

RAV CHESED

essays in honor of

Rabbi Dr. Haskel Lookstein

VOLUME I

EDITED BY
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KTAV Publishing House, Inc.
Jersey City, New Jersey

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Library of Congress Cataloging-in-Publication Data

Rav chesed : essays in honor of Rabbi Dr. Haskel Lookstein
edited by Rafael Medoff.

v. cm.

A two-volume collection of original essays by prominent rabbis, historians,
and other scholars, composed in honor of Rabbi Dr. Haskel Lookstein on the
occasion of his fiftieth year in the pulpit of Congregation Kehilath Jeshurun,
in New York City.

ISBN 978-1-60280-115-8

1. Orthodox Judaism. 2. Jewish women - Religious life. 3. Orthodox
Judaism - Relations - Nontraditional Jews. I. Lookstein, Haskel. II. Medoff,
Rafael, 1959-BM42.R375 2009 296.8'32 - dc22 2009010615

Published by
KTAV Publishing House, Inc.
930 Newark Avenue
Jersey City, NJ 07306

Email: bernie@ktav.com
www.ktav.com
Office: 201 963 9524
Fax: 201 963 0102

"The Hair of a Woman is Erotic:" An
Explanation of the Contemporary
Practice of Many Married Orthodox
Women Not to Cover their Hair

Michael J. Broyde

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.

-Aruch Hashulchan OC 385:18

⌘ I. PREFACE

Among many communities throughout the Diaspora in previous generations, married women – meticulous in their observance of Jewish law – were “accustomed” to going with their hair uncovered, whether at home, in a courtyard, or in the street. Nearly all *halakhic* authorities have dismissed this “custom” as baseless and were unable to find any legal justification for it. Nearly all of the Acharonim take the view that a married woman who walks in a public thoroughfare with her hair uncovered violates a biblical prohibition.¹ It is not my intention to dispute as a matter of

practical *halakha* the views of the giants of the our generation. However, in my humble opinion, one who closely examines the writings of the Rishonim – particularly the school of Tosafot, the Tur, and the Shulhan Arukh – finds that a great many of them take the view that the prohibition of uncovering hair is categorized as a rabbinic prohibition (*dat yehudit*) and not a biblical prohibition (*dat moshe*). The purpose of this article is to collect and analyze their views. Everything that follows has been written as an attempt to justify the *halakhic* practice of the daughters of Israel who otherwise dress and act modestly. It is not my intention to rule publicly as a matter of practical *halakha* against the explicit pronouncements of the *halakhic* giants of our time. I write only to point out that many Rishonim rule that the prohibition for women to go with hair uncovered is rabbinic (*dat yehudit*) rather than biblical (*dat moshe*) in nature. It is for this reason that I have departed from my usual style of generally summarizing disparate views while directly citing relatively few; in a matter such as this it is important for the numerous sources and authorities of old to be quoted as fully and robustly as possible.

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

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

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

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

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

according to *dat yehudit* even a basket [on her head is insufficient and] is prohibited as well.

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

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

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

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

Rambam (*Hil. Ishut 24*) writes similarly:

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

12. What is considered to be *dat yehudit*? Those are the modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: Going out in the marketplace or in a through alley with her head uncovered and without the headscarf that all other women wear, even though her hair

is covered by a kerchief; or spinning in the marketplace with rouge or the like on her face – on her forehead or cheeks, in the manner of the promiscuous non-Jewish women.

The simple understanding of the Rambam is that a woman who goes out with her hair completely uncovered violates *dat moshe*. However, the Rambam is of the opinion that the category of *dat yehudit* includes violations that are only rabbinic in nature.³ It is impossible to ascertain whether in principle the Rambam is of the view that uncovering of the hair is only a rabbinic or a biblical violation. The Rambam's position will be addressed at length in section VII below.

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

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

The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food or any of the other prohibited food items, such as blood or forbidden tallow, where she caused him to sin and he ate relying on her word and was informed subsequently: for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf or issued me a ruling that this piece of meat is permissible or issued me a ruling that my current discharge of blood is pure, and then

was found to be lying.... And what is *dat yehudit*? Going out with her head uncovered; even if it is not uncovered entirely but only covered by her work-basket, since she was not covered with a head-scarf, she is to be divorced. The Rambam wrote that even though a woman's hair is covered with a kerchief, since she is not wearing a head-scarf⁴ like all women, she is to be divorced without receiving her *ketubah*.

The Tur switches or modifies all of the rabbinic prohibitions classified by the Rambam as *dat moshe* and classifies them instead as *dat yehudit*. For example, the Tur eliminates the words "menstrual spotting" and replaces them with "discharge of blood," and he changes "dough" to "pile."⁵ The general rule behind these changes is that all the prohibitions that are only rabbinically forbidden were recategorized as *dat yehudit*; by doing so, the Tur eliminated all matters related to hair covering that the Rambam classified as *dat moshe* and listed them only under *dat yehudit*. According to the Tur, a woman who goes with "head uncovered" is included in the category of *dat yehudit* – both her uncovered entirely, and "even if it is not uncovered entirely but only covered by her work-basket." Nothing related to the prohibition of a woman to uncover her hair is categorized as *dat moshe* in the view of the Tur.⁶ The Bach – but not Beit Yosef – quotes the Gemara (*Ketubot* 72b) and voices his own opinion that going out with one's head entirely uncovered is a biblical prohibition and considered *dat moshe*.⁷

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

Shulhan Arukh (*Even HaEzer* 115) writes:

1. The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or *dat yehudit*. What

is *dat moshe*? Feeding [her husband] untithed food or any other prohibited food item, or having intercourse with him during the period of her menstruation, and he was made aware of this subsequently – for instance she averred that such-and-such sage made this pile legally fit for use [by separating the priestly dues] on my behalf or issued me a ruling that this piece of meat is permissible or issued me a ruling that my current discharge of blood is pure, and then was found to be lying....

4. What is *dat yehudit*? The modest practices which the daughters of Israel practice. If a woman has done one of the following, she is considered to have violated *dat yehudit*: going out in the marketplace or in a through alley or in a courtyard which many people frequent with her head uncovered⁸ and without the headscarf that all other women wear, even though her hair is covered by a kerchief.

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

The Rama adds nothing in regard to this paragraph; thus he does not disagree.¹⁰ Similarly, the *Terumat HaDeshen* – whose rulings the Rama regularly quotes when they do not appear elsewhere in the *Shulhan Arukh* itself – ruled that the prohibition involved here is not biblical. In the *Responsa Terumat HaDeshen* (no. 10), in discussing the obligation for men to cover their heads, he answers by way of comparison to a more severe prohibition (compared to a custom): the obligation of women to cover their

hair, as “the prohibition for a woman to have her head uncovered has some support in the Torah.”¹¹

The Levush also cites the wording of the Mechaber in *Even HaEzer* 115 without altering it. In *Even HaEzer* 21 the Levush rules, “The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married, for this is promiscuous for a woman, and there is also a deeper meaning according to the Kabbalah.” It is reasonable to understand that the last clause, “there is also a deeper meaning according to the Kabbalah” comes to explain that even though as a matter of technical law these matters are only rabbinically prohibited, there is additional reason to be strict according to the Zohar.¹²

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

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

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

on her head is biblically permissible, but by *dat yehudit* it is forbidden to do this in the marketplace.¹³

Indeed, there is a fundamental disagreement between the Tur and Mechaber on the one hand and the Rambam, Bach, and Beit Shmuel on the other. According to the Tur and Mechaber, the prohibition for a woman to go with her head uncovered falls under the category of *dat yehudit*, “the modest practices which the daughters of Israel practice.” According to the Rambam, Bach, and Beit Shmuel, uncovering of the hair in its entirety is considered *dat moshe*, and the prohibition is not dependent upon the practices of the daughters of Israel but rather is unchanging.¹⁴

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

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

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

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

Many of the Rishonim have examined this topic and reached the

conclusion that the prohibition for a woman uncovering her head in its entirety is properly categorized not as *dat moshe* but rather as *dat yehudit*. Their view forms the basis for the ruling of the Tur and Shulhan Arukh. For example:

A. The Rosh

The Talmud (*Gittin* 90a–b) states:

⋮

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

Tosafot HaRosh on this passage explains:

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

Thus the Rosh is of the view that a woman who goes out with her

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

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

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

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

states regarding a woman who makes vows and does not fulfill them – “As our master stated, on account of the sin of [unfulfilled] vows, one’s children die.” We see that the sin of not fulfilling her vows is itself not sufficient for her to be considered to have violated *dat* [*moshe*] such that she would forfeit her *ketubah* payment – only because her actions cause harm to her husband by leading to the death of his children [is she considered such].¹⁵

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

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

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

Thus R. Heller is of the view that wherever the custom of modest religious women is to uncover a particular part of their body (such

as forearms, and certainly hair), there is no prohibition against doing so according to the Rosh.¹⁶ According to this understanding, in the Rosh's view there is a dispute among the Talmudic passages in *Ketubot* 72 and *Berachot* 24.¹⁷

B. Tosafot

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

*Do you really mean to say [he sees her] bathe with other men? – Rashi explained that if that were the case, there would be circumstantial evidence that she is unfaithful and thus forbidden [to her husband], and the Talmud would not have said in that case one ought to divorce such a woman, but rather one must divorce her. This seems difficult, for [according to this view] one must also divorce a woman who spins in the marketplace or goes out with her head uncovered, not just that one should divorce her, yet the question in Sotah 25a as to whether or not a husband may choose to stay married to a woman who violates *dat yehudit*¹⁸ remains unresolved – why did the Talmud not raise this issue there [by bringing these cases as clear proof]? One may answer that because the question in Sotah was only in regard to a rabbinic violation, it is reasonable for the Talmud to posit that one ought to divorce such a woman, but here [in Gittin], one is biblically obligated to divorce [a woman who bathes with other men].*

In *Sotah* (25a), *Tosafot* rules that “a husband is permitted to remain married to a woman who violates *dat [yehudit]*¹⁹ even after warning her numerous times.”

The *Chelkat Mechokek* (115:18) writes, “That which the Talmud states at the end of the ninth chapter of *Gittin* (90a-b) that one ought to divorce [a woman who acts immodestly], it is possible that it is discussing one who is exceedingly promiscuous, such as one who goes with both sides of her torso exposed or

bathes, etc., as stated there.” It is a biblical commandment to divorce a woman who conducts herself in the manner of promiscuous women (as in *Gittin* 90).²⁰ However, regarding a woman who is not “exceedingly promiscuous” (where there is no suspicion of infidelity at all in her actions), certainly according to Tosafot there is only a rabbinic obligation to divorce such a woman, and Tosafot maintains that a husband may pardon a wife who violated *dat yehudit* in situations where there is no suspicion of infidelity.²¹

Tosafot (*Gittin* 90) raises the question as to the difference between situations where one should divorce one’s wife and where one is obligated to do so. Tosafot answers that we say one must divorce one’s wife biblically only when there is evidence she is unfaithful and there is a biblical prohibition against living with her. According to this basic framework, there are three categories within the obligation to divorce. The first is a biblical obligation that one must divorce his wife, but this is limited to cases where there is evidence that she is unfaithful (such as a woman who bathes with men unclothed). The second is a biblical obligation that one ought to divorce his wife (but biblically one is not required to do so) – this applies in cases where she “goes out with her head uncovered, spins in the marketplace with both sides of her torso exposed,” and bathes in the same place as the men (but they are not actually in the water). These are considered actual promiscuity (which the Chelkat Mechokek calls “exceedingly promiscuous”), and they carry an obligation by which one *ought to* divorce such a woman biblically but *need not*. The third category pertains to a woman who violates *dat yehudit* in such a way that her actions are not exceedingly promiscuous but still she is not acting in a modest manner like the rest of the daughters of Israel – in that case, there is only a rabbinic obligation to divorce.²² Tosafot maintains that a woman who goes “with her head uncovered” but not “with both sides of her torso exposed” in an exceedingly promiscuous manner violates only this third category and is considered one who violates *dat yehudit* (“or goes out with her head uncovered...violates *dat yehudit*”²³); Tosafot rules that one may

remain married to a woman who fits into this category, even in a case where she admits to violating *dat yehudit*.

One cannot possibly argue that Tosafot maintains that uncovering of hair is only a rabbinic violation yet is still categorized as *dat moshe*, because throughout these *sugyot*, Tosafot consistently refers to hair covering as a violation of *dat yehudit* and not *dat moshe*.²⁴ Tosafot even goes so far as to insert the term *yehudit* into the passage in *Sotah* when the text itself mentions only *overet al dat*. (All of the Tosafot can be found as well in the *Novellae* of the *Ran*.)

C. Rashi

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

* * *

D. Other Rishonim

The view of Rashi, Tosafot, and the *Rosh* – that uncovering hair is considered *dat yehudit* and a subjective rabbinic prohibition – can be found among many other Rishonim as well, among them: the

Semak (*Sefer Mitzvot Katan*, Commandment 184), the Ba'al HaIttur (*Sefer HaIttur*, Letter Mem, s.v. *hilchot mered*), the Ra'aviyah (*Mishpetei HaKetuvah* [*Kol Kitvei Ra'aviyah* 4:919]),²⁶ the Kol Bo (*Hilchot Gittin*),²⁷ and the Ritva.

Perhaps this view of the Ritva – and the other Rishonim – is based on his novel insight to Kiddushin 82a. There the Ritva writes:

All is dependent on wisdom and the sake of heaven: This is the normative rule of Jewish law, that all is dependent on what a person sees in himself. . . . If he sees in himself that his desires are subdued and under control and do not give rise to any impure thoughts, he may look at and speak to a woman with whom he is prohibited to engage in a sexual relationship and ask a married woman how she is doing.²⁸

The Ritva maintains that when there is no concern at all that a person will have erotic thoughts, there is no prohibition against looking at an uncovered area, neither for the viewer nor for the one being viewed. It is therefore permissible for a woman to go with her hair uncovered before a man who would not find that conduct arousing: when there is no erotic activity, there is no prohibition.

Thus, one who examines the Rishonim will find that many of them held that the prohibition against a woman's uncovering her head (or hair) in its entirety is considered only *dat yehudit* (and rabbinically prohibited).

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

There is no doubt that there is a large group of Rishonim who maintain that hair covering is rightfully categorized solely as *dat yehudit*. It is not possible to argue that these Rishonim maintain that there are biblical prohibitions within the category of *dat yehudit*. It makes no sense to say that all these Rishonim considered

the prohibition to be biblical but only *dat yehudit*;²⁹ after all, Rashi explained *dat yehudit* as being “the practice of modesty which the daughters of Israel practice even though it is not expressly written in Scripture.”³⁰ The Shittah Mekubetzet (*Ketubot* 72) explains the category of *dat yehudit* as follows:

Dat yehudit – matters that are not forbidden biblically but rather are the practice of the daughters of Israel for modesty in general, and this woman violates such a practice.³¹

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

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

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

Dat moshe means all of the commandments stated explicitly in the Torah or alluded to therein.

Included in *dat moshe*, in regard to a woman who violates Jewish law as pertains to her being divorced and receiving the attendant *ketubah* payment, when she causes her husband to sin or violates a matter indicative of promiscuity, are even rabbinic laws.... Some Rishonim maintain that since *dat moshe* and *dat yehudit* are discussed as parallel structures, *dat moshe* is meant to include only actual biblical laws, and

only where the expression *dat moshe ve-yisrael* is used are rabbinic laws intended to be included as well.³²

The following is found explicitly in Responsa *Tzemach Tzedek* (*HeChadash*), *Even HaEzer* 151:

The Talmud (end of *Ketubot* 72a) asks [Is not going out with an] uncovered head a biblical prohibition? To which Rashi comments: why is it therefore not considered *dat moshe*? That seems to imply that a rabbinic violation cannot be classified as *dat moshe*. This seems to support the position of the Shevut Yaakov (no. 206)...But in fact all that this indicates is that a biblical violation certainly cannot be classified as *dat yehudit*; however, as [the Tur] explained with regard to one who feeds her husband untithed produce (see *Beit Shmuel*, beginning of *Even HaEzer* 115),³³ that it even includes feeding him the dough-offering from dough made of grain grown outside the land of Israel, which has no basis in Torah law at all, like the ability a deaf-mute has to divorce. And even though the authorities there raise doubts with regard to Eruv, which has no basis in Torah law as well, we may infer that in our case, with regard to something she feeds him, she is to be divorced without receiving her *ketubah* payment, that [feeding rabbinically prohibited food] is categorized as *dat moshe*.³⁴

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

In the seventh chapter of *Ketubot*, the Mishna teaches that a wife who violates *dat moshe* or *dat yehudit* is to be divorced without receiving her *ketubah*. *Dat moshe* are those things which are explicitly prohibited in the Torah of Moshe, particularly matters which involve the husband as well. For

instance, if she feeds him untithed produce and lies to him and says they have been tithed; or she has intercourse with him during the period of her menstruation and says that she is pure but in fact has the presumptive status of being a menstruant by dint of her conduct among her neighbors; similarly, if she makes vows but does not fulfill them, for one's children die on account of this sin. In all of the above instances, he too sins and loses out on account of her. But if she is intentionally lax in other prohibitions which have nothing at all to do with her husband, we pay no attention. *Dat yehudit* are those matters of modesty and dignity which the daughters of Israel practice, such as not to go out with one's head uncovered and the like. These, too, are relevant to the husband, for a man is particular about such conduct by his wife.³⁵

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

Rabbi Baruch Frenkel, in his notes on the Beit Meir (*Even HaEzer* 115), disagrees with this position. He writes that *dat moshe* includes only those actions that lead the husband to sin as well; anything that does not cause him to sin is only *dat yehudit*. In his view, seclusion with another man and hair covering are considered *dat yehudit* even though they might be considered biblical prohibitions. (A suggestion along these lines can be found in Rabbi Yehudah Herzl Henkin, *Responsa Benei Banim* 3:22.) All this is based on the language of the Rosh, who states that "With regard to *dat yehudit*, the husband is able to deprive his wife of her *ketubah* on account of her impudence and on account of the suspicion of infidelity."³⁶

There is no fundamental disagreement between the Rosh and other authorities with regard to "what is considered *dat yehudit*." Indecent actions which give rise to "the suspicion of infidelity" are those matters which are dependent on the "practices

of the modest daughters of Israel.”³⁷ What then is the dispute? If there are actions that in no way detract from a woman’s modesty but are still biblically prohibited for some other reasons, what are they? According to the Beit Meir and Rosh, these are other sins entirely (neither *dat moshe* nor *dat yehudit*). However, nowhere in the Rosh can one find a biblical prohibition (other than *dat moshe* or *dat yehudit* and modesty) that is the biblical source for hair covering. A related presentation can be found in the Rosh on *Berachot* (3:37) explaining the passage in the Gemara (24a), which lays out the rule that “the hair of a woman is considered *ervah*.” The Rosh is of the view that this prohibition is not at all dependent on whether one is praying; rather, it applies at all times and in all places. He writes, “That which is normally covered up by a woman [is considered *ervah*].... The hair of married women, who normally cover their hair, is considered *ervah*, but it is permitted [even] to pray in view of unmarried women who normally go with their hair uncovered.” R. Yom Tov Lipman Heller, in his *Divrei Chamudot* commentary to this paragraph of the Rosh, writes that according to the Rosh:

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

Thus R. Heller is of the view that wherever the custom of modest religious women is to uncover a particular part of their body (such as forearms, and certainly hair), there is no prohibition against doing so according to the Rosh.³⁸ According to this understanding, in the Rosh’s view there is no disagreement between the Talmudic passages in *Ketubot* 72 and *Berachot* 24: one is dealing with laws of the *ketubah*; the other, with laws of modesty.³⁹

Rabbi Moshe Feinstein, Igrot Moshe, *Even HaEzer* 1:69, writes the following with regard to what is considered to be a violation of *dat yehudit* and promiscuous behavior:

[T]here is another prohibition outlined in *Ketubot* 72 for women under the rubric of *dat yehudit* not to act in a promiscuous manner. However, in this regard it is limited to where she alone acts this way. But when all the women of her city act that way, it is not at all appropriate to consider such conduct promiscuous. It makes no difference that the conduct of these women might have originally been promiscuous behavior at one time; nonetheless, since such is now the manner of dress and walking, one ought not consider it promiscuous conduct and forbid such. [Avoiding such clothing or activity] is regarded as the conduct of the pious and exceedingly modest – may blessing come to such a person.⁴⁰

A similar ruling is found by Rabbi Ovadia Yosef in *Responsa Yabia Omer*, Vol. 4, *Even HaEzer* no. 3:

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

So too, Rabbi Yehudah Herzl Henkin describes the concept of *dat yehudit* thus:

It seems to us that *dat yehudit* is dependent on local practice, as evidenced by the Rambam.... It is also widely accepted among the Rishonim that *dat yehudit* is based on common practice, as Rashi explained: which the daughters of Israel practice *even though it is not expressly written in Scripture*. Rabbi Isaiah di Trani in his commentary (Tosafot Rid) to the phrase, There is no prohibition, explained: *rather, the women follow those practices in a modest manner* – in the present tense.⁴¹

* * *

Only in the Shulhan Arukh of Rabbi Shlomo Chelma (Shlomo Ashkenazi ben Moshe Rappaport, author of the *Mirkevet HaMishneh* commentary on the Rambam) on *Even HaEzer* 115:3–4 do we find a code of law that rules that uncovering all of one's hair is considered a violation of *dat moshe*. He writes that there are three types of behavior included in the category of *dat moshe*:

1. Causing one's husband to violate a prohibition,
2. Performing a prohibited act whose punishment is death [at the hands of Heaven], where one's children die even though the husband has violated nothing, and
3. Performing a prohibited activity that is promiscuous and raises suspicion of infidelity.⁴²

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*. On the basis of this statement, we can explain the view of the Rosh and Tur. The Rosh writes (*Ketubot* 7:9) that a woman's uncovered hair raises suspicion of infidelity; it is possible the Rosh maintains that in a time and place where such is an act of promiscuity leading to infidelity, such conduct is biblically prohibited. However, the Tur, who writes the law in a general manner, in an ordinary place, where there is no attendant suspicion of infidelity

(in a place or time when such is not promiscuous behavior), writes that everything is dependent on the category of *dat yehudit*. (According to this approach, the Rosh might be of the same view as the Yerayim [commandment 392], that the prohibition is in fact to distance oneself from forbidden sexual relationships.)

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

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

In the Rulings of R. Isaiah di Trani the younger (*Piskei Riaz* R. Yishayah HaAcharon) to *Ketubot* 72, he states:

However, going without [even] a basket on her head is biblically forbidden, as Scripture states, "And he shall uncover her head" – this is a warning to the daughters of Israel that they should not go out with uncovered head.⁴³

Rabbi Simeon b. Tzemach Duran (Tashbetz) in *Zohar HaRakia*, his commentary on R. Solomon ibn Gabirol's *Azharot*, a poetic rendition of the 613 commandments, positive commandment no. 137, writes explicitly that there is a biblical obligation for a woman to cover her hair, and going with uncovered hair violates the attendant biblical prohibition, just like all other transgressions that are corollaries of a positive biblical obligation (*issur aseh*).⁴⁴

Rabbeinu Yerucham b. Meshullam, in *Sefer Mesharim* 23:8, writes: "[F]or if [the hair] were entirely uncovered, it would be

obvious that such is forbidden even biblically, as Scripture states, 'And he shall uncover her head.'⁴⁵ Thus he is of the view that it is a biblical prohibition.

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

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

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

Talmud responds: Shmuel answered, “with her work-basket.” In other words, when the Mishna states that a woman who goes with her head uncovered violates *dat yehudit*, it means to say a woman who goes out wearing a work-basket, for going out without even a work-basket is prohibited biblically. (Rashi, first edition)⁴⁶

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

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

The Ran maintains that if a woman goes out wearing only a work-basket on her head, she violates *dat yehudit*. However, if she goes out without any covering at all, according to the Ran, she violates a more serious prohibition, namely *dat moshe*.⁴⁷

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

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

In sum, six Rishonim maintain that uncovering one’s head is biblically prohibited: Meiri, Tashbetz, Rashba, Ran, Riaz, and Rabbeinu Yerucham.⁴⁸

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

The Rambam's view with regard to hair covering is not simple. It is clear that the Rambam rules that uncovering of one's entire head is forbidden as *dat moshe*.⁴⁹ It is also obvious that in the Rambam's view, there are rabbinic prohibitions that fall into the category of *dat moshe*. The Rambam rules that a woman who does not set apart the dough offering,⁵⁰ or who feeds her husband foods that are untithed (even fruit), or who has intercourse with her husband while in a state of impurity due to menstrual spotting violates *dat moshe*.⁵⁰ Thus, even though the Rambam rules that uncovering of one's entire head is forbidden as a violation of *dat moshe*, it is possible that it is only a rabbinic prohibition.

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

The daughters of Israel, whether unmarried or married, should not go out in the marketplace with their head uncovered. A woman ought not to walk in the marketplace with her children following behind, as a prophylactic rule, lest her child be captured and she follow after him to get him back and evil men sexually abuse her.

One who examines chapter 21 of *Hilchot Issurei Biah* will notice that all of the laws from *halakha* 11 through the end of the chapter are rabbinic matters according to the Rambam. In 21:17 itself, there are three laws presented, and the other two are undoubtedly rabbinic in nature.⁵¹ Furthermore, nowhere in his *Sefer HaMitzvot* does the Rambam mention that the obligation of hair covering is biblical.⁵²

The *Terumat HaDeshen* (Responsum 10) writes as follows:

Even though the Rambam wrote that the origin of [the prohibition against seclusion with another man (*yichud*)] is only ancient tradition (*divrei kabbalah*), he also wrote that uncovering of hair is only a rabbinic admonition, as evidenced by the language of his formulation.⁵³

R. Yonah Landsofer, Responsa *Meil Tzedaka* 61, also writes:

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

The Novellae of Rabbi Dov Beresh Meisels (Mahardam) to Rambam's *Sefer HaMitzvot* (positive commandment 175) states as follows:

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

And it is this explanation that Rashi indicated to be the main one. According to this explanation, it is not a full-fledged prohibition, but rather a practice of the daughters of Israel that is ascribed Torah status, and for that reason [Rambam] did not count it in his enumeration of the commandments.

According to this understanding, the Rambam (and Rashi) rule that uncovering one's entire head does not constitute a biblical violation. The Kiryat Sefer, who collects all of the biblical laws that the Rambam codifies, also does not include any *halakha* about hair covering.⁵⁴

In the view of the Rambam, the prohibition against a woman's going with uncovered hair constitutes a violation of *dat moshe*, though it is only a rabbinic prohibition.⁵⁵

The view of the Rambam is found in the Semag as well (who, as was his wont, took nearly all of his language from the Rambam).⁵⁶

The *Orchot Chaim* of R. Aharon b. R. Jacob HaKohen of Narbonne also adopts the formulation of the Rambam, as is his wont. In the Laws of *Ketubot* 33, he quotes from *Ishut* 24:11-12, and in the Laws of *Ketubot* 8, he quotes from *Issurei Biah* 21:17. Thus the *Orchot Chaim* also bases his view on the view of the Rambam.

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

One who violates *dat moshe*: such as going out in the marketplace with her head uncovered, making vows or taking oaths and not fulfilling them, having intercourse with her husband during the period of her menstruation, not setting apart the dough offering, or feeding her husband forbidden foods, and the matter is ultimately uncovered – for instance, she claimed, “These fruits were tithed for me by such-and-such Kohen, or such-and-such person set aside the offering

from this dough, or such-and-such sage ruled my menstrual spotting to be pure," then after he ate or slept with her, he inquired of that person, who informed him that she lied.⁵⁷

Similar statements can also be found in *Sefer Etz Chaim* by Rabbi Jacob b. Judah Hazzan of Londers [London] (an English Tosafist who published his work in 1287, three years before the expulsion in 1290), part 3, p. 266.⁵⁸

⌘ VIII. SUMMARY TO THIS POINT

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

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

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

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

"And he shall uncover her head." How so? [The Kohen] turns to stand behind her and lets her hair loose, as a fulfillment of the obligation to uncover, so said R. Yishmael. Alternatively: this teaches that the daughters of Israel cover their heads. And though there is no explicit proof to the matter, there is an indication:⁵⁹ "And Tamar put ashes on her head" (II Samuel 13:19).⁶⁰

The Netziv, in his *Haamek Sheelah* commentary to the Sifri writes:

Derived, etc: from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head] we can infer that it is forbidden. Alternatively, since Scripture states, "And he shall uncover," we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered: this is the main explanation – so writes Rashi, *Ketubot* 72a. These [two explanations] are dependent on the dispute between the Raavad and Rosh, *Moed Katan* 3:3. According to

the 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 liable to death at the hands of the divine – this corresponds to the second explanation. The 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.⁶¹

According to the Netziv, the dispute with regard to hair covering is one manifestation of a fundamental dispute about negative corollaries of a positive biblical obligation (*issur aseh*) in general. The Netziv maintains that the two views presented by Rashi correspond to the sides of this fundamental dispute between the Rosh and the Raavad. The 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. The Rosh, however, maintains that 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), there is no attendant biblical prohibition against performing the same act outside of the parameters that 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 upon Aaron and his sons is it incumbent.⁶²

In the Netziv’s view, there is a fundamental disagreement as to whether or not the hermeneutical derivation that the Talmud presents is an actual derivation; Rashi presented two bases for the matter, as each is tenable. According to the Rosh, the obligation

for women to cover their hair is like the obligation to mourn – namely, it is an ancient practice of the Jewish people which predates the giving of the Torah, but it is not a biblical obligation.⁶³ This view of the Netziv helps to explain why many Rishonim ruled against the simplest reading of *Ketubot* 72a, that the prohibition is of biblical origin. Nearly all of these authorities (Rosh, Tosafot, Rashi, Tur, and Rama) also rule that the practices of mourning are only rabbinic.⁶⁴ In their view, just as mourning has a biblical source but does not constitute a biblical obligation, uncovering of a woman's hair has a biblical source but no attendant biblical prohibition.

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

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

See *Even HaEzer* 115, where he wrote that regarding the dispute there,⁶⁵ that even according to those who maintain that it is forbidden to go with one's hair uncovered in a courtyard, such is only a rabbinic prohibition. Accordingly, if one is to accept that going without even a work-basket (i.e., with one's hair fully uncovered) in a public domain is biblically prohibited, then the Rabbis enacted legislation

forbidding doing so in a courtyard lest one come to do so in a public domain. However, if going with one's hair fully uncovered in a public domain is forbidden only rabbinically, why would they have outlawed this in a courtyard – it would be considered one prophylactic decree on top of another?! Indeed, one may suggest that those who maintain that it is permissible to go out in a courtyard with one's hair fully uncovered in fact maintain that this is only rabbinic, just as the *Terumat HaDeshen* maintains is the view of the Rambam. Therefore the sages did not enact a decree about going into a courtyard, but only in an alleyway which resembles a public domain. The same seems to be the view of the Beit Yosef, who only forbade going with a kerchief on one's head rather than a headscarf in a courtyard which many use as a pass through or in an alley.⁶⁶

Who are the Rishonim who maintain that it is permissible for a woman to go out in a courtyard with her hair fully uncovered? Tosafot,⁶⁷ Rosh, Ran, Rashi, Rif, Ritva, Ittur, and many others (including the Tur and Shulchan Aruch).⁶⁸ When R. Yochanan maintains “When a woman goes with a basket [on her head], she is not considered to be [going with] an uncovered head,” his view is predicated on the assumption that there is no biblical prohibition at all. Many Rishonim in fact rule this way.⁶⁹ We thus understand why so many Rishonim cite the passage in the Yerushalmi stating that some courtyards are considered as alleys and that some alleys are considered as courtyards. Because no biblical prohibition is involved here at all (this is the view of the Yerushalmi⁷⁰), one must keep in mind that not every courtyard is the same, and that the Talmudic sages enacted a decree with regard to an alley through which many people pass just as they enacted a decree regarding the public domain (and they did not rely, for instance, on the definitions from the laws of *eruv*).⁷¹

Furthermore, even though the Talmud asks, [Is not going out with an] uncovered head a biblical prohibition, only the Shach

(*Choshen Mishpat* 28:8) maintains that in every instance in the Gemara in which the word “biblical” (*deoraita*) appears, does it necessarily indicate an actual biblical obligation and not merely an association to a verse (*asmachta*). The Beit Yosef and many other Acharonim rule that even when the term “biblical” is used, it is possible that the verse serves only as an *asmachta*, and the underlying obligation is only rabbinic. Thus, only according to the view of the Shach, that whenever the term “biblical” in all its permutations appears in the Talmud, it always sets out a biblical obligation or prohibition, must one say that the law of hair covering described in *Ketubot* 72a is of biblical origin. The vast majority of Rishonim and Acharonim disagree with that view. The Sedei Chemed (letter “daled,” kelal 19) writes as follows:

Biblical: We have found this expression used for matters which are not, in fact, biblical obligations; the Talmud in fact means to say that this rule has some support in the Torah. So wrote our master the Beit Yosef (see beginning of *Yoreh Deah* 184, s.v. *u-vi-she'at*) with regard to the rulings of Tosafot, the Rosh, and the Semag that separation from one's spouse before the anticipated time of menstruation is biblical. Similarly, the Derisha wrote (see beginning of *Yoreh Deah* 183) regarding the view of the Tur that such is a biblical obligation. A similar comment appears in the Beit Yosef (*Orach Chaim* 418, s.v. *ve-yachid* [at the end]) regarding the Talmud's statement that Rosh Chodesh is biblical, that the Talmud means to say that the law is hinted at through a biblical association. See also Shach (*Choshen Mishpat* 28:14), that according to both R. Isaac Levin (author of the *Megilat Ester*) and the Shach himself, when the Talmud unequivocally states that something is “biblical,” rather than asking it as a question, it is biblical... [otherwise] it need not be a proof to a Torah rule (but perhaps merely an association). R. Judah Ayas, in his *Afra de-Ar'a* commentary to Israel Jacob Argazi's *Ar'a Derabanan* (42:142), also indicated that what Rashi on

the Rif (Beitzah 37) wrote regarding commercial activity on Shabbat, that it is a biblical prohibition, is not necessarily so, for that certainly is only rabbinic.... Regarding work on the intermediate days of a festival, the Talmud (*Moed Katan* 11b) states: "Mourning is rabbinic; work on the intermediate days of a festival is biblical," but some Rishonim explained that this means to say that there is an allusion to it in the Torah; see *Yerayim* 113, *Hagahot Maimoniyot*, *Hilchot Yom Tov* ch. 7, *Rosh*, beginning of Tractate *Moed Katan*, and *Tosafot*, *Chagiga* 18a, s.v. *cholo*.⁷²

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

* * *

In my humble opinion, there is further proof from the Gemara that the teaching of the school of R. Yishmael, that "this is a warning to the daughters of Israel that they should not go out with uncovered head," is not in fact a hermeneutical derivation of biblical law. There are only eight places in the Talmud that a prohibition is formulated using the expression "a warning to..." (*azharah le...*) in which the warning is addressed not to the individual transgressor but only to institutions or groups as a whole ("a warning to the court [*beit din*]," "a warning to the children of Israel," "a warning to the daughters of Israel," or "a warning to all of Israel," not "a warning to an adulterer" or "a warning to a thief"). *Each time this expression is used (and not addressed to the individual transgressor), it does not indicate an actual derivation of biblical law, nor does it function as a basis for an actual biblical prohibition. The eight are:*

- (1) *Rosh HaShana* 6a: "The Rabbis taught: 'That which comes out of your lips' (Deut. 23:24) – this is a positive obligation. 'You shall guard' (ibid.) – this is a negative obligation. 'And

you shall do' (ibid.) – this is a warning to the courts that they shall impel one to do as he has vowed.”

The hermeneutical derivation, “And you shall do’ – this is a warning to the courts that they shall impel one to do as he has vowed,” does not establish a personal or individual obligation. The Chinuch (mitzvah 575) cites both “That which comes out of your lips’ – this is a positive obligation,” and “You shall guard’ – this is a negative obligation,” but omits the third derivation, “And you shall do’ – this is a warning to the courts that they shall impel one to do as he has vowed.” The Rambam too omits the third hermeneutical derivation (see *Sefer HaMitzvot*, positive commandment 84, negative commandment 155). Tosafot (*ad loc.*, s.v. *yakriv*) maintains that this derivation functions only to state that the laws of sacrifices are like all other positive commandments, whose enforcement the courts have the authority to compel, not to create an individual obligation. See also Rashba and Meiri (*ad loc.*), who take this to be not a self-standing biblical prohibition but rather a subcategory of the prohibition against delaying the bringing of promised sacrifices or the obligation to “guard one’s tongue.”⁷³

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

There are some Rishonim who do in fact maintain that this decree is a fulfillment of a biblical mandate. However, each bases the law on another source, *Shevuot* 30a, where the laws of equal treatment of litigants is derived – without the expression of warning – from the verse “With righteousness shall you shall judge your neighbor” (Lev. 19:15).

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

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

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

Nearly all of the Rishonim rule that this is only a rabbinic obligation. Only Rabbeinu Tam rules that this is an actual biblical source.⁷⁴ As a matter of *halakha*, the Tur, Shulhan Arukh, and Rama all rule that this is not a biblical obligation.⁷⁵

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

All of the Rishonim⁷⁶ rule that this is in fact a true derivation and a biblical obligation; however, their texts do not include the expression, “a warning to all of Israel.” The text of the Semag reads, “an obligation upon all”; the text of the Rosh reads, “this obligation shall be binding upon all of Israel”; the Rif states, “This is an obligation on all of Israel.”⁷⁷ Not a single Rishon has the text, “a warning to all of Israel,” as appears in our editions of the Talmud.

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

Some Rishonim do in fact maintain that this is a fulfillment of a positive biblical obligation. However, they each base the law on an alternate source, *Shevuot* 31a, where a similar requirement is derived – without the expression of warning – from the verses “Keep far from a false matter” (Ex. 23:7) or “Do not accept an illegal report” (*ibid.*, 23:1).⁷⁸

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

The Rishonim do not maintain that this is an actual derivation. Nor will one find this homiletic derivation in any of the compilations of mitzvot. Each of the Rishonim located foundations for these obligations in other mitzvot.⁷⁹

(8) *Ketubot* 72a (Our passage): “What is [considered to be a violation of] *dat yehudit*? Going out with her head uncovered.” But [going out with] an uncovered head is a biblical prohibition as it is written, ‘And he shall uncover her head’ (Num. 5:18), and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head.”⁸⁰

In sum: All of the homiletic derivations that employ the expression, “a warning to...” (such as “a warning to the court,” “a

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

Moreover, in every case in the Talmud in which two homiletic derivations are presented for the same law and one contains the expression “a warning to...,” the Rishonim accepted the other derivation, the one not phrased as a “warning,” to be the main source for the *halakha*.⁸¹ On the basis of this idea, it seems reasonable to assert that some Rishonim considered the passage in *Berachot* 24 to be the main source for hair covering. *Berachot* 24 states:

Rav Chisda said: A woman’s leg [*shok*] is considered forbidden nakedness [*ervah*], as it says, “Uncover the leg, pass through the rivers” (Isaiah 47:2) and it says afterwards, “Your nakedness shall be uncovered, your shame shall be seen as well” (ibid. 47:3). Shmuel said: A woman’s voice is considered forbidden nakedness, as it says, “For your voice is sweet and your appearance is comely” (Song of Songs 2:14). R. Sheshet said: A woman’s hair is a considered forbidden nakedness, as it says, “Your hair is like a flock of goats” (ibid. 4:1).⁸²

According to the above understanding, the view of R. Sheshet, which establishes that a woman’s hair is considered *ervah*, disputes the passage in *Ketubot* 72a–b and the Rishonim rule in accordance with R. Sheshet. The prohibition against a woman going with her hair uncovered is thus rabbinic in nature, since the derivation of R. Sheshet is based solely on a verse in Shir HaShirim.⁸³

§ X. UNCOVERING OF HAIR CATEGORIZED AS A
RABBINIC PROHIBITION BY THE ACHARONIM

Many Acharonim indicate in their writings that the main source of the prohibition that “the hair of a woman is considered *ervah*” and the obligation of hair covering comes from *Berachot* 24 and not *Ketubot* 72. For example, R. Isaac ben Samuel HaLevi Segal (brother and teacher of the Taz) writes in Responsum No. 9:

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

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

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

It seems simple, in my humble opinion, that since they have already developed the practice of going with their hair

uncovered, there is no need for concern.... Consider the reasoning behind why the decisors ruled that it is permissible for single women: since they do so regularly, it does not arouse improper sexual thoughts, and the same is true in our case.

In the Responsa of Maharam Alshakar 35 (regarding the prohibition against partially uncovering one's hair), he writes:

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

Answer: It is clear that there is no need to be concerned for that hair at all, because the practice is to expose it. The rule that a woman's hair is considered *ervah* applies only to hair that women normally cover...but that which is regularly uncovered and which a man is comfortable seeing is permissible, even as we have explained...everything follows the local practice.

R. Yehoshua Babad (grandfather of the Minchat Chinuch) in Responsa *Sefer Yehoshua* 89 (regarding the prohibition against a betrothed woman going with her hair uncovered), writes:

The general rule regarding the exposure of *ervah* is dependent on the following: If a woman exposes a body part that women regularly cover, it is considered *ervah*; but if women do not regularly cover it at all, it is not categorized as *ervah* at all, since all women regularly go with at least one body part exposed.... Likewise with regard to hair: It is considered to be exposure of *ervah* if the practice of women is to cover [their hair]; but if their practice is to regularly uncover their hair...like the unmarried women who regularly go with their heads uncovered...such is not considered to be *ervah* since this is their practice.

The basic principle is that any part of the body which is always seen and which it is not the common practice of women to cover and which men are used to seeing is not considered *ervah*, people are not stirred by such because they are used to seeing this, and no biblical prohibition is involved at all [in uncovering them].... Were it the practice of all Jewish women to go with their heads entirely uncovered, there would be no prohibition at all, even for married women. Rather, as the Gemara demonstrates from the verse that states, "And he shall uncover," we can infer that up to that point her head was covered, as was the practice of all women. In truth, the Talmudic sages knew that the practice of women was to cover their heads with a braid and a head-scarf; accordingly, for them uncovered hair was considered *ervah* and biblically prohibited, not just *dat yehudit*. Therefore, the Talmud was compelled to say that the violation of *dat yehudit* involved going with braided hair – this, with God's help, is clear.

A similar formulation – explicitly permitting the uncovering of married women's hair – can be found in several other Acharonim. *Sefer Chukei HaNashim* (by the Ben Ish Chai) p. 55, states as follows:

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

Thus, all is dependent on the modest practices of Jewish women – just as with *dat yehudit*. Likewise, R. Ephraim Zalman Slutzki, Responsa Etz Ephraim (Orach Chaim, p. 12), writes:

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

R. Yaakov Chaim Sofer, in his *Kaf HaChaim*, Orach Chaim 75:(17) writes:

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

And in 75:(18) he rules:

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

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

Rabbi Joseph Messas (Rabbi of Morocco and later Chief Rabbi of Haifa), Responsa *Mayim Chaim*, 2:110 rules:

Thus, nowadays when women worldwide have abandoned the ancient custom and reverted to the simple practice of not covering their hair, it in no way indicates a deficiency in their modesty or promiscuity, God forbid.

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

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

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

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

R. Moshe Malka, the late Chief Rabbi of Petach Tikva and author

of Responsa *Mikveh HaMayim*, also rules in accordance with R. Messas as a matter of *halakha*:

From here one sees that women's hair is considered forbidden nakedness only when it is covered and in a place where women normally cover it. But when it is uncovered and in a place where women normally do not cover it, it is not considered *ervah*. The reason is that hair that is normally covered that is exposed leads to erotic thoughts, but this is not the case where it is always exposed: it does not give rise to erotic thoughts in people who are accustomed to seeing it all the time, as in the case of single women – there is no prohibition when the hair is always uncovered [in that society].... Thus the position of [R. Messas] now stands, that this matter is based on local practice, and wherever the entire local populace goes with their heads uncovered, there is no issue of erotic thoughts. And it seems that women nowadays rely on this, as they go about with their heads uncovered in the markets and streets and no one protests, for they have something to rely on.

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

But through their fierce opposition to promiscuity, they have distorted for us – intentionally or unintentionally – the simple understanding of the teachings of the Sages (Shabbat 64, Nazir 28, and the beginning of the second chapter of *Ketubot*), to the point that even an intelligent person cannot sort this out; see *ibid*. The truth is that these matters of law, prohibited and permitted, are based not in the Talmud or the early decisors, but in the public conduct of women in a given place and time. I have written all this not to rule as a matter of practical *halakha*, but to find an *ex post facto* justification for the practice of the daughters of Israel.

I have expanded upon this more than is called for, yet it nevertheless seems to me that hair covering ought not to be included in the enumeration of the mitzvot, even though the Talmud stated that it is a biblical obligation, once we have concluded that it is dependent on place and time, and in a place where the practice of women is to go with their heads uncovered, there is no obligation nor interdiction, either biblical or rabbinic.

R. Yerucham Fishel Perlow in his commentary to the *Sefer HaMitzvot* of Saadia Gaon (positive commandment 96) writes as follows:

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 since it falls into the category of "Do not place a stumbling block before the blind."

According to his approach, all of hair covering depends on the laws concerning the prohibition against facilitating sinful conduct (*lifnei ivver*) – and in a place where uncovered hair does not cause improper thoughts nor lead to promiscuity, there is no biblical prohibition.

A related ruling appears in Responsa Yashiv Moshe (by Rabbi M. Turetsky, p. 381), who maintains that it is permissible for a married woman to uncover her head in a place where there are only Gentiles (in a circumstance where there is no concern for seclusion [*yichud*]). He rules:

[I]t is forbidden for a woman to expose [her hair] to a Jewish man on account of the man's sin, for she causes him to stumble in the prohibition to look at forbidden sexual matters, as

explained in the laws of marriage, *Even HaEzer* 21:1, which is a violation of *lifnei ivver*, as the man will come to violate the biblical prohibition of “You shall guard yourself from every evil thing” (Deut. 23:10) – one should not engage in improper thoughts during the day which would lead to impurity at night (*Avoda Zara* 20b). Alternatively, she must do so on account of the woman’s [i.e., her own] sin, as there is an obligation upon a woman to conduct herself modestly in the presence of others, and her prohibition against behaving in a promiscuous manner is similar to that which the Shulchan Aruch wrote in the subsequent paragraph (*ibid.*, 21:2) [“The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married”].

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

* * *

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

Our master [Rav Hisda] also violated the ruling of Shmuel, for Shmuel states: men should not interact with [literally, be handled/served by] women [i.e., in a manner which involves physical contact]. He responded: I accept the alternate view of Shmuel, for Shmuel states: Everything is for the sake of heaven. [i.e., physical interactions between men and women

are permissible when in a situation in which there are no sexual overtures; *Rashi*: All for the sake of heaven – my interactions aren't with her for the sake of sexuality or marriage but rather for mere closeness, and to become a friend to her mother when I am pleasant to her daughter. *Tosafot*: All for the sake of heaven – this is what we rely on nowadays, for we physically interact with women.]

The Ritva *ad loc.* writes:

All is dependent on wisdom and the sake of heaven. This is the normative rule of Jewish law, that all is dependent on what a person sees in himself. If he needs to create additional barriers for his own desires, he must do so, even such that he not look at women's undergarments when they are being washed (See Avoda Zara 20b). So too, if one sees in himself that his desires are bent and submissive and it does not give rise to any impure thoughts in his heart at all, he may look and speak with a prohibited sexual relationship and ask about the well being of a married women, and this explains the conduct of Rav Yohanan who sat at the gates as the women were immersing, looking on without any erotic intent, and Rav Ami who spoke with the Caesar's mother, and other Rabbis who spoke with various Matrons [immodest women] and Rav Ada bar Ahava who placed a bride on his shoulders [at a wedding] and danced, none of whom were afraid of erotic thoughts, based on our above explanation. Rather, one should not be lenient on these matters unless one is a greatly pious person, acutely aware of one's own desires...

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

All is dependent on that which one sees in one's eyes and masters one's own desires. If one is able to overcome one's

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

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

Perhaps this is all dependent on the view of the Ra'aviyah on Berakhot 24 (Vol. 1, *Siman* 76):⁸⁴ The Ra'aviyah maintains that “all of the items mentioned above [hair, voice, and legs] with regard to *ervah*, apply specifically to areas of the body that are not normally uncovered” – when parts of the body are normally uncovered, no erotic thoughts are generated, and thus no prohibition applies.

The Ritva, Maharshal, and Ra'aviyah all maintain that when there is no concern that a person will have erotic thoughts, there is no prohibition to look at an uncovered area, *neither for the viewer nor for the one being viewed*. Just as it was permissible for Rav Yohanan to view a “naked” woman – with her hair uncovered, too – because it did not “give rise to any impure thoughts,” it is likewise permissible for a woman to go “naked” – precisely with her hair uncovered – before Rav Yohanan when he would not find that conduct arousing. Their view is cited approvingly by the Pitchei Teshuvah, *Even ha-Ezer* 21:(4).⁸⁵

According to the view of the Ritva, Maharshal, and Ra'aviyah, Pitchei Teshuvah, and others, when there is no concern at all about erotic thoughts, there is no prohibition, neither for the actor nor for the viewer. And even though regarding the incident of the naked woman in the Talmud, the Ritva rules that such is only permissible for a pious person such as R. Yohanan, it makes sense to say that this is because an ordinary person is not trusted

to aver that a naked woman does not give rise to erotic thoughts. But with regard to uncovered hair nowadays, the eminent decisors admit and explicitly write that no erotic thoughts are generated – because most women go around this way,⁸⁶ it is permissible for all. This is precisely the view of the Maharshal: it is permissible to greet (ask the well being of) a married woman in a society where modest men do so – even though the Talmud ruled that such was expressly forbidden as a matter of *halakha*.

✿ XI. CONCLUSION

Rabbi Dr. S. Carlebach, in his article on hair covering for women, “Sources for the Prohibition of a Woman Uncovering Her Hair and Laws Regarding Wigs,” which collects a host of sources on hair covering from the Rishonim and Acharonim, writes:

I have searched through the numerous books I own and those I could get my hands on to gather the views of the great medieval and latter-day decisors on this topic. And from all I have been able to amass in my stronghold, I have concluded in my humble estimation that a woman who goes with her head uncovered violates a biblical prohibition, even though I did not find explicit statements to this effect by the Rambam, Semag, or Shulchan Aruch – I find this to be astounding.⁸⁷

I, too, have set out to investigate this topic in the footsteps of the great decisors, and I tried to search all the books I could get my hands on to gather the views of the Rishonim on hair covering for women, and I have discovered that many of them – Tosafot, the Rosh, the Tur, and Terumat HaDeshen in particular – established the prohibition against a woman’s going with her head uncovered as a violation of *dat yehudit* and a rabbinic prohibition. I find this result to be astounding as well, because their view never appears in the works of the leading Acharonim.⁸⁸

Rashi in his commentary to *Ketubot* 72 offers two possibilities

regarding the classification of the prohibition against going with an uncovered head.⁸⁹ According to the first possibility, Rashi writes that the prohibition comes from “the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head], we can infer that it is forbidden.” The second possibility is that “since Scripture states, ‘And he shall uncover,’ we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered.” Rashi rules that the fundamental understanding of the second explanation is correct, that we are to rely on “the practice of the daughters of Israel” with regard to hair covering. Thus, everything is dependent on the practice of Jewish women.⁹⁰

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

* * *

The great R. Yechiel Yaakov Weinberg (author of *Responsa Seridei Esh*), at the end of his article regarding the prohibition against uncovered hair, remains uncertain if there is a biblical prohibition regarding a woman’s not covering her hair. He writes:

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

even from the standpoint of Jewish ethics, it is appropriate for a married woman to cover her hair; by doing so, she demonstrates that she is not eager to make herself attractive to other men.... R. Samson Raphael Hirsch, ob”m, mentioned the requirement for a woman to cover her head in his book *Chorev* in the same chapter in which he discusses the sanctity of thought which is demanded of every Jewish man and woman. May this sign of modesty serve as a source for the purification of our thoughts.⁹¹

✂ NOTES

- * This article was translated into English by Michael Ausubel of Atlanta from a Hebrew working manuscript first begun by the author nearly twenty years ago. The author remains solely responsible for the presentation and analysis of the content and has reviewed this translation closely. A condensed version of the original Hebrew manuscript has previously been published as “*Gilui se’ar be-ishah nesuah: issur torah (ve-dat moshe) o issur derabbanan (ve-dat yehudit)*” in *Techumin* 27: 248–265 (2007). Some very early thoughts on this topic were published in an article entitled “Tradition, Modesty and America: Married Women Covering Their Hair,” *Judaism* 40(1):79–87 (January 1991), as well as in a letter to the editor entitled “Modesty,” in the *Journal of Halacha and Contemporary Society* 31:123–126 (1996). Finally, a significant portion of this material is soon to be published by *Tradition: A Journal of Jewish Thought* entitled “Hair Covering and Jewish Law” (forthcoming, 2009).
1. See, e.g., *Yechavveh Da’at* 5:62; See also *Yabia Omer, Even HaEzer* 3:21 and 4:3; *Tzitz Eliezer* 6:48 and 7:48; *Minchat Yitzchak* 6:106; *Igrot Moshe, Even HaEzer* 1:53, 57; *Seridei Eish* 3:30; *Responsa Maharsham* 7:215; *Responsa Chatam Sofer* 3:12 (*Even HaEzer* 1:12); *Responsa Teshuvah Me-Ahavah* 1:48; *Responsa Be’er Sheva* 18; *Responsa Radvaz* 1:445. See also generally *Otzar ha-Poskim, Even HaEzer* 21:4.
 2. This is the textual version of all the Rishonim; see *Rosh* and *Rif*; see also *Dikdukei Soferim*.
 3. Menstrual spotting is certainly rabbinic according to all opinions. According to the Rambam, failing to separate dough and to give tithes are also considered to be rabbinic violations. See also *infra*, section v11, Uncovering of Hair Categorized as *Dat Moshe* but a Rabbinic Prohibition: The View of the Rambam.
 4. I.e., a full covering of all hair.
 5. The opinion of the Tur is that tithes and priestly dues are biblically prohibited even nowadays; therefore, he wrote of the “pile,” which relates to priestly dues, and not the dough offering. But the Tur does not eliminate the case of feeding untithed food (even though the Rambam is of the view that the consumption of untithed food is only rabbinically prohibited, and therefore he writes, “even foods that are untithed” – meaning, even though they are not biblically prohibited), because the Tur takes the view that the consumption of untithed food is prohibited biblically. See *Tur, Yoreh Deah* 331.
 6. The view of the Tur can also be found in the *Kitzur Piskei HaRosh* (also written by the Rosh’s son R. Jacob b. Asher). It states:
An exposed handbreadth of a woman’s body is considered forbidden nakedness, and it is forbidden to recite the Shema in the presence of such a woman.... The Shok of a woman is considered forbidden nakedness, as is the hair of a married but not unmarried woman, as is the voice of a woman, to which it is forbidden to listen.
The Tur explains that the prohibition found in *Berachot* 24 is not restricted to forbidden

nakedness during prayer; rather, he is of the view that the Gemara is talking about a general prohibition (whose source is only rabbinic, since the verse from which this law is derived is from Song of Songs, but see Mishpetei Uziel #94, who disagrees).

Even though the Rosh (*Ketubot* Ch. 7, no. 9) quotes the Gemara, which states that uncovering of the hair is “of biblical origin,” the *Kitzur Piskei HaRosh* (ibid.) does not explain the Rosh that way. R. Jacob b. Asher summarizes the Rosh without at all mentioning the category of one who violates *dat*. A similar formulation can be found in the *Tur, Even HaEzer* 21. The *Tur* writes: “The daughters of Israel should not go out in the marketplace with their heads uncovered, no matter if they are unmarried or married.” The *Tur* does not distinguish between married and unmarried women, even though he himself is of the opinion that there is no prohibition for an unmarried woman to go out with her hair uncovered. Perhaps with regard to everything contained in *Even HaEzer* 21, the *Tur* is of the view that the prohibitions are only rabbinic in nature and apply only in the time and place of promiscuous women: see *Ritva, Kiddushin* 89 (cited in *Pitchei Teshuvah Even HaEzer* 21).

7. The Beit Yosef writes: “That which [the *Tur*] wrote, ‘Even if it is not uncovered entirely but only covered by her work-basket, since she was not covered with a head-scarf, she is to be divorced,’ is from [*Ketubot* 72b]. That which he ascribed to the Rambam appears in Chapter 24 of *Hilchot Ishut*, and it is an explanation of the Gemara’s remark, ‘Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket [on her head is insufficient and] is prohibited as well.”
8. Cf. *Tur*, who adds, “Even if it is not uncovered entirely.”
9. There is a dispute among the Acharonim as to meaning of the word “unmarried” (*penuyah*). Most authorities are of the view that it should be understood as referring to a woman who was once married but is currently unmarried, rather than to one who is single and has never been married; see *Chelkat Mechokek*, Beit Shmuel and *Dagul Merevavah* on *Even HaEzer* 21:4. See also Bach (*ad loc.*) who disagrees, as does Magen Avraham, o.c. 75:3. See also below, section x1.
10. There is some evidence that the Rama rules that the prohibition of a woman uncovering her hair is *dat yehudit* and not *dat moshe*: see Responsa of Rama #20, *Shulhan Arukh*, o.c. 75:2 (“the same is true of women’s hair that regularly protrudes from under their coverings”), and *Darkei Moshe, Even HaEzer* 115, who rules that the prohibition is only for a woman to go with her head uncovered in the marketplace and nowhere else; see also Responsa of Rama #45. See also Responsa *Binyamin Ze’ev, Dinei Kiddushin* (par. 50), who explains *dat moshe* only as the Mechaber does (see also his *responsum* #127). The Perishah, too, does not disagree with the *Tur*’s view. In *Even HaEzer* 115 (Perishah no. 11) he writes that the prohibition is for a woman to go with her hair completely uncovered in the marketplace, and in *Even HaEzer* 21 he writes that “women should not go out in the marketplace with their heads uncovered, no matter if they are unmarried ... – apparently it seems that [the *Tur*] means to say [unmarried,] such as a widow or divorcee; but single women who have never been married are permitted to go out, as is our custom.”
11. See also below, p. 25.
12. The Zohar (Parashat Naso, p. 125b–126a) is exceedingly strict with regard to the prohibition of women going with uncovered hair. The Zohar writes:
 - 77) R. Chizkiyah stated: A stupor shall befall the man who allows his wife to let her hair be seen protruding forth. This is one of the modest practices of the home. A woman who exposes some of her hair for self-adornment causes poverty for her household, causes her children to be unimportant in their generation, and causes a foreign spirit to dwell in her house. What causes all this? The hair of her head that could be seen protruding forth. If this is true within the home, how much more so in the marketplace. And how much more so [could it lead to] even further brazenness. Thus the verse, “Your wife shall be as a fruitful vine in the innermost parts of your house” (Psalms 128:3).
 - 78) R. Yehudah stated: The hair of the head of a woman being exposed causes “other hair” [i.e., the powers of impurity] to be revealed and harm her. Thus, a woman is

required to ensure that even the beams of her house not see a single hair of her head, and all the more so outdoors.

See also R. Menachem Recanati, *Taamei Hamitzvot Hashalem*, Mitzvah of Sotah, and the *Even Yekarah*, commentary of R. Mordechai Yaffe (published in the Complete works of the Levush).

13. It seems that the Gra, too, disagrees; see *Biur HaGra*, *Even HaEzer* 115:19 and the comments of the Birkat Eliahu, who explains the language of the Gra to mean that he disagrees as well.
14. In general, the laws of modesty in the category of *dat yehudit* are dependent on the practice of modest Jewish women who are Torah-observant. For example, see Responsa *Maharam Alshakar*, *Even HaEzer* #35 who rules as a matter of Jewish law that it is permissible for a modest married woman to reveal the hair that protrudes from under her hat if that is the societal practice, since all agree that no biblical prohibition is involved when a woman is wearing a hat. R. Moshe Feinstein (*Igrot Moshe*, *Even HaEzer* 1:57 and 4:32[4]) also permits the violation of *dat yehudit* in cases of need when such action is not inherently immodest. See also the discussion of the difference between *dat moshe* and *dat yehudit* below, section v.
15. The Rosh (*Ketubot* 7:9) also writes:

Dat yehudit is going out with her head uncovered. [Is not an] uncovered head a biblical prohibition, as it is written, "And he shall uncover her head," and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head? R. Yehudah answered in the name of Shmuel: Biblically, her work-basket is a satisfactory head covering; however, according to *dat yehudit* even a basket is prohibited as well [*Hagahot Asheri*: This is so in the public domain, but in a courtyard, even the absence of a work-basket is not considered a violation even of *dat yehudit* - R. Hezekiah of Magdeburg]. R. Assi stated in the name of R. Yochanan: When a woman goes with a basket, she is not considered to be of uncovered head. Abayee, or alternatively R. Kahana, stated: [R. Yochanan's ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley. *Talmud Yerushalmi* (*Ketubot* Ch. 7): A courtyard which many people use as a pass through is [considered] as an alley; an alley through which many people do not pass is [considered] as a courtyard.

See also the discussion relating to the comments of the Minchat Ani, below, p. 30.
16. R. Aaron Samuel Kaidanover, commenting on this in his *Tiferet Shmuel*, writes: "meaning, he comes to exclude that which women normally uncover, such as the face and neck and hands, but it seems simple to me that the practice of women to regularly uncover their forearms and have their garments open nearly to their breasts is an evil practice; to them I apply the term a no-good place: an exposed handbreadth of a woman is considered *ervah*."
17. See also the *Rosh* on *Gittin* 9:15, as well as note 8 above. If *Berachot* 24 is not dealing exclusively with the ability to recite the Shema, then the three body parts discussed in *Berachot* (hair, voice, and legs) parallel the three activities classified as *dat yehudit* in the Mishna in *Ketubot* 72.
18. The Gemara in *Sotah* does not use the expression *dat yehudit*; this is an interpretive gloss by Tosafot.
19. It is not possible to argue that Tosafot here is speaking of a woman who violates *dat moshe*, since it is certainly forbidden to continue to live with a woman who causes her husband to violate biblical prohibitions. (Rashi, too, *s.v. overet al dat*, understands the Gemara in *Sotah* to be limited to one who violates *dat yehudit*.) See also *Shut HaBach HaChadashot* 84.
20. *Beit Yosef*, *Even HaEzer* 119, *s.v. bameh devarim amurim*. See also *Beit Shmuel*, *Even HaEzer* 115:19, who maintains that "even according to the view of Tosafot and the Rashba (see *Shitah Mekubetzet* 72) that the resolution to the question is that a husband may choose to remain married to such a woman, nonetheless they are of the view that one ought to divorce her."
21. Since it is impossible to maintain that whenever there is a biblical commandment to divorce, one may forego the commandment. See also R. Yitzchak Isaac Herzog, *Hechal Yitzchak*, *Even HaEzer* 1: 9.
22. It is possible that the full scope of Tosafot's position escaped the view of the *Beit Shmuel* (*Even*

HaEzer 115). The Beit Shmuel maintains that the view of Rashi, that there is no obligation to give forewarning before divorcing one's wife for a violation of *dat moshe*, is a solitary view. Yet this seems to be the view of Tosafot here as well (if one is biblically obligated to divorce one's wife, then there need not be an obligation to forewarn her).

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

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

See also *Minchat Ani*, below (note 66), regarding the basis of Tosafot's ruling to permit uncovering hair in a courtyard.

23. Thus there is a tremendous difference between a woman who is not as modest as the proper daughters of Israel and a promiscuous woman. It is not fitting for a proper Jewish man to marry a woman who has been divorced on account of promiscuity (*Shulhan Arukh, Even HaEzer* 119:5), but there is a dispute among the Rishonim as to whether one even ought to divorce a woman who violates *dat yehudit*; see *Shulhan Arukh, Even HaEzer* 115:4.
24. See *Mareh Panim* commentary to the end of Yerushalmi Gittin as well as *Tiferet Yaakov* to *Gittin* 90; the above explanation is consonant with their comments.
25. See also the explanation of R. Yerucham Fishel Perlow in his commentary to the *Sefer Hamitzvot* of Saadia Gaon, quoted below, pp. 98-99. R. Yehuda Herzl Henkin also maintains that the alternate explanation of Rashi is based on the principle that going in the street is not biblically prohibited (as is the view of the Rambam), and only according to the first explanation is there a biblical prohibition to go out in the street; see his "Shiur Kisui Rosh Shel Nashim," *Techumin* 13:290 (5753).
26. See also Responsa of Maharam of Rothenburg 4:927 (Prague ed.); the Rashba citing the Ravad (*Berachot* 24b); and *Ba'al Halachot Gedolot*, Laws of *mi'un*.
27. See Responsa of Rif, No. 73; *Sefer Agudah*, seventh chapter of *Ketubot*; and R. Yonatan ben David HaKohen of Lunel, commentary to *Ketubot* 72a.
28. See *Pitchei Teshuvah, Even HaEzer* 21.
29. According to such an understanding, there would be a categorical biblical obligation upon every woman to cover her hair, as, for instance, the obligation upon every woman to pray daily, but a woman who does not cover her hair is only in violation of *dat yehudit*, and then only if hair covering were considered an indication of modesty in that generation would she be in violation of *dat yehudit*; otherwise she would not, just as a woman who does not pray every day violates neither *dat moshe* nor *dat yehudit*.
30. Rashi on the Rif explains, "The practice of the daughters of Israel even though it is not written."
31. The Rosh (*Ketubot* 7:9) explains that a woman who "violates *dat yehudit* does not receive her *ketubah* payment" "on account of her impudence and on account of the suspicion of infidelity."
32. See also Responsa of Rashba 5:246, cited below, p. 77.

33. It is possible that the Tur disagrees and thinks that there is not a single rabbinic prohibition categorized as *dat moshe* nor any biblical prohibitions labeled *dat yehudit*.
34. As further proof to this proposition, the Rama (*Even HaEzer* 115:4) rules that "A woman who regularly secludes herself among non-Jewish men is considered to violate *dat*." Whether she is considered to have violated *dat moshe* or *dat yehudit* depends on the dispute as to whether or not seclusion with another man (*yichud*) is a biblical prohibition. See *Terumat HaDeshen* 242; *Biur HaGra*, *Even HaEzer* 115:19; and *Birkat Eliyahu* supercommentary *ad loc*.
35. He adds:
 One is only required to give forewarning to a woman who violates *dat yehudit*, whose sin is relatively minor; but one who violates *dat moshe*, whose sin is great, requires no forewarning at all, for we penalize her. There is some support to this from Rashi (Sotah 25a), who in commenting on the Talmud's question of whether a woman who violates *dat* requires forewarning [before losing her *ketubah* payment], writes: "A woman who violates *dat - yehudit*, who is immodest, such as going out with her head uncovered or spinning in the marketplace, etc., which the Talmud in *Ketubot* (72a) rules as being grounds for divorce without receiving her *ketubah*." He explicitly states that the question in the Gemara is with regard to one who violates *dat yehudit*, and not *dat moshe* when he cites the opinion of Rashi that one who violates *dat yehudit* requires forewarning, he also cites Rashi's view that hair covering is *dat yehudit* and not *dat moshe*. See also *Responsa Yachin Uvoaz* 1:122.
36. Rosh, *Ketubot* 7:9.
37. Among the Rishonim and Acharonim, nearly all are unanimous in rejecting this opinion and taking the view that *dat yehudit* includes only rabbinic prohibitions; see *Sedei Chemed*, s.v. *dat*, and *Encyclopedia Talmudit*, s.v. *dat yehudit* and *dat moshe*, who cite numerous Rishonim and Acharonim who say that *dat yehudit* is equivalent to "rabbinic prohibition" (*issur derabbanan*). (see above, p. 70.)
38. R. Aaron Samuel Kaidanover, commenting on this in his *Tiferet Shmuel*, writes: "[M]eaning, he comes to exclude that which women normally uncover, such as the face and neck and hands, but it seems simple to me that the practice of women to regularly uncover their forearms and have their garments open nearly to their breasts is an evil practice; to them I apply the term a no-good place: an exposed handbreadth of a woman is considered *ervah*."
39. 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 the Rambam with regard to the law that it is prohibited to enter the Temple precincts with one's hair uncovered. The Rambam (*Bi'at Hamikdash* 1:17) rules:
 Similarly, it is prohibited for anyone, whether Kohen or ordinary Israelite, to enter the entire Temple, from the beginning of the outer courtyard and inward, after having consumed wine or while drunk or with one's head uncovered in a disgraceful manner or with torn clothes – even though the latter is not included in the biblical admonition, for it is not befitting of the honor and reverence due to the great, holy site to enter in a disgraceful manner. However, a person who grew out his hair such that it is smooth and no longer disgraceful is permitted to enter the outer courtyard.
 [Translator's note: The author is aware that the preceding remarks in the text duplicate those found on pp. 65 with one crucial difference: here the author suggests that according to the Divrei Chamudot's understanding of the Rosh there is no disagreement between the Talmudic passages in *Ketubot* and *Berachot*, while above he indicates that there indeed is a dispute. The author had no easy resolution for this seeming contradiction.]
40. See also what my esteemed teacher Rabbi Mordechai Willig wrote on this topic in his work *Am Mordechai* 16:3 (pp. 67–68).
41. See Rabbi Henkin's article, "Shiur Kisui Rosh Shel Nashim," above, note 27.
42. For instance, he writes, "A woman who goes out into the public domain with her hair

- completely uncovered violates *dat moshe*. The same is true of a woman who regularly secludes herself with non-Jewish men.”
43. This is also the view of the *Shiltei Giborim* to *Ketubot* 72, who cites this exact formulation of *Piskei Riaz*.
 44. He writes, “This need not be enumerated among the commandments, for the Talmud also states (*Sukkah* 6a) that the laws regarding barriers (*chatzitzah*) are biblical, and likewise (*Ketubot* 72a) that going with one’s head uncovered is a biblical prohibition...”
 45. R. Yerucham has a further innovation as well. He rules that even in an alley, if a woman’s hair is entirely uncovered, she violates a biblical prohibition.
 46. None of this is found in our edition of Rashi (neither in Rashi printed alongside the Gemara nor Rashi printed alongside the Rif). Why did Rashi emend his comments and omit the entire matter of the biblical nature of the prohibition from our (later) edition? Perhaps Rashi maintains that the second explanation he presents, namely that we infer from the verse “And he shall uncover,” that at that time her head was not uncovered, and it is not the practice of the daughters of Israel to go with their heads uncovered – and which in our edition he indicates to be the main explanation – is based on something other than a biblical prohibition; see the Novellae of Rabbi Dov Beresh Meisels (Mahardam) to Maimonides’ *Sefer HaMitzvot*, positive commandment no. 175 (“He is of the same view as the second explanation presented by Rashi, that from the verse “And he shall uncover...” we infer that at that time her head was not uncovered, and we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered. According to this explanation, it is not a full-fledged prohibition, but rather a practice of the daughters of Israel that is ascribed Torah status.”)
 47. It is possible that the Ran takes the same view as the Rambam, namely that there are some rabbinic prohibitions that are categorized as *dat moshe*; however, the simple understanding of *dat moshe* is that it indicates a biblical prohibition.
 48. Rabbi David b. Isaac Bonan, Responsa *Dei Hashev* (Livorno 1846), *Even HaEzer* 4, formulates a truly innovative insight regarding the biblical prohibition of uncovering one’s hair. He rules:

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

According to this view, the biblical prohibition is limited to the Temple mount. See also Rabbi Yehuda Herzl Henkin’s evaluation of this innovative approach in his article “Shiur Kisui Rosh Shel Nashim,” above, note 27.
 49. *Ishut* 24:11: “If a woman has done one of the following, she is considered to have violated *dat moshe*: Going out in the marketplace with the hair of her head uncovered, making vows...”
 50. The Maggid Mishneh (*ad loc.*) writes:

If a woman has done one of the following – the Mishna in the seventh chapter of *Ketubot* states: The following are to be divorced without receiving their *ketubah*: a wife who violates *dat moshe* or [one who transgresses] *dat yehudit*. What is *dat moshe*? Feeding [her husband] untithed food, having intercourse with him during the period of her

menstruation, not setting apart the dough offering, or making vows.... The Gemara there explains that if a woman goes out in the marketplace with her head uncovered, it is a violation of *dat moshe*. It also states that going out with an uncovered head is a biblical prohibition, as it is written, "And he shall uncover her head," and the school of R. Yishmael taught that this is a warning to the daughters of Israel that they should not go out with uncovered head. And our master [the Rambam] explained that when the Talmudic sages stated, feeding him untithed food, they certainly meant to include all other types of forbidden foods, for nowadays tithes are only a rabbinic obligation, as noted in the first chapter of *Hilchot Terumot*.

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

51. (1) A married woman should not go out in the marketplace with her head uncovered, (2) an unmarried woman should not go out in the marketplace with her head uncovered, and (3) a woman should not walk in the marketplace with her children following behind her.
52. Nor is it found in any other compilation of mitzvot (save for the commentary of Tashbetz to ibn Gabirol, *Zohar HaRakia*). In general, the Rambam's methodology is not to count the negative corollary of a positive biblical obligation (*issur aseih*) separately (see what is written on this topic in R. Saadya Gaon's *Sefer HaMitzvot* [1:655] and the comments of the *Yad Malachi* [371-372]), nor to count "matters derived from any of the thirteen hermeneutical principles" (*Sefer HaMitzvot, Shoresh 11*).
53. The *Mishneh LeMelech, Hilchot Sotah* 2:1 writes, "Seclusion with a man is no worse than having her head covered with a work-basket, which according to all opinions is only a rabbinic prohibition." He maintains that there are Rishonim who ruled that hair covering is only rabbinic; the simple understanding is that this is the Rambam's view. See also Responsa *VaYashev Moshe, Yoreh Deah* 2; *Yechavveh Daat* 5:62.
54. Rabbi Henkin writes, "[T]his makes sense according to the view of the Rambam, that hair covering is only a rabbinic obligation, and the verse is merely an allusion"; see his article, "Shiur Kisui Rosh Shel Nashim," note 27 above.
55. The view of the Rambam calls for an explanation of the distinction between *dat moshe* and *dat yehudit* (since the distinction is not, in his view, between biblical and rabbinic prohibitions). In my view, one might suggest that the violations labeled *dat moshe*, whether biblical or rabbinic, are constant prohibitions and not at all dependent on time or place; violations considered *dat yehudit*, however, are dependent on the modest practices of each generation. See Responsa *Brit Avraham, Even HaEzer* 13:(6).
56. The Semag writes (Positive commandment 48):
If a woman has done one of the following, she is considered to have violated *dat moshe*: As presented in the seventh chapter of *Ketubot* – going out in the marketplace with the hair of her head uncovered, as the school of R. Yishmael taught, "And he shall uncover her head" – this is a warning to the daughters of Israel that they should not go out with uncovered head; making vows or taking oaths and not fulfilling them; having intercourse with her husband during the period of her menstruation; not setting apart the dough offering; or feeding her husband forbidden foods – insects, reptiles, and the carcasses of unslaughtered beasts go without saying, but even foods that are untithed.
57. What is *dat yehudit* in his view? "The daughters of Israel have long accepted upon themselves certain modest practices, and one who violates those practices is called, in the words of the Sages, one who violates *dat yehudit*;" *Ezrat Nashim*, printed in *Shitah HaKadmonim* to Tractates *Sotah* and *Nazir*.
58. The rationale of the Rishonim who maintain that going with one's hair uncovered is categorized as *dat moshe* but is nonetheless only a rabbinic prohibition is that the teaching of the school of R. Yishmael functions only as an association to a biblical verse, yet as per the simple reading of the flow of the Talmud, they switch hair covering from the category of *dat yehudit* to *dat moshe*. (As Rashi notes, "Going out with an uncovered head is a biblical prohibition – so why

- is it not considered *dat moshe*?) That hair covering has the status of a rabbinic prohibition and yet *dat moshe* is predicated on the text of the Gemara reading, “such-and-such sage ruled my menstrual spotting to be pure,” rather than, “ruled my current discharge of blood to be pure.” The former is the text of the Rif and Rambam. Thus, the category of *dat moshe* clearly includes both biblical and rabbinic prohibitions. (In our edition of the Rosh, we have “ruled my menstrual spotting to be pure,” but the Tur’s summary of his father’s rulings [*Kitzur Piskei HaRosh*] indicates his text to have been “ruled my current discharge of blood to be pure.”)
59. The plain reading of this Sifri is that this is only an association to a verse (*asmachta*) and not an actual biblical law, as it states, “though there is no explicit proof to the matter, there is an indication.” It is possible that the view of the Rambam, that uncovering of hair is categorized as *dat moshe* but only a rabbinic prohibition, is based on this Sifri and the Yerushalmi, which do not raise the possibility of this being a biblical prohibition.
60. The Sifri continues:
 R. Yehudah says: if the place where *chalitzah* is done [i.e., her foot] was beautiful, he does not shave it; and if her hair was beautiful, he does not undo it. If she was clothed in white, he clothes her in black; if black becomes her, he removes them and clothes her in unseemly garments. If she wore golden ornaments and necklaces, earrings and finger-rings, they remove them from her in order to make her repulsive. R. Yehudah b. Berokah stated: One does not humiliate the daughters of Israel any more than what is described in the Torah. Rather, as the verses state, “before God. He shall uncover her head,” the Kohen would spread a sheet of linen between himself and the others assembled, turn to stand behind her, and uncover her head in order to fulfill the obligation to uncover.
61. On the line, “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 Mishna in *Ketubot* (72a) states, ‘One who goes out with uncovered head.’”
62. 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 whether, when the Torah records an ancient practice (whether the dowry of virgins [*mohar habetulot*] or hair covering), whether it has 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 Num. 5:18 is a biblical custom and not a biblical law. Perhaps this is the rationale of the second view presented by Rashi, *Ketubot* 72a.
63. See *Encyclopedia Talmudit* 1:57–58, s.v. *avelut*. The view of the Mechaber, in my estimation, is predicated on an entirely different rationale. The Mechaber rules that going with one’s head uncovered is a rabbinic prohibition only because that is the view of the Rambam (and not because it is the view of the Rosh, Tosafot, and Terumat HaDeshen), but he also maintains – like the Tur – that it is impossible for rabbinic prohibitions to fall into the category of *dat moshe* (against the view of the Rambam). Thus they recast the prohibition from *dat moshe* to *dat yehudit*.
64. For the view of Tosafot and the Rosh, see *Tur*, *Yoreh Deah* 398 and *Rosh*, *Moed Katan* 3:2; for Rashi (Rashi printed in our editions of *Moed Katan* is not traditionally ascribed to him), see Rashi on the Rif (ibid.), who rules that mourning is only a rabbinic law; in the Commentary of the Ran on the Rif in *Moed Katan*, the Ran rules that mourning is only rabbinic; the Semak rules that mourning is only rabbinic, see *Semak*, nos. 95–98; the Ritva rules that mourning is indeed biblical (Commentary of Ritva, *Moed Katan* 14, s.v. *avelut de-me-ikar*), but he maintains that the Talmud’s derivation from “Do not let your hair grow wild” is merely an association to the verse (*asmachta*); his view that mourning as a biblical obligation is based on something else entirely. The Behag seems to be the lone exception; see *Behag*, laws of

- mourning, part I, p. 435. (The Raaviyah may be an exception as well; see *Raaviyah*, *Hilchot Avel* p. 235, nn. 4-7.)
65. The editor notes: "In our edition of the Beit Shmuel, the emendation he suggests already appears."
66. R. Yosef David Zintzheim (Chief Rabbi of Strasbourg and author of the *Yad David* on the Talmud), *Minchat Ani* 1:44-45.
67. Tosafot, *Ketubot* 72b, s.v. *chatzer* ("In a courtyard - meaning, even without a basket there still is no prohibition of going with an uncovered head; for if this were not the case, then you have not left a single daughter of our patriarch Abraham.")
68. See *Beit Yosef*, *Even HaEzer* 115, s.v. *umah she-katav ve-davka*, which quotes the views of the Rishonim on this matter. The Beit Yosef is himself unsure as to what the view of the Tur is, but the Beer Sheva (responsum 18) maintains that the Tur in fact agrees with this position.
69. See, e.g., *Rosh*, *Ketubot* 7:9.
70. This seems to be the simple understanding of the position of R. Yochanan in the Talmud Yerushalmi (*Y.Ketubot* 7:6 [42b]): "R. Chiyyah stated in the name of R. Yochanan: When a woman goes out with her *kaplitin* [on her head], she is not considered to be [going with] an uncovered head. That which you have said must be with regard to going into a courtyard, but in an alleyway, it is considered to be going with an uncovered head." See also *Penei Moshe*, *Y.Gittin* 9:11, s.v. *ve-ha tani*; see also note 89, below.

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

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

71. The Gemara is explained as follows:

When R. Yehudah stated in the name of Shmuel that "biblically, her work-basket is satisfactory, but according to *dat yehudit* even a basket is [insufficient and] prohibited as well," their view is that according to R. Yehudah, it is biblically prohibited to go out in the marketplace without any head covering at all, and the Rabbis decreed that rabbinically, one is required to have more of a head covering than the Torah required. R. Yochanan states that a woman who covers her hair with only "a basket, she is not considered to be going with an uncovered head"; in other words, she violates no prohibition - neither biblical nor rabbinic. Abayee explains that there is no prohibition, according to R. Yochanan, when a woman wears only a basket in an alley. But in a through alley or a courtyard through which many people pass (both of which are legally equivalent to the marketplace according to R. Yochanan; see *Tur*, *Even HaEzer* 115 and compare the rules with regard to a marketplace, through-alley, and courtyard through which many pass), R. Yochanan maintains that wearing only a basket is prohibited, since their status is equivalent to that of a marketplace. According to R. Yochanan, there is never a biblical prohibition even in a marketplace, but there is a prohibition based on the rules of modesty (*dat yehudit*) to go with one's head uncovered in the marketplace (which is the statement of R. Yishmael), and the Sages further decreed, in his view, a prohibition to go out with only a basket (which in their time was considered immodest) in the marketplace or

anywhere resembling a marketplace. But they made no such decree with regard to going out into a courtyard or anywhere resembling a courtyard, as there is no possibility of a prohibition based on rules of modesty applying there. Thus, the view of R. Yochanan in the Bavli is harmonized with the view of R. Yochanan in the Yerushalmi, as well as with the Yerushalmi's statement that "a courtyard which many people use as a pass through is considered as an alley, while an alley through which many people do not pass is considered as a courtyard," which many Rishonim include (as they also infer from R. Yochanan that it is permissible to go with one's head uncovered in a courtyard). Likewise, those who maintain that there is a biblical prohibition to go with one's head uncovered also maintain that it is forbidden to go out in a courtyard without at least a basket; see, e.g., Piskei Riaz, *Ketubot* 72.

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

72. Elsewhere in the *Sedei Chemed* (Maarechet daled, Kelal 12), he writes: "Biblical – in many places we find this expression used to describe laws which are only rabbinic."
73. The Rambam (*Hilchot Maaseh HaKorbanot* 14:15) writes that "the courts compel a person [who has neglected to bring his offering for three consecutive festivals] to bring the offerings immediately upon the next festival." However, there is no evidence that Rambam considers this to be a self-standing biblical obligation, nor does the *Kiriat Sefer* include it in his list of commandments found in the *Yad*.
74. *Tosafot*, *Yevamot* 63; see *Rosh ad loc.*, who rules that the obligation to separate is only rabbinic.
75. *Yoreh Deah* 184.
76. See Rambam, *Hilchot Shechitah* 14:15; *Rosh*, *Chullin ad loc.*; *Semag*, positive commandment 64. See also *Taz*, *Yoreh Deah* 28:8.
77. See *Meiri*, *Beit HaBechirah*, *Chullin* 87. See also *Dikdukei Soferim*, *Chullin* 87.
78. The Rambam, *Sefer HaMitzvot*, Positive Commandment 177; *Chinuch*, *Mitzvah* 235; and *Semag*, Negative Commandment 10 did not base this obligation in the verse in Deuteronomy. *Rashi* writes, "Hear [the causes] between your brethren" – when they are there together, hear their claims; do not hear the claims of one without the other, as this may arrange falsehood as the truth, for the other is not there to contradict him. Because the judge will naturally be inclined to find favorably for the first, he will not be able to revert to find favor for the second as easily, as *Sanhedrin* 7 states." *Rashi* thus explains *Sanhedrin* 7 in light of *Shevuot* 31; the derivation presented in *Sanhedrin* is not the main one. Only the Rambam (*Sanhedrin* 21:7) writes that *Deut.* 1:16 serves as a self-standing source for one aspect of the law. However, the *Kesef Mishneh* explains – and all other Rishonim agree – that "Hear the causes between your brethren" serves merely for an association to a verse, but the main homiletic derivation comes from the verses "Do not accept an illegal report" or "Keep far from a false matter." (See *Tur*, *Choshen Mishpat* 17; *Rosh* to *Shevuot* 31; *Encyclopedia Talmudit* 7:318–319 [s.v. *dinei mamonot*, "hashva'at ba'alei ha-din."])
79. See Rambam, *Hilchot Sanhedrin* 25:2; *Beit Yosef*, *Choshen Mishpat* 8. This hermeneutical derivation does not appear in the *Rif*, *Rosh*, or *Bach*.
80. It is also possible that there is a dispute among the Tannaim and Amoraim even in *Ketubot* 72. Five Tannaim and Amoraim speak: R. Yishmael, R. Yehudah, R. Yochanan, R. Zera, and R. Kahana (alt., Abayee). The *Rif* parses the Gemara as follows: R. Yishmael taught that there is a warning to the daughters of Israel that they not go out with uncovered head. R. Yehudah answered in the name of Shmuel: Biblically, her work-basket is a satisfactory head covering." The *Rif* might maintain that there is a dispute between the view of R. Yishmael and that of R. Yehudah, in that R. Yishmael is of the view that going with one's hair uncovered is only a rabbinic prohibition, while R. Yehudah thinks that the statement of R. Yishmael is limited to going with a basket. Without even a basket, in R. Yehudah's view, she violates a biblical prohibition. R. Yochanan rules that even in the marketplace if a woman goes out with only a basket on her head, it is not considered to be going with uncovered head – i.e., there is no prohibition. (This is the simple understanding of the view of R. Yochanan appearing in

- the Yerushalmi, see note 77 above. R. Zera proceeds to ask, "Where are we talking about? If you say, in the marketplace – this is already considered to be *dat yehudit*; but if you suggest instead, in a courtyard – if so, you have not left a single daughter of our patriarch Abraham who could live with her husband!" Abayee, or alternatively R. Kahana, then answers: [R. Yochanan's ruling is meant to apply to a woman who goes] from one courtyard to another by way of an alley (meaning that there is no difference, in R. Yochanan's view, between an alley and the marketplace).
81. See examples 2 (*Ketubot* 26a) and 6 (*Sanhedrin* 7a).
82. The Midrash gives another rationale for the prohibition of going with uncovered hair. The Midrash Rabbah, Bamidbar 9:13 states:
 "And he shall uncover." This teaches that the way of the daughters of Israel is to have their heads covered. Therefore he would uncover her head and say to her: "You separated yourself from the way of the daughters of Israel, whose manner is to have their heads covered, and went in the ways of the gentiles who go with their heads uncovered. Here is what you asked for."
 According to this approach, the proscription derives from the prohibition against following in the ways of the gentiles; but in a time or place where there is another reason that Jewish women uncover their hair, there may be no prohibition at all (see Shulhan Arukh, *Yoreh Deah* 178:1–2). While this rationale appears in R. Saadya Gaon's *Sefer HaMitzvot* (part I, p. 650), I have not found it cited by the Rishonim (with the exception, perhaps, of Yerayim, *mitzvah* 392). Among the Acharonim, it appears in R. Moshe b. Yaakov Chagiz, *Eleh HaMitzvot*, no. 262, and the rulings of the Gra, *Even HaEzer* 115:4. See also *Otzar HaPoskim, Even HaEzer* 21:21 and *Yabia Omer* 4:3.
83. On the basis of this novel understanding, one can also explain why the ruling of R. Sheshet is not codified by the Rambam in *Hilchot Tefilla*. In this view, the Rambam cites the ruling of R. Sheshet in *Hilchot Issurei Biah* 21:17 when he rules that "The daughters of Israel, whether unmarried or married, should not go out in the marketplace with their head uncovered." Nor does the Jerusalem Talmud ever discuss the idea of uncovered hair being a biblical prohibition. The ruling of the school of R. Yishmael does not appear in the Yerushalmi; see Y.Gittin 9:18 and *Penei Moshe, ad loc.* See also *Mareh Panim* and *Sheyarei Korban ad loc.* See also n. 19, above.
84. See also Rashba (to Berakhot 24b) citing the Ra'avad ("However, with one's own wife, even if one is touching her, so long as he turns away and does not see her nakedness it is permissible, for touching [one's own wife] does not cause one to become overly distracted, for he is comfortable with her [as they share an intimate relationship].").
85. But see *Sefer ha-Chinuch*, Mitzvah 188 (cited in *Otzar ha-Poskim, Even ha-Ezer* 21:19:2), who writes that nowadays we ought not to breach even the smallest fence in regard to these matters. See also *Responsa Benei Banim* 1:37.
86. See *Arukh ha-Shulhan, Orach Hayyim* 75:5; *Iggerot Moshe, Orach Hayyim* 1:42; *Yabia Omer, Orach Hayyim* 6:13; and many other *poskim* who maintain that it is permissible to pray in the presence of women who go about with their hair uncovered, because there is no concern for erotic thoughts.
87. Rabbi Dr. S. Carlebach, "Sources for the Prohibition of a Woman Uncovering Her Hair and Laws Regarding Wigs" (Heb.), in S. Eppenstein, M. Hildesheimer, and J. Wohlgemuth, eds., *Sefer LeDavid Tsevi: Festschrift on the seventieth birthday of Rabbi David Zvi Hoffman* (Ger.-Heb.) (Berlin: L. Lamm, 1914), h. 218–247.
88. See R. Moshe Feinstein, *Igrot Moshe, Yoreh Deah* 1:101 (toward the end), who writes:
 And that which my dear correspondent wrote asking how we are permitted to rely in practice on such innovative insights as those I have presented, particularly when such a view contradicts the position of some latter-day authorities, I say: Has there already been an end or boundary set for Torah study, God forbid, that we should only rule according to what is found in existing works, but when questions arise that have not been posed in our traditional works we will not decisively resolve them even when we

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

89. The Novellae of Rabbi Dov Beresh Meisels (Mahardam) to Rambam’s *Sefer HaMitzvot* (positive commandment 175) states as follows:

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

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

90. R. Moshe Feinstein, *Igrot Moshe, Even HaEzer* 1:57, writes as follows regarding the two views in Rashi:

I have been asked about a woman who was widowed and required to support her children but was unable to find a position that payed an adequate wage to support her children unless she would not cover her head while working in the office – is she permitted to do so? I responded that there is room to be lenient in a case of great need such as this, for it is clear that even according to the *Beit Shmuel* and *Dagul MeRevavah, Even HaEzer* 21:5, who maintain based on the Yerushalmi that even a widow is forbidden to go with her head uncovered, this is only a requirement based on *dat yehudit*, for biblically, such is required only of a married woman.... It also seems, in my humble opinion, that this matter depends on the two explanations found in Rashi, *Ketubot* 72, regarding the derivation [of the requirement of head covering]: According to the first, which explains that “from the fact that we disgrace her in this manner commensurate to her act of making herself attractive to her lover [by uncovering her head], we can infer that it is forbidden,” and see the comments of the Ritva, who wrote that according to this explanation of Rashi we infer that for a woman to go with uncovered head is considered promiscuous behavior, it is thus certainly forbidden. But according to the second, which explains that “since Scripture states, ‘And he shall uncover,’ we can infer that at that time her head was not uncovered; we thus deduce that it is not the practice of the daughters of Israel to go out with their heads uncovered,” seems to imply that there is an obligation for a woman to go about with a head covering, but there is no explicit prohibition other than that the conduct becomes de facto prohibited as one violates a positive commandment by going with her head uncovered. And Rashi concludes that “[the latter] is the main explanation.... Yet, it seems nevertheless that with regard to a married woman, where the obligation is biblical, one ought to forbid such conduct based on our uncertainty as to the correctness of the first explanation given by Rashi that this is in fact prohibited, and for that reason one should forbid [going with an uncovered head] even if it causes a woman to lose her entire income. However, with regard to a widow, where the obligation is only based on *dat yehudit*, there is room to be lenient based on this uncertainty, for clearly it should be no more stringent than a rabbinic prohibition, where we rule leniently in a case of doubt.

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

91. R. Yechiel Yaakov Weinberg, “On Women's Hair Covering” (Heb.), *HaMaayan* 14:1–8.