

The nature and extent of the (possible) obligation for (married) Jewish women to cover their hair (outside their homes) is of great practical significance today, and has been treated well halakhically by Rav Yehudah Herzl Henkin. I do not wish today to enter the halakhic lists, but rather to explore briefly the relationship between textual integrity and psak Halakhah.

Bamidbar 5:18 has the presiding priest at the sotah ordeal do something to the alleged sotah's head. What does "para rosh haishah" mean? Rashi is interestingly ambivalent – he identifies the action as "unweaving her braid", but the result as "revealing her head." Ketubot 72 contrasts a completely parua head with one that has a basket over it, which it regards as somewhat parua – it may be that the basket only covers part of the head, or it may be that a cover is merely a shield over a head that remains in and of itself parua, or it may be that a fully non-parua head is one whose hair is both braided and covered.

The purpose of the priest's action is not made explicit by the text. Rashi presumes that it is intended to humiliate her, which seems reasonable in context, but what is the nature of the humiliation? Perhaps the humiliation is a public recreation of her (partially only alleged) lack of tzniut, but I feel constrained to point out that public exposure is only a punishment for people who would be shamed by it, and that it's hard to understand why placing a woman on sexual display is ever good public policy. As an alternative, I suggest the converse, that she is made to appear unkempt and bedraggled in public.

Ketubot cites a beraita which derives from here an obligation for Jewish women not to go outside with their heads parua. If we adopt the first interpretation, this is an obligation to avoid the loss of dignity that comes with excessive sexual display, but if we adopt the second, it is an obligation to avoid the loss of dignity that comes with insufficient attention to one's appearance. I suggest further that the first interpretation fits better with the interpretation of para as "uncovered", and the second with "unbraided".

Either way, the derivation is highly unusual, as it moves from "is" to "ought" – it does seem to demonstrate that most women did not have their heads parua, but why should that generate a prohibition against doing so? This seems more a "hint" than clear Biblical evidence of law.

Mishnah Ketubot lists a married woman going out with a parua head as a violation of dat yehudit, in contrast to dat Mosheh. Possibly this means that it indeed sees this as rabbinic rather than Biblical. However, the Talmud challenges this categorization on the basis of the beraita, which it asserts demonstrates a deoraita obligation, and concludes that going out with a parua head is listed under dat yehudit because the deoraita obligation is satisfied by wearing a basket. This seems to indicate that dat Mosheh = deoraita, and dat Yehudit = derabbanan.

On this reading, it is interesting that Tur – and essentially all Ashkenazic halakhists – record the halakhah of the Mishnah as is, without mentioning that going out with a completely parua rosh is a violation of dat Mosheh. One might think that this means that they reject the Talmudic discussion, and specifically the understanding that the obligation is Biblical.

However, it would be highly unusual for Ashkenazi halakhists to reject a Talmudic interpretation without comment. Rather, it seems to me that the correct explanation is found in the Tur's father Rabbeinu Asher (Rosh), both in his Talmudic digest/commentary and in his responsa. Rosh says that the difference between dat Mosheh and dat Yehudit is not deoraita vs. derabbanan, but rather that dat Mosheh = actions that cause the husband to sin whereas dat Yehudit = actions that indicate chutzpah or lewdness. On this reading it is clear that not going out with a parua head is a dat yehudit, without reference to its deoraita or derabbanan status.

According to Rosh, though, why does the Talmud object to the Mishnah's failure to list complete paruaness as a dat Mosheh, on the ground that it is deoraita?

I suggest that Rosh saw the Talmud as suggesting that a deoraita prohibition cannot be classified as a dat yehudit. The Talmud also understood that women cannot be divorced for violating any Biblical prohibition, and that dat Mosheh in the Mishnah must be limited to causing the husband to stumble. Accordingly, the question "but a fully parua head is deoraita" is intended not to suggest that it should be included under dat Mosheh, but rather that the Mishnah's categories are insufficient. To this the Talmud answers that since the prohibition "parua head" include a case which is only derabbanan, namely when she is wearing a basket, it can be included under the rubric of dat Yehudit, although certainly going out with a completely parua head is a deoraita violation.

Here we must note, though, that the challenge “That’s deoraita” in the Talmud is sometimes deliberately ironic, and actually means “That’s not deoraita, but we treat it as really important”. Where the derashah, as here, seems legally unconvincing, perhaps we should assume that the claim that the prohibition is deoraita is merely hyperbolic rhetoric. And yet, here it’s not clear why the prohibition ought not to be classified as dat Yehudit if it is not in fact deoraita.

So to sum up – Based on a simple reading of the verse, it seems that there should be a strong suggestion, but no obligation, to braid rather than cover the hair. However, the Talmud clearly reads it as an obligation, and later sources tend to assume the same. Based on a simple reading of the rishonim, it seems to be only a rabbinic prohibition, but more careful attention to their words removes any evidence of such. At what points in the halakhic process do we allow our conceptions of original intent to have weight even if they are against subsequent interpretations, and can we cite highly plausible interpretations to support our positions when we ourselves think that those interpretations are completely erroneous?

Shabbat Shalom

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### 1. במדבר פרק ה:יח

וְהָעֹמֵד הַכֹּהֵן אֶת הָאִשָּׁה לִפְנֵי הַשָּׂרֵעַ אֶת רֹאשׁ חֲמִשָּׁנָה כִּפְיָהּ אֶת מִנְחַת הַזִּכְרוֹן מִנְחַת קִנְיָנָהּ וְהָיָה  
הַכֹּהֵן יִהְיֶימָהּ מִרֵּימָהּ מֵאַרְבָּיִם:

### 1. Numbers 5:18

The priest will stand the woman up before Hashem; he will *para* the head of the woman; he will place on her palms the meal-offering . . .

### 2. רש"י במדבר פרק ה

וְהָיָה יִהְיֶימָהּ מִרֵּימָהּ מֵאַרְבָּיִם: מכאן לבנות ישראל שגלוי הראש גנאי להן:

### 2. Rashi to ibid

He deconstructs the weave of her hair in order to disgrace her. From here we learn about the daughters of Israel that a revealed head is shameful to them.

### 3. כתובות עב. – עב:

מתני'.

ואלו יוצאות שלא בכתובה: העוברת על דת משה ויהודית.

ואיזו היא דת משה?

מאכילתו שאינו מעושר, ומשמשו נדה, ולא קוצה לה חלה, ונודרת ואינה מקיימת.

ואיזוהי דת יהודית?

יוצאה וראשה פרוע, וטווה בשוק, ומדברת עם כל אדם.

אבא שאול אומר: אף המקללת יולדיו בפניו.

רבי טרפון אומר: אף הקולנית.

ואיזוהי קולנית?

לכשהיא מדברת בתוך ביתה ושכיניה שומעין קולה.

גמרא . . .

"ואיזוהי דת יהודית? יוצאה וראשה פרוע" –

ראשה פרוע דאורייתא היא, דכתיב "ופרע את ראש האשה" ותנא דבי רבי ישמעאל: "אזהרה לבנות ישראל שלא יצאו בפרוע ראש"?

דאורייתא, קלתה שפיר דמי; דת יהודית, אפילו קלתה נמי אסור.

### 3. Ketubot 72a-b

Mishnah

These women are divorced without being paid their *ketubah*: A woman who transgresses *Dat Mosheh* and *Yehudit*.

Which are *Dat Mosheh*?

If she feeds him foods that have not had *maaser* taken from them, or has sexual relations with him while she is *nidah*, or if she does not take *challah* (from the bread she bakes), or if she takes vows but does not fulfill them.

Which are *dat yehudit*?

If she goes out with her head *parua*, spins in the marketplace, or speaks with everyone.

Abba Shaul says: Also if she curses those who bore him to his face.

Rabbi Tarfon says: Also if she is a *kolanit*.

Which is a *kolanit*?

When she speaks in her house (about or during sexual relations) and her neighbors hear her.

Gemara . . .

"Which are *dat yehudit*? If she goes out with her head *parua*" –

But (going out with) a *parua* head is Biblically forbidden, as Scripture says "he will *para* the head of the woman", and a *beraita* from the House of Rabbi Yishmael taught: This is a legal "do not" statement to the daughters of Israel that they should not go out with *parua* heads"!? Biblically, *kaltah* is sufficient; *dat yehudit*, even *kaltah* is forbidden.

#### 4. טור אבן העזר סימן קטו

אלו יוצאות בלא כתובה העוברת על דת משה ויהודית ואיזו היא דת משה

מאכילתו שאינו מעושר או אחד מכל האיסורים, כגון דם או חלב, שהכשילתו ואכלו על פיה, ונודע לו אח"כ, כגון שאמרה פלוני חכם תקן לי הכרי הזה או התיר לי חתיכה זו או טיהר לי הדם הזה ונמצאת שקרנית, ודוקא שהוכחשה בעדים, כגון שהעידו שבאותה שעה שאמרה שפלוני תקן לה שלא היה אותו פלוני בעיר וגם יש עדים שאמרה לו שהוא מתוקן ושהוא אכלו על פיה, אבל אם אין עדים והיא כופרת שלא האכילתו או שמכחשת החכם שאומר שלא תקן לה והיא אומרת שתקן לה, נאמנת, ודוקא שהכשילתו ואכל על פיה, אבל אם רצתה להאכילו דבר איסור ונודע לו ופירש או שהיא בעצמה אכלה דבר איסור לא אבדה כתובתה הוחזקה נדה בשכנותיה שראוה לובשת בגדי נדותה ואמרה לו טהורה אני ובא עליה יוצאת כלא כתובה הונדרת ואינה מקיימת תצא בלא כתובה דבעון נדרים בנינים מתים קטנים ואיזו היא דת יהודית יוצאת וראשה פרוע, אפי' אין פרוע לגמרי אלא קלתה בראשה, כיון שאינה מכוסה בצעיף, תצא

#### **Tur Even haEzer 115**

These are divorced without being paid their *ketubah*: A woman who transgresses *Dat Mosheh* and *Yehudit*.

Which are *Dat Mosheh*?

If she feeds him foods that have not had *maaser* taken from them, or any other prohibited food, such as blood or forbidden fat, where she tripped him up and he ate by her word, and he finds out afterward, as if for example she says "Sage X took *maaser* from that grainheap for me, or permitted that piece of meat for me, or declared that blood not *niddah*, and she is discovered to be a liar,

but only if she is contradicted by witnesses . . .

and only if she tripped him up and he actually ate by her word . . .

or if she is established as *niddah* among her neighbors (and nonetheless has sex with her husband), meaning that . . .

One who vows and doesn't fulfill is divorced without being paid her *ketubah*, because . . .

Which are *dat yehudit*?

If she goes out with her head *parua*, even if not completely *parua* but rather with a *kalta*, since she is not covered with a *tsaif*, she must be divorced . . .

#### 5. רא"ש מסכת כתובות פרק ז סימן ט

האי דעוברת על דת משה ויהודית אין לה כתובה היינו בדבר שהיא מכשילתו כי הנך דמתניתין וכיוצא בהם כגון שהאכילתו חלב או דם . . . אבל אם היתה עוברת בשאר עבירות כגון שהיא עצמה אכלה דבר איסור לא הפסידה כתובתה ודת יהודית משום חציפותא ומשום חשד זנות הוא דמפסדה:

#### **Rosh Ketubot 7:9**

The statement that a woman who transgresses a *dat Mosheh* or a *dat Yehudit* does not receive her *ketubah* refers to transgression in which she trips him up, such as the cases in the *Mishnah* and others like them, for example if she feeds him forbidden fat or blood . . . but if she transgresses other transgressions, as for example if she herself eats something forbidden, she has not forfeited her *ketubah*. But with regard to *dat Yehudit*, it is for impudence and the suspicion of adultery that she forfeits her *ketubah*.

#### שו"ת הרא"ש כלל לב סימן ח

מ"מ נראה לי דלא הפסידה כתובתה; דלא מיקריא עוברת על דת משה אלא בדברים שמכשלת בהם הבעל, כדברים המפורשים במשנה (כתובות עב): מאכילתו שאינו מעושר ולא קוצה לו חלה ונודרת ואינה מקיימת ומשמשתו נדה.

#### **Responsa Rosh 32:8**

Nonetheless it seems to me that she has not forfeited her *ketubah*, as she is not called a transgressor of *dat Mosheh* except regarding matters in which she trips up the husband, such as those which are explicit in the *Mishnah*