rosh, there is no prohibition to do so.[27] In fact, in Rosh's view there is a dispute among the Talmudic passages in b. Ketubot 72 and b. Berachot 24.[28]

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27. R. Aaron Samuel Kaidanover, commenting on this in his *Tiferet Shmuel* on the Rosh Berachot 3:37, 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 *erva*."

28. Only in the *Shulchan Arukh* of R. Shlomo Chelma (Shlomo Ashkenazi ben Moshe Rappaport, author of the *Mirkevet HaMishneh* commentary on Rambam), entitled *Shulchan Tamid Even HaEzer* 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.
3. Performing a prohibited activity that is promiscuous and raises suspicion of infidelity.

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 Yehudi*t. (According to this approach, Rosh might be of the same view as the *Yereim* [*mitzvah* 392], that the prohibition is in fact to distance oneself from forbidden sexual relationships.) 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 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

RABBI SHIMON SIDON

Rabbi Shimon Sidon of Kunitz (1815–1891), a student of *Chatam Sofer*, offers a brief defense of the practice of many women to not cover their hair (*Shevet Shimon, Chiddushei Sugyot*, pp. 56–7).[29] He argues that the obligation is for women to cover that which is normally covered by married women. Thus, in a place where women cover most of their hair but allow some to come out of their head coverings, that hair is not problematic. Possibly, he suggests, the same is true when the norm becomes that no women cover their hair. To explain the Talmudic evidence, he suggests that married women covering their hair was a custom accepted by women upon themselves which made leaving hair uncovered a degrading act.[30] However, this is not a formal obligation, and thus is subject to changing norms.

THE EXPLICIT ARGUMENTS

With the exception of *Yashiv Moshe*, who raises it as a possibility, none of the poskim cited above explicitly writes that the law would change in modern times. Nonetheless, several modern authorities, aware that in today's reality most women do not cover their hair, fully accepted the notion that the law can and should change as social norms evolve.[31]

RABBI ISAAC HUREWITZ

R. Isaac S. Hurewitz, in *Yad HaLevi*, his commentary to Rambam's *Sefer HaMitzvot* (Positive Commandment 175), 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, with only wigs on their heads, they railed loudly against this, and	ואמנם רבנן קשישאי גאוני עולם בזמנם שלא הסכינו לראות בנות ישראל יוצאות וראשן פרועה בפאה נכרית על ראשן הרעישו עליהן עולם

grew out his hair such that it is smooth and no longer disgraceful is permitted to enter the outer courtyard.

29. Thanks to Dr. Marc Shapiro for this reference.

30. He compares this to the *chumra de-Rabbi Zeira,* Rabbi Zeira's codification of the custom accepted by women to treat all potential menstrual blood with the stringencies of *zivah* blood, requiring seven bloodless days, rather than seven days total, to become pure from niddah impurity.

31. Indeed, scattered throughout this book are many other modern Jewish law authorities who adopt views that also would permit married women to not cover their hair in a society where such is not customary among modest women.

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 (b. Shabbat 64, b. 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.

ומלואה, וחששו על הפריצות מקלקול נשמתן יותר מסכנת גופם הנשקפת להן מהפאה נכרית ובצדק ובמשפט עשו זאת. כי אחרי שלא היו דרכן בכך היה באמת פריצות ועבירת דת כאמור, אלא שבשנאתם לפריצות עקמו עלינו - אם במתכון או שלא במתכון - את פשטות דברי רז"ל (שבת ס"ד נזיר כ"ח ורפ"ב דכתובות) עד שמי שיש לו מוח בקדקדו לא יסבול זאת, עיין בדבריהם. והאמת שענין דברים אלו האסורין והמותרין, אין בש"ס ופוסקים ראשונים יסודם, אלא במנהג הליכות הנשים במקום ובזמן ההוא, כתבתי כל זה לא להלכה למעשה רק ללמד זכות על בנות ישראל.

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 *mitzvot*, even though the Talmud stated that it is a biblical obligation. Once we have concluded that it is dependent on place and time, then 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 Tashbetz himself did not include it in his enumeration of the *mitzvot*. Notwithstanding, there ought not to be even a wisp of a question raised from barriers (*chatzitzin*) or hair covering or the many other instances in which the Talmud states that something is biblical.

הנה הארכתי יותר מהצורך לענינו ועכ"פ נראה כי אין מקום להכניס פריעת ראש במנין המצות אם כי בגמרא אמרו דאורייתא הוא, אחרי שתלוי במקום ובזמן, ובמקום שדרך הנשים לילך בפרועת ראש, אין בו לא מצוה ולא מניעה לא מדאורייתא ולא מדרבנן, ואולי מזה הטעם לא הכניס הרשב"ץ עצמו במנין מצותיו, ובלא"ה אין כאן ריח קושיא מחציצין פריעת ראש וכיוצא באלו הרבה שאמרו בש"ס דאורייתא הוא, אם כי כן הוא האמת, אבל כ"ז שאין מקרא בתורה בלשון מצוה או אזהרה מורה ע"ז לא

יחשבו בענין המצות, כי אין לנו במנין התרי״ג אלא לשון התורה עשה או ל״ת.

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 *mitzvot*, 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.

Among the arguments he propounds is that presented above by Rabbi Perlow within the second reason of Rashi.

RABBI EFRAIM ZALMAN SLUTZKI

Likewise, R. Efraim Zalman Slutzki, *Responsa Etz Efraim* (*OC*, responsum starting on p. 12 12b (22)),[32] writes:

ולפ״ז הותר כל אשר עמדו המפרשים בזה... ואחרי אשר פרצו בעה״ר נשי ישראל ללכת פרועת ראש והר״ז דרכם לגלות גם השער הרי זה כמו שכתב הב״ח בעיירה שהולכין יחף שלעולם רגלי׳ מגולין.

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 *Bach* wrote with regard to towns where the women go barefoot, and their legs are always exposed.

RABBI CHAIM HIRSCHENSON

Rabbi Chaim Hirschenson presents a unique series of arguments to defend the practice.[33] His first approach is premised on the idea that there can be decrees from the time of the giving of Torah (that is, the time of Moshe) that do not take on biblical law. R. Hirschenson notes that the Redid HaZahav (*Bereishit* 29:22), in a discussion involving *takkanot* (decrees), assumes precisely this. Using this paradigm of rabbinic decrees with biblical mandates that remain merely rabbinic, Rabbi Hirschenson applies this same construct to custom. Based on this, in a world where it is customary that most women do not cover their hair, it is permitted for married women to uncover their hair. As a corollary to this argument, R.

32. I would like to thank Dr. Marc Shapiro for calling this source to my attention.
33. *Chiddushei HaRav Chaim Hirschenson, Nasso* 69. I would like to thank Dr. Marc Shapiro for pointing out this source and position.

Hirschenson seems to understand Rashi's first explanation as assuming the obligation for married women to cover their hair was derived from custom. As such, it was merely the breach of custom that made it humiliating for the sotah to have her hair uncovered.

In the end, R. Hirschenson moves away from the above analysis in favor of one mentioned in Chapter 1, namely, that the term of *periat ha-rosh* refers to wild hair rather than uncovered hair. Accordingly, there would be no obligation for a woman to cover her hair. She must simply keep it neat. Regardless of which approach seems sounder or more reasoned, one thing is clear. R. Hirschenson concludes that the practice of women who do not cover their hair can be defended as a matter of halakha.[34]

RABBI YOSEF MESSAS

The modern authority who most extensively defends the practice was Rabbi Yosef Messas, and therefore we will present his responsum in full. It is critical to frame his argument within the positions we have outlined above. Rabbi Messas accepts the lenient interpretations of Rashi offered by both the Neztiv and Rabbi Perlow (though he does not cite either), arguing that according to *both the first and second explanations* of Rashi, there is only a custom, rather than an obligation, for a married woman to cover her hair. He additionally draws on the comments of Rashi to the Torah and the responsum of Maharam Al-Ashkar, which we have discussed above in Chapter 7. Following Rabbi Messas, we will present the position of Rabbi Moshe Malka who essentially accepts the position of Rabbi Messas. This piece is from the Responsa of Rabbi Yosef Messas (as printed in *Otzar HaMikhtavim* III:1884) on the "Topic of the Requirement for Women to Cover Their Hair.")[35]

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34. It is not entirely clear whether he thinks even keeping the hair neat is subject to changes in custom, or at this point he has abandoned his understanding that the issue at hand is custom. What drives him to this conclusion is a desire to reject the claim put forth by Torah Temimah (*Nasso* 5:18, n. 95–96) that the question of whether the problem is for women to have their hair wild or uncovered is a dispute between Rabbi Yishmael and the sages. Rabbi Hirschenson offers his arguments to negate this view. It is worth noting that in order to develop his argument, he suggests several textual emendations, without which his claims are much more difficult. See also note 67 on page 76 for the unique way Rabbi Hirschenson understands the b. Berachot 24a source.

35. This translation and many of the notes on this translation were done by Rabbi

(2) מכתבו הבהיר הגיעני, ולרוב הטרדות לא יכולתי להשיב עד כה. ראיתי שאלתו שאלת חכם הנוגעת לעצמו, והיא, זה כשנה נשא אשה בראשה מכוסה, ממחוז וג׳דא, ועתה מוצא מקום עבודה בקאזא בלאנקא, ושלח אחר אשתו שתבא אצלו, ותאבא לבא, ואך בראש מגולה כמנהג המקום והזמן, וכבודו לא רצה, ואחר כמה חליפות מכתבים שעברו ביניהם וצערא דגופא שסבל, קבל תנאה לבא בראש מגולה, ואך הוריו מעכבים על ידו בזה שלא תגלה ראשה בשום אופן, והיא באחת ולא תשוב, רק לגלות, והוא עומד בין הבינים ואינו יודע איזה דרך ילך, אם ישמע לקול הוריו או לאשתו, ובעי מר מנאי לחוות דעתי להמציא לו צד היתר בענין זה ולהראותו להוריו, ולהשקיט המיית לבבם הסוער ולשפות שלום בין כל המשפחה.

2. Inquiry: His illuminating letter reached me, but due to my being extraordinarily busy I was not able to answer until now. I saw that his halakhic inquiry was a *sheilat hakham hanoga'at le'atzmo*,[36] and it is as follows: This year he married a woman, who covered her head, from the region of Oujda (Morocco) and now he has found a place to work in Casablanca (Morocco). He sends for his wife to join him there, and she is willing to come, but on condition that she be allowed by him to have her hair uncovered according to the custom of that place and time.[37] The honorable sir did not want to agree to this, but after many letters passing back and forth between them and feeling the physical discomfort of enduring a prolonged separation, he eventually accepted her condition to come to Casablanca with her head uncovered. His parents, however, prevented him from going through with this, telling him that she should not uncover her head in any way. His wife, however, would not relent, being single-minded in her desire to uncover her hair. And now he is left standing between

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Yehuda B. Ilan and I am grateful to him for allowing me to use his translation in this book. Added to his excellent translation and notes are paragraph numbers to allow the reader to move more easily from the Hebrew to the English in such a complex text and occasional other small comments, as well as a few other changes from his original translation.

It is worth adding that Rabbi Messas writes something similar in a responsum as well (*Mayyim Chayyim* 2:110):

> 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… 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…

36. A halakhic question about which a Torah scholar feels that he cannot be entirely objective in settling the matter for himself being that it is too personal in nature.

37. In mid-twentieth century Morocco.

them, not knowing which path to take; whether to listen to the voice of his parents or that of his wife. So now the honorable sage would like me to state my opinion, and to find for him a halakhic basis on which to be lenient in this matter so that he can present what I say to his parents in order to silence the raging emotion of their hearts and to effect peace among the entire family.

(3) **תשובה**. דע בני, כי אסור גלוי הראש לנשואות היה חמור אצלנו פה מחזק,׳ וכן בכל ערי המערב טרם בוא הצרפתים, ואך אחרי בואם במעט זמן, פרצו בנות ישראל גדר בזה, וקמה שערוריה גדולה בעיר מהרבנים והחכמים ונבוני עם יראי אלהים, ואך מעט מעט קם השאון לדממה, ויחדלו הקולות, כי לא הועילה שום תוכחת, לא בנחת, ולא באש מתלקחת, כי אין חזק כאשה אמרו הקדמונים, ועתה כל הנשים יוצאות בריש גלי פרועי שער, זולת הזקנות הן שמכסות את ראשן, ולא כולה, רק מניחין חלק גלוי מצד פנים. ואני בלכתי בס״ד לשרת בקדש בעי״ת תלמסאן זה כשלושים שנה, ראיתי הדבר פשוט שם ובכל המחוז אצל כל הנשים, גם הזקנות, שכלם פרועי ראש, עם כמה מיני תגלחות משונות, כאשר נמשך הדבר גם פה בכל ערי המערב.

3. Responsum: Know, my child, that the prohibition of married women uncovering their hair used to be quite strong among us here [in Meknes].[38] And so it was in the all the cities of the west before the arrival of the French. But only a short time after their arrival, Jewish women broke with societal norms in this matter which caused a great scandal among the rabbis, the Sages, and intelligent God-fearing people, but gradually the uproar began to quiet and the dissenting voices ceased. This was because no manner of rebuke was effective with them, neither when gentle nor when raining down fire, for as the ancients said, "There is nothing so stubborn as a woman." And now all of the women go out with their heads uncovered and their hair unbraided, except for the older women who do cover their heads, although not entirely, leaving a portion of their hair uncovered around their face. And when I went, with the help of Heaven, to render holy service in the praised city of Tlemcen (Algeria) when I was about thirty years of age,[39] I saw something which was ubiquitous in the entire region among all the women there, even the elderly, that all of them had their

38. The Arabic term for Morocco.

39. Rabbi Messas went to Tlemcen, Algeria, in 1924 at the age of 31.

hair down, uncovered, and wore haircuts in various styles, just as the women do now in all of the cities of *Al-Maghreb* [North Africa].

(4)בכן נתתי לבי ללמד עליהם זכות, כי אי אפשר להעלות על לב להחזיר הדבר מאז, כי הדבר הולך ומתפתח עם התפתחות הזמן בכל דבר, ובגשתי לחפש בדברי הפוסקי׳ אשר לפני, מצאתי רק חומרא על חומרא ואסור על אסור, ובכן אמרתי אשא דעי למרחוק לשאוב מן המקור, משנה וגמרא ונושאי כליהם הנמצאים לפני, אולי נמצא להם פתח תקוה להכנס בו, כי באמת קשה לנשים ולבעליהן לעבור על מצות עשה שהזמן גרמא בעניין זה יותר מכל דבר, בהיות הדבר הזה גלוי לעין כל, והודות לאל כי מצאנו הרבה פתחים למקום ליכנס בו בהיתר ולא באיסור, והם:

4. And so, at that time, I set my heart to finding a halakhic justification for their actions since trying to revive the previous practice of covering the hair was simply not a viable option, for this continues to develop along with everything else in the world that changes with the progression of time. When I undertook to search in the words of the halakhists who were before me, I found only one restrictive interpretation and one ban piled upon another. So I said, "I will obtain my knowledge from afar"[40] and draw directly from the source – the Mishnah, Gemara, and their commentaries which were before me. Perhaps a "door of hope" can be found for them, I thought, through which they can enter. For in truth it is difficult for women and their husbands to transgress commandments which are contingent upon a set period of time, and in this matter more than any other since her uncovered hair is obvious and apparent to all.[41] And thanks be to God, we found many doors through which one might enter into such a practice, with halakhic permission and not through violating a prohibition, and they are as follows:

(5) הנה. יסוד מוסד לכל הפוסקים, אשר בנו עליו כמו רמים מקדשם, הוא מה שדרש ר׳ ישמעאל, ופרע את ראש האשה, אזהרה לבנות

5. Behold! The strong foundation upon which all of the halakhists base their arguments when dealing with the subject of women covering their heads in public – who have built their "sanctuary" upon

40. Cf. Job 36:3.

41. In other words, in the mind of Rabbi Messas, there must have been a good reason for religious Jewish couples' apparent flouting of a halakhic requirement. Therefore, he sought a firm legal basis for their actions.

ישראל שלא יצאו בפרוע ראש, כמ״ש במס׳ כתובות דף ע״ב סוף ע״א, ופרש״י ז״ל, וז״ל, אזהרה, מדעבדינן לה הכי לנוולה מדה כנגד מדה כמו שעשתה להתנאות על בועלה, מכלל דאסור, אי נמי, מדכתיב ופרע, מכלל דההיא שעתה לאו פרוע הוה, שמע מינה אין דרך בנות ישראל לצאת פרועות ראש, וכן עיקר, עכ״ל.

it "like the heights" – is the exposition of Rabbi Yishmael: "'And the kohen shall uncover the hair of the woman.'[42] This verse is a warning to Jewish women[43] that they should not go out with their heads uncovered," as it is written in tractate Ketubot at the end of 72a. And Rashi z"l comments, "*A warning* – From what we do to her for the sake of humiliating her, treating her measure for measure. In other words, just as she uncovered her hair and let it down privately for the pleasure of her paramour, so also it is done to humiliate her in public. And this implies that it is forbidden. Another interpretation of the verse where it says, 'the kohen uncovers' is that it implies that at that moment her hair was not uncovered. Thus, we learn from it that it is not the practice of Jewish women to go out in public with their heads uncovered – and this is the main interpretation."

(6) וההבדל שיש בין ב׳ הפירושים הוא עפ״י א׳ משמע, שהטעם שמגלין שערה, כדי לנוולה בגלוי, כמו שעשתה היא לבועלה להתנאות לפניו בראש מגולה, משמע שאנן הוא שאסור לן לגלות שערה ברבים כדי לנוולה על חנם, ואך כדי לעשות לה מדה כנגד מדה התירה לנו התורה אסור זה כדי לנוולה, אמנם היא אין לה שום אסור בגלוי ראשה, שאם רצתה לנוול עצמה, תנוול לכל עת שתרצה, ובכל מקום שתרצה בבית ובשדה. ואך מפי ב׳ ופרע, מכלל דעד

6. The difference that exists between these two interpretations is that according to the first it is implied that the reason that they uncover her hair is in order to humiliate her, and to do to her just as she did for her paramour, pleasuring him with her uncovered head. It further implies beyond all doubt that it is forbidden for us to uncover her hair in order to humiliate her without due cause, but in order that she should receive punishment measure for measure, the Torah permitted us to engage in this prohibition in order to shame her. However, she herself is under no prohibition whatsoever not to uncover her head, since if she wanted to humiliate herself, she may do so at any time she so

42. I.e., the *sotah*, the woman accused of adultery (cf. Numbers 5:11–31).

43. *Bnot yisrael* (בנות ישראל) – translated as "Jewish women" throughout.

השתא לאו פרוע הוה, ומה טעם? משום דאין דרך בנות ישראל לצאת פרועות ראש, משמע שאסור לה גם עצמה לגלות שערה, שלכך בא הכתוב להזהירה שלא תשנה מדרך בנות ישראל בשום אופן.

desires and in any place she would like, whether in the house or in the open field. But the second interpretation implies that until the point when the kohen uncovered her hair it was not that way. And what is the reason that it gives for this? It states that her hair was not uncovered because "it is not the practice of Jewish women to go out with their hair uncovered." This implies that it is even forbidden for her to uncover her own hair. And it is for this purpose, so the line of reasoning goes, that the verse comes to warn her that she should not deviate in any way from the practice of Jewish women in this regard.

(7) הרי לך מפורש, דלפי א', אין לה בזה אסור כלל, שאין בזה רק משום נוול, ואם תרצה לנוול עצמה, תנוול, ולפי' ב ג"כ אין האסור מצד עצם הדבר של גלוי שער, רק מצד מנהג בנות ישראל שנהגו לכסות ראשן, משום שחשבו בזמנם שיש בזה צניעות לאשה, והמגלה שערה נחשבת פורצת גדר הצניעות, ולזה הזהירה תורה לכל בת ישראל שלא תעשה היפך מנהג בנות ישראל בזה.

7. So you see explicitly that according to the first explanation she does not have a prohibition at all since the only concern is that of shame, and if she wants to shame herself she may halakhically do so. According to the second explanation there is likewise not a prohibition from the standpoint of the act of uncovering the hair itself, but only from the standpoint of the custom of Jewish women who were accustomed to cover their heads because covering the hair was considered in their time to be a matter of feminine modesty. A woman at that time who uncovered her hair in public was considered to be someone who broke with societal norms of modesty and it is for this reason that the Torah warned every Jewish woman not to overturn the custom of Jewish women in this regard.

(8) וא"כ עתה שכל בנות ישראל הסכימה דעתן שאין להן בכיסוי הראש שום צניעות וכ"ש שאין להן בגלוי הראש שום נוול, ואדרבה גלוי שערן הוא הודן והדרן ויופיין ותפארתן ובגלוי שערה מתגאה האשה לפני בעלה

8. Therefore, now that all Jewish women[44] agree and are of the opinion that covering the head does not represent a matter of

44. Or most Jewish women, which counts as "all" under the principle of *rubo kekulo* ("the majority is counted as the entirety").

ובועלה, א״כ נעקור האסור מעיקרו ונעשה היתר.

modesty – and all the more so that going out with an uncovered head does not represent any sort of shame, but rather the revealing of their hair is their glory, their splendor, their prettiness, their beauty, and nowadays a woman confidently and unabashedly uncovers her head in front of either her husband or her paramour – this being the case, the prohibition has been uprooted from its very base and it has now become permissible.

(9) ומה גם עוד דסברת פי׳ א׳ שכתב רש״י ז״ל, מצאנוה מפורשת להתה״ק ר׳ עקיבא זיע״א, במס׳ ב״ק דף צ׳ ע״א במשנה, וזל״ה מעשה באחד שפרע ראש האשה בשוק, באת לפני ר׳ עקיבא וחייבו ליתן לה ד׳ מאות זוז, [על שנוולה בשוק כפי זמנם שגלוי הראש היה נחשב לנוול] א״ל, רבי, תן לי שמן, ונתן לו זמן, שמרה עומדת על פתח חצרה, ושבר את הכד בפניה ובו כאסר שמן, גלתה את ראשה והיתה מטפחת ומנחת ידה על ראשה, העמיד עליה עדים ובא לפני ר׳ עקיבא, א״ל לזו אני נותן ד׳ מאות זוז? א״ל לא אמרת כלום, שהחובל בעצמו אע״פ שאינו רשאי פטור, אחרים שחבלו בו חייבים. עכ״ל.

9. In addition, we find that the implicit reasoning of the first explanation in Rashi z"l is explicitly attributed to the holy Tanna, Rabbi Akiva (may his merit protect us. Amen.) on b. Bava Kamma 90a in the Mishnah, where it states: "It once happened that someone uncovered the head of a woman in the marketplace. The woman brought her complaint for this before Rabbi Akiva and he ruled that the man was obligated to pay her damages in the amount of 400 *zuz* [on account of his having shamed her in the open marketplace, since at that time the uncovering of a woman's head was considered to them to have been a shameful thing]. The man said to Rabbi Akiva, 'Give me some time.' And he gave the man some time. It happened that while the woman was standing in the opening to her courtyard, he broke a vial containing expensive perfume in front of her, to which she responded by uncovering her head, dripping the oily perfume from her hand, and placing her hand on her head. The man appointed witnesses against her and came before Rabbi Akiva, saying, 'To such a woman I am supposed to give 400 *zuz*?' Rabbi Akiva said to him, 'Your argument means nothing, for the one

who harms himself – even though it is not proper to do so – is exempt, but if others harm him in the very same way they are culpable.'"

(10) וצריכים לדעת, מה פי' פטור דקתני, מאיזה דבר פטור, מתשלומין לא שייך, דלמי ישלם, האם לעצמו? ממלקות פשיטא, דהיכן מצינו שהחובל בעצמו חייב מלקות, ושו"ר להתוס' דף צ"א ע"ב ד"ה החובל וכו', שנתעוורו בזה, ויישבו בדוחק, דפי' פטור הכא, היינו שאין בזה צד חיוב רק שאינו חס על גופו, יעוי"ש.

10. We need to understand what the meaning of "exempt" is here in the Mishnah, i.e., from what is the person exempt? In this case the assessment of monetary damages is irrelevant since to whom would a person pay damages? To himself? The obvious reference is to lashes by the court, since where do we find that one who harms himself is liable to lashes? I also saw that the Tosafot [Bava Kama] 91b, beginning with *ha-chovel . . .*," were confused over this and then settle the apparent contradiction[45] with a very strained line of reasoning that surrounds the meaning of "exempt" in this context, which is that "exempt" here does not indicate being exempt from an obligation – which is its normal usage – but rather that a person did not properly preserve his body (see there).

(11) ולדעתי המעט נר' כי רע"ק לא נקט האי לישנא דהחובל וכו' רק בלשון השאלה מדין חובל שיש בו צד איסור לחבול בעצמו, אבל בנידו"ד אין כאן חבלה רק ביש בעלמא, ולכ"ע רשאי אדם לבייש את עצמו, אבל אחרים שביישוהו חייבים, וכמו שמפורש שם דף צ"א, יעוי"ש, וכן איתא בהגהות מא"י שבגליון הרי"ף בתלמוד החדש דפוס מינכאן, שכתבו על דברי רע"ק הנ"ל, וז"ל,

11. In my humble opinion, it appears to me that Rabbi Akiva did not adopt the meaning that was employed by the Tosafot in their explanation, but only borrowed metaphorically from the law of "the one who harms," which contains an aspect that it is halakhically prohibited for one to harm himself. But in our case, there is no actual harm,[46] just general embarrassment, and according to all opinions it is completely acceptable for someone to embarrass himself, but others who embarrass him are liable. This is explicit on b. Bava Kamma 91 (see there), and so it is stated in the comments

45. I.e., that a person is liable to receive lashes, yet is at the same time said to be exempt from them.

46. I.e., physical harm.

החובל, נ״ב, שביישה את עצמה, עכ״ל, הרי כדברינו ממש.

of the *Alfas Yashan* (printed in the *Gilyon HaRif* included in the New Talmud edition from Munich), in which they wrote on the statements of Rabbi Akiva mentioned above as follows, "The one who harms (52) – who embarrassed herself." Indeed, this is in exact accord with our explanation.

(12) ואף לדעת פתיית חכם אחד, שכתב לי זה כמה, שדבר זה נקרא לדעתו חובל, השבתיו, דזו פתיות גסה לחשוב כן, הן מצד השכל הישר, הן מצד דבפי׳ אתמר שם בש״ס דף צ״א סוף ע״א, וז״ל, והא מתניתין בבושת היא וכו׳ יעוי״ש. ואף לפי פתיותו, מצינו שם תנא דברייתא אליבא דרע״ק דס״ל רשאי אדם לחבול בעצמו, וכן מפורש עוד התם דאיכא תנאי דס״ל רשאי אדם לחבול בעצמו וכן מפרש למארי מתני׳ ובריתא דמס׳ שבועות דף ז״כ ע״א, יעוי״ש. ופי׳ רשאי פשוט לכל מבין שאין בדבר שום אסור, הרי לך שלדעת רע״ק דמתני׳ ולדעת כמה תנאי כפי׳ א׳ של רש״י ז״ל, שאין שום אסור לאשה לגלות ראשה, שאם רצתה לנוול עצמה תנוול, וכ״ש כפי האמת שאין בזה אלא צד ביוש, ולפי׳ רשאי אדם לבייש את עצמו וכמש״ל.

12. Even according to the naiveté of one particular scholar who wrote me to the effect that, in his opinion, the text is not referring to mere embarrassment but to actual harm, I responded to him that such a position is incredibly naive, whether from the standpoint of common sense or whether from the standpoint of interpreting the Talmudic statement there and the bottom of 91a where it says, "And surely the Mishnah is referring to embarrassment" (see there). But even according to his naive view, we find there in a baraita that according to Rabbi Akiva it is permissible for a person even to harm himself. There are also explicit statements there of several Tannaim who also hold that it is permissible for a person to harm himself. It was also obvious to the scholars of the Mishnah and baraita, such as in tractate Shevuot 27a (see there). And as for the meaning of the word "permissible," it is obvious to every intelligent person that there is no indication of prohibited activity inherent in this term. So you see that according to the opinion of Rabbi Akiva in the Mishnah, the opinions of several Tannaim that are found elsewhere, and the first explanation in Rashi z"l there is not any prohibition for a woman to uncover her head since if she desires to shame herself she may halakhically do so. And all the more so according to the truth that there is nothing in this act other

than an aspect of personal embarrassment, and as we already learned, it is completely permissible for a person to embarrass himself.

(13) ועוד מצינו תנאי דס״ל, דלא דאמרינן מכלל הן אתה שומע לאו, כמ״ש במס׳ שבועות דף ל״ה ע״א במשנה, אל יכך ויברכך וייטיב לך ר״מ מחייב וחכמים פוטרים, ופרש״י ז״ל ר״מ מחייב מכלל לאו אתה שומע הן, אל יככה אם תעידוני, ואם לא תעידוני יכך, ע״ש. ורבנן פוטרים דאין אומרים מכלל לאו וכו׳, וא״כ הכא נמי בנד״ד נימא דלא ס״ל כר׳ ישמעאל, ופרע אזהרה ללאו, דאין אומרים מכלל הן, וכו׳.

13. We further find that the Tannaim are not of the opinion that "a prohibition may be established through a negative inference." In tractate Shevuot (35a), for example, the Mishnah states there, "May God not strike you, or May God bless you, or May it be well with you. Rabbi Meir holds them liable on account of such things, but the sages exempt them." The commentary of Rashi z"l explains that the person saying these things in the Mishnah meant implicitly "May God not strike you – if you testify on my behalf, but if you do not give testimony on my behalf, then may God strike you." And Rabbi Meir holds that such implied curses incur liability since he is of the opinion that a prohibition may be established through implication – see there. But the sages exempt such implicative statements from liability since they do not hold that a prohibition may be established through implication. If this is so, then also here in our case we may say that they do not hold like Rabbi Yishmael that the phrase "and the kohen shall uncover" indicates an actual prohibition because we do not say that a prohibition may be established from mere implication.

(14) ועוד דעדיפא מכל זה, כי פי׳ דברי ר׳ ישמעל, אינו כמו שאנו מבינים בשטחיות דבריו שעומדים על רגל אחד דהיינו גילוי הראש לחוד, אלא דבריו עומדים על ב׳ רגליים, דהיינו ב׳ רעותות. גלוי שכר וסתירת שער מקליעתו וקשריו, אבל

14. Even better than all of this is the actual meaning of Rabbi Yishmael's words. They do not mean what we superficially understand them to mean, leaving them to stand only on one foot – that it refers to uncovering the head only – but his words stand on two feet, as it were, which are two shameful actions: uncovering the hair

and loosening it from its braids and ties. But the mere uncovering of the hair by itself is not a part of the warning to Jewish women at all. This conclusion is forced by the plain meaning of the Mishnah in Sotah (7a) where it says, "And the kohen takes hold of her garments . . . until he reveals her heart. Then he loosens her hair." The commentary of Rashi z"l states, "This means that he unties her hair from its braid, and it will be discussed later in the Gemara." The discussion is on page 8a where it says, "Our rabbis taught in a baraita, 'And the kohen shall uncover the head of the woman.' From this passage I can only learn about the uncovering of her head. From where do we learn that her body is uncovered [i.e., 'her heart,' as mentioned in the Mishnah]? Therefore, the verse includes the seeming superfluous word 'the woman' [i.e., which implies that her body is also uncovered ('her heart'), as was accepted by the scholars of the Mishnah]. If so, then what does it mean that he 'uncovers her head' except to teach that the kohen loosens her hair." That is, he dishevels her braided locks, undoing it and spreading it on her neck and shoulders. Doing this is considered ugly[47] even in our present time. That is, if a woman who has long hair were to loosen it from its braids and place it here and there, tangled and snarled, it would be seen as ugly. The idea that the word 'uncover' means to loosen hair from its braids is exactly what the *Magen Avraham* (Rabbi Avraham Gombiner) writes in *Orach Chayyim* (75:2), in exposition of what Rabbi Yosef Karo writes in *Even HaEzer*, "The daughters of Israel do not go out with their heads

גלוי שער לחוד אינו באזהרה כלל, ופי' זה מוכרח ממשנה בסוטה דף ז'. וזל"ה, והכהן אוחז בבגדיה וכו' עד שמגלה את לבה, וסותר את שערה, ופירש רש"י ז"ל, סותר את שערה מקליעתו ולקמן יליף לה, עכ"ל. והילפותא היא בדף ח' ע"א, וז"ל, תנו רבנן ופרע את ראש האשה, אין לי אלא ראשה גופא [לבה דקתני במתני'] מנין? ת"ל האשה [משמע גופה דהיינו לבה כמו שקבלו מארי מתני'] וא"כ מה ת"ל ופרע את ראש האשה? אלא מלמד שהכהן סותר שערה דהיינו הורס קווצותיה הקלועים ומתירן ופושטן על צווארה וכתפותיה, וזה נפל אף בזה"ז לאשה בעלת שער ארוך לסתור אותו מקליעותו ולהניחו פרוש אנה ואנה מעורבב ומדובלל, וכ"כ המג"א בא"ח סי' ע"ה סק"ב דמ"ש מרן באה"ע לא תלכנה בנות ישראל פרועות ראש, היינו שסותרות קליעת שערן והולכות בשוק עכ"ל ע"ש.

47. The text here is emended from נפל to נוול.

'uncovered,' that is, with the braids of their hair undone and walking around in the open marketplace" (see there).

(15) הראת לדעת דפי׳ ופרע ראש האשה, היינו שמגלהו וסותרו, ועל זה אמר ר׳ ישמעאל אזהרה לבנות ישראל שלא יצאו פרועות ראש, דהיינו שערן מגלה וסתור מקליעתו ומדובלל, אבל אם רק מגלה וקלוע או סרוק ומתוקן שאין לה בו שום נוול לית לן בה, וכל זה הוא אפי׳ לפי זמניהם.

15. "It has been shown you"[48] that the meaning of "and the kohen shall uncover the head of the woman" is that he both uncovers her hair and loosens it. This was what Rabbi Yishmael stated as a warning to Jewish women when he said that they should not go out "with uncovered heads," that is, with their hair uncovered, loosened from its braids, being tangled and snarled. But if, however, she merely uncovers it and wears it either braided or combed and styled – so that there is no appearance of ugliness or unkemptness – then we are not concerned about it. And all of this was applicable even in the times of the Mishnah and Gemara.

(16) וחכם אחד כתב לי ראיה לאסור, ממעשה דקמחית שזכתה לז׳ בנים ששימשו בכהונה גדולה בחייה בשביל שלא ראו קורות ביתה קליעת שערה, דמשמע מזה שהוא אסור גדול, והנזהרת בו יש לה שכר גדול אפי׳ בעוה״ז, והשבתיו, כי ודאי שמע המעשה מאשה זקנה המספרת מעשיות, ולא ראה המעשה במקורו, שהוא ביומא דף מ״ז ע״א וז״ל ת״ר ז׳ בנים היו לקמחית וכלם שמשו בכהונה גדולה, אמרו לה חכמים מה עשית שזכית לכך, אמרה להם מימי לא ראו קורות ביתי קלעי שערי, אמרו לה הרבה עשו כן ולא הועילו, עכ״ל.

16. A certain scholar once wrote me a proposed proof to forbid women from uncovering their hair. His argument was brought from the account of Kimchit who merited to have seven of her sons serve as kohen gadol in her lifetime because, as she states there, the rafters of her house "never saw the braids of her hair." From this statement, this scholar maintained, it can be implied that (a) it is a severe prohibition for a woman to uncover her hair even within her own house and (b) that a woman should be cautioned that there is a great reward for doing so, even in this world. I responded to him that he must have heard the story this way from an old woman telling fables instead of seeing it as it is actually recorded in its source, which is in b. Yoma 47a. It says, "Our rabbis taught

48. *hor'eta le-daat* (הראת לדעת), cf. Deuteronomy 4:35.

הרי לך שחכמים דחו דבריה שאינם אלא שיחת אשה זקנה, כי הם ידעו שאין בזה אסור רק מנהג שנהגו בנות ישראל.

in a baraita – Kimchit had seven sons and all of them served as kohen gadol. The sages said to her, 'What have you done that you have merited to such things?' She said to them, 'Never in all of my days have the rafters of my house seen the braids of my hair.' They said to her, 'Many have done likewise and it was not useful to them.'" So you see that the sages rejected her words as being nothing more than chattering of an old woman, for they knew that there was no prohibition involved, but only a custom that was practiced among Jewish women.

(17) המורם מכל זה, שדבר זה של כסוי הראש בנשים אינו אלא מצד המנהג דוקא, שחשבוהו בזמן הקודם לצניעות, והעושה הפך המנהג, היתה נחשבת לפרוצה, אולם עתה שהנשים עלו בהסכמה, שאין להם בזה שום נוול ושום פריצות חלילה, ואין בכסוי הראש שום צניעות, רק צביעות, ועברה על מצוה שהזמן גרמה, א"כ אזדא ליה אסורא.

17. The conclusion to this entire line of reasoning is that the entire matter of women covering their heads is specifically a custom which was considered in previous times to be a part of feminine modesty. Those who acted in opposition to the custom were viewed as being lewd and immodest. However, now that women have come to the consensus that having uncovered hair is neither ugly, unkempt, or lewd, *chalilah,* and that covering the head is no longer connected with modesty – only decoration[49]– time has passed this commandment which is dependent on a specific period of time. Therefore, there is no longer any prohibition.

(18) וא"ת וכי מפני שנהגו היתר בדבר אסור, נעקר האסור ממקומו? זו אינה קושיא חדא! שאין זה אסור, אלא מנהג שבטל טעמו, שאף

18. And if you say, "So because they flouted a prohibition, the prohibition becomes uprooted from its place?!" I say that this does not present a difficulty. First of all, the uprooting of an actual prohibition is

49. *tzeviut* (צביעות), a play on the word *tzeniut*. Note – I chose to render the word here as "decoration" in relation to its less-common meaning of "coloring" or "painting." The reason for this choice is due it being used as a fairly obvious antonymic pun on the word for "modesty" (צניעות). My colleague at Emory, Rabbi Dr. Don Seeman, proposes that "He means to call it hypocrisy dressed up as piety" idiomatically. That is possible.

אסור שבטל טעמו לגמרי בטל אסורו, שהרי גלוי משקים, אף שהוא מילתא דסכנתא דחמירא מאיסורא והוא דבר שנאסר במנין, כמ״ש בתוס׳ ביצה דף ו׳ ד״ה והאי דינא וכו׳, ע״ש, עכ״ז עכשיו שאין נחשים מצויים בינינו, מותר, כמ״ש מרן ביו״ד סי׳ קט״ז ס״א, יעוי״ש, וקו״ח לנד״ר שיסודו הוא מנהג נשים שבטל טעמו.

not under discussion, but only a custom – the reason for which no longer applies. However, even an actual prohibition can be abolished once the reason for it no longer exists or is applicable. Take, for example, the prohibition on drinking liquids that have been left uncovered. Even though it is listed as "a dangerous matter more severe than a prohibition," and although it was a prohibition prescribed by the Sanhedrin (as the Tosafot write in b. Beitzah 6a, beginning with *Vehaedna*...[50]), nevertheless now that snakes are no longer common among us it has become permissible to drink such liquids (as Maran writes in *Yoreh Deah* 115:1 – see there), and all the more so in our case which is based on a custom of women, the reason of which no longer applies.

(19) ועוד מצינו להגאון מוהר״ם אלאשקר ז״ל בתשובותיו סי׳ ל״ה, וז״ל, שאלת הידיד אם יש לחוש לאלו הנשים שנהגו לגלות שערן מחוץ לצמתן להתנאות בו, לפי מה ששמענו מי שהורה להם אסור גמור, ובפי׳ אמר שער באשה ערוה. תשובה, אין בית מיחוש לאותו שער כלל, כיון שנהגו לגלות, ואפי׳ לק״ש, וההיא דשער באשה ערוה לא מיידי אלא בשער שדרך האשה לכסותו, דומייא דטפח וכו׳ וכו׳, ע״ש מה שהאריך, והוסיף עוד משם ראבי״ה ז״ל, שכל אלו שהזכירו לערוה דוקא בדבר שאין רגילות לגלות. אבל בתולה הרגילה בגלוי השער

19. We further find the following statement by the eminent teacher and scholar, Rabbi Moshe Al-Ashkar z"l, in his responsa (#35): "An inquiry from a friend as to whether or not we need to be concerned about these women who are accustomed to reveal some of their hair from underneath their hairnets in order to beautify themselves. Since there are those whom we have heard teach that to do so is completely prohibited on the basis of the Talmudic statement 'the hair of a woman is nakedness.' Answer: There is no place for concern regarding such hair at all since they are accustomed to regularly leave it uncovered, even while reciting the Shema. And the statement in the Talmud that 'the hair of a woman is nakedness' does not relate to any hair except that which is normally covered by women, similar to the span of a *tefach*, etc. etc.'" – see

50. The text had a misprint which we corrected.

לא חיישינן יעוי״ש, והוסיף עוד שם, שאפילו הבאים ממקום שרגילים לכסות אותו שער מותר להם לגלותו במקום שנהגו לגלותו, ע״ש. לא חיישינן יעוי״ש, והוסיף עוד שם, שאפילו הבאים ממקום שרגילים לכסות אותו שער מותר להם לגלותו במקום שנהגו לגלותו, ע״ש.

his explanation in detail there. And he also adds in the name of the Ra'aviah z"l that everything which is mentioned in that passage as being "nakedness" is specifically referring to something which women are not accustomed to leave uncovered, but we are not concerned at all about unmarried women who regularly leave their hair uncovered (see there). He further adds there that even if they come from a place where the custom is to cover such hair, it is permitted for them to uncover it in a place where the custom is to leave it uncovered (see there).

(20) ואנן נוסיף עוד דבר המובן מאליו לכל עם תלמיד, שהאידנא שכל הנשים מגלות שער כל ראשן, חזר שער הנשואות כשער הבתולות שכלן מתאימות רגילות לגלותו, כי מדי הוא טעמא בבתולות, משום דרגילות לגלותו לא מקרי בגלויין פריצות, הוה״ד והוא הטעם האידנא בנשואות הרגילות לגלותו, דלא הוי בזה שום פריצות חלילה, וכן לענין מ״ש שער באשה ערוה [ברכות כ״ד], מדי הוא טעמא בבתולות משום שאין הרהור ברגיל לראות, הוה״ד בנשואות הרגילות האידנא, אין הרהור ברגיל, וכל אדם מבשרו יחזה, שרואה אלפי נשים עוברות לפניו יום ויום בראש מגולה, ואינו שם לבו להן, והמהרהר, לא מחמת שער גלוי מהרהר. זהו ידידי

20. And we add to this another point which is obvious even to the student[51] that nowadays, since all women reveal all the hair of their heads, the hair of married women has returned to a state similar to that of unmarried women for they are all appropriately accustomed to uncovering it. And so, for the same reason that we are no longer concerned about unmarried women not covering their hair in public, i.e., that due to them regularly leaving it uncovered, the fact that it is visible is no longer considered lewd. It is also the case, by the same logic that, since nowadays married women regularly leave their hair uncovered, there should not be any consideration that it is lewdness, *chalilah*. Also, with regard to what was written, "the hair own flesh"[52] for thousands of women pass before him each and every day with uncovered heads and he does not even pay attention to them, and those that do uncovered hair of a married woman. Every man "will see [the truth of this statement] from

51. Cf. 1 Chronicles 25:8.

52. Cf. Job 19:26.

הנר׳ לקוצ״ד ברור בכל זה, ועוד יש הרבה מה להאריך בזה, ואין הפנאי מסכים, ומה גם שאין עוד צורך, באורך, ומעתה עיני הוריך יראו וישמחו, ויהי שלום בחילך, שלוה בארמנותיך, אמן

his own flesh"[53] for thousands of women pass before him each and every day with uncovered heads and he does not even women pass before him each and every day with uncovered heads and he does not even pay attention to them, and those that do pay attention and have licentious thoughts are not doing so because of uncovered hair. This is it, my friend, and everything that I have said is clear and apparent even to my limited ability.[54] There is much more that could be explained in detail regarding this matter, but the time is not currently available for me to do so. Also, there is no need to be so lengthy since now the eyes of your parents will see and rejoice. And "there shall be peace within your walls and prosperity within your palaces."[55] Amen.

RABBI MOSHE MALKA

Rabbi Moshe Malka, who was the chief rabbi of Petach Tikva, accepted the position of Rabbi Messas in a series of letters written to Dr. Marc Shapiro. The first piece is from *Responsa Veheshiv Moshe* #34:

The Question:

לכבוד הרב הג׳ כמוה״ר מלך שפירא שליט״א ארה״ב, שלום ורו״ב!

To the great Rabbi Melech Shapiro shlit"a in the United States, greetings and many blessings.

שאלני להודיעך בעניין גלוי ראש של נשים, שהרה״ג מוהררי״מ פסק בספרו מים חיים, חלק ב׳ סי׳ קי׳, שבז[מן] הז[ה] שכל נשי העולם חזרו לגלות את ראשן פקע איסוריה, וכת״ר מבקש לדעת אם כדאי לסמוך על זה, ואיך

You have asked me to explain to you the issue of women's hair covering, since our great master, teacher, Rabbi Yosef Messas, ruled in his book *Mayim Chayyim* 2:110, that in our days, since all women in the world appear in public with their hair uncovered, the prohibition is no longer extant. His honor wishes to know if this

53. Cf. Job 19:26.
54. Cf. Rambam, *Mishneh Torah*, *Hilkhot Me'ilah* 8:8.
55. Cf. Psalms 122:7

should be relied upon and how people practice in Morocco.

נוהגים במרוקו?

The answer:

Answer: You should know that I also had difficulty with the Gaon's (i.e., R. Yosef Messas's comment). Since the matter is set out in the Gemara, in the seventh chapter of Ketubot (72a): "Going out with her hair undone violates a Torah law!" The Rif, the Rambam, and the Rosh all quote this, so how can the Gaon call it a custom?!

תשובה: דע לך שגם אני נתקשיתי בדברי הגאון ז"ל, כי דבר זה הוא גמרא ערוכה בפרק המדיר עה' "ראשה פרוע דאוריי[תא] היא." הביאה הרי"ף, הרמב"ם והרא"ש, ואיך הגאון ז"ל קורא לה מנהג?

But after I looked carefully at the words of our Master (=R. Joseph Karo) in [the *Shulchan Arukh*] *Orach Chayyim* 75:2, I saw that the Gaon was correct, for this is what it says: "It is forbidden to recite [the Shema] in the presence of [a woman exposing] the hair that a woman generally covers." It seems from his phrasing that only hair that a woman generally covers is part of the category of "a woman's hair is *erva*." But hair that she usually exposes is not considered *erva*.

אך אחר העיון בדברי מרן באו"ח סי' עה' ס"ב, ראיתי שצדק הגאון וז"ל: "שער של אשה שדרכה לכסותו, אסור לקרות כנגדו." משמע מדבריו ז"ל שרק שער שדרכה לכסותו הוא שיש בו משום שער באשה ערוה ואסור לקרות כנגדו, אבל שער שדרכה לגלותו אין בו משום ערוה.

And this is what the *Kaf HaChayyim* wrote there, #15:2, in the name of the *Ben Ish Chai*, that it is permitted to recite [Shema] in the presence of women from European cities, whose way it is to always appear in public with their hair undone, since it is the way of all these women, see there for details. And these are his words:

וכ"כ הכה"ח שם ס"ק טו"ב בשם הבן איש חי, שהנשים של ערי אירופא שדרכן תמיד לילך פרועי ראש מותר לקרות כנגדן כיון שכל הנשים דרכן בכך, יעו"ש, וז"ל,

The *Ben Ish Chai*, "*Parashat Bo*," #12, wrote as follows:

הבא"ח בפרשת בא אות יב, וזל"ה:

> It is forbidden to recite [the Shema] or pray or say blessings in the presence of a woman [exposing] her hair, which she generally covers, etc., but in the presence of virgins, whose practice it is to appear in public with their hair
>
> "שער של אשה שדרכה לכסותו ערוה הוא ואסור לקרות ולהתפלל ולברך כנגדו וכו' אבל בתולות שדרכן לילך פרועות ראש, וכן שערות של

נשים שרגילים לצאת חוץ לצמתן בקצת ארצות מותר לקרות כנגדן כיון שדרכן בכך ורגילין בהם, וכן נשים שדרכן לעשות שער ראשן קליעות משתלשלות מאחוריהן, כיון שדרכן בכך מותר לקרות כנגדן. ובסה"ק מקבציאל, העליתי שהנשים בערי אירופא שדרכן לילך תמיד פרועי ראש מותר לקרות כנגדן, כיון שכל הנשים דרכן בכך." עכ"ל.

out, and [the hair of] women in some countries, who generally let some hair stick out from under the covering, it is permitted to recite [the Shema] in their presence, since it is their practice and [men] are used to them. Similarly, women whose practice it is to braid their hair and let it fall behind them [without covering it], since this is their practice, it is permitted to recite [the Shema] in their presence. And in my small book, *Mekabtziel*, I noted that since European women always appear in public with their hair uncovered, it is permitted to recite [the Shema] in their presence, since all women [in their societies] appear this way.

מכאן אתה למד, שאין השער באשה נקרא ערוה אלא אם הוא מכוסה, ובמקום שדרכן לכסותו אבל אם הוא מגולה במקום שדרכן לגלותו אינו נקרא ערוה,

From here you learn that only the hair of a woman that is [generally] covered can be called *erva*, and in a society in which it is generally covered, but if it is exposed in a society in which women expose it, this is not called *erva*.

והטעם נראה דכל שהשער מכוסה ונתגלה מביא לידי הרהור, לא כן אם הוא במקום שהוא תמיד מגולה שבני אדם רגילים לראותו תמיד, אי' מביא לידי הרהור, דומיא דבתולות שאין איסור בגלויו כיון שהוא תמיד מגולה, ומשום כך בערי אירופא שהנשים יוצאות תמיד פרועי ראש אין בזה משום ערוה.

And the reason appears to be that whenever hair that is generally covered is exposed, it can lead to erotic thoughts, but this is not the case when it is always revealed, and men are used to seeing it all the time; then it doesn't lead to erotic thoughts. This parallels [the law about] virgins, where there is no prohibition to reveal the hair, since it is always revealed, and for this reason, in European cities, where women appear in public with their hair uncovered as a matter of course, this does not count as [exposing] *erva*.

וגדולה מזו כתב הר"מ אלשקר ז"ל, הב"ד הכה"ח אות ח', שאפי[לו] אותן נשים הבאות מארצות שדרכן

The R. Moses Al-Ashkar said even more than this – his words are quoted in the *Kaf HaChayyim* #8 – that even those women who come from countries where

לכסות למקום שדרכן לגלות, מותרי׳ הן לגלות אם אינן רוצות לחזור, יעו״ש.

women generally cover their hair [who move to countries where women do not] are permitted to stop covering their hair, assuming they do not wish to return [to their native countries]. See there for further discussion.

מעתה קמו ועמדו דברי הגאון מהר״מ זלה״ה שהדבר תלוי במנהג וכל שאנשי העיר כולן נהגו לגלות אין בזה משום הרהור, וכנראה שעל זה סמכו הנשים בימינו אלה שהן הולכות בגלוי ראש בשווקים וברחובות ואין מוחה בידן, הואיל וי״ל על מה שיסמוכו.

With this in mind, the words of the Gaon our master stand firm, for the matter is all dependent on practice. Thus, anywhere in which all the women in a given city appear in public with their hair exposed, there is no concern about erotic thoughts. And it would appear that this is what modern [religious] women, who appear in markets and on the street with their hair uncovered, are relying on, and no one tries to stop them, since it can be argued that they have a reasonable view to rely upon.

משום כך אנו צריכים לומר דמ״ש הגמרא פריעת ראש דאוריתא היינו פריעת הראש מקליעת השער והיי׳ הסותרות שערותיהן וסורקות אותן מאחורי׳ כדרך אותן הפרוצות, לזה קראה הגמרא איסור דאוריתא, אבל לא שערות סתם והן קלועות ומסודרות על ראשן שאין בזה שום פליאה למיתי לידי הרהור.

For this reason, we need to suggest that when the Gemara says "uncovering hair is a Torah violation," this refers to undoing braided hair; in other words, making her hair free-flowing and brushing it back behind themselves, like lewd women do. This is what the Gemara calls "a Torah violation." But not a simple hairstyle, that is braided or coiffed and sits above their heads – this would give someone no cause to come to lewd thoughts.

וכך פירש רש״י על הפסוק ופרע את ראש האשה, סותר את קליעת ראשה (במדבר ה״יח), וכן מוכח מדברי הבא״ח הנ״ל שכתב:

And this is how Rashi explained the verse "and [the priest] shall undo the woman's hair" – "he undoes the braids on her head" (Num. 5:18). And this is also explicit in the words of the *Ben Ish Chai* referenced above, who wrote:

> ״וכן הנשים שדרכן לעשות שער ראשן קליעות משתלשלות לאחוריהם. כיון שדרכן בכך מותר

> And so too, women whose practice is to braid their hair and let the braids fall behind them, since this is their normal way of appearance, it is permitted to

לקרות כנגדן."

recite [the Shema] in their presence."

הרי שאם השערות קלועות אין בהן משום ערוה.

We see from this that if their hair is braided, this does not count as *erva*.

אצלנו בחו"ל היה הדבר גלוי ומפורסם, שכל הנשים היו הולכות בגלוי ראש, פרט לחרדיות שהיו חובשות פאה נכרית או מטפחת, ומ"מ אפילו אלו המחמירים היו יודעים שאין הנשים מוכנות לשמוע להם לכסות ראשן, ומשום כך לא היה מי שימחה ע"ז, משום מוטב שיהיו שוגגות וכו' עיי' הלכות יוה"כ.

In our community in the Diaspora (=Casablanca), it was well known that all women would appear in public with their hair uncovered, except for Chareidi women who would wear a wig or a head scarf. Nevertheless, it was understood even by those authorities who took a strict position that [non-Chareidi] women were unwilling to pay attention to them and cover their hair, and for this reason, there was no one who tried to stop them practicing this way, since "it is better to sin unwittingly, etc." See the laws of Yom Kippur (*Shulchan Arukh*, *OC* 608:2).

והלואי שיהיה הדבר נשאר בגלוי שערות ולא יתפשט גם למקומות מכוסים שדברי הכל יש בהם משום ערוה, וכבר הרשו לעצמן נשי הזמן להתהלך ברחובות ובשווקים חשופות שוקיים וזרועות, ובמקומות שחיה מעורבות על אחת כמה וכמה, ואין בידנו להקים את עול הדת עד בוא גואל צדק במבי"א.

If only the matter would remain at revealing hair and not spread to other covered places that would be considered *erva* according to everybody. But contemporary women have already allowed themselves to walk in the streets and marketplaces with bare thighs and arms – and in places where there is mixed swimming how much more so [is this a problem]! But we cannot establish the yoke of religion (i.e., we cannot stop this practice by force) until the righteous redeemer comes, may it be speedily in our days.

זה מה שנ"ל לענות על שאלתך ותו ל[א] מ[ידי]

This is what I have to answer in response to your questions, and nothing more.

החותם בברכת התורה: הצב"י משה מלכה

I sign with the blessing of Torah: A small one among the tribes of Judah, Moshe Malka.

Rabbi Malka returns to this discussion in Responsum 35.

פתח תקוה טו"ב אייר תשנ"א

Petach Tikva, 15th of Iyyar, 5751 (April 29, 1991)

למעלת הרה״ג כמוה״ר מלך שפירא שליט״א ארה״ב

To the great Rabbi Melech Shapiro shlit"a in the United States,

רב יקר! קבלתי את כל מכתביך, והנני מצטער שלא הייתי יכול לענות עליהם בזמן מחמת עול הצבור והיחיד המוטל עלי, ואחר עד עתה ועמו הסליחה.

Dear Rabbi! I received all your letters, and I apologize that I have not had time to answer them because of my communal and personal responsibilities, and it has had to wait till now, and I request your forgiveness.

בענין כסוי ראש האשה שכב׳ ראה כאילו ישנה סתירה בדברי המכתב הראשון ששלחתי לו, והוא דורש ממני הסבר.

With regard to a woman's hair covering, that his honor sees what seems to be a contradiction in the words of my first letter that I sent him, and he asks me for an explanation.

רב יקר! אינני יודע איך הגעת לידי סתירה כזו, כאשר אני כותב במפורש: ״ומ״מ אפילו המחמירים היו יודעים כי אין הנשים שומעות וכו׳״ והנה כידוע לכת״ר שלא כל קולא מתקבלת אצל החכמים כולם,

Dear Rabbi! I do not understand how you have come to see a contradiction when what I wrote explicitly is: "Nevertheless, it was understood even by those authorities who took a strict position that [non-Chareidi] women were unwilling to pay attention to them, etc." And it is known of course, to his honor, that not every lenient interpretation is accepted by every sage.

הלא תראה, הגאון מופת הדור הרב עובד׳ שליט״א מתנגד לפאה נכרית, ובצדק, כי הנשים בוחרות להן פאה חשובה ומהודרת, וזה גרוע לפעמים משער טבעי, ובכל זאת חרדות הולכות בפאה נכרית בשופי לית דחש, להודיע שבכל דבר ישנם מחמירים וישנם מקילים,

For instance, the great sage of our generation, Rav Ovadia shlit"a, opposes wigs, and correctly, since women choose expensive and beautiful wigs, and this is often worse (=more attractive) than their natural hair! But even so, Chareidi women wear wigs with easy spirits and no one [in that community] is concerned. I say this to point out that in all matters there are those who are strict and those who are lenient.

אני הסברתי תחילה את דברי הר״י משאש ז״ל והבאתי סמוכים מדברי שאר הפוסקים, דבמקום שהנשים נוהגות ללכת בראש מגולה אין שם איסור, אך לא כולם מודים לזה,

I explained first the words of R. Yosef Messas z"l, and I brought proofs from other poskim, that in a place where women's practice is to appear in public with hair uncovered, there is no prohibition, but that not everyone agrees with this.

וישנם המחמירים ואומרים אם הגמרא אומרת פריעת ראש דאוריתא, פשוטם כמשמעם ואין לשמוע לכל מי שמפרש אותם אחרת,

And there are those who are strict and say that if the Gemara says that exposing hair is a Torah prohibition, the simple meaning of the words is their intent, and we should not listen to anyone who tries to explain them differently.

אלא ודאי סוברים שאסור לאשה ללכת בראש גלוי, ואיך למה לא היו מוחים בידם? על זה כתבתי שהם היו יודעים שאין הנשים שומעות להם ולכן לא מחו בידם כי מוטב וכו'.

Now certainly, people who think this way believe it is forbidden for women to appear in public with their hair uncovered, but then why don't these people stop [the women] from doing so? It was to answer this question that I wrote that they know the women will not listen to them, and this is why they did not try to stop them, since "it is better, etc."

ועכ"פ שמחתי לראות את מה שכתב הרב הלוי, בספרו "ספר המצות," והוא תנא דמסייע למה שכתבתי חזק וברוך.

Nevertheless, I was happy to see what R. HaLevi[56] wrote in his book *Sefer HaMitzvot*, and he can be considered an authority that supports what I wrote. Continue in strength and blessing! (=thank you).

Thus, both Rabbis Messas and Malka accept the societally based understanding of the prohibition, and thus rule as a matter of practical law that married woman in modern society, where the norm is not to cover their hair, are permitted to go with their hair uncovered.

RABBI YAAKOV BRECHER

A 19th–20th century scholar, Rabbi Yaakov Brecher, attests to the fact that married women in many countries around the world no longer covered their hair. In a brief piece (*Katuv Yosher Divrei Emet* pp. 86–87), he presents a radically different understanding of the prohibition. He argues that it was simply a custom of married women intended to distinguish them from single women. He even compares it to a wedding ring.[57] In an

56. This refers to the *Yad HaLevi* which was discussed above.

57. While at first glance this approach is appealing, it does not withstand a close textual review. First, as we explained above in Chapters 2–4, the classical Talmudic texts do not clearly distinguish between married and single women. Second, this explanation is simply unstated as a reason (and if it were the reason, it should cause an *arusah* to cover her hair). Third, it defies the modesty-driven explanation found in so many Rishonim.

era where married women covered their hair, leaving it uncovered would be like a married woman walking around without her ring, presumably to hide her marital status, thereby inviting promiscuity. However, when the custom changes, he argues, there is no prohibition whatsoever.[58]

Excursus Six: Details of Hair Covering: Starting When, With What, Where, and How Much

This work has been devoted to developing the argument that the obligation for married women to cover their hair is based on social convention, and therefore does not apply in an era where most married women do not cover their hair. If this contention is correct, the material in this excursus is essentially not needed, since the "correct" answers to all of these questions are that women must only cover their hair when, with what, where, and how much as modest women do in their society.

This excursus discusses four topics.

- When must a woman start covering her hair?
- How much hair should be covered?
- Hair covering in non-public locations
- Hair covering with a wig, rather than a hat or a snood

A. COVERING HAIR BY A BRIDE AT THE WEDDING

As explained many times in this book, normative Jewish law ruled that single women need not cover their hair. Furthermore, this has been the common practice in the Jewish community (other than Yemen[59]) for many centuries. When a woman becomes obligated to cover her hair (assuming such an obligation) – specifically, whether a bride must cover her hair on her wedding day is in dispute.[60] The *Mishnah Berura* (*OC* 75:11) rules that a woman must cover her hair as soon as she becomes an *arusah,* after the first stage of marriage, even before *sheva berachot* are

58. His position was challenged vociferously by Rabbi Chaim M. Roller (1868–1946) in *Responsa Be'er Chaim Mordechai* 3:52. Thanks to Rabbi Jonathan Ziring for these references.

59. For more on Yemen and a few other Sephardic places, see Ilan Fuchs, "Hair Covering for Single Women: A New Reading of Mizraḥi Halakhic Rulings" *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, No. 23:35–59 (Spring–Fall 2012) and Rabbi Yitzchak Ratzabi, *Shulchan Arukh Hamekutzar,* Chapter 202 (on single women covering their hair in Yemen).

60. Before any intimacy takes place.

recited and before she is fully married. This position follows the view of Rabbi Akiva Eger (Comments on *Shulchan Arukh OC* 75), who cites the Mahari HaLevi. As Rabbi Moshe Sternbuch *(Responsa Teshuvot VeHanhagot* 5:334) notes, this would essentially obligate a bride to come to the wedding with her hair covered, even before she is married.

While there are a variety of opinions on what constitutes each stage of marriage (see *Shulchan Arukh EH* 55:1), it would be impractical for a bride to cover her hair in the middle of a wedding ceremony. The practical reality is reflected in Rabbi Sternbuch's position.[61]

Other poskim, however, believe it is the consummation of marriage that creates the obligation for a woman to cover her hair. However, this position further divides. Some rule that after *yichud,* where *in theory* the couple could consummate their marriage, as they are left secluded for the time needed to consummate the marriage, a woman must cover her hair, though the couple has not in fact been intimate. Furthermore, according to some, yichud constitutes nissuin.[62] However, Rabbi Sternbuch notes that since realistically the couple is not intimate during yichud, there is room to argue that this yichud does not constitute real nissuin. Other poskim contend that the obligation for a married woman to cover her hair begins after the actual consummation of the marriage, when she becomes "sotah eligible." This is the position of *Chatam Sofer* and was accepted by Rabbi Moshe Feinstein in an unpublished responsum.[63]

Still other poskim provide alternative grounds to permit this conduct. Rabbi Yehuda Henkin in *Responsa Bnei Banim* 3:23 argues that even if this newly married woman would be obligated to cover her hair, the wedding hall is not considered a public place for these purposes. Rabbi Wosner in *Shevet HaLevi* 8:259 suggests that while a bride may be obligated to cover her hair, her veil covers much of her hair and is sufficient as a kalta/*hynuma* (see Excursus Three above). Rabbi Shlomo Zalman Auerbach is quoted in *Ishei Yisrael* Ch. 55 n. 77 as preferring a bride cover her hair but argues that *bediavad* one need not enforce this where it will cause tension.[64]

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61. Mahari HaLevi himself (*Responsa Mahari HaLevi* 9) argues that a woman must cover her hair during the period of *erusin,* but the obligation is waived on the day of the wedding when it is clear that she is a bride.

62. See, for example, *Shevut Yaakov* 103.

63. See *Responsa Chatam Sofer YD* 195 and the unpublished responsum available here: https://tinyurl.com/y472p748.

64. For further details on this issue, see R. Dovid Emanuel Feinberg, "When

B. HOW MUCH HAIR SHOULD BE COVERED?

The arguments in this book about the custom of covering and *dat Yehudit* explains some of the various positions among those poskim who contend that married women must, in accordance with *dat Moshe*, cover their hair in some form. While these poskim hold that *dat Moshe* does not change, they argue for allowing women to cover less than all of their hair when such conduct is modest in their time and place.

Some argue that a woman must, or at least should, cover all her hair, based on the Zohar (see *Responsa Chatam Sofer OC* 36). The *Mishnah Berura* (*OC* 75:14) endorses this conclusion by combining the Zohar and the story of Kimchit. The *Chazon Ish* is cited as saying that a woman must cover all hair as a matter of law, and that even the hair that sticks out of the head covering must be covered due to custom (see Rabbi Moshe Sternbuch's discussion in *Responsa Teshuvot VeHahanhagot* 2:692). However, Rashba, in the context of the *keriat Shema* discussions, writes that hair that sticks out of a woman's hair covering is not considered erva, as that is normally uncovered and therefore does not distract men. This accords with our interpretation of Rashba (that he did not understand this to be a biblical prohibition) in Chapter 5.

As we have discussed earlier, Maharam Al-Ashkar (Responsum 35) argues that where it is the norm for women to leave some of their hair uncovered, a woman is permitted to do so. While we took the position that this indicated a subjective understanding of the law, as developed by Rabbi Yosef Messas in this chapter, other poskim have argued that this was not the intention of Maharam Al-Ashkar. Rather, they argue that the basic obligation for women to cover some of their hair is non-negotiable, although how much must be covered may be societally dependent. This, for example, is the position of R. David Y. Zilberstein (1820–1884) in *Shevilei David OC* 75:2, although he does not explain the minimum amount that women must cover. Several poskim argue that a woman may leave a *tefach* (handbreadth, between 3.15 to 4.0 inches) of hair uncovered. This measure is the smallest size prohibited, based on b. Berachot regarding *erva*. Consequently, Rabbi Shlomo Tabak (*Responsa Teshurot Shai* 1:51) argues that one must cover the entire head but allows a total of

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is a Kallah Required to Cover Her Hair," *Journal of Halacha and Contemporary Society* LXVIII, p. 102 and R. Yehoshua Van Dyke, "Kisui Rosh HaKallah Beseudat Hanissuin," *Techumin* 36 and many other sources cited therein. See also *Migdal Chananel* by Chananel Shlossberg (2018), *Even HaEzer* 55.

a tefach to be exposed. This is how he understands the kalta – that only a tefach of hair will be visible through the holes.

Rabbi Moshe Feinstein (*Responsa Iggerot Moshe OC* 1:58), on the other hand, argues slightly differently. He contends that the biblical obligation is for a woman to cover her head, not hair. The rest of the hair must be covered by dint of *dat Yehudit.* However, as evidenced by the fact that unmarried women need not cover their hair, then hair is not truly erva; so less than a tefach cannot be considered problematic, as even by erva the minimum size for many of the prohibited areas is only a tefach. In a society in which there is no applicable *dat Yehudit*, Rabbi Feinstein would permit a considerable amount of non-head hair to be uncovered, and this is endorsed by Rabbi Mordechai Willig (*Am Mordechai* Berachot, p. 69). The logic of this position is that there is no *dat Yehudit* present, and once the *dat Moshe* is fulfilled, no more hair needs to be covered. Rabbi Yehuda Henkin (*Responsa Bnei Banim* 3:21) argues that Rabbi Feinstein's intent is a square tefach. However, Rabbi Tzvi Hirsch Meisels (*Responsa Mikadshei Hashem* 1:97) argues that what needs to be covered is a tefach by any width. While Rabbi Henkin prefers accepting this position, or even being more stringent, he admits that there is room to argue that one need only cover the majority of the head based on the principle of *rubo kekulo,* that the majority is like the entirety. However, he does indeed note that there is photographic evidence that many wives of rabbis from two and three generations ago covered their head but left out more than a tefach of hair, which may imply the acceptance of an even more lenient standard.

Some rabbis have been quoted (but not in writing) as saying that some form of covering the hair is non-negotiable, but anything beyond that is societally dependent and therefore no longer relevant. Similarly, some have been quoted as saying that a woman need only wear something that indicates that she is married, such as a headband (this is similar to Rabbi Brecher's comparison to a wedding ring).[65] Again, these positions have

65. Explaining these two views logically, rather than precedentially, is simple. If there is a Torah obligation not grounded in modesty rules but in something else, it can have only four basic parameters: (1) All; (2) All but a handbreadth; (3) Most; (4) A nominal amount. The parameters are explained as follows: All that is needed is something to dishevel or uncover. Since this rule is a Torah-mandated commemoration of the sotah ritual, all that is needed is enough that when it is revealed, one can say "now that is uncovered" and it should not matter whether that is 25% or 52% of the woman's hair. The position that a wedding ring is sufficient is grounded in a completely different understanding of the mitzvah unrelated to the

not been recorded in writing and have not been adopted by any major posek to the best of my knowledge, though it has become a common practice in some communities.

C. HAIR COVERING NOT IN A PUBLIC PLACE

A third relevant issue concerns where a woman must cover her hair if other men will see her. (We are not referring here to those who suggest following the stringency of the Zohar to cover hair even when no men are around, similar to Kimchit.) The Gemara in Ketubot 72a–b clearly distinguishes between public places, semi-public places, and private places, and seemingly only demands even partial covering in places that are as public as a *chatzer* (courtyard) or more. Based on the fact that the Gemara only discusses partial coverings in a chatzer, some poskim have contended that, in a woman's own home, she need not cover her hair even if others are present. This seems to follow the position of both Rashi and Tosafot in b. Ketubot 72b who understand that even in a chatzer women did not cover their hair. Moreover, they make no distinction between cases where men are present and where they are not.

However, others have argued that the location distinctions are only relevant due to the probability that men will see the woman's hair. However, in a case where men will surely see her hair, she must cover it. This, for example, is the position of Rabbi Henkin, (*Responsa Bnei Banim* 3:24) on the basis of a comment by Ritva (b. Ketubot 72b). Rabbi Henkin therefore rejects a suggestion by his interlocutor that no such obligation should exist within the home. In an earlier responsum (3:21), he even argues that the position of Maharam Al-Ashkar to uncover some of the hair was only in the home, which implies quite a strict standard even in private, and even more so in public! This accords more closely with the position of *Bach* (*EH* 115), who rejected the possibility that women could walk in a chatzer without at least a partial covering.

Rabbi Yosef Tzvi Rimon notes that these two positions may depend

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Sotah ritual, but to the idea that the Torah mandates that married women identify themselves as such, as explained in some sources above. For more on this view, see https://www.deracheha.org/head-covering-2-rationale-and-meaning/ (accessed Sept. 12, 2023) which notes that one explanation for why women cover their hair is to show marital status, writing: "*A sign of Marriage.* The Mishnah teaches that a Jewish bride's hair left loose in the public procession to her wedding was a sure sign that she had not been married before."

on how one deals with the seemingly contradictory comment of Ritva. As Rabbi Rimon writes:

> The Ritva mentions the reason behind this leniency: "…since nobody sees." Later in his comments, however, he cites the Yerushalmi's definition of a chatzer: "an alley that does not have many people intruding through it is considered a 'chatzer.'" This definition suggests that people do, in fact, look into the chatzer, only not "many people." Accordingly, we should perhaps reread the Ritva's earlier phrase as "since not many people see."[66]

The core of this idea, that seeing the hair of a married woman is not universally forbidden but rather depends on location, assumes that hair is not intrinsically erotic or immodest. Otherwise, such distinctions would make little sense.

It is worth noting that the idea that a woman need never cover her hair in her home no matter who is around is widely considered the view of Rabbi Ovadia Yosef and is recorded as such by Rabbi Yehuda Naki, the secretary of Rabbi Ovadia Yosef, in the name of Rabbi Yosef. In *Shut Maayan Omer* Rabbi Naki records that when he asked Rabbi Yosef whether a woman must cover her hair in her home, he answered that she does not. Even after clarifying that he was asking about cases when men were present other than the woman's husband, Rabbi Yosef maintained his position. In the footnotes, Rabbi Naki notes that this is the simplest understanding of *Beit Yosef* as derived from Rashi.[67]

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66. See Rabbi Yosef Tzvi Rimon, "Woman's Hair-covering in a Chatzer" at https://www.etzion.org.il/en/womans-hair-covering-chatzer, note 2. In note 3, he discusses the nature of the prohibition as to how it affects this discussion.

67. Rabbi Yehuda Naki, *Shut Maayan Omer* Volume 11, *EH* 15. Rabbi Naki notes, however, that while Rabbi Yosef was comfortable expressing his lenient position, he refused to elaborate on the rationale. Rabbi Naki speculates that Rabbi Yosef felt that ideally a woman should be strict to cover her hair at home even without men present out of deference to the position of the *Chatam Sofer* based on the story of Kimchit. Nevertheless, Rabbi Yosef did not want to spell this out, as from a halakhic perspective there was no real reason to be strict in this way, and "even a Torah scholar and fearer of God should not refrain from marrying such a woman if she fears God, is careful about *mitzvot,* and has good character traits." Thus, Rabbi Yosef simply stated his lenient position clearly and succinctly to leave room for committed Jews to follow either position. While, like Rabbi Naki, one can only speculate as to the exact policy concerns of Rabbi Yosef, it seems certain that from

D. THE SHEITEL – COVERING THE HAIR WITH A WIG

One of the most interesting developments of Jewish law in the area of hair covering is the trend – now many centuries old – of women covering their hair with a wig, rather than with a hat. As the normative practice of secular people changed and modest secular women ceased covering their hair generally, the sheitel (wig) developed in many segments of Orthodox Jewish society as the perfect social and religious compromise: It allowed one to remain in conformity with the basic requirements of Jewish law (that one's hair be covered), while simultaneously recognizing

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a legal perspective Rabbi Yosef felt that there was no reason for a woman to cover her hair at home, even if men other than her husband were present.

The question of whether a woman should cover her hair while on a Zoom call or while being photographed is driven by this issue. Unlike the question of hair covering in the home, which is amply discussed in a variety of sources going back to the Talmud and is repeatedly discussed in each of the many eras since then, the question of how to view general modesty standards in a photographic setting is without direct precedent. Classical Jewish law prohibits men and women from engaging in revealing of body parts which are thought of as erotic or sexual or immodest. The Talmudic rabbis always understood this to cover a wider variety of body parts for women than men, reflecting their (and our) general understanding of human sexuality and eroticism. No one has ever questioned whether this covers erotic photographs or movies, technologies that are more than a century old. The reason is obvious: erotic behavior is prohibited as a matter of Jewish law in any and every manner outside the marital context. But, hair has always been understood to be different from other body parts in that it is not truly erotic at all. Indeed, as many have noted, one can find countless pictures of wives of Torah scholars who happily posed for pictures in their backyards or homes with their hair uncovered, and yet otherwise completely modestly dressed. This is exactly because hair was not identical to other body parts; based on that, women wear sheitels and unmarried women do not cover their hair, neither of which would be acceptable if hair was truly erotic. I see little difference between posing for a picture in one's backyard and appearing on zoom. Hair then is uniquely situated because there remains a fundamental dispute about whether exposed hair is erotic at all. Those who think hair is covered because it is erotic rule that appearing on Zoom with hair uncovered is prohibited. Those who think hair is covered and thus has become erotic also think that hair needs to be covered in a Zoom call. Those who think married women need to cover their hair for other reasons (*sotah*, *chok* or other approaches) and allow women to appear with their hair uncovered routinely in such situations even around men who are not part of their family, rule that exposed hair is not immodest and may be exposed when Jewish law permits it to be (unless it is for reasons external to halakha and immodest in the specific time and place), and then permit a woman in her home to expose her hair. Whether a woman should cover her hair on a Zoom call or photograph is dependent on whether she covers her hair in the home when people visit.

that uncovered hair was no longer strictly a sign of immodest conduct. Women who desire to obey Jewish law while socially fitting into Western society found wearing a hat or a scarf to be a burden. Hence, the sheitel became the perfect compromise because it promotes conformity with both Jewish law and Western culture.[68]

Whether this compromise was acceptable according to halakha has been a dispute for many centuries. The Mishnah (Shabbat 6:5) states that a woman may wear a wig into a place where carrying is prohibited on Shabbat.[69] Writing in the middle of the 16th century, the famous commentator on the Rif, the *Shiltei HaGibborim* (64 29:1(1)) notes that this Mishnah implicitly permits a married woman to go out in public covering her hair with a wig and nothing else. Others promptly disagreed, the most prominent being *Beer Sheva* (no. 18, published first in 1614) who quotes R. Ezekiel Katzenellebogen as polemically insisting that this approach was wrong: rather, he maintains that the various "in passing" discussions of wigs found in any pre-modern source must only be discussing wearing a wig under a hat. Of course, he posits that a married woman may not cover her hair with only a wig.

Rabbi Moshe Isserless (Rama), in his commentary on the *Tur* and again in his glosses on the *Shulchan Arukh* itself,[70] adopts the view that wigs as a head covering are permitted and this is endorsed by many prominent commentaries on the *Shulchan Arukh* including *Levush, Magen Avraham, Pri Megadim, Gra,* and *Shulchan Arukh HaRav*.[71] One is hard-pressed to find a prominent authority, other than the *Chatam Sofer,* who flatly rejects the view permitting head covering with a wig in modern times in the Ashkenazi community.[72] *Mishnah Berura* (75:15) summarizes

68. I made a similar point in a different context in a popular article "The Case for the Sheitel," *The Forward*, March 14, 2011 at https://forward.com/sisterhood/136137/the-case-for-the-sheitel/.

69. Shabbat 64b in the Talmud. The discussion is, on its face, unrelated to the rules of modest conduct and only discussing the rules of carrying on Shabbat.

70. *Darkhei Moshe, Orach Chaim* 303:6 and *Shulchan Arukh* 75:2.

71. See *Ein Mishpat* Nazir 28b (number 50) for one of the few times where the author of this reference work shares his view of Jewish law, which permitted married women to wear a wig and rejects the view of the *Beer Sheva*.

72. Indeed, even the *Kaf HaChayyim* adopts this view; see *Kaf HaChayyim* 75:19. But see R. Yaakov Emden in *She'eilat Yaavetz* 1:9 and *Chatam Sofer* (notes on *Magen Avraham* 75:5) who do reject this view. For a very comprehensive review of the literature, see *Otzar HaPoskim* on *Even HaEzer* 21:2 (24:5–8).

the debate while leaving one with the impression that it is acceptable to wear just a wig.[73]

However, this matter was re-opened in the middle of the twentieth century by Rabbi Ovadia Yosef[74] who argues at length in many different forums that covering one's head exclusively with a wig is without a shadow of a doubt forbidden. He essentially advances three arguments, two grounded in Jewish law and one a subjective assessment of the sociology. First, he argues that wigs cause the same sexual thoughts as regular hair and thus cannot be permitted. Second, even if hair no longer causes any sexual thoughts, women who wear wigs look like they are sinning and thus this conduct is prohibited. Finally, he seems to posit that wig wearing is the first step of generally abandoning observance of the mitzvah. His formulation is harsh and complex and deeply critical of those who do not agree. He notes:

והעיקר כדברי רוב ככל האחרונים הנ"ל לאסור בזה, ומצוה רבה לפרסם האיסור ברבים, ובפרט לספרדיות שנהגו לאסור מימות עולם ומשנים קדמוניות, ורק כעת התחילו ללמוד מאלו המורות היתר לעצמן שלא ברצון חכמים, דילפי הני נשי מקלקלתא ולא מתקנתא, ומצוה להודיען שזוהי פירצה חמורה בגדר הצניעות של בנות ישראל הכשרות, וכמ"ש הגאון מהר"א תאומים בעל חסד לאברהם: שצריך למחות ולמנוע בנות ישראל לצאת בפאה נכרית. (ומה מאד יש להזהיר את עורכי העתונות הדתיים שנעשה להם כהיתר לפרסם המקומות שמוכרים: פאה נכרית, ומכשילים בזה את

The correct view is that like most, nearly all, recent authorities (mentioned above) who prohibit a wig. It is a vast mitzvah to publicly share that wig wearing is prohibited, in particular to Sephardim who had always conducted themselves this way and in times past. Only now have they started to learn from those who ruled liberally for themselves without the consent of the Sages, since these women learn the perversion and not the solution. It is a mitzvah to tell them that this is a serious breach in the rules of modest conduct of proper Jewish women as is noted by great Rabbi Avraham Teomim in his work *Chesed le'Avraham* who states that one must object and protest Jewish women who go out with a wig. (Even more so, one must warn the editors of the Orthodox Jewish papers who have made wigs totally permissible against sharing the location of wig sellers who lead the

73. Interestingly, *Arukh HaShulchan* is simply silent on this issue, although you could read his comments *OC* 303:20 as permitting wigs and thus upon a close examination of *OC* 75 conclude that this is what he actually says here as well.

74. *Yabia Omer*, 5: *EH* 5.

public astray.) Every woman who accepts on herself this matter [not to wear a wig] and to go out only with a hat or a snood that covers all her head, she should be blessed with all the blessings in the Torah, bountiful sustenance and learned children and blessed to see children accomplished in Torah and love of heaven, leaders of the Jewish community.

הרבים). וכל אשה המקבלת עליה לשמור לעשות ככל דברי רבותינו הפוסקים שאסרו הדבר בכל תוקף, ולצאת אך ורק בכובע או מטפחת המכסה את כל ראשה, תתברך בכל הברכות שבתורה, ובמזוני רויחי ובבני סמיכי, ותזכה לראות זרע קודש בנים גדולים בתורה ויראת ה׳ טהורה, מורי הוראות בישראל.

Many contemporary Sephardic authorities have followed his view and aver that wearing a wig alone is not an acceptable practice in the Sephardic community or anywhere.[75]

Those who rule leniently point directly to the responsum of Rabbi Moshe Feinstein, *Iggerot Moshe*, *EH* 2:12, who permitted wig wearing with two simple observations. First, he observes that Jewish law mandates that married women cover their hair and a wig is a covering. Second, there is no real prohibition of looking like one's hair is not covered since the average person (in our community) knows that women cover their hair with wigs all the time.[76] Indeed, Rabbi Feinstein is clear that even if the husband objects to his wife's practice of wig wearing and wants her to wear a hat, she can ignore his objections and continue to wear a wig.[77]

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75. This was not the consensus of Sephardic poskim historically (See *Yaskil Avdi* 7:16, for example) although there is no doubt that Rabbi Yosef's deep opposition to married women wearing wigs as a form of head covering has changed the Sephardic consensus. For a view of more than one hundred authorities on the question of wig wearing, see https://tinyurl.com/ycyu9na5. There is little doubt that wigs are less common in Israel than America for a set of social reasons outside the parameters of this book.

76. Rabbi Feinstein's famous comparison is to a man shaving with an electric shaver, which he avers is not prohibited as people might think one shaves with a razor.

77. I think that there is some truth to the sociological observation of Rabbi Yaakov Hoffman that:

> "The *yeshivish* preference for wigs might have to do with the fact that in recent history, many Orthodox women did not cover their hair at all. In such a societal reality, *sheitels* became associated with those pious women who covered their hair at all times, as opposed to others who donned hats only for religious functions. Thus, the *sheitel* came to be thought of as the mark of a scrupulously observant woman."

https://www.torahmusings.com/2019/01/reconsidering-the-sheitel/

From the tone of Rabbi Feinstein's writings, it seems reasonable that he does not think that wearing a wig is a step in the wrong direction, but a step in the right direction. He states:

ולכן לדינא אין כתר"ה יכול למחות ביד אשתו הרבנית החשובה מללבש פאה נכרית, שאף אם כתר"ה רוצה להחמיר אינו יכול להטיל חומרותיו עליה שזהו רק דין שלה, וכיון שהיא עושה כדין שהוא כרוב הפוסקים ושגם נראה כמותם, אינו יכול להחמיר עליה אף אם לא תכסה כלל הפאה נכרית,

Thus as a matter of Jewish law, you, my questioner, cannot stop your wife – the eminent *rebbetzin* – from wearing a wig. Even if you wish to be strict, you cannot push your stricture on her since this is just her Jewish law matter; since she is conducting herself completely properly, as [wigs as head coverings are permitted in] the view of most poskim and which logic inclines one to follow, you cannot be strict to her on this matter, even if she does not wear anything on top of the wig.

Thus, Rabbi Feinstein completely validates wigs and Rabbi Yosef totally invalidates them.

A compromise view is taken in many letters of Rabbi Menachem Mendel Schneerson, the Rebbe from Lubavitch, who thought that it was much better for a woman to wear a wig than a hat, since when one wears a hat or even a snood, natural hair of the woman will protrude and that is a violation of Jewish law. He states simply that the essential obligation is that "the purpose and intent of a *sheitel* is for all the hair to be covered."[78] In the words of one recent commentator:

The Rebbe's opposition to wearing kerchiefs was due to the likelihood that some hair would be exposed – even temporarily – and thus lead a woman to transgress a "major prohibition" as explained in *Shulchan Arukh, Orach Chaim* 75 (*Igros Kodesh*, vol. XIX, p. 428).[79]

The Satmar community, and a few other smaller Chasidic communities, continue to adhere to the position of the *Chatam Sofer* that a wig alone is not sufficient.[80] This community follows the practice of wearing both a wig and a hat on top of a wig.[81]

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78. Menachem Mendel Schneerson, *Igros Kodesh*, vol. VIII, p. 217.

79. See Esther Vilenkin, "Only Sheitels Cover Every Strand Of Hair" at *Jewish Press*, January 17, 2019 at https://www.jewishpress.com/indepth/opinions/only-sheitels-cover-every-strand-of-hair/2019/01/17/.

80. This is based on the view of the *Chatam Sofer* and its endorsement by Divrei Chaim *YD* 59. Divrei Chaim is clear that what he favors is wigs plus a hat.

81. See the fine article by my colleague, Rabbi Dr. Gidon Rothstein, "Chatam

Socially, what we are left with is a few different head covering practices in the Orthodox community. The Sephardic community is insistent that wigs are prohibited and only hats, snoods or other such covers are permitted. The mainstream Ashkenazic community is of the view that either wigs or hats are fine and acceptable. The Chabad community endorses wigs only as the ideal and the rest of the Chasidic community endorses a wig with a hat on top of it. What one can say for sure is that the practice of wearing a wig as a head covering is well established in the Orthodox Jewish world and is unlikely to go away.

CONCLUSION TO THIS EXCURSUS

For those who reject the central thesis of this book (or who choose to be strict, even if they believe the thesis of the book to be correct), the above four discussions will require more extensive investigation. However, we include them here for completeness, although as noted, if our central contention is correct, these issues are rendered moot since all is dependent on the custom of modest Jewish women.

Conclusion

As noted at the outset of this chapter, the main halakhic arguments in this book were made in the earlier chapters where the primary sources from the Talmud, Rishonim, and main codes of Jewish law were analyzed in great detail. In this chapter, we have attempted to outline and explain the minority of modern voices that reach similar conclusions to those developed earlier in this book – that in a society where the majority of married women do not cover their hair, there is no halakhic obligation to do so. While our position may not be the dominant one in modern discourse, as we have shown, it emerges from many Acharonim, and was embraced even by several modern authorities who were cognizant of the changed reality in which many if not most married women no longer covered their hair.

Sofer on Women's Hair Covering" at https://www.torahmusings.com/2019/06/chatam-sofer-on-womens-hair-covering/.

CHAPTER 9

Conclusions: Jewish Law and Modesty: Hair as a Test Case

CHAPTER 9 CONCLUDES THIS BOOK AND HAS FOUR short sections. The first section is a summary of the arguments in this book, and it is followed by a more detailed chapter-by-chapter recitation of the arguments found in this work. The next part of this section discusses some methodological issues in Jewish law, focusing on the relationship between Talmudic reasoning and modern Jewish law. The final part of this conclusion focuses on some sociological observations about modern Jewish life that help explain, perhaps, the tension between the approach most modern Jewish law authorities have taken and the dominant view in the law codes and Rishonim.

Conclusions to books that are very textual are never simple in that they must both summarize what the book concludes and argue why this book and its conclusion are important generally. This conclusion aims to accomplish that dual mission.

A Summary of the Arguments in This Book

This book can be easily summarized: It contains an elaborate and highly textual argument about whether Jewish law mandates that married women cover their hair – or parts thereof – no matter what the social norm around them dictates. It concludes that there is a significant school of thought that validates the fully subjective approach to all issues of modesty, including hair covering. Support for this fully subjective approach is present in the Talmud (as discussed in Chapter 2) and the Geonim (Chapter 3). It can also be found in the post-Talmudic Jewish law authorities, be they

Ashkenazi or Sephardi (Chapter 5). Support extends to many members of the Tosafist school, as well as the *Tur* and *Shulchan Arukh* (Chapter 6). It is further seen in many post-*Shulchan Arukh* works that discuss brides covering and partially covering their hair (Chapter 7).

Significantly, this subjective approach is commonly articulated and adopted by many great authorities throughout the ages until the modern era. Nevertheless, as this book concedes at the beginning of Chapter 8, virtually all the noteworthy Jewish law authorities of the last 150 years have ignored this common pre-modern view and ruled directly that married women must cover at least some part of their head as a matter of biblical (Torah) law, no matter what the sociology around them is and no matter how other women dress. With but a few and rare exceptions, it is hard to find any prominent Jewish law authority post-emancipation who endorses the view that married women do not have to cover their hair when other modest women in the general society do not. The only important Jewish law authority to the contrary seems to be the Ben Ish Chai (and only in passing in a work written in Judeo-Arabic). This is true even as large numbers of generally observant Jewish women ceased covering their hair due to the pressures of modern life.

A Concluding Methodological Note

If the argument to permit married women to uncover their hair, or that all of the rules of modesty generally, were based on the reputational authority of those modern decisors of Jewish law cited in the last chapter, I would have to concede that – based on these authorities alone – the arguments found in this book would carry little weight. However, normative halakha is – according to most – decided primarily on the basis of analysis of the Talmud, the Rishonim, and the central codes of Jewish law such as the *Tur* and *Shulchan Arukh* and not based on the Jewish law authorities of the few most recent centuries. It is in that spirit that this book is written: Most Jewish law authorities of great renown over the last millennium were in the school of thought that labeled modesty – including even hair – purely subject to the cultural norms of the society one inhabits, and not anything else.

Rabbi Moshe Feinstein's responsum repeatedly justifies reaching conclusions of Jewish law contrary to that deemed normative by contemporary authorities when challenged for issuing a lenient ruling against the modern consensus. He 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 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 Mishnah bring destruction upon the world, for they decide points of law from their recitation of the texts" (b. 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 (Acharonim), 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 b. Bava Batra 131a; see Rashbam ad loc.) – so long as one does not contradict the undisputed opinion of the *Shulchan 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 b. Chullin 7a].[1]

1. *Iggerot Moshe Yoreh Deah* 1:101, towards the end. I alluded to the importance of this framing for my approach to this topic in my earlier article in *Tradition,* n. 98, and I elaborate on this now. Much of this material is explained in even greater detail

Particularly in a case such as this one, where so many pre-modern authorities are of the subjective view, there is no reason to hesitate to voice a view that runs directly contrary to the dominant contemporary view.

Indeed, many great rabbinic scholars severely criticized and rejected the general approach that post-Talmudic modern precedent, whether in codes, restatements, or responsa, could or should establish binding norms of halakha; the more modern the code, the less binding it is.[2] Rulings based on modern post-Talmudic codes and precedents are never really binding in any classical sense because the structure of Jewish law does not allow such modern codes to bind.[3] Thus, Rabbi Judah Loew (1526–1609) argued that relying on modern post-Talmudic precedents is mistaken because such texts "were merely authored for practical instruction, and not to learn the law from,"[4] meaning that post-Talmudic accounts of the halakha are useful handbooks of practical instruction for the times and places in which they were written, but they cannot be regarded as the law itself: They are merely timely applications of timeless rules. "It is more appropriate," Rabbi Loew continues, "to rule based directly on the Talmud, for while there is room to fear that in doing so one may… rule incorrectly… nevertheless, a wise man has only what his own mind understands from the Talmud," and he may thus rely on his own judgment.[5] It is for this reason that significant segments of this book focus on the Talmud and the early (more binding) authorities.

Indeed, a basic theme of this book in Chapters 4, 5, and 6 is that, in reality, the seemingly determinate rulings found in various post-Talmudic works were no more clear-cut than the meandering discourses of the Talmud itself, and therefore offered little real advantage to rabbinic scholars seeking knowledge of correct halakhic norms in regard to issues related to hair covering.[6] Chapters 6 and 7 show that – even as the modern

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in a work I co-authored with Shlomo Pill, entitled *Setting the Table: An Introduction to the Jurisprudence of Rabbi Yechiel Mikhel Epstein's Arukh haShulchan* (Academic Studies Press, 2021).

2. For a comprehensive explanation of why halakhic rulings should not merely follow existing precedents, whether in the codes or other rabbinic materials, see Rabbi Tzvi Hirsch Chayes, *Darkhei HaHoraah* 11 *in Kol Sifrei Maharitz Chayes* (1958), Vol. 1: 249–250.

3. See, e.g., Rabbi Chayyim ben Betzalel, *Viku'ach Mayim Chayyim*, sec. 1, 94.

4. Rabbi Judah Loew, *Netivot Olam*, *Netiv HaTorah*, ch. 15.

5. Ibid. See also Rabbi Judah Loew, *Derekh Chayyim* 6:7.

6. See Rabbi Solomon Luria, *Yam Shel Shlomo*, *Introduction to Bava Kamma*

recitation of Jewish law cites the classical codes as objectively requiring covering – actually that is not correct and the subjective view is well represented. Because of this, halakhic decision makers may as well engage directly with the Talmud and Rishonic works – the true repository of Jewish law – and rule in accordance with their respective understandings of the primary sources.

Since relying on secondary works also requires substantial interpretation and analysis as abstract rules are applied to specific cases, it is better that such legal reasoning engage the normative halakha itself through independent Talmudic and Rishonic analysis rather than rely on secondary sources several steps removed from the ultimate source of halakhic authority.[7] Moreover, many scholars opposed ruling from late post-Talmudic precedent because they thought that such reliance on such secondary sources was bound to lead rabbinic decisors to reach incorrect results in practice. Rabbi Joel Sirkes (1561–1640), for instance, argued that "those who [mechanistically] issue rulings based on the [precedential authority] of the *Shulchan Arukh* are ruling not in accordance with the halakha, for they do not know the roots of the halakha from which these specific rules emerge."[8] The heart of this book is the argument that the earlier the sources one examines, the more clear the subjective approach is.

More recently, two important 20th-century halakhic authorities firmly rejected the possibility that rabbinic scholars can be bound by any precedent, and instead affirmed that each must rule in accordance with his own independent judgment of the issue.[9] Rabbi Moshe Feinstein (1895–1986), the preeminent halakhic authority in the United States during the latter half of the 20th century, wrote that the scholars of later generations are permitted, and indeed required, to resolve halakhic questions in accordance with their own considered understanding of the relevant sources, even if their rulings conflict with the opinions of earlier

(arguing that every time one attempts to author an account of the halakha, "there is an even greater need for clarifications, and clarifications upon clarifications. For it is impossible that the initial clarification of the law would be free of all doubts and nuances such that there would be no need for further elaboration.")

7. See, e.g., Rabbi Solomon Luria, *Yam Shel Shlomo*, *Introduction* to *Bava Kamma.*
8. *She'elot uTshuvot HaBach HaYeshanot* (*Yeshanot*), no. 80.
9. See generally Jeffrey Woolf, "The Parameters of Precedent in Pesak Halakhah," *Tradition* 27:41–48 (1993).

authorities, and even if they themselves might be objectively less qualified and learned than scholars of earlier generations.[10] Rabbi Hayyim David HaLevi (1924–1998), Chief Rabbi of Tel Aviv, put this view even more stridently. Speaking about contemporary halakhic decisors, he wrote, "No precedent binds him, even a ruling of a court composed of scholars greater than he, and even of his own teachers."[11]

Based on this approach, I have written this work – arguing that most of the great Jewish law authorities of the last 150 years have been hesitant to rigorously reexamine the precedent in this area and have incorrectly reasoned the rules – and the correctness of this work rests on the classical sources analyzed.

A Concluding Sociological Observation

As shown in the initial seven chapters of this book, in every epoch of Judaism until modern times, important voices of mainstream Jewish law endorsed the subjective theoretical construct with regard to hair covering and modesty in general. Indeed, Ashkenazi Jewish law authorities unhesitantly permitted single women to uncover their hair when that become the normal practice about 1,000 years ago and Sephardic authorities soon concurred. But here, notwithstanding the clear path of authorities of Jewish law – that others could have seen just as easily as I did – post-emancipation Jewish law authorities were virtually silent about this lenient school of thought in their discussion of these issues once it became clear that modest women actually did not cover their hair.

Nor was it because this uncovering was sociologically foreign to them and they did not see what was happening. The rabbinic discussion about the sociology of married women not covering their hair abounds. Such discussions took place in such diverse areas as synagogue life, grounds for divorce, the permissibility to marry a woman who does not plan to cover her hair, and many other areas as well. But yet virtually no one sought to justify the underlying practice (the goal of this book). And yet, as this book shows, with diligence a small number of decisors did so; and furthermore, anyone who faithfully examines the literature with an

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10. See Introduction to *Iggerot Moshe, Orach Chayyim*, vol. 1. See also *Iggerot Moshe, Yoreh Deah* 2:88 as well as the above, quite famous, quote from Rabbi Feinstein on page 436.
11. *Aseh Lecha Rav* 2:61 (1989).

open mind and intellectual honesty would see that such a path is available. Furthermore, as the preface notes, we have a common rabbinic practice to seek to justify such common customs – and yet it was not followed in this case.

Why?

I suspect that there are no fewer than five important answers to that question and this conclusion will share them. Indeed, a close review of the opening chapter and other important places in this work hints at this.

First, conservative approaches to matters of sexuality and modesty became core values within Orthodoxy and many authorities of Jewish law saw social value in what has become known as the "hair wars" of the late 20th century. Like the *mechitzah* (separation between men and women in prayer) which became a litmus test of the Orthodox community 65 years ago, hair covering became a way for people to identify with the Orthodox community. The heart of this argument was that *sheitel* (wig) – like *tzitzit* or kippah – served as a social and cultural barrier to sexual improprieties. Furthermore, it allowed head covering to serve as an aspect of religious identification for women. This is even more so true, given – as Chapter 1 shows – the normalcy of hair as a sexual feature of many societies (including rabbinic ones).

Second, the development of the refined and human hair wig (sheitel) as a cultural norm within the Orthodox community reduced the religious pressure by women who just needed a practical way to function in the secular community economically while covering their hair. Similarly, the expansion of multi-cultural dress norms has allowed many more women to wear a hat to work, something that was much less acceptable within the American business community in years past. The creation of a Jewish state in Israel, where "Jewish dress" was part of the cultural revival of traditional Judaism, further reduced this pressure: in modern Israel, dressing Jewish is normal. This approach highlighted a different reality – the acknowledgment that hair was less sexual than other previously erotic body parts, since no modest person covers immodest parts with reproductions of immodest parts. This change also validated the sheitel and hat in our cultural norms.

Third, the distinction between married women and single women has grown in social importance within our "family centered" Orthodox community and this moniker has become a convenient social distinction (like *tallit* for men) between those who are married and those who are

single. Hair covering has become the Jewish wedding ring, so to speak. This also very much resonates with the rabbinic sense (found in Chapters 4 and 6) that there are important distinctions about modest conduct between married people and single people, of which only hair covering remains, but others were present in the classical sources. This approach also validates hair covering as a unique marital practice or custom with all of the cultural significance it causes.

Fourth, the community within the Orthodox universe that commonly did not cover their hair was, for many years, less interested in the type of detailed textual discussion of the sources that is needed to validate a practice. Particularly since Rabbi Joseph B. Soloveitchik's wife simply did not cover her hair (and she was not unique in this regard 75 years ago), no more justification than this was needed in some communities.[12] It is no surprise to this writer that such a mimetic tradition is hard to maintain in modern times and current reality.[13] Furthermore, the general weakness (both religious and communal) of parts of the more modern Orthodox community is religiously apparent, and this is creating a sense that the basic modern Orthodox approach here of having married women not cover their hair was a religious mistake, whatever the sources permit,

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12. Dr. Tonya Lewit Solovetchik. Indeed, the fact that the Rav's wife did not cover her hair was repeatedly noted to me countless times by many in the first decades of my writing and thinking on this topic. Reflecting this influence, the Hebrew manuscript version of this work (which is still intentionally unpublished, but was written many years ago as a translation of the *Tradition* article of mine published in 2009 on this topic) bore the following dedication:

> This article is dedicated to the memory of HaRav Yosef Dov HaLevi Soloveitchik, זצ"ל, and his beloved Rebbetzin Tonya Soloveitchik, ז"ל. Together they built Torah structures and practices in America and we are all deeply indebted to them to this day. (Regarding the view of R. Soloveitchik on this topic, cf. R. Hershel Schachter, *Nefesh HaRav* (Reishit Jerusalem: 1994), 55; R. Dov Frimer, "Grounds for Divorce," [full cite is in the Introduction, p. xxv; and R. Hershel Schachter, "*Mi-Peninei ha-Rav*," 267–68 (Beth Midrash of Flatbush, 2001), all purporting to be in the name of the Rav).

In 2010, Rabbi Norman Lamm directly told this writer that the citation found in the *Mi-Peninei ha-Rav* was what Rabbi Soloveitchik told him was the practical rule of Jewish law that he should follow and repeat to others. It is no secret that Rabbi Lamm told this to countless people.

13. For more on this issue, see Haym Solovietchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition*, Vol. 28, No. 4 (Summer 1994), which can be found at https://traditiononline.org/rupture-and-reconstruction-the-transformation-of-contemporary-orthodoxy/.

since it did not lead to heightened Jewish identity, but instead was part of what produced a weaker, less robust, and less dedicated community.

Finally, Orthodox Judaism finds value in uniformity in many levels and created strong social pressure to identify as part of the community of the faithful. This gave rise to greater uniformity in dress as a way of crafting greater unity. The sheitel or hat became a trademark sign of being an Orthodox Jew,[14] and this has deep social virtues beyond any question of the formal technical requirements of Jewish law. Indeed, as Chapter 1 notes, both the academic and cultural literature are already full of references to the fact that Jewish women cover their hair with hair and the issues that this creates.

All of these factors created a sense that a profound and abiding reexamination of the sources to seek to justify this practice was not helpful to the Orthodox Jewish community (as I have been reminded many times, by countless Orthodox Jews!).

But yet, notwithstanding this, I have undertaken to do so for three reasons, each with their own values, both intellectual and religious.

First, the critical concept that the texts speak volumes about the Jewish tradition. The truths of the text have a life of their own within the Jewish tradition, and this is of value independent of the expediency of the conclusions they reach in any given society. This idea strikes me as a central one of the Jewish tradition and the proper place of Jewish law in Orthodox Jewish life. Traditional Orthodox Judaism is grounded in the text and not the community, and this work continues that tradition. Whatever the public policy of any given community is, Jewish law texts should speak on their own terms. There is deep religious value to faithfully determining what the Talmud, Commentaries, and Codes intend, and that value is in and of itself profoundly important. This reason alone for me is enough to explain the significance of the study I have undertaken.

Second, there are still many parts of the community of Orthodox Jews – both in Israel and in America – where married women do not cover their hair; explaining the Jewish law justification for their conduct is a religious imperative that resonates with me (as the introductory material notes). Communities have a sacred mission to explain and justify their

14. See for example, the fine video posted by the "Jew in the City" blogger at https://jewinthecity.com/2019/01/why-do-orthodox-jewish-women-wear-wigs-if-they-look-better-than-hair/ which seeks to explain such conduct to those who are not Orthodox.

conduct. This work is a fulfilment of that religious idea. Furthermore, demonstrating that the subjective school of modesty has widely acknowledged roots within the Talmud, Codes, and Commentaries serves important goals beyond the question of hair covering and addresses many difficulties endemic to men and women in modern Western society. To some extent, this book argues that any conduct that is without sexual overtones – not just hair covering – is permitted between genders in the Jewish Tradition.

Third, times change; the needs of communities evolve; and one can never be completely certain when approaches that no longer resonate as valid public policy will return to be a wise policy. Arguing that hair covering is an immutable obligation of Jewish law – like Sabbath beginning on Friday night, or circumcision being needed on the eighth day for boys, so that if we are denied these rites we will be inauthentic to our roots – is not an argument that strikes me as truthful. It reduces the flexibility of halakha to continue to function in diverse cultural norms.

So, the conclusion of this book is clear. Important views of Jewish law, found in the Talmud, medieval commentaries (Rishonim), the classical codes of Jewish law including the *Shulchan Arukh* and many of its commentaries, provide ample justification for the uncovering of hair by women in a society in which such conduct is widely seen as normal and modest. Indeed, this provides ample justification for the subjective approach to all matters of modesty as a matter of Jewish law.

AFTERWORD

A Concluding Letter [to My Daughters] About This Book

THE EPILOGUE IS MORE PERSONAL AND LESS SCHOLARLY and is written as a letter to my daughters, both of whom are living in Israel now. It is designed to address questions of practice that go beyond the technical matters addressed in this book.

Where the Law Ends and Moral Guidance Begins

Dear beloved daughters,

I promised your mother that once I completed this book on modesty and hair covering I would write you a letter that explains some issues not found in the body of the book, but found in the life we live. The theme of this letter is why I have never encouraged you to dress fully secularly, even as I think it is not a violation of the technical halakhic rules of modesty.

If you read the book, you will see that I have stuck to my basic view of Jewish law that there is not much in the laws of modesty that is objectively *assur* according to mainstream and normative sources. I do not think that married women have to cover their hair when modest women generally do not. I do not think that modest women need to cover their elbows when modest women do not. I do not think that modest women need to cover their legs when modest women do not. Furthermore, I think that the same social construct of modesty applies to men and women: people need to dress in a modest way as determined by the time and place they live in.

This book is an elaborate argument that nearly all of the rules related to *tzniut* that you both were taught in day school and yeshiva are wrong, and

I trace it in the Gemara, Rishonim and *Shulchan Arukh.* I am convinced that my view is correct.

I think that halakha requires that women dress as modest people in their society dress. Nothing more and nothing less. There are very few immutable halakhic rules of modesty beyond that idea.

Seems simple and easy.

But yet, as you know quite well, this has never been my view in practice, but only in theory. Almost always when asked, I favor less bold and more conservative answers to these questions from the many people who ask (frequently to their surprise, I sense). I am more adventurous in theory than in practice in this area. Seems pretty schizophrenic for someone who has written ten articles and now one book against the contemporary Orthodox concept of *tzniut* to be actually, as one of you said to me, "a closet frummy."

So, I write this letter to explain my practical view, independent of the sources. The truth in this short letter is not halakhic in the classical sense and it does not belong as anything other than an appendix to a work of halakha. In this letter, I make six points, each deeply important to me. I hope you appreciate them.

First, I started my work on hair covering more than 30 years ago to defend the practices of our Modern Orthodox community of many generations in which married women did not cover their hair and yet were otherwise *frum*. Simply put, that was the Orthodox norm for many generations – now close to 200 years – and it is worthy of a detailed halakhic defense. It was the normative practice in Lithuania a century ago and America 50 years ago. No one should think that they come from an Orthodox community that had community-wide sinful practices and we have a long tradition of writing *lemudai zekhut* for wide communal practices. Our holy community deserves a defense of its apparently non-halakhic practices no different than the many other such defenses published in other Orthodox communities. I was happy to do that; indeed, over time, I have grown more than convinced that my view is correct.[1]

1. Although not explicitly part of this work, in past discussions of these issues I have been less certain that my view was really correct – since it was contrary to so many contemporary poskim. In the course of writing this book, the hard read into so many Rishonim has persuaded me that the subjective view is not only the dominant-view in the Rishonim and the view of *Shulchan Arukh* and Rama, but also well founded in the Talmudic sources.

Second, and perhaps most importantly, I think modesty in dress by women's choice aids the cause of progressive intellectual women. The same is true for men: modesty in dress aids the cause of progressive intellectual men. I – and thus you – come from a long line of progressive, intellectual, accomplished Orthodox women. Your mother is a renowned lawyer and my sister a professor of radiology at Yale Medical School. My mother is a prominent scientist and professor at NYU from an era when women scientists were exceedingly rare. My grandmother was a lawyer by training, in an era when that was even rarer. We want that same level of opportunity for you. On the whole, I am a huge supporter of the feminist revolution of the last century: from the right of women to vote and be elected, to study everything both secular and religious, to learn all there is to master, and to accomplish and be paid equally and fairly – all of that is positive, virtuous and compatible with the halakhic tradition. Indeed, the core tenets of the historical feminist ideology in America – autonomy of body, independence of thought, personal agency, the right to be treated as a full person with political equality – are also all part of (or at least compatible with) the Judaism I know and love. However, the sexual revolution of the last 50 years has, in my view, not been a step in a positive direction and has undermined many feminist goals. It has instead produced objectification, sexualization, and, ultimately, degradation. Orthodox Judaism has spurned that aspect of feminism for good reason, and it has not served women well generally.

Related to that, and of importance to me practically, as sexual modesty started to collapse in America and the West (Israel, too!) in the late 1960s with the onset of the sexual revolution, Modern Orthodoxy began to drift. This deprived the Modern Orthodox community of one of the pillars to validate its conduct on matters of modesty: If there were no detailed halakhic standards then all that a Torah-authentic Jew can do is look to secular standards. If the secular community is so adrift that it has no real standards to prevent sexual looseness, then the modern Orthodox community is also lost.[2] That is what has happened here: the standard 1950s answer to questions of how to dress in our community was, "Dress like modest secular people dress themselves and that is fine as a matter of halakha." I think this approach is correct – **but it leaves us rudderless**

2. For example, I am perfectly happy to concede that the Torah's model of what constitutes men's and women's clothing is societal: but what should one do if a society has no concept of men's or women's clothes, but prefers sexualized cross-dressing?

if there is no critical mass of modest secular people to imitate. If you define modesty in a non-circular way – modest people are people who are committed to confining sexuality to marriage – then halakha can easily say, "Look at the community that seeks to confine sexuality to marriage and dress that way." Sadly enough, that community hardly exists in our modern American world, leaving us with little secular anchoring to validate our conduct; maybe in some parts of the United States the fundamentalist Christian community fits this bill.[3] This has always driven me to practically – but not theoretically – endorse a much more modest lifestyle than halakha thinks is theoretically possible.[4]

Third, I have grown more sociologically comfortable with the Orthodox "uniform" (in the sense of modes of dress that allow us to identify each other as Orthodox) and think it has valuable and important sociological advantages for both men and women to dress "Orthodox." I tell men that they should do their best to wear a kippah nearly always; but when you press me, I do not think it is a halakhic requirement – just a really good idea. I think that garb that identifies people with the Orthodox community is valuable and important. If you take my book to its halakhic conclusion, you see no uniform: rather, people dress by secular standards. Even as I think that halakha does not require a uniform, I think it is wiser to have some uniform rather than none. I think dressing completely secularly is a bad social idea and it is sometimes part of the process of leaving the community on many levels. (Yes, I agree that there are a lot of problems with uniforms also: They can be stifling, over-conforming and create superficial and nasty attitudes. They frequently make people want to scream. And not only for women: actually I'm also thinking of the black-and-white dress code which narrowly limits a man's wardrobe in many Orthodox communities. In truth, I find it ideologically disturbing. Care must be taken to allow both the individual to flower and the community to grow for both men and women.)

3. See for example, "Trends in Premarital Sex in the United States, 1954–2003" in the Public Health Rep. 2007 Jan–Feb; 122(1): 73–78 which starts its conclusion section with the statement "Almost all Americans have sex before marrying."

4. Judy Heicklen noted to me that my logic here is somewhat flawed. Really, I am not endorsing much more modest dress than halakha allows; rather I am endorsing exactly what I believe theoretically – that we should dress as modest people in our society dress. However, our society is not a modest one in general, so it is hard to find that benchmark. But if we could find that benchmark (the segment that lives as if it was the 1950s or the fundamentalist Christians) then I would endorse that benchmark.

Fourth, in an era of sexual permissiveness, our interactions with the secular community will need to be different from what they were in the era before that "great awakening." Modern Orthodoxy truly needs to live by the model implied by the gemara in Megillah 9b that the "best of secular culture needs to live in Orthodox Judaism." The honest truth is that the promiscuity in much of our secular society is not something any of us really wants in our Torah community; it is far from the best of anything. There is so much that is good and valuable in secular culture – from science to math to medicine, with important insights from poetry and literature, as well as social justice and law – but I cannot admire that aspect of the culture I live in. How to build a worldly, vibrant, open to women, Modern Orthodox community does elude me at some level, but I have always thought that it involves three basic ideas: (1) vibrant Torah education for all; (2) vibrant secular education for all; (3) a public square desexualized as much as possible. The final idea is not accomplished by the modern western mode of dress for men or women, independent of exact halakhic concerns.

Fifth, the centrality of Israel in Jewish life is changing our models of modesty. In fact, Israel is a more insularly Jewish society, with little interest in evaluating the validity of ideas based on the gentile community both within it and around it. As the focus of the Orthodox community shifts to Israel and America becomes a satellite community to Israeli Orthodoxy, our standards of proper dress within the Orthodox community will, I fear, no longer reflect the needs of American Orthodoxy, but will be driven by the Israeli Orthodox community of many different flavors and varieties, which finds (for obvious social reasons) little interest in dressing by the cultural norms of the Islamic community around it. Whether it is Bnei Brak or Efrat – or many other communities in Israel – a sense of modesty and proper dress will come more from Israel, and less from the modest non-Jewish community in America. I am not sure this is exactly wise, but I sense that it is inevitable. The Diaspora will, of course, continue to exist for Orthodox Judaism; but it will be a suburb of Israel, rather than its own town.

Sixth, there is the reality around me, which I see clearly now. We live, both in Israel and in America, in a robustly sexually adventurous secular society where public intellectuals – women[5] as well as men who write

5. The saddest part of modern America might well be this issue: liberty has turned into hedonism. I am thinking here of the trend common in America for even

newspaper columns and are widely seen as public intellectuals – can share the variety of sexual adventures they have had. The general coarseness of society – two of our last four presidents are adulterers and much of our secular society hardly thinks of "cheating" as bad – has left me leery of building an Orthodox community dependent on our secular society in these areas. We Modern Orthodox are struggling to build an ideal society based on a variety of issues (I like that), and the religious ideal includes subjective standards of modesty as a matter of halakha. But it simply will not work, I fear, in a secular society that identifies women as sexual objects, glorifies sexual variety as an ideal, subjects people to social pressure to be sexual, and mocks communities of loyal monogamous families as antiquated or worse – castigates those who refuse to participate in the festivities. In that society, the legend of Icarus gnaws at me: I do not want to soar so high to a halakhic ideal that can work in theory, but does not work in fact.

So, here is the Jewish law reality as I see it:

As a matter of halakhic theory, I think that women need only dress as modest people in their society dress. Nothing more and nothing less is needed as a matter of halakha and the subjective school is correct.[6]

But, in reality, this approach to halakha does not work in America in the current decade – even as it works in theory. Thus, in practice, I counsel a much more conservative approach to modes of dress and I think dressing in a fully secular manner is a mistake in practice.

With love,
Dad

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women to 'buy into' this model of life. Consider for example the *New York Times* columnist Pamela Druckerman.

6. I would add three more considerations that are of importance in the model of being liberal on this issue. First, hair covering creates a false (in the sense of not mandated by halakha) Orthodox boundary issue such that people who should be embraced by the Orthodox community sometimes find themselves and their rabbis outside of it because of this one issue. I fear this will improperly diminish Orthodox Judaism for the next generation. Second, there are still plenty of Orthodox women who do not cover their hair and it is wrong to call them sinners, when a better read of important sources validates this conduct. Third, there is still a substantial subset of people who struggle with Orthodoxy and for whom this is a very sensitive issue, touching as it does on matters of gender and identity. Even people who do not agree with me on this issue would not want to lock the door against those who want to return.

P.S. Of course, this epilogue gives rise to the question of why address this issue if I really do not think it should apply in practice in our modern American society? But the answer is also clear to me, as I explain in the conclusion. Halakha has both a timeless and a timely component. The purpose of this book is to clarify that timeless aspect; whereas the purpose of this epilogue is to share my view of the timely. The timely changes and the timeless endures.

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