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Spring 1996

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The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School, Dr. Marvin Schick, President. The Rabbi Jacob Joseph School, located at 3495 Richmond Road, Staten Island, New York 10306, welcomes comments on this issue and suggestions for future issues.

It is the purpose of this Journal to study the major questions facing us as Jews in the twentieth century, through the prism of Torah values. We will explore the relevant Biblical and Talmudic passages and survey the halachic literature including the most recent Responsa. The Journal of Halacha and Contemporary Society does not in any way seek to present itself as the halachic authority on any question, but hopes rather to inform the Jewish public of the positions taken by rabbinic leaders over the generations.

Manuscripts which are submitted for consideration must be typed, double-spaced on one side of the page, and sent in duplicate to the Editor, Rabbi Alfred Cohen, 5 Fox Lane, Spring Valley, New York, 10977. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles which concern halachic practices of American Jewish Life.

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(3) According to some authorities, fruits produced for export do not need to have *teruma* separated from them;

(4) For the year 5754 and parts of 5755 (1993-1995) there might be no obligation because it is a *shemita* year or *shemita* produce.

Thus, seven different factors (the four mentioned above, and the three discussed by the letter writer) incline one to rule leniently.

I do, however, agree with a portion of the letter writer's final comment: Jews in America should purchase Israeli produce when they are available in the supermarket. One who wishes to separate *teruma* and *ma'aser* after purchase of this produce in the supermarket and be strict against these various doubts is blessed for so doing ברכה המזמיר תבוא עלינו. No blessing should be recited if this is done and this is not required by halacha, as the obligation to separate *teruma* for Israeli produce in America is at most a rabbinic obligation, and this rabbinic obligation is, in fact, subject to multiple factual and halachic doubts as to its applicability, thus producing a situation which permits a lenient ruling.

RABBI MICHAEL J. BROYDE

* * *

To the Editor:

The halachic issues involved in defending the *minhagim* of a community that has now nearly disappeared is a complex one, and a task not to be taken lightly.

One such issue was recently touched on by Rabbi Meyer Schiller in his excellent article entitled "The Obligation of Married Women to Cover their Hair" *JHCS* 30, pp. 81-108 (1995):

It is fairly well known that among Lithuanian Jews and their leaders after World War I many married women uncovered their hair. This was common even among rabbinic families.

I question one phrase: the words "after World War I." It is quite clear from both the halachic and historical literature that this uncovering was the practice of the community in Lithuania 100 years before World War I, when Orthodox observance and culture was at its strongest. For proof of this, one need only examine the fact that many *poskim* note this uncovering in the 1870s as already being well established; see e.g. Rabbi Yosef Chaim (*Ben Ish Chai*) Parshat Bo 12 (writing around 1870). Rabbi Yechiel Epstein's remarks on the commonness of this practice (*Aruch HaShulchan* OC 75:7) were published in 1903, and *Mishnah Berurah* OC 75:2 in 1881; both of them are clearly referring to what was then already a well-established practice.

If that is the case, and what is being dealt with is a well-developed custom of the established Orthodox community of Lithuania – a community that many now perceive as the idealized paradigm for non-Chasidic Orthodoxy – one has no choice but to disagree with Rabbi Schiller's final remarks on this custom:

The Lithuanian practice is probably best seen as an aberration which, when the time became more receptive, was quickly abandoned. It may be understood in the context of the general laxity which enveloped East European Orthodoxy concerning this halacha in the post World War I era.

This *minhag* was not a product of the "general laxity" of religious observance in Lithuania in the years when this "practice" was developed; nor was this *minhag* abandoned. It came to an end with the nearly complete destruction of the Lithuanian Jewish community during the Holocaust.

What then is the halachic basis for this widespread custom emanating from this venerated Torah community? Both the *Tur* and the *Shulchan Aruch* (based on a wealth of *Rishonim*) codify the prohibition for a woman to completely uncover her hair as *dat yehudit*. *Dat yehudit* is the term used for the socially-determined customs of modesty of Jewish women, which according to most *poskim* is not immutable but can and does change with the customs

of Jewish women (see *Iggerot Moshe* EH 4:32(4), *Yabia Omer* 3:21, and many sources cited by Rabbi Schiller).

Thus, the simple understanding of the *Shulchan Aruch's* and *Tur's* discussion of why even fully uncovered hair violates halacha places the prohibition in a halachic context that indicates it to be dependent on the local custom of "modest Jewish women," which certainly was, historically, to cover their hair. This would, however, imply that in a society where the normative custom of observant Jewish women is to go without their hair covered, such conduct may be permitted. (As Rabbi Schiller notes, the *Beit Shmuel* disagrees with the *Shulchan Aruch* and *Tur's* classification of the prohibition of full uncovering as *dat yehudit*.) So too, in a society where many women do not cover their hair at all, the secondary reasons for covering cited by Rabbi Schiller (pages 93-94) – licentiousness and Gentile practices – also disappear. These insights perhaps justify the *minhag* of the Lithuanian community.

While one will not find *teshuvot* from the Lithuanian Torah community defending this *minhag*, this perhaps reflects the nature of Torah scholarship and discourse by the Lithuanian *poskim*, which generally did not focus on *halacha le-ma'aseh*. With notable exceptions, it focused its intellectual energies on abstract talmudic study, methods of categorization and conceptual analysis of Torah precepts. Not surprisingly, within the Lithuanian Torah community writings one can find quite a number of authorities, who provided forms of categorization for the obligation of women to cover their hair, indicating that there is no Torah obligation for a woman to cover her hair in a society where uncovering is not perceived as immodest.

One must also note the well-known school of thought which rules the Torah obligation for women's hair is limited to disheveled, not uncovered hair (see *Shevut Yaakov* 1:103). Indeed, many other limiting forms of analysis from Lithuanian *poskim* can also be cited related to woman's obligation to cover their

hair; see *Minchat Ani*, s.v. *Gilui Se'ar Benashim*; *Sedeh Chemed* 4:19 s.v. *Deoraita*; *Shut VaYashav Yosef* YD 1-3; *Chidushai Hafla, Ketubot* 72a; *Chidushai Mahardam al Sefer Hamitzvot LeHarambam*, 175.

The custom of Lithuanian Orthodoxy is not unique either. At least one other devout Orthodox community also accepted that halacha does not require married women to cover their hair when modest Gentile women do not; this was the practice of the Algerian (and Moroccan) Orthodox community from well before 1900 also. The *poskim* of this community explicitly defended its custom in this matter, and one can find a number of *teshuvot* on this topic from leaders of their community sanctioning this practice. Indeed, to this day, the halachic leadership of this North African Jewish community in Israel maintains that hair covering is not required; see Rabbi Moshe Malka, *VaHashiv Moshe* 1:34 and 35 and Rabbi Yosef Massas, *Mayim Chaim* 2:110.

Lithuanian Jewry, like many other European communities of its time, had customs and practices that some in America no longer consider "normative" halacha. That does not in any way imply "laxity in observance of halacha" by that venerated Orthodox community. Casting aspersions on the fidelity to Jewish law and tradition by now-destroyed Jewish fortresses in Europe is uncalled for – and also not supported by the halachic sources.

RABBI MICHAEL J. BROYDE

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