

## Abstract

*Lo Yilbash* as a Case Study in Halakhic Conceptions of Masculinity

by

Tzvi Sinensky

This study seeks to advance the Jewish gender studies field by utilizing halakhic texts concerning the biblical prohibition of cross-dressing as a case study in conceptualizing rabbinic masculinity. We begin by sketching major trends in the general and Jewish gender studies fields respectively, including their points of intersection with legal theory, culminating with the emergence of the sub-field of masculinities. We then review key insights that emerge from the general literature on cross-dressing, particularly as they bear on themes in masculinity.

Against the backdrop of the scope and reasoning of the biblical prohibition of “*lo yilbash*” in Deuteronomy, we analyze texts spanning approximately 2,000 years to identify a series of key stages in the development of Jewish legal treatments of this prohibition, considering the implications of these developments for constructing a rabbinic view on masculinity.

Notwithstanding a countervailing minority view, the dominant position in rabbinic legal texts spanning the *Targumim*, *Midrashim*, Bavli, and medieval authorities increasingly expands the scope of the prohibition upon men while sharply limiting that of women. This majority school identifies armor as the paradigmatic men’s ornamentation and places special emphasis on the prohibition for men to depilate hair, especially in the pubic and armpit areas.

Early modern halakhic literature ushers in a “return to reciprocity” between men and women’s prohibitions alongside a new emphasis on the role of intention. This culminates in the 19th-century literature, which emphasizes distinct gender roles as the basis for *lo yilbash*, returning to what contemporary scholars increasingly see as the most likely explanation for the biblical prohibition. Finally, seeking to combat the rising influence of the feminist movement in Orthodoxy, numerous contemporary halakhic authorities reverse the earlier trend, dramatically expanding the scope of *lo yilbash* as it applies to women.

Notwithstanding these significant variations throughout halakhic history, numerous rulings concerning cross-dressing utilize *lo yilbash* to combat an underlying “anxious masculinity,” to discourage men from pursuing physical beauty, and to encourage them to reclaim the image of the warrior male. Rabbinic treatments of *lo yilbash* thus provide key data points in an attempt to reconstruct a larger picture of rabbinic views on masculinity.

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by

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Submitted in partial fulfillment of the

requirements for the degree

of Doctor of Philosophy

in the Bernard Revel Graduate School

Yeshiva University

May 2022

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by

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## Acknowledgements

This dissertation was an underserved gift bestowed upon me by numerous people, first and foremost Dr. David Berger. Dr. Berger, then Dean of Revel, allowed me to “test run” the proposed Revel distance learning program, and was supportive in every way notwithstanding my physical distance and part-time capacity. I could not have contemplated pursuing or completing this degree if not for his kindness.

Dr. Daniel Rynhold, then Director of the PhD program and now Dean, has been the greatest mentor and advocate anyone could hope for. He helped me proceed apace in my coursework, offered me an independent study, and moved quickly to bring on board other scholars to ensure my work met the highest academic standards. He never asked me to align my research interests with his own; his only aspiration has been for me to succeed in my studies.

Dr. Richard Hiday, my dissertation advisor, saved me from numerous errors, and has been constantly available, discerning in his recommendations, and a paragon of humble yet confident scholarship. Dr. Jonathan Dauber, as both professor and now Director of the PhD program, has been generous with his time and wisdom at every juncture.

Professor Ronit Irshai, despite her extensive responsibilities at Bar-Ilan University, not only took it upon herself to examine me for my Oral exams and serve on my Dissertation Committee, but also encouraged me as I entered an area in which she is widely regarded as the leading scholar in the field. Should the opportunity arise, I hope to have the opportunity to pay forward her unfounded faith in me to future aspiring students.

Many others deserve recognition. Dear friends Shari and Chaim Saiman proposed the idea of studying gender in the first place, and have stood front and center in my cheering section ever since. My students have never shied away from asking the hard questions about Judaism and gender. Numerous editors and publishers have reminded me that no one wants to read much of anything I have to say about women, which helped steer me toward my present focus on masculinity. My past and present colleagues at *The Lehrhaus* have improved my writing skills immeasurably since I published my first essay on the platform in 2016 and joined the editorial team in 2018. Finally, I could not have completed this study if not for the unstinting support, encouragement, and kindness of Dr. Asya and Matt Sigelman, whose surpassing educational vision inspires me each and every day.

My family has always been present for me. My parents never miss an opportunity to express pride in my accomplishments. They are living paragons of pristine unconditional love. Growing up as the eldest of four boys, each with his own interests and inclinations, primed me to think about the possibility of multiple models of manhood from a young age. My in-laws have always been encouraging, particularly in my pursuit of this degree. A special thank you to my mother-in-law for her regular reminders that the only good dissertation is a finished dissertation.

My children Bezalel, Moriah, and Naava served as my unofficial editors, though they will be perfectly happy if they never have to hear the words gender and masculinity again. As I progressed in my doctoral work, they grew from sideline cheerleaders into budding *havrutot*. There are few greater gifts a parent could wish for.

My wife Tova is my role model and thought partner in everything we do, and encouraged me to pursue this degree in the first place. I am blessed to share my life with someone who dedicates her life to utilizing scholarship in service of individuals and communities. While my study focuses on the theoretical intersection between gender and *halakhah*, she sensitively and brilliantly supports people who are navigating the messy, real-world points of contact between gender and *halakhah*.

Finally, the fact that I managed to complete this PhD in well under five years despite geographic and professional transitions, not to mention a pandemic thrown in for good measure, is beyond my comprehension. Any success I have achieved is ultimately due to the beneficent, guiding hand of the Almighty, to whom I owe all the blessings and good fortune enumerated above, and so much more.

Tzvi Sinensky

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May 12, 2022

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## Chapter 1 - Gender Studies and Masculinity

### I. Second-Wave Feminism

The field of gender studies has undergone dramatic developments over the last fifty years. Betty Friedan's 1963 *The Feminist Mystique*<sup>1</sup> ushered in the so-called second wave of feminism;<sup>2</sup> the first wave had climaxed with the legalization of female suffrage in the Nineteenth Amendment,<sup>3</sup> ratified on August 18, 1920.<sup>4</sup> Asserting that the bland domesticated lives led by many post-World War II middle-class American housewives were morally objectionable and corrosive for women and society, activists clamored for

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<sup>1</sup> For Friedan's personal reflections on the watershed impact of her work, see Friedan, *It Changed My Life: Writings on the Women's Movement*, Harvard University Press, 1998. For Friedan's dramatic impact, see Dan Horowitz, *Betty Friedan and the Making of the Feminine Mystique: The American Left, the Cold War and Modern Feminism*, University of Massachusetts Press, 2000; Judith Hennessee, *Betty Friedan: Her Life*. Viking, 1999; Jules Archer, *Breaking Barriers: The Feminist Revolution from Susan B. Anthony to Margaret Sanger to Betty Friedan*, Puffin Books, 1996, pp. 124-170; and Bhasker Shukla, *Feminism: From Mary Wollstonecraft to Betty Friedan*, Sarup & Sons, 2007, chaps. 6-7.

<sup>2</sup> The following works provide particularly valuable introductions to second-wave feminism: Judy Evans, *Feminist Theory Today: An Introduction to Second-Wave Feminism*, Sage Publications, 1995; Malin Lidstroem Brock, *Writing Feminist Lives: The Biographical Battles over Betty Friedan, Germaine Greer, Gloria Steinem, and Simone de Beauvoir*, Springer International, 2018; Sara Evans, *Personal Politics: The Roots of Women's Liberation in the Civil Rights Movement and the New Left*, Vintage Books, 2015; Jane Elliott, "Stepford U.S.A.: Second-Wave Feminism, Domestic Labor, and the Representation of National Time," *Cultural Critique*, vol. 70, no. 1, 2008, pp. 32-62; and Stephanie Gilmore and Sara Evans, *Feminist Coalitions: Historical Perspectives on Second-Wave Feminism in the United States*, University of Illinois Press, 2008.

For introductions to third-wave feminism, see Catherine Orr, et al., "Diversity Feminisms: Postmodern, Women-of-Color, Antiracist, Lesbian, Third-Wave, and Global Perspectives," in *Teaching and Social Justice: Integrating Multicultural and Feminist Theories in the Classroom*, pp. 41-68; Orr, "Charting the Currents of the Third Wave," *Hypatia*, vol. 12, no. 3, 1997, pp. 29-45; and Shelley Budgeon, *Third Wave Feminism and the Politics of Gender in Late Modernity*, Palgrave Macmillan, 2011.

<sup>3</sup> For an invaluable collection of primary sources culling the most significant writings and lectures from the suffrage movement, see Elizabeth Crawford, *The Women's Suffrage Movement: A Reference Guide, 1866-1928*, Routledge, 2001.

<sup>4</sup> Some recent thinkers have challenged the utility of the familiar three-waves framework. For example, the essays published in Stacy Gillis, et al., *Third Wave Feminism: A Critical Exploration*, Palgrave Macmillan, 2017, collectively question the value of the wave metaphor, suggesting that it may be more accurate not to see the "third wave" as an independent movement in its own right but as a series of approaches to negotiating the legacy and import of the second wave. A number of essays in the same collection also question the commonplace that the first wave ended in 1920, which is often taken to incorrectly imply that feminism was effectively dormant from 1920 until the 1960s.

women to receive better educations and more opportunities to pursue professional careers outside the home.<sup>5</sup> This led to the founding of organizations such as Friedan’s NOW, the National Organization for Women,<sup>6</sup> as well as radical feminist groups.<sup>7</sup>

## II. Third-Wave Feminism

The second wave, however, was sharply criticized not only by conservatives but also by feminists of color and their allies, who saw Friedan as having spawned a movement that excluded women of color and those hailing from low-class socioeconomic backgrounds.<sup>8</sup> This critique later became associated with “intersectionality,” a term coined by Kimberle Crenshaw in the 1990s<sup>9</sup> but perhaps best captured by Audre Lorde, who, in her feminist classic *Sister Outsider*, insisted not only that there is an inherent relationship between all forms of minority oppression by the privileged class, but also that we must radically revisit the intellectual-patriarchal roots of Western civilization. As she put it in the iconic title of her essay, “The master’s tools will never dismantle the master’s house.”<sup>10</sup>

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<sup>5</sup> Important explorations of this theme include Lori Rotskoff’s “Home-Grown Radical or Home-Bound Housewife? Rethinking the Origins of 1960s Feminism through the Life and Work of Betty Friedan,” *Reviews in American History*, vol. 28, no. 1, 2000, pp. 120–7; and Lesley Johnson and Justine Lloyd, *Sentenced to Everyday Life: Feminism and the Housewife*, Berg, 2004.

<sup>6</sup> Maryann Barakso, *Governing Now: Grassroots Activism in the National Organization for Women*, Cornell University Press, 2005, chap. 2.

<sup>7</sup> For a review of the central thinkers and ideas of this movement, see Imelda Whelehan, *Modern Feminist Thought: From the Second Wave to 'Post-Feminism,'* Edinburgh University Press, 2020, chap. 3.

<sup>8</sup> See, for example, Arlene Keizer, “Black Feminist Criticism,” in *A History of Feminist Literary Criticism*, pp. 154–168; and Julie Podmore and Manon Tremblay, “Lesbians, Second-Wave Feminism and Gay Liberation,” in the *Ashgate Research Companion to Lesbian and Gay Activism*, Routledge, 2020.

<sup>9</sup> Kimberle Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color.” *Stanford Law Review*, vol. 43, no. 6, 1991, p. 1241.

<sup>10</sup> Audre Lorde, *Sister Outsider*, Penguin Books, 2019, pp. 110-3.

These critiques were accompanied by a reevaluation of the relationship between the categories of sex (rooted in biology) and gender (rooted in culturally-prescribed roles), which, along with intersectionality, came to be associated with the shift from second-wave to third-wave feminism. Second-wave feminist scholars from the 1960s through the 1980s generally held,<sup>11</sup> following Simone de Beauvoir's 1949 classic *The Second Sex*,<sup>12</sup> that sex and gender are distinct,<sup>13</sup> with the latter often determined by patriarchal cultural predilections. Third-wave feminists, however, such as Luce Irigaray,<sup>14</sup> Monique Wittig,<sup>15</sup> and Judith Butler,<sup>16</sup> heavily influenced by French poststructuralist thinkers including Jacques Lacan,<sup>17</sup> Jacques Derrida,<sup>18</sup> and Michel Foucault,<sup>19</sup> challenged the existence of biological sex as a fixed category, and the epistemological foundations of Western philosophy and culture more generally.<sup>20</sup>

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<sup>11</sup> See Gillian Howie and Rebecca Munford, "Transgender Feminism: Queering the Woman Question," in *Third Wave Feminism: A Critical Exploration*, Palgrave Macmillan, 2007, p. 63.

<sup>12</sup> Simone de Beauvoir, *The Second Sex*, Vintage Books, 2015.

<sup>13</sup> Judith Butler, "Sex and Gender in Simone de Beauvoir's *Second Sex*," *Yale French Studies*, no. 72, 1986, pp. 35–49.

<sup>14</sup> Luce Irigaray, *Speculum of the Other Woman*, Cornell University Press, 2010, pp. 101-3.

<sup>15</sup> Monique Wittig, "One Is Not Born a Woman," in *Feminist Theory Reader*, 2016, pp. 294–9.

<sup>16</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, Routledge, 2006, pp. 8-10, 22-5, 50, 100-1, 202-3.

<sup>17</sup> Lacan, "The Meaning of the Phallus," Printed in *Psychoanalysis and Gender*, 2014, pp. 153–193.

<sup>18</sup> Jacques Derrida, et al. *Before the Law: The Complete Text of préjugés*, University of Minnesota Press, 2018.

<sup>19</sup> Michel Foucault, *The History of Sexuality*, Penguin Classics, 2020, part 1, p. 154.

<sup>20</sup> For helpful overviews, see Claire Snyder in "What Is Third-Wave Feminism? A New Directions Essay," *Signs: Journal of Women in Culture and Society*, vol. 34, no. 1, 2008, pp. 175–196; and Susan Mann Archer and Douglas J. Huffman, "The Decentering of Second Wave Feminism and the Rise of the Third Wave," *Science & Society*, vol. 69, no. 1, 2005, pp. 56–91.

Instead, Butler, arguably the most influential third-wave thinker, contends in her watershed book *Gender Trouble* (1990) that sex is performative: instead of biology determining one's sex, in fact, a person's "acts, gestures, enactments, generally construed, are *performative* in the sense that the essence or identity that they otherwise purport to express are *fabrications* manufactured and sustained through corporeal signs and other discursive means."<sup>21</sup> This has the effect of undermining the distinction between sex and gender. Previously, it was generally assumed that sex and gender are distinct: sex is biologically determined, while gender is a cultural construct. For Butler, however, sex is also culturally-produced through a series of repeated behaviors. Further, as she emphasizes in her subsequent work *Bodies that Matter*, "performativity cannot be understood outside of a process of iterability."<sup>22</sup> For Butler, culture has men and women repeatedly play their assigned roles, subtly but effectively retrenching those roles' normativity. Thus, recent decades have seen biology "demoted" in the gender studies field, while cultural criticism, especially of a discursive variety,<sup>23</sup> has been ascendant.

Even biologists have not been immune to third-wave trends. Thus, Ann Fausto-Sterling contends that the manifold cases of intersex<sup>24</sup> babies at birth not only suggests

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<sup>21</sup> Butler, p. 185.

<sup>22</sup> Butler, p. 95.

<sup>23</sup> For a brilliant book-length critique of the discursive style of the third-wave feminists from the perspective of a Marxist, see Teresa Ebert, *Ludic Feminism and after: Postmodernism, Desire, and Labor in Late Capitalism*, University of Michigan Press, 1996.

<sup>24</sup> In recent years, the word intersex has become an increasingly popular way to refer to individuals possessing both male and female physical sexual characteristics. This has largely supplanted the terms androgynous and hermaphrodite, which were used more regularly in previous eras. See, for example, Nico Mara-McKay, "Becoming Gendered: Two Medieval Approaches to Intersex Gender Assignment," *Prandium - The Journal of Historical Studies*, vol. 7, no. 1, 2018.

that there is a spectrum of sexes<sup>25</sup> - which is consistent with her 1993 essay proposing that we “replace our two-sex system with a five-sex one”<sup>26</sup> - but that the very category of sex has been destabilized.<sup>27</sup>

Under the influence of Foucault, recent decades have also seen a turn to the body as a site of construction and contestation of gender.<sup>28</sup> By “examining the association of masculinity with active bodily subjects—and of femininity with passive bodily objects,” these thinkers explore “the ways bodies reproduce and, sometimes, challenge gendered power dynamics.”<sup>29</sup> By dressing and comporting ourselves in certain ways, these feminists maintain, we inadvertently reinforce society’s hegemonic power dynamics; by refusing to blindly follow those norms, we protest and ultimately work to subvert them.<sup>30</sup>

At the same time, the new “discursive” turn in gender studies has elicited a firestorm of

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<sup>25</sup> Anne Fausto-Sterling, *Sexing the Body: Gender Politics and the Construction of Sexuality*, Basic Books, 2020, p. 78.

<sup>26</sup> Fausto-Sterling, “The Five Sexes,” *The Sciences*, vol. 33, no. 2, 1993, pp. 20–4; and Fausto-Sterling and Žarko Trajanoski, “The Five Sexes, Revisited: The Varieties of Sex Will Test the Medical Values and Social Norms.” *Identities: Journal for Politics, Gender and Culture*, vol. 3, no. 1, 2004, pp. 207–221. See also Fausto-Sterling, et. al., “How Sexually Dimorphic Are We? Review and Synthesis,” *American Journal of Human Biology*, vol. 12, no. 2, 2000, pp. 151–166.

<sup>27</sup> Fausto-Sterling, *Sexing the Body*, chap. 4.

<sup>28</sup> For example, see Sabala and Meena Gopal, “Body, Gender and Sexuality: Politics of Being and Belonging,” *Economic and Political Weekly*, vol. 45, no. 17, 2010, pp. 43–51. There are two special issues of the prominent feminist journal *Hypatia* devoted to the ethics of embodiment, dealing with the implications of situating bodies at the center of ethical theory.

As a consequence of these insights, there is increasing work amongst feminist philosophers on the ethics of embodiment. Gail Weiss points to specific feminist philosophers, critical race scholars, and disability theorists who “impoverish the lived experience of both oppressors and the oppressed, largely by predetermining the meaning of their bodily interactions in accordance with institutionalized cultural expectations and norms” (“The Normal, the Natural, and the Normative: A Merleau-Pontian Legacy to Feminist Theory, Critical Race Theory, and Disability Studies,” *Continental Philosophy Review*, vol. 48, no. 1, 2015, p. 77).

<sup>29</sup> Katherine Mason, “Gendered Embodiment,” in *The Handbook of the Sociology of Gender*, 2018, p. 95.

<sup>30</sup> Butler, *Gender Trouble*, p. 189.



cultural debate throughout the West, and has generated significant controversy within the field itself.<sup>31</sup>

### III. The Rise of Masculinity Studies

Over the last three decades, gender studies has seen the rise of masculinity,<sup>32</sup> the focus of the present study, as a topic worthy of study in its own right.<sup>33</sup> An extensive literature on this subject has emerged in relatively short order. The popularity of terms such as “toxic masculinity”<sup>34</sup> and “locker room culture”<sup>35</sup> offers a sense as to how deeply this discourse has also penetrated general culture. Scholarly inquiries into how societal

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<sup>31</sup> Feminist scholars have been forced to grapple with the apparent contradiction between advocating for women’s rights and decentering the very notion of sex. See, for example, Linda Alcoff, “Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory,” *Signs: Journal of Women in Culture and Society*, vol. 13, no. 3, 1988, pp. 405–436.

<sup>32</sup> For an important critique of the contemporary scholarly usage of the term “masculinity,” see Jeff Hearn, “Is Masculinity Dead? A Critical Account of the Concepts of Masculinity and Masculinities,” in *Understanding Masculinities: Social Relations and Cultural Arenas*, Open University Press, Buckingham, 2000, pp. 202–217.

<sup>33</sup> An all-too-brief sampling of some reviews and classics in the field includes: Bryce Traister, “Academic Viagra: The Rise of American Masculinity Studies,” *American Quarterly*, vol. 52, no. 2, 2000, pp. 274–304; Judith Gardiner, *Masculinity Studies and Feminist Theory: New Directions*, Columbia University Press, 2006; George Mosse, *The Image of Man: The Creation of Modern Masculinity*, Oxford University Press, 2010; David Buchbinder, *Studying Men and Masculinities*, Routledge, 2013; and Harry Brod, *The Making of Masculinities: The New Men's Studies*, Routledge, 2016.

<sup>34</sup> On toxic masculinity, see Paul Lewis Veissière, “‘Toxic Masculinity’ in the Age of #MeToo: Ritual, Morality and Gender Archetypes Across Cultures.” *Society and Business Review*, vol. 13, no. 3, pp. 274–286. For the pervasive influence of toxic masculinity in contemporary political discourse, see Columba Achilleos-Sarll and Benjamin Martill, “Toxic Masculinity: Militarism, Deal-Making and the Performance of Brexit,” in *Gender and Queer Perspectives on Brexit*, 2019, pp. 15–44.

The term toxic masculinity has been popular since the late 1980s, as noted by Sam De Boise in “Is Masculinity Toxic?” *NORMA*, vol. 14, no. 3, 2019, pp. 147–151. Despite its meteoric rise in popularity, however, others have critiqued the use of the term toxic masculinity from a feminist perspective, arguing that it essentially lets men who act badly off the hook. See Carol Harrington, “What Is ‘Toxic Masculinity’ and Why Does It Matter?” *Men and Masculinities*, vol. 24, no. 2, 2020, pp. 345–352.

<sup>35</sup> See Donn Short, “The Informal Regulation of Gender: Fear and Loathing in the Locker Room,” *Journal of Gender Studies*, vol. 16, no. 2, 2007, pp. 183–6. See also Brian Cole, et al., “Predicting Men’s Acceptance of Sexual Violence Myths through Conformity to Masculine Norms, Sexism, and ‘Locker Room Talk,’” *Psychology of Men and Masculinities*, vol. 21, no. 4, 2020, pp. 508–517.

expectations inexorably shape the meaning of manhood, whether one is “born a man” or, so to speak, must “become a man,”<sup>36</sup> have taken their place alongside more familiar concerns of gender theorists.

R.W. Connell’s *Masculinities* was also pivotal to the development of the fledgling field.<sup>37</sup> The book’s title neatly encapsulates Connell’s core thesis: there is no single masculinity, just a range of meanings that various cultures ascribe to what it means to be male. *Masculinities* further argues that the rise of colonialism in the 17th century is inextricably bound with what Connell terms<sup>38</sup> “hegemonic masculinity,” which, simply understood, suggests that cultures generally implicitly uphold an idealized model of masculinity, which only some men meet, and which excludes and subjugates all “Others,” including men who do not fit the ideal profile of masculinity.<sup>39</sup> Whether or not we accept this historical reading of the rise of masculinity or the larger conception of

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<sup>36</sup> For a methodological introduction, see Kasper Lysemose, “The Being, the Origin and the Becoming of Man: A Presentation of Philosophical Anthropogenealogy and Some Ensuing Methodological Considerations,” *Human Studies*, vol. 35, no. 1, 2012, pp. 115–130. See also Michael Herzfeld, *Poetics of Manhood: Contest and Identity in a Cretan Mountain Village*, Princeton University Press, 1992.

<sup>37</sup> For just one of countless examples, see Nikki Wedgwood, “Connell’s Theory of Masculinity – Its Origins and Influences on the Study of Gender,” *Journal of Gender Studies*, vol. 18, no. 4, 2009, pp. 329–339.

<sup>38</sup> Connell, *Masculinities*, pp. 76–81.

<sup>39</sup> The precise meaning of “hegemonic masculinity” has been subject to extensive scholarly discussion. Connell and Messerschmidt seek to clarify the meaning in “Hegemonic Masculinity: Rethinking the Concept,” observing that “certain masculinities are more socially central, or more associated with authority and social power, than others. The concept of hegemonic masculinity presumes the subordination of nonhegemonic masculinities” (p. 846).

To this they add two elements: “The hierarchy of masculinities is a pattern of hegemony, not a pattern of simple domination based on force. Cultural consent, discursive centrality, institutionalization, and the marginalization or delegitimation of alternatives are widely documented features of socially dominant masculinities. Also well supported is the original idea that hegemonic masculinity need not be the commonest pattern in the everyday lives of boys and men. Rather, hegemony works in part through the production of exemplars of masculinity (e.g., professional sports stars), symbols that have authority despite the fact that most men and boys do not fully live up to them” (ibid.).

hegemonic masculinity - both have been hotly contested even among scholars otherwise sympathetic to Connell's work,<sup>40</sup> leading Connell to substantially revise the theory<sup>41</sup> - the assumption that masculinity is culturally constructed has become commonplace in the field.<sup>42</sup> It is also consistent with the poststructuralist third-wave trends we noted in regard to the gender studies field as a whole.<sup>43</sup>

Also influenced by third-wave trends, recent studies of masculinity, including those of Connell, have underscored the intersectional relationship between masculinity and other forms of privilege, including race, ethnicity, country of origin, age, physical and mental capacity, and sexual orientation.<sup>44</sup> Some have fronted these themes in seeking to demonstrate how an intersectional framework can help to account for specific instances of discrepancies in power relations between hegemonic and non-hegemonic men.<sup>45</sup>

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<sup>40</sup> Ibid., pp. 836-845. For a particularly insightful critique, which argues that Connell is overly disposed to interpret all scholarly observations about masculinity through just one narrow lens, see Michael Moller, "Exploiting Patterns: A Critique of Hegemonic Masculinity," *Journal of Gender Studies*, vol. 16, no. 3, 2007, pp. 263–276. For further argumentation in favor of the enduring value of the term, see Messerschmidt, "The Saliency of 'Hegemonic Masculinity,'" *Men and Masculinities*, vol. 22, no. 1, 2019, pp. 85–91.

<sup>41</sup> Connell and Messerschmidt, "Hegemonic Masculinity: Rethinking the Concept," *Gender & Society*, vol. 19, no. 6, 2005, pp. 829–859.

<sup>42</sup> A good example is Ian Harris, *Messages Men Hear: Constructing Masculinities*, Taylor & Francis, 1995, especially chap. 3.

<sup>43</sup> For an elaborate account of masculinity couched in a poststructuralist analytical framework, see the introduction to Todd Reeser, *Masculinities in Theory: An Introduction*. Wiley-Blackwell, 2011, esp. pp. 29-48.

<sup>44</sup> Ann-Dorte Christensen and Sune Qvotrup Jensen, "Combining Hegemonic Masculinity and Intersectionality," *NORMA*, vol. 9, no. 1, 2014, pp. 60–75. Studies of masculinity tend to focus less heavily on themes of sexual identity, presumably because this subject is already addressed in the general third-wave literature and need not be discussed specifically in context of masculinities.

<sup>45</sup> Lance McCreedy, *Making Space for Diverse Masculinities: Difference, Intersectionality, and Engagement in an Urban High School*. Peter Lang, 2010, pp. 89-98; Aida Hurtado and Mrinal Sinha, *Beyond Machismo: Intersectional Latino Masculinities*, University of Texas Press, 2016, chap. 3; and Baron Rogers, et al., "Masculinities among African American Men: An Intersectional Perspective," *Psychology of Men and Masculinity*, vol. 16, no. 4, 2015, pp. 416–425.

Masculinity scholarship has also devoted significant attention to the idea that men are commonly or necessarily anxious about the possibility of forfeiting their masculinity.<sup>46</sup> While this phrase is used in different ways by different scholars, we will use the work of Mark Breitenberg,<sup>47</sup> who has endeavored to define anxious masculinity with more precision than many others. Breitenberg contends that patriarchal societies are necessarily anxious for two reasons. First, men are naturally fearful that a society built on the foundation of sexual inequality may collapse, causing them to lose their superior place in society. Second, anxiety is actually productive in the sense that, through a series of compensatory strategies that seek to reinforce men's societal position and create healthy outlets for the expression of male anxiety, it plays a necessary role in perpetuating a social order that is inherently in danger of collapse.<sup>48</sup>

Alongside these theoretical developments, there is a growing body of quantitative research demonstrating that boys in the West fare poorly in comparison with their female

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<sup>46</sup> See, for example, Hélène Dubinsky, "The Fear of Becoming a Man," in *Facing It Out*, 2018, pp. 99–112; Jeffrey Cohen and Bonnie Wheeler, *Becoming Male in the Middle Ages*, Routledge, 2015; and Miles Groth, "'Has Anyone Seen the Boy?'" *Boyhood Studies*, vol. 1, no. 1, 2007, pp. 6–42.

<sup>47</sup> Mark Breitenberg, *Anxious Masculinity in Early Modern England*, Cambridge University Press, 2003, pp. 2–34.

<sup>48</sup> There are also some important differences between Breitenberg's use of the term anxiety and ours. Breitenberg follows Freud in defining anxiety as a discomfort or fear that has no evident source, one which is well-suited not only for early modern England but also for the general current moment in the West. However, for our purposes, we will use anxiety more broadly to refer to the fear that masculinity can easily be lost, whether conscious or unconscious. Second, the patriarchal structure of societies need not be the only way to account for anxious masculinity; it may be due to a host of additional factors, biological and/or social. For the purposes of this study, we need not necessarily prove a particular cause or set of causes for anxious masculinity, only to observe that it exists, the rabbis took note of it, and responded in particular ways.

peers in numerous key measures, including academic achievement,<sup>49</sup> ADHD diagnosis,<sup>50</sup> gambling,<sup>51</sup> sexual abuse and harrassment,<sup>52</sup> violent criminal behavior,<sup>53</sup> and imprisonment.<sup>54</sup> This has led to increased interest in the so-called “boy problem”<sup>55</sup> and a reckoning with the real-world consequences of perpetuating unhealthy conceptions of masculinity. The ongoing shift from the physical labor workforce to the knowledge economy, particularly in cities that were once closely identified with the labor industry, has led to devastating effects for men who are struggling to find their place in society.<sup>56</sup>

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<sup>49</sup> Kathryn Wiens, “The New Gender Gap: What Went Wrong?” *Journal of Education*, vol. 186, no. 3, 2006, pp. 11–27; Peg Tyre, *The Trouble with Boys: A Surprising Report Card on Our Sons, Their Problems at School, and What Parents and Educators Must Do*, Three Rivers Press (CA), 2009; and Richard Whitmire, *Why Boys Fail: Saving Our Sons from an Educational System That's Leaving Them Behind*, American Management Association, 2012.

<sup>50</sup> José J. Bauermeister, et al. “ADHD and Gender: Are Risks and Sequela of ADHD the Same for Boys and Girls?” *Journal of Child Psychology and Psychiatry*, vol. 48, no. 8, 2007, pp. 831–9.

<sup>51</sup> Robert Ladouceur, et al. “Pathological Gambling and Related Problems among Adolescents,” *Journal of Child & Adolescent Substance Abuse*, vol. 8, no. 4, 1999, pp. 55–68.

<sup>52</sup> Gordon Hall and Richard Hirschman, “Sexual Aggression against Children,” *Criminal Justice and Behavior*, vol. 19, no. 1, 1992, pp. 8–23.

<sup>53</sup> David Farrington, et al. “Why Are Boys More Likely to Be Referred to Juvenile Court? Gender Differences in Official and Self-Reported Delinquency,” *Victims & Offenders*, vol. 5, no. 1, 2009, pp. 25–44.

<sup>54</sup> Allison Hatch and Karlene Faith, “The Female Offender in Canada: A Statistical Profile,” *HeinOnline*, 8 Mar. 2021, <https://heinonline.org/HOL/LandingPage?handle=hein.journals%2Fcajwo13&div=33>.

Commentators have noted that the incidence of violent crime perpetrated by American and Canadian girls has risen significantly over the last few decades; see, for example, Meda Chesney-Lind and Vickie V. Paramore, “Are Girls Getting More Violent?” *Journal of Contemporary Criminal Justice*, vol. 17, no. 2, 2001, pp. 142–166. Still, the overall percentage remains significantly lower than the rate of imprisonment or violent crime for boys. For the latter, see Ronald Roesch, *Psychology in the Courts: International Advances in Knowledge*. Psychology Press, 2013, p. 41.

<sup>55</sup> The term “boy problem” has been in vogue since at least the beginning of the twentieth century. For example, William Byron Forbush’s *The Boy Problem* was published in 1907 (Pilgrim Press).

<sup>56</sup> Alan Krueger, “Where Have All the Workers Gone?: An Inquiry into the Decline of the U.S. Labor Force Participation Rate,” *Brookings Papers on Economic Activity*, vol. 2017, no. 2, 2017, pp. 1–87.

Others dispute this portrayal of boys in crisis, insisting instead that the West is moving toward an “inclusive masculinity.” This term is widely credited to Eric Anderson, who contends in his eponymous 2009 book *Inclusive Masculinity: The Changing Nature of Masculinities* that there are an increasing number of social spaces in which hypermasculine behavior is not expected or met with approval, beginning to undermine the hegemonic masculinity heretofore pervasive in the West.

The discourse surrounding masculinity has penetrated even “old-school” liberal feminist scholarly circles, leading at least one third-wave cultural constructionist to bemoan the fact that many masculinity scholars simply do not possess sufficient grounding in gender studies to study masculinity responsibly, leading to major errors in the field.<sup>57</sup>

More recently, amid ongoing concerns for sexual abuse and rape culture, especially since the rise of the #metoo movement,<sup>58</sup> at least one prominent author who previously conducted research on the lives of young women has begun to examine the experiences of young men. Peggy Orenstein, who published her bestselling book *Girls and Sex* in 2017,<sup>59</sup> subsequently published *Boys and Sex* in 2020. Despite her initial resistance to writing on a subject beyond the ken of her prior research, she became

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<sup>57</sup> Roseanne M. Mandziuk, “Necessary Vigilance: Feminist Critiques of Masculinity,” *Critical Studies in Media Communication*, vol. 17, no. 1, 2000, pp. 105–8.

<sup>58</sup> Jamie R. Abrams, The #MeToo Movement: An Invitation for Feminist Critique of Rape Crisis Framing (April 10, 2018), *University of Richmond Law Review*, vol. 52, 2018, University of Louisville School of Law Legal Studies Research Paper Series No. 2018-5; Rachel Loney-Howes, “The Politics of the Personal: The Evolution of Anti-Rape Activism from Second-Wave Feminism to #MeToo,” in *#MeToo and the Politics of Social Change*, 2019, pp. 21–35; and Tracey Nicholls, *Dismantling Rape Culture: The Peacebuilding Power of 'Me Too'*, Routledge, 2021.

<sup>59</sup> Orenstein, *Girls & Sex: Navigating the Complicated New Landscape*, Harper, 2017.

convinced by the people who “urged her at every stop... to turn [her] attention to young men [and] that by shifting cultural assumptions surrounding norms of masculinity,” we might be able to create a world in which boys are more mentally healthy, and women consequently afforded greater respect.<sup>60</sup>

The meteoric rise of masculinity studies<sup>61</sup> is chronicled by the editors of the *Handbook of Studies on Men and Masculinities*, who note that “monographs on masculinities appear in every social and behavioral science discipline and in every field of the humanities” and that “there are now several scholarly journals specifically devoted to it.”<sup>62</sup>

Various explanations have been offered for the emergence of this new sub-discipline. In part, the new interest in masculinity is a natural outgrowth of second-wave feminist concerns.<sup>63</sup> For if the meaning of femininity is culturally bound, so is masculinity.<sup>64</sup> Further, it is logical to assume that male and female roles in any given

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<sup>60</sup> Orenstein, *Boys & Sex: Young Men on Hookups, Love, Porn, Consent, and Navigating the New Masculinity*, Harper, 2021, p. 5.

<sup>61</sup> As Michael Kimmel notes in the introduction to the *Handbook of Studies on Men and Masculinities* (Sage Publications, 2009), scholars debate the best language with which to denote this field. Some advocate for the terminology of “men’s studies” or “masculinity studies,” which suggests a parallel to women’s studies, while others prefer terms such as “studies of men” and “studies of masculinity,” seeking to convey that this area is inspired by, but not merely parallel to, women’s studies (pp. 2-3). Because “men’s studies” and “masculinity studies” are widely used in the scholarly literature, we will alternate between these two, which we use synonymously.

<sup>62</sup> Kimmel, p. 1.

<sup>63</sup> Kimmel, p. 175.

<sup>64</sup> Gardiner, *Masculinity Studies*.

society can best be understood when viewed side-by-side, leading scholars to consider the meaning of manhood in different times and places.<sup>65</sup>

Yet others were drawn to masculinity studies from a different vantage point. Following de Beauvoir,<sup>66</sup> femininity may be defined as the *absence of manhood*. If so, a prior understanding of men's roles in a given society is a prerequisite for any attempt to study women's roles.<sup>67</sup> For instance, on many accounts, in ancient Rome and Greece the ideal man was seen as active and aggressive.<sup>68</sup> Working within de Beauvoir's framework, this suggests that in Greco-Roman culture, women were necessarily deemed passive and meek.<sup>69</sup> One cannot understand the Greco-Roman conception of femininity without a prior appreciation of the roles occupied by men in the same culture.

Even prior to the second wave, as anthropological studies burgeoned in the first half of the twentieth century, scholars had already begun noting the diverse conceptions

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<sup>65</sup> Sam Cochran, "Emergence and Development of the Psychology of Men and Masculinity," in *The Handbook of Gender Research in Psychology*, 2009, pp. 43–58.

<sup>66</sup> De Beauvoir, *The Second Sex*, p. 53.

<sup>67</sup> Katherine Crawford, *European Sexualities, 1400-1800*, Cambridge University Press, 2007, pp. 56-60. For a Jewish mystical perspective on this point, see Elliot Wolfson's work in general, especially his *Circle in the Square: Studies in the Use of Gender in Kabbalistic Symbolism*, NYU Press, 1995.

<sup>68</sup> In regard to sexual matters, in which the man was viewed as the penetrator and the woman as the one who was penetrated, see Jason Von Ehrenkrook, "Effeminacy in the Shadow of Empire: The Politics of Transgressive Gender in Josephus's *Bellum Judaicum*," *Jewish Quarterly Review*, vol. 101, no. 2, 2011, pp. 145–163," especially the sources cited in n. 15 on p. 149. See also Michael L. Satlow, "'They Abused Him like a Woman': Homoeroticism, Gender Blurring, and the Rabbis in Late Antiquity," *Journal of the History of Sexuality*, vol. 5, no. 1, University of Texas Press, 1994, pp. 1–25, esp. pp. 7-9.

<sup>69</sup> Todd Penner and Caroline Vander Stichele, *Mapping Gender in Ancient Religious Discourses*, Society of Biblical Literature, 2010, p. 5.

Bernadette Brooten in *Early Christian* captures the Roman origins of this culture as follows: "Active and passive constitute foundational categories for Roman- period culture; they are gender coded as masculine and feminine respectively. In their presentations of a wide range of sexual behaviors and orientations, astrologers often categorized an active sexual role as masculine and a passive sexual role as feminine; for this reason they described passive men as effeminate and active women as masculine." (Cited by Boyarin, *Unheroic Conduct*, p. 5).



of masculinity, particularly as refracted through ritual rites of entry into manhood. The pioneering anthropologist Margaret Mead<sup>70</sup> was particularly influential in the development of such early studies. In her 1928 *Coming of Age in Samoa*, she observed that Samoan boys and girls transition much more naturally into adult roles than their American counterparts.<sup>71</sup> Seven years later, in *Sex and Temperament in Three Primitive Societies*, she noted that many East Pacific cultures were wedded to radically different gender roles than those taken for granted in the West. Arapesh men were thus considered nurturers and Mundugmor women seen as violent.<sup>72</sup> This strongly suggests that gender roles are more a function of nurture than of nature.<sup>73</sup> Mead's 1949 work, *Male and Female: A Study of the Sexes in a Changing World*, further developed her conviction that gender roles are overwhelmingly culturally determined.<sup>74</sup>

David Gilmore's 1963 *Manhood in the Making: Cultural Concepts of Masculinity*<sup>75</sup> similarly demonstrated the wide variety of masculinities and male initiation

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<sup>70</sup> Mead, *Coming of Age in Samoa: A Psychological Study of Primitive Youth for Western Civilisation*, Forgotten Books, 2016. On Mead's decisive influence on the field, see Anne Cranny-Francis et. al, *Gender Studies: Terms and Debates*, Palgrave Macmillan, 2011, p. 3.

<sup>71</sup> Mead, *Coming of Age*, pp. 195-7.

<sup>72</sup> Mead, *From the South Seas; Studies of Adolescence and Sex in Primitive Societies*, W. Morrow & Co., 1950, pp. 278-9.

<sup>73</sup> Mead, *From the South Seas*, pp. 280-8.

<sup>74</sup> Mead's ground-breaking research notwithstanding, the accuracy of her findings about the free spirit of Samoan adolescents, and the broader implications of her research for sexual libertinism, have been the subject of intense controversy. Mead was accused by Derek Freeman (*Margaret Mead and Samoa: The Making and Unmaking of an Anthropological Myth*, Harvard University Press, 1983) of having simply been duped by Samoan girls. For a helpful summary of his critique, see Freeman, *The Fateful Hoaxing of Margaret Mead: A Historical Analysis of Her Samoan Research*, Westview Press, 1999. For a defense of Mead, see Paul Shankman and Paul Boyer, *Trashing of Margaret Mead: Anatomy of an Anthropological Controversy*. University of Wisconsin Press, 2009.

<sup>75</sup> Gilmore, *Manhood in the Making: Cultural Concepts of Masculinity*, Yale University Press, 1990.

rites in places as diverse as the Circum-Mediterranean, Truk Island, Sambia, and East and South Asia.<sup>76</sup> On Truk Island, for example, men were encouraged to take risks, think “manly” thoughts, and prove their worth through alcohol consumption and brawling.<sup>77</sup> They were expected to set sail on deep-sea fishing expeditions in shark-filled waters to prove their manhood.<sup>78</sup> If they failed in any of these tasks, they were mocked as effeminate and child-like.<sup>79</sup> Gilmore observed that these rites were especially important in cultures where men were expected to undertake physically taxing and/or dangerous tasks to protect their communities and families.<sup>80</sup> Gilmore concludes that while masculinity means very different things in different cultures, the common denominator is that *masculinity is not taken for granted but must be achieved*.<sup>81</sup> In chapter two, we will see that this position of Gilmore is widely, but not universally<sup>82</sup> accepted.

Gilmore’s work also has another implication. If masculinity is not a given but must be achieved, that suggests that masculinity is tenuous and may be stripped from its possessor. This leads to the psychological assessment that masculinity often is

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<sup>76</sup> Gilmore is regularly cited as exemplifying the notion of masculinity as a struggle for identity. For example, see Sarah White’s “Men, Masculinities, and the Politics of Development,” in Sweetman, *Men and Masculinity*. Oxfam, 2004, p. 16.

<sup>77</sup> Gilmore, *Manhood*, p. 62.

<sup>78</sup> Gilmore, p. 72.

<sup>79</sup> Gilmore, p. 73.

<sup>80</sup> Maud Meason makes a similar argument for the Roman elite, but argues that they turned from physical activity to rhetoric as the barometer of masculinity. See Gleason, *Making Men Sophists and Self-Presentation in Ancient Rome*. Princeton University Press, 2010, p. 159.

<sup>81</sup> Gilmore, *Manhood*, p. 11.

<sup>82</sup> See Admiel Kosman, “An Overview of Masculinity in Judaism: A Bibliographical Essay.” *God's Own Gender?*, 2018, pp. 147–184, p. 167 n. 65.

accompanied by a significant degree of anxiety. This theme draws on Freudian psychoanalytic themes related to castration anxiety, and is a leitmotif running through much of the masculinity literature.<sup>83</sup>

Of course, as with virtually any nascent field, masculinity studies has had its share of detractors. This includes not only critics of gender studies writ large, but also some third-wave feminists, who “have charged that writing the history of masculinity can efface women and thus risks subverting feminist goals, constituting an ‘atavistic return to research on men.’”<sup>84</sup>

Critiques notwithstanding, a general agreement has emerged, including among staunch feminists, siding with the viewpoint that is sympathetic to the study of masculinities.<sup>85</sup> Some feminists simply assert that “it is important to study men as men in order to gain insight into how the life worlds are constructed that constantly reproduce the inequality between the sexes.”<sup>86</sup> Robin Judd, echoing the intersectional theme we mentioned previously, notes that “Robert Nye, R. W. Connell, and Catherine Hall, insist

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<sup>83</sup> For a basic introduction to Freud and gender theory, see Hilary Lips, *Sex & Gender: An Introduction*, Waveland Press, 2020, pp. 62-72.

<sup>84</sup> Benjamin Maria Baader et al., *Jewish Masculinities German Jews, Gender, and History*, Indiana University Press, 2012, p. 4. See also Harry Brod’s discussion in “Some Thoughts on Some Histories of Some Masculinities,” pp. 83-6, in Harry Brod and Michael Kaufman, *Theorizing Masculinities* (Sage Publications, 1994).

In an article (“Masculinity Studies and Male Violence: Critique or Collusion?” *Women's Studies International Forum*, vol. 30, no. 5, 2007, pp. 404–415) summarizing a variety of critiques of the new masculinities field, Melanie McCarry sums up her three major objections to the field as currently practiced as follows: “there are three central limitations in this literature: that it can construct men as the real victims; that it disembodies men from ‘masculinity’ and reifies ‘masculinity’; and the commitment of the male masculinity authors to reflexivity and the relationship between the personal and the political” (ibid., p. 412).

<sup>85</sup> Baader et al., *Jewish Masculinities*, pp. 4-5.

<sup>86</sup> Hanna Schissler, “Männerstudien in Den USA,” *Geschichte Und Gesellschaft*, vol. 18, no. 2, Vandenhoeck & Ruprecht, 1992, pp. 204–20,” esp. p. 220. Cited in *Jewish Masculinities*, p. 4.

that masculinity is useful as a historical category because of its ongoing interplay with the construction of a variety of different kinds of hierarchies, particularly those involving relationships of power, defined by gender, race, class, and kin.”<sup>87</sup> Given this emerging consensus, it is not surprising that recent years have seen a similar upsurge in scholarly interest not only in gender, but specifically in the meaning of masculinity, in Jewish life and law.

## **Chapter 2 - Jewish Gender Studies and Masculinity**

### **I. Introduction**

Like numerous other academic disciplines, second- and third-wave gender studies trends have transformed the terrain of Jewish Studies. This chapter briefly sketches the contours of feminist Jewish studies, and then reviews the literature on Jewish studies and masculinity, placing special emphasis on the gaps in the scholarship that our study of rabbinic<sup>88</sup> legal texts seeks to fill. Overall, feminist Jewish scholarship has produced a substantial body of work addressing second-wave questions concerning the place of women in Jewish texts and life. In more recent decades, scholars have begun to turn to many of the foci of third-wave feminist scholarship, including questions related to women’s bodies and intersectionality.

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<sup>87</sup> Baader et al., *Jewish Masculinities*, p. 75.

<sup>88</sup> By “rabbinic texts” we refer not to the rabbinic period as narrowly defined, but more broadly to those authorities who see themselves as heirs of rabbinic Judaism.

## II. The Emergence of Jewish Feminist Studies

### II.1. Uneven Development

Jewish Studies feminist scholarship emerged unevenly.<sup>89</sup> A 1994 collection of essays<sup>90</sup> pointed to a number of areas in which this area of Jewish scholarship remained underdeveloped. For instance, Hava Tirosh-Rothschild noted<sup>91</sup> that “scholars of Jewish philosophy have virtually ignored the presence of feminism in the academy, the feminist critique of Western philosophy, and the feminist attempt to articulate an alternative to traditional philosophy.” Lynn Davidman and Shelly Tenenbaum wrote that “in surveying the literature on the sociology of American Jews, one becomes immediately aware that the recent proliferation of feminist theory and research has had minimal impact on this field.”<sup>92</sup> Joyce Antler added, “Until [feminist concerns are addressed] more regularly, the full implications of the gendered content of literary texts and the historical experience of readers and writers will remain elusive.”<sup>93</sup>

Notwithstanding the disproportionate presence of Jews in Hollywood, even cinema had seen limited self-criticism from the gender angle. This led Sonya Michel to

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<sup>89</sup> Lynn Davidman and Shelly Tenenbaum, *Feminist Perspectives on Jewish Studies*. Yale University Press, 1994, p. 3.

<sup>90</sup> Davidman and Tenenbaum, *Feminist Perspectives*.

<sup>91</sup> Davidman and Tenenbaum, *Feminist Perspectives*, p. 85.

<sup>92</sup> Davidman and Tenenbaum, *Feminist Perspectives*, p. 140.

<sup>93</sup> Davidman and Tenenbaum, *Feminist Perspectives*, p. 193.

note<sup>94</sup> that although “feminist theory has been making important advances in cinema studies... it has had little impact on film scholars concerned with Jewish issues.”<sup>95</sup>

Yet even where feminism was relatively slow to emerge, over the last fifteen years feminism has fast become a dominant force throughout the field, so that by 2009 Deborah Glanzberg-Krainin and Laura Levitt were able to declare<sup>96</sup> that “feminist theory has been a transformational force in Jewish Studies, profoundly influencing notions of Jews, Jewishness, and Judaism.”<sup>97</sup>

## II. 2. Feminist Biblical Scholarship

Other disciplines in the field of Jewish Studies and feminism developed earlier on. Biblical studies was among the first fields to be thoroughly reshaped by the gender studies revolution, with gentile scholars beginning to subject the Bible to liberal feminist interpretation more than 100 years ago.<sup>98</sup> Perhaps best-known is Elizabeth Cady Stanton’s *Women’s Bible*, published in two volumes in 1895 and 1898.<sup>99</sup> Later scholars

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<sup>94</sup> Davidman and Tenenbaum, *Feminist Perspectives*, pp. 245-6.

<sup>95</sup> In regard to Jewish history, see Susanna Heschel, “The Impact of Feminist Theory on Jewish Studies,” *Modern Judaism and Historical Consciousness*, Brill, 2007, pp. 529–548.

<sup>96</sup> Deborah-Krainin Glanzberg and Laura Levitt, “Feminist Theory and Jewish Studies,” *Religion Compass*, vol. 3, no. 2, 2009, p. 241.

<sup>97</sup> See also Rachael Kamel, “Women and the Transformation of Jewish Studies: An Oral History of the Association of Jewish Studies Women’s Caucus: The Paula Hyman Oral History Project,” *Nashim: A Journal of Jewish Women’s Studies & Gender Issues*, no. 27, 2014, pp. 129-158. For recent advances in gender studies and Jewish thought, see Mara Benjamin, “Agency as Quest and Question: Feminism, Religious Studies, and Modern Jewish Thought,” *Jewish Social Studies*, vol. 24, no. 2, 2019, pp. 7–16; and, most recently, Andrea Dara Cooper, “Gender and Modern Jewish Thought,” *Jewish Studies*, 2021.

<sup>98</sup> For a helpful overview, see Sarah Shectman, “Feminist Biblical Interpretation: History and Goals,” *TheTorah.com*, <https://www.thetorah.com/article/feminist-biblical-interpretation-history-and-goals>.

<sup>99</sup> For a historiography of the reception of Cady Stanton’s Bible among feminists and Bible scholars, as well as some of the complexities involved in an uncritical reception of her scholarship, see Emily Mace, “Feminist Forerunners and a Usable Past: A Historiography of Elizabeth Cady Stanton’s *The Woman’s Bible*,” *Journal of Feminist Studies in Religion*, vol. 25, no. 2, 2009, pp. 5-23.

such as Phyllis Trible (b. 1932) made major contributions to the field of feminist Bible interpretation.<sup>100</sup> Like Cady Stanton, Trible sought to extract an egalitarian kernel encased in the biblical text, arguing that our contemporary biases can lead us to miss important feminist motifs that are present in the Bible.<sup>101</sup> In the wake of second-wave feminism, numerous twentieth-century Jewish scholars such as Athalya Brenner-Idan,<sup>102</sup> Tikva Frymer-Kensky,<sup>103</sup> Carol Meyers,<sup>104</sup> Esther Fuchs,<sup>105</sup> and Yael Shemesh<sup>106</sup> began exploring feminist themes in biblical studies, with some, Fuchs most outspoken among

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<sup>100</sup> Trible's most enduring contribution came in her 1973 article, "Depatriarchalizing in Biblical Interpretation," *Journal of the American Academy of Religion*, vol. 41, no. 1, 1973, pp. 30–48. This was followed in 1978 with the publication of her *God and the Rhetoric of Sexuality*, SCM Press, 1992.

<sup>101</sup> For a brief but useful review of the history of feminist biblical studies, see chap. 1 in Katharine Doob Sakenfeld, et al., *Engaging the Bible in a Gendered World: An Introduction to Feminist Biblical Interpretation in Honor of Katharine Doob Sakenfeld*. Westminster John Knox Press, 2006. For a review of feminist biblical hermeneutics, see Ahida E. Pilarski, "The Past and Future of Feminist Biblical Hermeneutics," *Biblical Theology Bulletin: Journal of Bible and Culture*, vol. 41, no. 1, 2010, pp. 16–23. Claudia Seltzer offers an overview of feminist biblical interpretation in America in her essay in *The Oxford Handbook of the Bible in America*, Oxford University Press, New York, 2017, pp. 163–183. For a cutting-edge collection of essays exemplifying new approaches in feminist biblical readings, see Yvonne Sherwood and Anna Fisk, *The Bible and Feminism: Remapping the Field*, Oxford University Press, 2019.

<sup>102</sup> Brenner-Idan is editor of the twenty-volume *Feminist Companion to the Bible*, Sheffield Academic Press, 1993.

<sup>103</sup> Frymer-Kensky was among the most influential feminist readers to introduce Assyrian and other Ancient Near Eastern goddesses into biblical scholarship. See her *In the Wake of the Goddesses: Women, Culture, and the Biblical Transformation of Pagan Myth*, Fawcett Columbine, 1994.

<sup>104</sup> Meyers is considered one of the leading historians, archaeologists, and feminist biblical scholars of the twentieth century. Her major work is *Rediscovering Eve: Ancient Israelite Women in Context*. Oxford University Press, 2013.

<sup>105</sup> See Fuchs's *Sexual Politics in the Biblical Narrative: Reading the Hebrew Bible as a Woman*, Sheffield Academic Press, 2003.

<sup>106</sup> See Shemesh's essay, "The Stories of Women in a Man's World: The Books of Ruth, Esther, and Judith," in *Feminist Interpretation of the Hebrew Bible in Retrospect*, Sheffield Phoenix Press, Sheffield, 2017, pp. 248–267.

them,<sup>107</sup> insisting that liberal feminist scholars were papering over the truly difficult questions posed by a patriarchal Bible.<sup>108</sup> These methods and findings rapidly permeated the mainstream of Jewish Studies, so that by 1994, in the same collection of essays in which other scholars lamented the lack of progress in their fields, Frymer-Kensky was able to identify<sup>109</sup> “a general openness in the [Bible] field to women’s studies—an expectation that women’s studies can provide fresh perspectives on the texts.”<sup>110</sup>

The field has developed and diversified to the point that a range of views has emerged on the degree to which the Bible can be read in line with contemporary feminist proclivities. By 2016, Shemesh was able to offer this wider observation that she also used to characterize Bible studies: “Jewish feminist scholarship—like general feminist

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<sup>107</sup> Esther Fuchs, “Reclaiming the Hebrew Bible for Women: The Neoliberal Turn in Contemporary Feminist Scholarship,” *Journal of Feminist Studies in Religion*, vol. 24, no. 2, 2008, pp. 45–65.

<sup>108</sup> Laura Levitt expresses frustration with the slow progress in the field in “Engendering the Jewish Past: Towards a More Feminist Jewish Studies,” *Feminist Theology*, vol. 16, no. 3, 2008, pp. 365–378. Esther Fuchs continues to be frustrated by what she sees as the lack of genuine progress; her *Jewish Feminism: Framed and Reframed* (Lexington Books, 2020) includes a strident critique of numerous figures in the masculinities field. For further reflections on the current and future state of the field, see Lori Lefkowitz, “The View from Here: Reflections on the Future of Jewish Feminism and Jewish Feminist Scholarship,” *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, vol. 10, 2005, pp. 218–224.

Others have expressed concern that feminist biblical methods have not sufficiently permeated the larger field of biblical studies. See, for example, Lily Nortjé-Meyer, “Has Scientific Biblical Research Categorically Acknowledged Feminist Themes and Methods? A Review of Feminist and Traditional Exegesis Done on the Letter of Jude,” *Gender Agenda Matters: Papers of the "Feminist Section" of the International Meetings of the Society of Biblical Literature*, Cambridge Scholars Publishing, Newcastle, 2015, pp. 1–24.

<sup>109</sup> Frymer-Kensky and Tikva Simone, *Studies in Bible and Feminist Criticism*, Jewish Publication Society, 2006, pp. 159-160.

<sup>110</sup> Frymer-Kensky offers the following summary of the field’s major findings: “Despite the charged atmosphere in which the Bible’s treatment of women is sometimes discussed, however, Israel was neither the creator of patriarchy nor the worst perpetrator in the ancient world. Anthropology shows patriarchy to have been widespread, almost universal, and history shows that all the great historical civilizations were patriarchal, including the civilizations that preceded and surrounded ancient Israel. The patriarchy of Israel was part of an inherited social structure from the ancient world. A comparison of biblical laws with those of Assyria readily shows that the Bible did not rival Assyria in the extent to which it subordinated women” (*ibid.*, p. 18).



scholarship—is not all of one piece. Despite the shared ideology and common Jewish identification, this school is split into different, sometimes contradictory, streams.”<sup>111</sup>

### II. 3. Feminist Rabbis Scholarship

Second-wave Jewish scholars focused their attention not just on the Bible, but also on Rabbinics and Jewish law, turning much of their attention on women’s status in the rabbinic corpus.

Jacob Neusner laid the foundation for this fledgling field of rabbinics and feminism. Neusner set forth<sup>112</sup> a methodology for feminist study of Mishnah, particularly *Seder Nashim*, concluding that the Mishnah is interested in how women enter and leave marriages, but not in their experiences while in such relationships.<sup>113</sup> The reason for this omission, Neusner maintained, is that men, not women, were the primary subjects of and audience for the Mishnah’s rulings. Consistent with this exclusion, women tended to be perceived as “abnormal, anomalous, dangerous, dirty, and polluting” - in short as a threat to upset the natural order.<sup>114</sup> Further, the Mishnah was written in the post-Second Temple era, when rabbinic Judaism sought to impose order on the chaos engulfing the Jewish community. As part of this wider effort, in *Seder Nashim* the Rabbis sought to impose order on the sexual domain. Thus, Neusner concluded, “the goal and purpose of

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<sup>111</sup> Yael Shemesh, “Directions in Jewish Feminist Bible Study.” *Currents in Biblical Research*, vol. 14, no. 3, 2016, p. 399.

<sup>112</sup> Jacob Neusner, *Method and Meaning in Ancient Judaism*. Scholars Press, 1979.

<sup>113</sup> Neusner, pp. 79-100.

<sup>114</sup> Neusner, p. 97, citing Rosaldo.

Mishnah's division of women are to bring under control and force into stasis all of the wild and unruly potentialities of sexuality."<sup>115</sup>

Hauptman pushes back<sup>116</sup> against some of Neusner's contentions, noting, for example, that men too were viewed as pollutants, as evidenced by the existence of Tractate *Zavim*. Still, she grants that *niddah* and *zav* should not be viewed as fully parallel: the existence of a full tractate in the Babylonian Talmud on *niddah*, not *Zavim*, as well as the practical nature of many of the cases cited in *Niddah*, makes it clear that only *niddah* continued to be practiced after the destruction of the Second Temple.<sup>117</sup>

Another foundational second-wave feminist work is Judith Romney Wegner's 1998 *Chattel or Person? The Status of Women in the Mishnah*,<sup>118</sup> which adopts a fundamentally similar methodology to Neusner but arrives at a different conclusion. Unlike Neusner, who perceives the Mishnah's basic conception of women in predominantly negative terms, Wegner analyzes a vast array of Mishnaic sources, also culled mainly from *Seder Nashim*, arguing for a more balanced presentation of the rabbinic view of women. She maintains<sup>119</sup> that the rabbis assigned women the same status

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<sup>115</sup> Neusner, p. 99. See also Judith Hauptman, *Rereading the Rabbis: A Woman's Voice*. Routledge, 2019, p. 5.

<sup>116</sup> Hauptman, *Rereading the Rabbis*, p. 169.

<sup>117</sup> For recent important research on Tractate *Zavim*, see Agnes Veto, "Rabbinic Conceptualization of the Male Body as Reflected in the Halakhic System of Male Genital Emissions." *New York University*, 2015. *Unpublished dissertation*.

<sup>118</sup> Judith Romney Wegner, *Chattel or Person?: The Status of Women in the Mishnah*. Oxford University Press, 1992.

<sup>119</sup> Romney Wegner, p. 7.

as chattel specifically in regard to sexual and reproductive matters, while in most areas the Rabbis treated women as full adults.<sup>120</sup>

Hauptman adopts Neusner and Wegner's larger project of subjecting the larger rabbinic corpus to feminist analysis, critiquing some of Wegner's conclusions, and more generally insisting that we must examine each text as an object of study in its own right without making presuppositions about the corpus as a whole that may bias the interpreter.<sup>121</sup> Hauptman argues that while "the rabbis upheld this patriarchy as the preordained mode of social organization... they began to introduce numerous, significant, and occasionally bold measures to ameliorate the lot of women."<sup>122</sup>

These and other scholars, including Tal Ilan,<sup>123</sup> Miriam Peskowitz,<sup>124</sup> and Judith Baskin<sup>125</sup> combined to create a robust and dynamic field of feminist rabbinic studies.<sup>126</sup>

While the field of rabbinic feminist studies was still in its infancy, other prominent feminist thinkers began to contemplate the theoretical possibility of achieving

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<sup>120</sup> For a brief, particularly insightful review, see Carol Meyers, "Chattel or Person? The Status of Women in the Mishnah," *The Journal of Religion*, vol. 70, no. 2, 1990, pp. 252–3. For Judith Hauptman's sharply critical comments, see her review in *Religious Studies Review*, vol. 18, no. 1, Jan. 1992, pp. 13–8.

<sup>121</sup> Hauptman, *Rereading the Rabbis*, pp. 54–6.

<sup>122</sup> Hauptman, p. 4.

<sup>123</sup> Tal Ilan, *Jewish Women in Greco-Roman Palestine*, Hendrickson Publishers, 1996; Ilan, *Mine and Yours Are Hers: Retrieving Women's History from Rabbinic Literature*, Brill, 1997.

<sup>124</sup> Miriam Peskowitz, *Spinning Fantasies: Rabbis, Gender and History*, University of California, 1997.

<sup>125</sup> Judith Baskin, *Midrashic Women: Formations of the Feminine in Rabbinic Literature*, Brandeis University Press, 2002. For a sharp criticism of Baskin's book, see Ishay Rosen-Zvi, "Misogyny and Its Discontents," *Prooftexts*, vol. 25, no. 1, 2005, pp. 217–227.

<sup>126</sup> For a list of additional formative second-wave works on feminism and rabbinics, see Ishay Rosen-Zvi, "The Rise and Fall of Rabbinic Masculinity," *Jewish Studies Internet Journal*, 2013, <https://jewish-faculty.biu.ac.il/files/jewish-faculty/shared/JSIJ12/rosen-zvi.pdf>, p. 1.

at least a partial reconciliation between feminism and contemporary Jewish law. In 1982, Cynthia Ozick and Judith Plaskow engaged in an enduring exchange on whether the central question confronting women in search of communal change was legal and cultural (Ozick<sup>127</sup>) or theological (Plaskow<sup>128</sup>). Ozick contended that we must strive toward a more egalitarian communal and legal discourse. Plaskow disagreed, arguing, as she later would elaborate in her seminal work *Standing Again at Sinai*,<sup>129</sup> that in order to restore an egalitarian ethos to Judaism, we must revisit not just our interpretation of *halakhah* but our very theological language about God. She roots this claim<sup>130</sup> in the work of famed anthropologist Clifford Geertz, who contended that our conception of divinity translates directly into the way we organize society. Thus, a people that worship a divinity they describe as male will inevitably organize their society in a patriarchal fashion.<sup>131</sup> Accordingly, Plaskow maintains, we must arrive at a new way of speaking about God with both male and female language. This will ultimately create a new sense of what is plausible, help to dismantle the patriarchy, and lead our society toward greater egalitarianism.<sup>132</sup> What is more, while the male metaphor initially was merely a symbol

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<sup>127</sup> Cynthia Ozick, "Notes toward Finding the Right Question (A Vindication of the Rights of Jewish Women)," *Lilith Magazine*, 17 July 1979, pp. 19-29.

<sup>128</sup> Judith Plaskow, "The Right Question Is Theological," *On Being a Jewish Feminist*, Schocken Books, New York, 1983, pp. 224-7.

<sup>129</sup> Judith Plaskow, *Standing Again at Sinai: Judaism from a Feminist Perspective*, Harper, San Francisco, 1994.

<sup>130</sup> Plaskow, *Standing Again*, p. 126.

<sup>131</sup> Geertz developed his concept of religion in numerous places, most prominently in his "Religion as a Cultural System," printed in *Reader in Comparative Religion: An Anthropological Approach*, Harper & Row, New York, 1965, pp. 87-125.

<sup>132</sup> Plaskow, *Standing Again*, pp. 126-7.

in no way intended to refer to God's character per say, over time this symbolism became so suffused in our cultural consciousness that we came to ascribe to God a male identity, including the masculine characteristics of a warrior.<sup>133</sup>

Others sharply critiqued Plaskow's theological views as unnecessarily bold and even heretical, and her assessment of the halakhic system as overly pessimistic. In *Engendering Judaism*,<sup>134</sup> Rachel Adler contends that *halakhah* can be interpreted in a manner that is far more congenial to feminist concerns and does not necessitate a radical revision of the metaphors we use to conceptualize the deity.<sup>135</sup> Critiquing Plaskow's "discomfort with halakhah,"<sup>136</sup> Adler instead looks to develop an alternate conception of Jewish law, relying heavily on legal scholar Robert Cover's magisterial essay "Nomos and Narrative."<sup>137</sup> Cover draws on the Bible and Jewish legal scholarship in claiming that since law is best seen as a bridge leading a community from its current station toward a more ideal realization of overarching story ("narrative") it would like to achieve, with a foot in both. Taking the metaphor to its logical conclusion, Cover concludes that through popular acceptance, any group seeing itself as bound to a particular set of laws may revise its overarching narrative such that its legal system eventually follows suit.<sup>138</sup>

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<sup>133</sup> Plaskow, *Standing Again*, pp. 127-134.

<sup>134</sup> Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics*, Beacon Press, 2005.

<sup>135</sup> Adler, *Engendering Judaism*, pp. 84-5.

<sup>136</sup> Adler, *Engendering Judaism*, pp. 46-7.

<sup>137</sup> Robert Cover, "Nomos and Narrative," *Harvard Law Review*, vol. 97, no. 4, 1983, pp. 4-68.

<sup>138</sup> Others have relied on Cover in seeking to develop new and deeper understandings of Jewish law. See, for example, Samuel J. Levine, "Halacha and Aggada: Translating Robert Cover's Nomos and Narrative," in *Jewish Law and American Law: A Comparative Study*, vol. 2, Touro College Press, New York, NY, 2018; Barry Wimpfheimer, *Narrating the Law a Poetics of Talmudic Legal Stories*, University of Pennsylvania Press, Philadelphia, 2011; Michael Walzer, *Law, Politics, and Morality in Judaism*, Princeton University Press, 2009;

Accordingly, Adler contends, if the halakhic community writ large accepts an egalitarian ethos, halakhic change will inevitably follow.<sup>139</sup>

Tamar Ross<sup>140</sup> objects to what she calls<sup>141</sup> Plaskow’s “outsider’s view” of the Jewish tradition.<sup>142</sup> Ross also takes issue with Adler, criticizing her for being insufficiently concerned with the integrity of the halakhic system, and granting too much sway to “the community of the halakhically committed” in the unfolding of the halakhic process.<sup>143</sup> Instead, Ross argues<sup>144</sup> on the basis of R. Abraham Isaac Kook that the feminist impulse itself may be viewed as a form of divine revelation, and thus constitutes an intrinsic element of the halakhic process.<sup>145</sup>

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and Chaim Saiman, *Halakhah: The Rabbinic Idea of Law*, Princeton University Press, 2020. Some are critical of Cover; see, for example, Suzanne Last Stone, “In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory.” *Harvard Law Review*, vol. 106, no. 4, 1993, pp. 813–894.

<sup>139</sup> For a critique of Adler, see Laura Levitt, “Marriage as Feminist Theology?” in *Jews and Feminism: The Ambivalent Search for Home*, Routledge, New York, 1997. Adler herself evolved over the course of time, shifting her affiliation from Orthodox to Reform. This is perhaps best exemplified by the change in attitude toward the laws of *niddah* observance: whereas in 1972 she defended these laws as consistent with basic feminist sensibilities (“*Tum’ah* and *Toharah*: Ends and Beginnings,” *Response: A Contemporary Jewish Review*, 1973, pp. 117–127), by 1993 she had disavowed her previous position, instead critiquing the laws of *niddah* as incompatible with feminist values. See Adler, “In Your Blood, Live: Re-Visions of a Theology of Purity,” *Tikkun*, 1993, pp. 38–41.

<sup>140</sup> Tamar Ross. *Expanding the Palace of Torah: Orthodoxy and Feminism*, Brandeis University Press, 2004.

<sup>141</sup> Ross, *Expanding the Palace*, p. 133.

<sup>142</sup> The suggestion that Christian thought influenced important Jewish feminists is particularly fair in the case of Plaskow, who studied at Yale Divinity School and published her doctoral thesis as a book under the title *Sex, Sin, and Grace: Women’s Experience and the Theologies of Reinhold Niebuhr and Paul Tillich*. Her close friendships with Christian feminists Carol Christ, with whom she co-edited the collection *Womanspirit Rising* (1979), and Elisabeth Schussler-Fiorenza, author of a book on women in early Christianity, *In Memory of Her* (1983), also had a significant impact on Plaskow’s thought. See Rachel Adler, “Judith Plaskow,” *Jewish Women’s Archive*, 23 June 2021, <https://jwa.org/encyclopedia/article/plaskow-judith>.

<sup>143</sup> Ross, *Expanding the Palace*, p. 156.

<sup>144</sup> Ross, *Expanding the Palace*, chap. 10, especially pp. 193–212.

<sup>145</sup> See also Ross, “Feminist Aspects in the Theology of R. Kook,” *Derekh Ha-Ruah: A Volume Honoring Eliezer Schweid*, Hebrew University Press, Jerusalem, 2005, pp. 717–752. Ross’s book-length treatment received both glowing praise and constructive criticism from reviewers. For a positive perspective, see Elizabeth Alexander Shanks’s review in *Nashim: A Journal of Jewish Women’s Studies & Gender Issues*, vol. 10, 2005, pp. 243–9.

More recently, Ronit Irshai<sup>146</sup> has critiqued Plaskow and others on different grounds: Judaism's longstanding emphasis on *halakhah* over philosophy. Taking legal, not theological, texts as an analytical starting point is to begin not with Stage Two but Stage One of Jewish scholarship. This includes an undue focus on even the conceptual framework undergirding the *Halakhah*. As she puts it,<sup>147</sup>

I am surprised at the prominent place [theology] occupies in Jewish feminist thought, especially since theological questions have never been the core area of Jewish interest. It may be that we see here the influence of Christian feminist thinkers, whose radical criticism in the religious sphere has often served as an important catalyst for the examination of questions of equality and gender justice within Judaism.<sup>148</sup>

Since *halakhah* is the primary religious language of Judaism, Irshai argues, Jewish feminist scholarship must grant pride of place to the analysis of halakhic texts.

#### II. 4. Third-Wave Jewish Gender Studies

More recently, much as the 1980s and 1990s saw a shift in the general feminist literature to third-wave concerns, since roughly the turn of the millennium, second-wave

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For a critical perspective from the left, see Michael Graetz and Naomi Graetz's review in *Conservative Judaism*, vol. 63, no. 3, 2012, pp. 89–91. For a sympathetic but partly critical review, see Daniel Reifman's review in *Modern Judaism*, vol. 26, no. 1, Feb. 2006, pp. 101–8.

<sup>146</sup> Ronit Irshai, "Toward a Gender Critical Approach to the Philosophy of Jewish Law (Halakhah)," *Journal of Feminist Studies in Religion*, vol. 26, no. 2, 2010, pp. 55–77.

<sup>147</sup> Irshai, "Toward a Gender Critical Approach," p. 58.

<sup>148</sup> Elsewhere, Irshai also points to the irony that some Orthodox Jewish feminists have made theology more central to their discourse than *halakhah*, in certain ways even more so than Reform Jewish feminists. See Irshai, "Theology and Halakhah in Jewish Feminisms," in *The Cambridge Companion to Jewish Theology*, Cambridge University Press, 2020, pp. 297–315.

Jewish Studies debates have begun to give way to third-wave explorations into how the Bible and Rabbis perceived sex and gender identity. These studies tend to move beyond the extent to which Jewish texts are compatible with a feminist ethos, and instead grapple with questions of sexual identity, seeking to unearth deeper structural ways in which rabbinic discourses reflect and produce hierarchical frameworks that shape women's bodies and identities.

To take an excellent example noted by Ishay Rosen-Zvi,<sup>149</sup> in her study of *niddah*, Hauptman, a second-wave feminist, trained her attention on Rabbi Akiva's leniencies regarding the laws of staining and *niddah*.<sup>150</sup> Hauptman held that the sage demonstrated sensitivity toward women by extending himself to rule leniently in respect to the laws of staining. Yet Charlotte Fonrobert,<sup>151</sup> who analyzes not just the bottom line but also the underlying assumptions of rabbinic discourse, brilliantly turned the argument on its head, noting that the rabbinic invention of the laws of staining required rabbinic expertise regarding which colors rendered a woman impure. Accordingly, the production of this area of knowledge and expertise intrinsically excluded women. Fonrobert's third-wave approach exemplifies a deemphasis on practical rulings in favor of a deeper analysis of the often-unstated conceptual underpinnings of halakhic decision-making. Fonrobert similarly pinpoints the imagery of a woman's vaginal area as a "house" as an instance of

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<sup>149</sup> Rosen-Zvi, "The Rise and Fall," p. 4.

<sup>150</sup> Hauptman, *Rereading the Rabbis*, p. 153.

<sup>151</sup> Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender*. Stanford University Press, 2009, pp. 112-5. See also Fonrobert, "The Political Symbolism of the Eruv." *Jewish Social Studies*, vol. 11, no. 3, 2005, pp. 9-35; and Cynthia M. Baker, *Rebuilding the House of Israel: Architectures of Gender in Jewish Antiquity*, Stanford University Press, 2003.



men “constructing” the female body. This is reminiscent of Butler,<sup>152</sup> who draws on Foucault<sup>153</sup> in contending that it is not biology but cultural discourse that determines the contours of gendered bodies.<sup>154</sup>

These third-wave advances notwithstanding, as Irshai sets forth in a programmatic essay,<sup>155</sup> more work remains to be done, particularly in regard to the overlap between

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<sup>152</sup> Butler, *Gender Trouble*, p. 185.

<sup>153</sup> Foucault, *The History of Sexuality*, vol. 1, Introduction.

<sup>154</sup> For an excellent example of a way in which the rabbis reshaped notions of purity and impurity, see Mira Balberg, *Purity, Body, and Self in Early Rabbinic Literature*, University of California Press, 2014.

For a summary of the state of the field, see Fonrobert, “The Political Symbolism of the Eruv.” See also Elisheva Baumgarten, *Mothers and Children: Jewish Family in Medieval Europe*. Princeton University Press, 2004, and Mara Benjamin’s work in general, especially *The Obligated Self: Maternal Subjectivity and Jewish Thought*. Indiana University Press, 2018.

For a review of the turn to materialism in Jewish gender studies, see Fonrobert, “The Human Body in Rabbinic Legal Discourse,” *The Cambridge Companion to the Talmud and Rabbinic Literature*, Cambridge University Press, Cambridge, 2007, pp. 270–294, and Boyarin’s monograph *Carnal Israel: Reading Sex in Talmudic Culture*, University of California Press, 1993. Naomi Seidman similarly points out that in the Bible and Talmud “discussions of the body occupy the well-perused center of the canon rather than its obscure margins” (Seidman, “Carnal Knowledge: Sex and the Body in Jewish Studies,” *Jewish Social Studies*, vol. 1, no. 1, 1994, pp. 115–146). And, as Eilberg-Schwartz writes, “these books talk at length and in rich detail about matters such as bodily emissions, skin diseases, circumcision, proper positions for sexual intercourse, how to urinate, how to empty one’s bowels, and so forth” (Howard Eilberg-Schwartz, *People of the Body: Jews and Judaism from an Embodied Perspective*, NYU Press, 1992, p. 2).

For just a small sampling of the relevant literature, see also Daniel Boyarin, “Gender,” *Critical Terms for Religious Studies*, University of Chicago Press, Chicago, 1998, pp. 117–135; Julia Watts Belser, “Reading Talmudic Bodies: Disability, Narrative and the Gaze in Rabbinic Judaism,” *Disability in Judaism, Christianity, and Islam: Sacred Texts, Historical Traditions, and Social Analysis*, Palgrave Macmillan, New York, 2011, pp. 5–27; Watts Belser, *Rabbinic Tales of Destruction: Gender, Sex, and Disability in the Ruins of Jerusalem*, Oxford University Press, 2020; Joshua Levinson, “An-Other Woman: Joseph and Potiphar’s Wife. Staging the Body Politic,” *The Jewish Quarterly Review*, vol. 87, no. 3-4, 1997, p. 269; Levinson, “Bodies and Bo(a)rders: Emerging Fictions of Identity in Late Antiquity,” *Harvard Theological Review*, vol. 93, no. 4, 2000, pp. 343–372; and Jonthan Wyn Schofer, *Confronting Vulnerability: The Body and the Divine in Rabbinic Ethics*, The University of Chicago Press, 2010.

<sup>155</sup> Irshai, “Between Feminist and Gender Analysis in the Study of Rabbis and Modern *Halakhah*: Homosexuality and the Construction of Masculinity as a Case Study” (Hebrew), *Dinei Israel*, vol. 32, 2018, pp. 249–284, particularly the first section of the article.

third-wave concerns and *halakhah*. Jewish legal texts, particularly contemporary ones, remain largely unmined for insights into questions of gender identity.

### III. The Emergence of Jewish Masculinity Studies

#### III. 1. Early Development

Even as Jewish feminist scholars have begun grappling with third-wave scholarship, the area of Jewish Men's Studies has remained relatively untouched. As Reuven Kiperwaser puts it, rabbinic masculinity remains the "less crowded area of studies."<sup>156</sup>

Despite halting progress, over the last two-and-a-half decades a growing number of Jewish Studies scholars have begun to excavate the theme of masculinity.<sup>157</sup> Here, as with feminism, scholars have engaged in the study of Jewish masculinity unevenly, with biblical studies, rabbinics, and modern Jewish history receiving the most attention.

#### III. 2. Bible Studies

In the area of Bible studies, the prolific scholar David Clines dedicated roughly a dozen studies to masculinity, contending that the Bible adopts a physically aggressive

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<sup>156</sup> Reuven Kiperwaser, "Wives of Commoners and the Masculinity of the Rabbis: Jokes, Serious Matters, and Migrating Traditions," *Journal for the Study of Judaism*, vol. 48, no. 3, 2017, p. 421, n. 13.

<sup>157</sup> The last few years have seen a steady stream of new writings in the field. Tellingly, though, few of these engage seriously with *halakhah* and masculinity. Examples of recent publications include: Ovidiu Creanga, *Men and Masculinity in the Hebrew Bible and Beyond*, Sheffield Phoenix Press, 2010; Cristina Rhiannon Graybill, "Men in Travail: Masculinity and the Problems of the Body in the Hebrew Prophets," University of California, Berkeley, 2012, [https://digitalassets.lib.berkeley.edu/etd/ucb/text/Graybill\\_berkeley\\_0028E\\_12280.pdf](https://digitalassets.lib.berkeley.edu/etd/ucb/text/Graybill_berkeley_0028E_12280.pdf); Stefanie Knauss, "Exploring Orthodox Jewish Masculinities with Eyes Wide Open," *Journal of Religion and Film*, 2013, <https://digitalcommons.unomaha.edu/jrf/vol17/iss2/7/>; Sarah Imhoff, *Masculinity and the Making of American Judaism*, Indiana University Press, 2017; Daniel Gerster and Michael Krüggeler, "Introduction." *God's Own Gender?*, University and State Library of Münster, 2018, pp. 7–36; Belser Watts, *Rabbinic Tales of Destruction*; and Max Strassfeld, *Trans Talmud: Androgynes and Eunuchs in Rabbinic Literature*, University of California Press, 2022 (forthcoming).

conception of masculinity which applies to biblical personalities and God alike.<sup>158</sup> Alstair Haines<sup>159</sup> pushed back against Clines's claims, concluding his critical analysis of Clines's 2015 lecture<sup>160</sup>:

The Bible is a book written by men, for men; but is it written so as to exclude women? I think not...<sup>161</sup> The Bible enshrines masculine virtues, promotes and inculcates them; but it also enshrines, promotes and inculcates human virtues, like faith, hope and love. It portrays a deity infused with masculine virtues, but not—

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<sup>158</sup> In a series of articles exploring themes in biblical masculinity (available at <https://sheffield.academia.edu/DavidClines>), Clines examines Moses, David (“David the Man: The Construction of Masculinity in the Hebrew Bible”), the characters in the book of Job (“Loingirding and Other Male Activities in the Book of Job”), whom he describes as an archetypal masculines; and others who fail in their pursuit of manhood, including the elders at Sinai (“Dancing and Shining at Sinai: Playing the Man in Exodus 32–34”), men in Psalms (“The Book of Psalms, Where Men Are Men ... On the Gender of Hebrew Piety”), and male prophets (“He-Prophets: Masculinity as a Problem for the Hebrew Prophets and their Interpreters”). He considers New Testament figures including Jesus (“*Ecce vir*, or, Gendering the Son of Man”) and Paul (“Paul, the Invisible Man”). He also considers whether the term “adam” refers specifically to man or to all humans (“ $\mu$ da, the Hebrew for ‘Human, Humanity’: A Response to James Barr”).

In another article (“Legally Male: Being a Man in the Book of the Covenant”), Clines systematically lays out what he sees as four central elements of biblical manhood, each of which he uses as a measure of the masculinity of biblical characters: (1) The Warrior Male; (2) The Persuasive Male; (3) The Womanless Male; and (4) The Beautiful Male. He views the biblical law code as masculine in character, and describes entire books, such as Psalms, as masculine in orientation (“The Book of Psalms”).

Clines later tackled the question of the masculinity of the biblical deity in “The Most High Male: Divine Masculinity in the Bible,” “Alleged Female Language about the Deity in the Hebrew Bible,” and “Gendering the Magnificat.” Beyond noting the obvious male references to the deity throughout the Bible, Clines identifies five central characteristics that he identifies with masculinity, and then finally with the deity: strength and power, size and height, violence and killing, honor, and holiness. Clines insists that God is coded male, not only because God is referred to as such, but also because God exemplifies the central characteristics that are associated with manhood.

Clines summarized his thoughts on the subject in a short essay entitled “Final Reflections on Men and Masculinity,” and in his scathing 2015 lecture, “The Scandal of a Male Bible.”

<sup>159</sup> Alasdair Haines, “The Masculine Language of the Bible: A Response to David Clines.” <https://newmalestudies.com/OJS/index.php/nms/article/download/201/237/>.

<sup>160</sup> Clines, “The Scandal.”

<sup>161</sup> See, however, Marc Brettler (“Happy Is the Man Who Fills His Quiver with Them,” in *Being a Man: Negotiating Ancient Constructs of Masculinity*, Routledge, London, 2019, pp. 198–220), who writes, “I believe that many of [Clines’s] solutions are correct, but I do not believe that much of the evidence he adduces supports his conclusions” (p. 203). I concur with Brettler regarding Clines’s evidence, much of which reads more as sustained polemic than as scholarly proof.

in my opinion—in such a way as to esteem men above women as Clines claims.<sup>162</sup>

Yet Clines, commenting on a collection of essays on this subject, confesses<sup>163</sup> that “especially by comparison with the beginnings of feminist biblical criticism, masculinity studies in the Hebrew Bible seem strangely lacking in passion. One gains no impression from the articles in this volume that masculinity studies is a movement, to which people have a commitment. Perhaps it is not. Perhaps there is no agenda in masculinity studies, other than intellectual curiosity.”

The field of rabbinic masculinities, by comparison, has surely not been lacking in passion. Indeed, the small-but-increasing group of scholars who have pursued these themes engage in inquiries that strike at the heart of central questions concerning rabbinics and masculinity.

### III. 3. Major Themes in Jewish Masculinity Studies

First, scholars inquire whether manhood is to be viewed as a given or an achievement. As noted in the previous chapter, in his anthropological studies David Gilmore drew the conclusion that while masculinity means very different things in different cultures, the common denominator is that masculinity is not a natural

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<sup>162</sup> Regarding Jewish history, see the breakthrough work of Sander Gilman in *Jew's Body*, Routledge, 1991, and *Freud, Race, and Gender*, Princeton University Press, 1993; George Mosse, *The Image of Man: The Creation of Modern Masculinity*, Oxford University Press, 1998; and Nancy Harrowitz and Barbara Hyams, *Jews & Gender: Responses to Otto Weininger*, Temple University Press, 1995. More recently, see Deborah Hertz, “Duelling for Emancipation: Jewish Masculinity in the Era of Napoleon,” *Jüdische Welten: Juden in Deutschland Vom 18. Jahrhundert Bis in Die Gegenwart. Festschrift for Monika Richarz*, Wallstein Verlag, Hamburg, pp. 69–85; and Benjamin Maria Baader, et al. *Jewish Masculinities: German Jews, Gender, and History*, Indiana University Press, 2012.

<sup>163</sup> Clines, “Final Reflections,” p. 5. For a representative example of recent analyses on biblical characters and masculinity, see Kelly Murphy, *Rewriting Masculinity: Gideon, Men, and Might*, Oxford University Press, 2019.

endowment but an achievement.<sup>164</sup> Does rabbinic literature take sides on this question? Related, do Jewish texts, descriptively and prescriptively, portray the notion of an anxious masculinity?

Michael Satlow, a pioneer in Jewish masculinity studies, advances the thesis<sup>165</sup> that rabbinic and Greco-Roman visions of the ideal male closely resemble one another, leading Satlow to conclude that rabbinic thought embraces a variation of Gilmore's ideas. In developing this thesis, Satlow also sketches an ideal portrait of the rabbinic male.<sup>166</sup>

According to Satlow, "two themes in particular stand out in [the Greek and Jewish] literature. First, self-mastery is a prerequisite for a life of the mind (whether Torah study or the pursuit of wisdom); it is gendered as characteristically male. Second, the pursuit of the life of the mind also is gendered as a masculine activity. Together, these characteristics define what it means to be a man."<sup>167</sup>

For the rabbis, then, masculinity needs to be constantly reaffirmed - not by battling external enemies, but by conquering one's own desires and pursuing the intellectual good life. Satlow cites Stanley Stowers, who eloquently captures this Greco-Rabbinic ideal: "Gender hierarchy lies close to the heart of the discourse of self-mastery. Life is war, and masculinity has to be achieved and constantly fought for. Men are always

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<sup>164</sup> For a related argument for the inherent impossibility of achieving full-fledged masculinity, particularly in Ultra-Orthodox culture, see Stefanie Knauss, "Exploring Orthodox Jewish Masculinities."

<sup>165</sup> Michael L. Satlow, "'Try to Be a Man': The Rabbinic Construction of Masculinity," *Harvard Theological Review*, vol. 89, no. 1, 1996, pp. 19–40.

<sup>166</sup> For a similar analysis to Satlow, see Stephen Moore and Janice Capel Anderson, "Taking It like a Man: Masculinity in 4 Maccabees," *Journal of Biblical Literature*, vol. 117, no. 2, 1998, p. 249.

<sup>167</sup> Satlow, "Try to Be," p. 21.

in danger of succumbing to softness, described as forms of femaleness or servility.”<sup>168</sup> Masculinity cannot be taken for granted; it must be acquired and reacquired through a constant internal battle for mastery over one’s intellect and desires. Jewish Hellenistic writers including Philo, Josephus, and especially Ben Sira write in a similar vein.<sup>169</sup> Satlow<sup>170</sup> refers to this as “the elusiveness of rabbinic masculinity.”

This accounts for the classic depiction of wisdom as female, not just in Ben Sira but also in Proverbs.<sup>171</sup> In a heterosexual society, the identification of wisdom with the feminine suggests that the pursuit of wisdom was conceived as an intrinsically male pursuit, requiring self-mastery and a sublimation of sexual passion in the direction of the intellect.

Satlow cites classical rabbinic texts in support of his approach, beginning with Ben Zoma’s teaching in *Avot* (4:1): “Who is mighty? He who subdues his inclination, as it states: ‘He that is slow to anger is better than the mighty; and he that rules his spirit than he that takes a city.’”<sup>172</sup> Another passage<sup>173</sup> similarly exhorts, “Happy is the man who overpowers his evil inclination like a man.” The term “*gevurah*” is generally associated with warfare, yet the Rabbis, taking a cue from Greco-Roman thought, redefine bravery as the capacity for self-mastery. Further, the term “conquer” is generally

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<sup>168</sup> Stanley Kent Stowers, *A Rereading of Romans: Justice, Jews, and Gentiles*, Yale University Press, 1997, p. 45. Cited by Satlow, “Try to Be.”

<sup>169</sup> Satlow, “Try to Be,” pp. 22-6.

<sup>170</sup> Satlow, “Try to Be,” p. 35; see also pp. 38-9.

<sup>171</sup> Satlow, chap. 8-9.

<sup>172</sup> It is presumably no coincidence that this citation is taken from Proverbs.

<sup>173</sup> *Avodah Zarah* 19a.

associated with the masculine in rabbinic literature,<sup>174</sup> suggesting that this Mishnah is to be coded masculine and not feminine. Self-restraint, like war, is a masculine activity.

Satlow further notes<sup>175</sup> that the Bavli<sup>176</sup> attributes to R. Yehoshua ben Levi a teaching that explicitly encodes the ability to defeat the evil inclination as masculine:

“Happy is the man who fears the Lord.” Happy is the man and not happy is the woman? R. Amram said in the name of Rav, “Happy is the one who repents like a man.” R. Yehoshua b. Levi said, “Happy is the one who overpowers his יצר like a man.”

It is therefore fitting, Satlow notes,<sup>177</sup> that while the phrase “be a man” appears only rarely in rabbinic texts, when it is invoked, it is in relation to Torah Study, which serves as a bulwark against the evil inclination:

He used to say: A brute is not sin-fearing, nor is an ignorant person pious; nor can a timid person learn, nor can an impatient person teach; nor will someone who engages too much in business become wise. In a place where there are no men, strive to be a man.<sup>178</sup>

This call to manhood tellingly appears in context of the acquisition of wisdom, suggesting that the phrase means to convey, “In a place where no others restrain their desires in preparation for the single-minded pursuit of Torah study, strive to be such an individual.”<sup>179</sup>

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<sup>174</sup> *Kiddushin* 2b: “It is the way of the man to wage war but not the way of a woman to wage war.”

<sup>175</sup> Satlow, “Try to Be,” p. 27.

<sup>176</sup> *Avodah Zarah* 19a.

<sup>177</sup> Satlow, “Try to Be,” p. 33.

<sup>178</sup> *Avot* 2:5.

<sup>179</sup> Because rabbinic masculinity is not a natural state but must constantly be reacquired, Satlow makes the following astute observation: “Rabbinic Judaism, unlike many peoples, appears to show no knowledge of initiation rites. The bar mitzva does not appear to have been any kind of male initiation, and circumcision is performed when the child is so young that this too would not qualify as such a rite. To my knowledge, there is

Satlow's arguments are largely convincing, but they fall short in their limited engagement with later rabbinic texts: he only cites a single passage from the Bavli in support of his thesis. Given that Satlow seeks to paint the wider rabbinic period, including that of the Tannaim and Amoraim, his net is cast more widely than his evidence manages to capture. In particular, whereas Satlow seeks to transform the Roman image of man-as-gladiator into an inner-directed battle against the passions, his analysis fails to address the late Babylonian Amoraic notion of rabbinic study as a battle *against other scholars*.<sup>180</sup> He also does not account for the earlier rabbinic identification of masculinity with armor and warfare,<sup>181</sup> a major motif we will encounter in the halakhic literature regarding cross-dressing. Still, his pivotal analysis strongly supports the notion of an anxious rabbinic masculinity.

In a 2017 study, Kiperwasser follows the general lines of Satlow's view that male identity is constructed; for Kiperwasser, however, the ideal rabbinic man defines himself in contrast to both women and other, non-scholarly Jewish men. "Rabbinic masculinity,"

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only a single text that might suggest a male initiation rite. In *Tanhuma Vayikra 22* on Gen. 22:1, in which Abraham is trying to trick Sara into letting him take Isaac to be sacrificed, he says that he is going to take Isaac to a place where they ["educate"] youths. Elsewhere in rabbinic literature the term means to initiate through a process of teaching, a definition that would make little sense here" (p. 38, n. 87).

Further, while Satlow argues that the Roman and Rabbinic conceptions were fundamentally similar, he acknowledges that there was one key difference: "while for the Romans gender associations were highly politicized, rabbinic sources rarely explicitly link gender and political discourses" ("They Abused Him like a Woman': Homoeroticism, Gender Blurring, and the Rabbis in Late Antiquity," *Journal of the History of Sexuality*, vol. 5, no. 1, July 1994, p. 24). For Satlow, this is simply an outgrowth of the fact that the Rabbis did not generally hold positions of significant power. This analysis buttresses Satlow's larger contention that there was a high degree of confluence between rabbinic and Greco-Roman attitudes toward masculinity; see "They Abused Him," p. 1, with sources in n. 1.

<sup>180</sup> Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud*. Johns Hopkins University Press, 2006. We will discuss Rubenstein below.

<sup>181</sup> For example, in Mishnah *Shabbat* 6:4. For further discussion, see chap. 7 below.



as he puts it, “is a structure shaped through dichotomy both with femininity and with the ‘other’ masculinity.”<sup>182</sup> Kiperwasser’s ideas resemble those of Connell, whose concept of hegemonic masculinities suggests that some men are necessarily superior to others because they more closely embody that culture’s ideal of masculinity.<sup>183</sup> Additionally, whereas Kiperwasser places greater emphasis on men distinguishing themselves intentionally from the “other,” Satlow focuses more on the discipline of self-control necessary for a male to achieve the status of manhood, and thereby avoid the characteristics associated with femininity.

Admiel Kosman, a scholar who draws heavily on neo-Freudian themes in his studies of gender and rabbinics, rejects both Satlow and Kiperwasser, arguing that to be a man is not a positive status in its own right, but merely the denial of any association with femininity. He roots this argument in the observation that Gilmore’s thesis of manhood-as-achievement was rooted in his inability to see any immediate connection between the meaning of masculinity among the tribes he studied. Kosman insightfully concludes that

the meagre findings of Gilmore’s extensive research (which Connell 2005, 31-33, finds surprising) strengthens the suspicion that masculinity is actually a trait that does not exist on its own, and that it might be said (in a Lacanian spirit) that masculinity is merely the repeatedly emphasized denial by someone who claims: “I am not a female.”<sup>184</sup>

In other words, Gilmore, who studied dozens of tribal communities, was unable to identify an obvious thread of masculinity running through all the tribes he had studied.

Whereas Gilmore concludes that the unifying feature is the overarching need for men to

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<sup>182</sup> Kiperwasser, “Wives of Commoners,” pp. 421-2.

<sup>183</sup> Connell, *Masculinities*, pp. 67-71.

<sup>184</sup> Kosman, “An Overview,” p. 167, n. 65.

fight for their masculinity, however defined, Kosman instead deduces that *there is simply no overarching positive identity of masculinity*. To be a man is simply to avoid any association with femininity.<sup>185</sup>

Their significant differences in emphasis notwithstanding, all three scholars seem to adopt an assumption that is commonly taken for granted throughout the general literature on masculinity: one way or another, masculinity is difficult to attain and therefore difficult to sustain (tenuous). This linkage, however, is not compelling, and, as we will demonstrate, is implicitly undercut by the rabbinic treatment of cross-dressing.

A second major area of inquiry concerns the specific characteristics associated with the ideal rabbinic male. Following Connell, it is common to think not of a single model of masculinity but of many masculinities.<sup>186</sup> Further, if we adopt Connell's notion of hegemonic masculinity, societies typically feature a dominant model of masculinity against which others, including men, are measured. Accordingly, we may inquire whether rabbinic culture or literature represents a particular model of masculinity. While scholars have not yet attempted a comprehensive sketch of these characteristics, we may highlight a few major treatments of this subject, particularly concerning the question of man-as-warrior.

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<sup>185</sup> See also Kosman, "The 'Man' as 'Fool-King': Alexander the Great and the Wisdom of Women," *CCAR Journal: The Reform Jewish Quarterly*, vol. 59, 2012, pp. 164–8.

<sup>186</sup> For a brief but valuable history of the explosion in popularity of the term "masculinities," as well as its declining usefulness in more recent years, see Harry Brod, "Some Thoughts on Some Histories of Some Masculinities," in *Theorizing Masculinities*, Sage Publications, Thousand Oaks, CA, 1994, pp. 82–96. After the work of Connell and Michael Kimmel, arguably the leading theorist in masculinity studies in the United States, Brod was influential in popularizing the notion of multiple masculinities; see Brod's 1987 volume, *The Making of Masculinities: The New Men's Studies*, Allen & Unwin, 1987.

As we have seen, for Satlow, the ideal rabbinic male is one who, through herculean effort, defeats temptation and acquires self-mastery and scholarly understanding.

Jeffrey Rubenstein maintains that the final stratum of the Bavli sees the ideal male as an academic warrior who locks horns with his study partner and others in the combative environment of the Beit Midrash. While Rubenstein does not explicitly link his work to the subject of rabbinic masculinity, it speaks directly to these themes and is important to review in this context.

Rubenstein dedicates one chapter of his book to the subject of rabbinic dialectics, and another to rabbinic violence. Rubenstein notes that the Stammaitic stratum of the Babylonian Talmud places tremendous weight on the importance of dialectical analysis. As an illustration, Rubenstein points to *Bava Metzia* 84a, which details the despondency of R. Yohanan following the death of Resh Lakish, who had provided R. Yohanan with twenty-four counter-arguments to every position R. Yohanan set forward. “For R. Yohanan,” Rubenstein notes, “the lack of intense dialectical debate was essentially a fate worse than death.”<sup>187</sup> This priority, present in the latest stratum of the Bavli, is almost entirely lacking in the Yerushalmi and receives far less emphasis in the earlier strata of the Bavli.<sup>188</sup> In fact, the very language of “objections and solutions,” commonplace in the Bavli, does not appear at all in the Yerushalmi or other Palestinian sources.<sup>189</sup>

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<sup>187</sup> Rubenstein, *The Culture*, p. 43.

<sup>188</sup> Rubenstein, *The Culture*, pp. 3-7.

<sup>189</sup> Rubenstein, *The Culture*, pp. 45-7.

Later, Rubenstein notes the Bavli's related emphasis on analytical skill, including its "high regard for *pilpul*." This is no coincidence, for "in a general sense *pilpul* relates to the same concern for intellectual virtuosity that underlies dialectical ability."<sup>190</sup> Closely related to both of these, Rubenstein further notes,<sup>191</sup> is the Bavli's emphasis on the importance of a study partner. In the stark terminology of the Bavli,<sup>192</sup> "either a study partner or death."

In his subsequent chapter on violence in the Babylonian Talmud, Rubenstein observes<sup>193</sup> that the sharpness and vigor of rabbinic disputation sometimes devolved into outright violence, again pointing to R. Yohanan and Resh Lakish as exemplars. All this gives credence to the thesis that the rabbis did not so much abolish violence entirely so much as transfigure it from physical to verbal form.

The common denominator between Satlow and Rubenstein is that for both, physical aggression has been sublimated or recast, whether as intellectual jousting or self-mastery. Daniel Boyarin,<sup>194</sup> by contrast, as we will detail extensively, portrays the rabbinic male as sexually potent yet effeminate, meek, and self-effacing. We will contend that the halakhic texts regarding the prohibition against cross-dressing sets forward the image of an actual physical warrior, implying that the Rabbis sought to retain the image of the physical warrior at least in theory if not in practice. Kosman, for his part, denies

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<sup>190</sup> Rubenstein, *The Culture*, p. 48.

<sup>191</sup> Rubenstein, *The Culture*, pp. 42-3.

<sup>192</sup> *Ta'anit* 7a.

<sup>193</sup> Rubenstein, *The Culture*, p. 48.

<sup>194</sup> Boyarin, *Carnal Israel*; Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man*, University of California Press, 1997.

any positive identity to manhood, which he sees as nothing more than the denial of femininity.

More recently, other scholars such as Ishay Rosen-Zvi have addressed additional key questions in regard to rabbinics and masculinity. In 2005, Rosen-Zvi published an analysis of the laws of priestly bodily defects as presented in the second chapter of Tractate *Bekhorot*.<sup>195</sup> In 2010, he co-authored an important article on the laws of carrying on Shabbat for women and men.<sup>196</sup> Regarding bodily desire, Rosen-Zvi contends<sup>197</sup> that the rabbis sought to “form” not just women, but both women and men: women into temptresses, and men into sex-obsessed maniacs. Accordingly, numerous rabbinic texts, including halakhic literature, offer men instructions on how to avoid the intense sexual temptations they experience in the face of female seduction.<sup>198</sup> His work on rabbinic views of women’s bodies and the Temple, which is built on an in-depth analysis of Tractate *Sotah*,<sup>199</sup> contends that men sought to control women’s bodies<sup>200</sup> by radically

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<sup>195</sup> Rosen-Zvi, “Bodies and Temple: The List of Priestly Bodily Defects in Mishnah *Bekhorot*, Chapter 7,” *Jewish Studies*, vol. 43, 2005, pp. 49–87.

<sup>196</sup> Rosen-Zvi and Deror Yinon, “*Takhshitim Gavri'im, Takhshitim Nashi'im: Mabbat Hadash Al Ma'amadah ha-Dati Shel ha'Isha be-Mishnat Hazal*,” *Reshit*, vol. 2, 2010, pp. 55–79.

<sup>197</sup> Rosen-Zvi, *Demonic Desires: Yetzer Hara and the Problem of Evil in Late Antiquity*, University of Pennsylvania Press, 2011.

<sup>198</sup> See also Rosen-Zvi’s “*Ha'Im Yesh le-Nashim Yetzer? Anthropolgia, Etika, u-Migdar be-Sifrut Hazal*,” *Samkhut Ruhanit: Ma'avakim al Koah Tarbuti ba-Hagut ha-Yehudit*, Ben Gurion University, Be'er Sheva, 2010, pp. 21–33.

<sup>199</sup> Rosen-Zvi, *The Mishnaic Sotah Ritual Temple: Gender and Midrash*, Brill, 2012.

<sup>200</sup> In this formulation, Rosen-Zvi is explicitly indebted to Foucault’s work on sexuality and the body. See *The Mishnaic Sotah Ritual*, p. 226.

reimagining the Sotah ritual<sup>201</sup> in a manner that radically departs from its face presentation in the book of Numbers.<sup>202</sup>

More recently, Yakir Englander has made important contributions to the field, focusing on the site of men's bodies. He contrasts most East European yeshiva environments, in which the body is granted merely instrumental status toward the study of Talmud, with the philosophy of Slobodka, which was an Ultra-Orthodox internalization of and response to the broader cultural phenomenon of the "honor society," which included duels and dress codes that were then popular in Eastern European male culture.<sup>203</sup> His 2016 book contends that the Haredi public space is an essentially male, afeminine space, which is in turn reflective of the yeshiva culture as a whole.<sup>204</sup> Englander has also introduced questions regarding male bodies to discussions of the Hasidic *zaddik*.<sup>205</sup>

### III. 4. *Unheroic Conduct*

Yet there is a major lacunae in the field of rabbinics and masculinity: at least until quite recently, the prooftexts scholars cite are overwhelmingly drawn from non-halakhic

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<sup>201</sup> For the notion that the mishnah is intended to preserve a sort of ritual of what cannot be effected in real life, and the more radical possibility that the mishnah itself is a ritual of sorts, see Rosen-Zvi, *The Mishnaic Sotah Ritual*, pp. 234-7.

<sup>202</sup> This is in sharp contrast to Jacob Neusner, who sees the *mishnayot* as essentially mirroring the face reading of the verses. See Neusner, "From Scripture to Mishnah: The Origins of Mishnah's Division of Women," *Journal of Jewish Studies*, vol. 30, no. 2, 1979, pp. 138-153, esp. p. 150.

<sup>203</sup> Yakir Englander, "The 'Jewish Knight' of Slobodka Honor Culture and the Image of the Body in an Ultra-Orthodox Jewish Context," *Religion*, vol. 46, no. 2, 2015, pp. 186-208. See also Eric Silverman's work on circumcision, particularly his "Circumcision and Jewish Masculinity: Motherly Men or Brutal Patriarchs," in *Brother Keepers: New Perspectives on Jewish Masculinity*, Men's Studies Press, Harriman, TN, 2010, pp. 34-56.

<sup>204</sup> Englander, *The Male Body in Ultra-Orthodox Jewish Theology*, Pickwick Publications, 2021.

<sup>205</sup> Englander, "*Ha-Metah Saviv Guf ha-Zaddik: Iyyun be-Sippurei Ba'al ha'Ahavat Yisrael' Mi-Vizhnitz*," *Mehkarei Yerushalayim be-Sifrut Ivrit*, vol. 27, 2014, pp. 103-131.

sources. This gap points to a larger trend in the field: there has been scant attention paid to the contributions of Jewish legal writings to the study of rabbinic masculinity. True, Satlow and especially Rosen-Zvi rely on halakhic texts. And some of Charlotte Fonrobert<sup>206</sup> and Gwynn Kessler's<sup>207</sup> work utilizes Jewish legal texts to explore the degree to which halakhic texts allow for the possibility of gender fluidity. But these remain the exceptions that prove the rule. Leading scholars including Satlow, Kiperwasser, and Kosman overwhelmingly draw on non-halakhic sources in seeking to outline rabbinic views on masculinity.

Perhaps the most powerful illustration of the omission of halakhic analysis from discussions of masculinity is the literature surrounding what is widely acknowledged as the watershed work in the field, Daniel Boyarin's *Unheroic Conduct*. Because of its importance to the field and this study, we will review Boyarin's thesis and four major responses, and make some general methodological observations about the discussion.

In his previous book, *Carnal Israel*, Boyarin had argued that the Rabbis saw humans, men in particular, as flesh-and-blood beings possessing carnal desires. As he put

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<sup>206</sup> Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender*, Stanford University Press, 2009; "On Carnal Israel and the Consequences: Talmudic Studies since Foucault," *Jewish Quarterly Review*, vol. 95, no. 3, 2005, pp. 462–9; "Regulating the Human Body: Rabbinic Legal Discourse and the Making of Jewish Gender," *The Cambridge Companion to the Talmud and Rabbinic Literature*, 2007, pp. 270–294; "The Political Symbolism of the Eruv," *Jewish Social Studies*, vol. 11, no. 3, 2005, pp. 9–35; "The Semiotics of the Sexed Body in Early Halakhic Discourse," in *How Should Rabbinic Literature Be Read in the Modern World?*, 2006, pp. 79–104; "Gender Duality and its Subversions in Jewish Law," in *Gender in Judaism and Islam: Common Lives, Uncommon Heritage*, New York University Press, New York, 2015, pp. 106–125; and "Gender Politics in the Rabbinic Neighborhood," in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies*, Mohr Siebeck, Tübingen, 2007, pp. 43–60.

<sup>207</sup> Kessler, "Perspectives on Rabbinic Constructions of Gendered Bodies," in *The Wiley Blackwell Companion to Religion and Materiality*, 2020, pp. 61–89.

it,<sup>208</sup> while many Hellenistic Jews and early Christians saw people as souls encased in bodies, the Rabbis tended to see people as bodies containing souls.<sup>209</sup>

*Unheroic Conduct* presents the flipside of the coin. Drawing on aggadic material coupled with modern psychoanalytic and Zionist writings, Boyarin contends that in rabbinic and medieval times, even as they were simultaneously viewed as corporeal, sexual beings, the East European Jewish ideal of a gentle, timid, and studious male—Edelkayt—is deeply rooted in traditional Jewish culture, and is especially prominent in the Babylonian Talmud.<sup>210</sup> By contrast, to this day the dominant strain within European culture interprets activity, domination, and aggressiveness as "manly," and gentleness and passivity as emasculate or effeminate.<sup>211</sup> In casting the ideal Jewish man in this mold, the rabbis implicitly eschewed the Greco-Roman image of the gladiator,<sup>212</sup> instead promoting the "sissy"<sup>213</sup> of the study hall who is first and foremost compassionate rather than physically superior.<sup>214</sup> Critiquing those denizens of men's studies who seek to "dispel a circumambient sissy-boy anxiety by forging fashionably dysfunctional males into iron men and warrior dads, [his] study is engaged not in dispelling sissy-boy anxiety but in

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<sup>208</sup> Boyarin, *Carnal Israel*, p. 5.

<sup>209</sup> For a slightly different perspective, including explicit discussion of the points of disagreement between himself and Boyarin, see David Biale, *Eros and the Jews: From Biblical Israel to Contemporary America*, University of California Press, 1997.

<sup>210</sup> Boyarin, *Unheroic Conduct*, p. 2.

<sup>211</sup> Boyarin, *Unheroic Conduct*, *ibid.*

<sup>212</sup> But see Satlow, "Try to Be," for a different view.

<sup>213</sup> Boyarin, *Unheroic Conduct*, pp. xiii, xiv, xviii, xix, xx, xxi, 19, 28, 263, 347.

<sup>214</sup> For a related discussion of rabbinic ambivalence toward biblical warriors, see Richard Marks, "Dangerous Hero: Rabbinic Attitudes toward Legendary Warriors," *Hebrew Union College Annual*, vol. 54, 1983, pp. 181–194.



revalorizing and reeroticizing the sissy.”<sup>215</sup> Thus, “though hardly feminist, rabbinic Jewish culture thus refuses prevailing modes through which the surrounding cultures represent maleness as active spirit, femaleness as passive matter, a representation that has dominated much (if certainly not all) of European cultural imagination and practice.”<sup>216</sup> Of course, Boyarin does not claim that Jewish texts championing the cause of the sissy represent the exclusive, or even majority, voice in the rabbinic tradition. Instead, he acknowledges that the perspective he is underscoring “can easily be countered by citing contradictory texts.”<sup>217</sup> He is merely offering one authentic rabbinic motif that resonates with the author:

[I] am instead focusing on a particular theme that attracts me, owing to my own particular set of identifications and desires, both political and erotic. Audre Lorde has written, ‘Our visions begin with our desires.’ I am tracing a cultural theme, an overtone, or a voice in the polyphony that I wish to isolate and amplify.”<sup>218</sup>

Boyarin then turns, as he does elsewhere,<sup>219</sup> to the Talmudic passage in *Bava Metzia* 83b-84a, first considering the themes of masculinity, power, and sexuality, and then examining the story of R. Yohanan and Resh Lakish’s initial encounter. R. Yohanan represents the ideal rabbinic male: virile yet scholarly, masculine yet beardless. Resh

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<sup>215</sup> Boyarin, *Unheroic Conduct*, p. 19.

<sup>216</sup> Boyarin, *Unheroic Conduct*, p. 10.

<sup>217</sup> Boyarin, *Unheroic Conduct*, p. 24.

<sup>218</sup> Boyarin, *Unheroic Conduct*, p. 25.

<sup>219</sup> See Boyarin’s “The Talmud as a Fat Rabbi: A Novel Approach,” *Text & Talk - An Interdisciplinary Journal of Language, Discourse Communication Studies*, vol. 28, no. 5, 2008, pp. 603–619; *Socrates and the Fat Rabbis*, The University of Chicago, 2009, p. 191; and “Friends Without Benefits; or, Academic Love,” in *Sex in Antiquity: Exploring Gender and Sexuality in the Ancient World*, Routledge, Taylor & Francis Group, London, 2015, pp. 517–535. See also his review of Michal Bar-Asher Siegal’s *Early Christian Monastic Literature and the Babylonian Talmud*, available at “The Talmud and the Desert Rabbis,” Jan. 2015, <https://marginalia.lareviewofbooks.org/the-talmud-and-the-desert-fathers-by-daniel-boyarin>.

Lakish is the Roman gladiator who seeks to rape R. Yohanan whom, he perhaps assumes, is a female. Resh Lakish is ultimately persuaded to abandon his gladiator lifestyle, foregoing his masculinity in the process and instead embracing the life of the study hall hoplite. As a direct consequence, he is no longer able to conjure the physical strength to use his spear, a phallic symbol, to vault to the other side of the river.

Boyarin explains<sup>220</sup>:

A final hint of the underlying cultural disquietude of this text has to do with the curious detail about Resh Lakish's attempted return to take his clothes. This is a highly overdetermined moment in the text. He will no longer be wearing the clothes that he wore before, the masculine clothes of a Roman man—presumably the toga virilis—he will now be wearing the robes of a scholar of the Talmud. This change is doubled in the text by the failure of Resh Lakish's lance as a means of propulsion back to the masculine signifiers of his clothing. His lance no longer works. He is dephallicized (but not castrated or emasculated—a crucial distinction). I am not, of course, invoking some putative Freudian notion of a phallic symbol here. I am suggesting, rather, that the text itself is animating such a symbolism—knowingly. A narrative that has a man vault over a river on his lance, undergo a spiritual transformation in which gender is explicitly thematized and then be unable to vault back on the same lance, seems clearly to be symbolizing masculinity through the working or nonworking of the lance... this text has summoned it as a symbol of a repudiated active, violent, thrusting masculinity.

Yet the Talmudic passage, in a moment of frank rabbinic ambivalence, goes on to question its own givens. R. Yohanan's very invitation to Resh Lakish to marry R. Yohanan's sister suggests that the Talmud is ambivalent about its own homosocial community, particularly concerning its treatment of women: "In replacing Resh Lakish's unsanctioned desire for coerced sex (with Yohanan—whether he knows him to be male or not) with a sanctioned, but apparently no less coerced sexual relationship, marriage,

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<sup>220</sup> Boyarin, *Unheroic Conduct*, p. 138.

the narrative is both offering the latter as a better alternative to the former and raising the suspicion in our minds that they are not all that different.”<sup>221</sup>

Then, in the course of a halakhic dispute regarding the precise moment at which a weapon is considered to be a full-fledged vessel, R. Yohanan sarcastically comments that Resh Lakish knows the answer because he is an expert at using the very same tools of banditry under discussion. Emotionally distressed by this vicious reminder of his once-sinful lifestyle, Resh Lakish becomes deathly ill and questions why R. Yohanan has led him to the path of Torah merely for him to die. Boyarin sees in this an acerbic rabbinic self-critique:

Resh Lakish bitterly complains to Rabbi Yohanan: "What have you profited me? There they called me Rabbi and here they call me Rabbi!" You offered me a masculinity that would be resistant to that of the dominant culture, one that would not depend for its adequation on the violence of male rivalry and cruelty to women, but this substitute, this resistant male subjectivity turns out to be just as brutal—claims Resh Lakish—as that which I left behind me. At one moment the text insists that Jewish masculinity is different, less violent; at the next, with a hermeneutics of sharp suspicion, it suggests that nothing is really different after all. At one moment the text argues, as it were, that the gladiatorial combat of Torah study is somehow finer, less cruel, more sublimated than the gladiatorial combats that "they" engage in, but then the text seems to suggest with its deadly ending that perhaps our vocal combat is not so different from theirs after all. They kill with the spear, but we kill with the voice. The renunciation of the weapon turns out to be merely the substitute of the vocal weapon for the physical one. In this reading of the narrative, it essays a far reaching critique of the implicit violence of the institutionalized male competitiveness in Torah study.<sup>222</sup>

Despite the entreaties of Resh Lakish's wife (R. Yohanan's sister) to R. Yohanan to pray on behalf of his brother-in-law, R. Yohanan refuses and Resh Lakish dies. R.

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<sup>221</sup> Boyarin, *Unheroic Conduct*, p. 132.

<sup>222</sup> Boyarin, *Unheroic Conduct*, p. 147.

Yohanan is terribly distressed. Unable to find an adequate study partner to replace Resh Lakish, he ultimately falls mad and dies.

Boyarin contends that the image of the effeminate rabbinic scholar remained dominant through the Middle Ages and early modern period. He uses the familiar motif of the Seder night's wicked-son-as-armed-warrior to support this chronological extension of his thesis:

In general, medieval and early modern Haggadas illustrate the wicked son as some form of martial figure, almost always, in fact, a knight in shining armor (see Plate 4).<sup>223</sup> This, of course, establishes a direct and explicit contrast between the Jewish ideal and the models of "manliness" that the circumambient culture had developed. As George Mosse has remarked of nineteenth century western Europe, "Manliness drew upon the aristocratic ideal of knighthood as a pattern of virtue in a changing world and a model for some of its behavior." As we have seen, however, for traditional Jewish iconography it was the ideal of knighthood that represented the negative ideal, the "wicked son," the antithesis of a pattern of virtue. For such traditional Jews the knight and all that he represented both on the field of battle and in the bedroom of courtly and romantic love were the essence of *goyim naches*.<sup>224</sup>

On one hand, Boyarin explains, it is clear that the behaviors that the Rabbis portrayed as ideal were understood as proper male demeanor within their own system of cultural values, particularly given that gender dimorphism and separation of roles were givens for

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<sup>223</sup> For a summary of these illustrations, see Mendel Metzger, *La Haggada Enluminée: Étude Iconographique Et Stylistique Des Manuscrits Enluminés Et Décorés De La Haggada Du XIIIe Au XVIe Siècle*, E.J. Brill, 1973, pp. 52-6.

From the fact that the wicked son is often portrayed in medieval *Haggadot* wielding weapons, David Biale infers (unconvincingly, in my view) that bearing arms was not entirely foreign to Jews at that time (*Power and Powerlessness in Jewish History*, Schocken Books, 1987, p. 73). This anticipates elements of Elliott Horowitz's controversial research, which is laid out most comprehensively in his book *Reckless Rites: Purim and the Legacy of Jewish Violence*, Princeton University Press, 2008. For discussions of this subject in a contemporary American context, see Warren Rosenberg, *Legacy of Rage: Jewish Masculinity, Violence, and Culture*, University of Massachusetts Press, 2010; Paul Breines, *Tough Jews: Political Fantasies and the Moral Dilemma of American Jewry*, BasicBooks, 1990; and Shaul Magid, *Meir Kahane: The Public Life and Political Thought of an American Jewish Radical*, Princeton University Press, 2021.

<sup>224</sup> Boyarin, *Unheroic Conduct*, p. 53.

the Rabbis. They therefore rejected representations that would depict such practices as "effeminate." At the same time, they lived within and were an integral part of a larger cultural world, within which those very valorized rabbinic practices were often stigmatized as "female." At times, the Rabbis seem to have been willing to transvalue that image into a positive self-representation as feminized.<sup>225</sup>

His rich portrayal of the effeminate rabbinic male notwithstanding, Boyarin dedicates a full chapter to clarifying that he should not be misconstrued as suggesting that because men were effeminate, there was little misogyny in the Talmudic period: "I repeat that I deeply love and feel connected to rabbinic texts and culture, but there is much within them that I find deeply disturbing as well. If Jewish culture has been a place of safety for a sissy, it has hardly—to understate the case—provided such felicitous conditions for Jewish women."<sup>226</sup> The dual movement of this political project is "to resist the delegitimization of Judaic culture from without, while supporting the feminist critique from within."<sup>227</sup>

In the second half of his book, Boyarin traces what he sees as a regressive shift in psychoanalytic and Zionist circles toward the classical phallic-military image of

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<sup>225</sup> Boyarin, *Unheroic Conduct*, pp. 98-9.

Studying Torah, Boyarin therefore provocatively claims, is a kind of cross-dressing, marked by Resh Lakish's crossing of the river and doubly marked by his inability to cross back on his masculine lance to take up again his masculine clothing. Boyarin is quick to acknowledge that the issue is of course more complex than this, for studying Torah within rabbinic culture is obviously primarily the definitive performance of male gendering. Men studying Torah are not cross-dressed from within the culture's own norms and models. Still, he insists, women who study Torah would be "cross-dressing." In light of our own subject, Boyarin's initial claim is obviously incorrect, as he acknowledges, but his latter claim has merit, particularly in the contemporary context, in which cross-dressing has increasingly become as a metaphor for violation of communal gender roles. For further discussion, see chapter 11 of this thesis.

<sup>226</sup> Boyarin, *Unheroic Conduct*, p. xviii.

<sup>227</sup> Boyarin, *Unheroic Conduct*, p. ix.

masculinity, which he associates with a reversion to heteronormativity. Utilizing a brilliant analysis of Freud's abandonment of the abuse theory in favor of the Oedipus complex, Boyarin claims that in the wake of his homosexual feelings toward Fliess, "Freud needed desperately to hide this dimension of his personality,"<sup>228</sup> particularly as it was increasingly associated with effeminacy and antisemitic portrayals of the Jews. This included claims of Jewish male menstruation, and self-hating Jews' associations between Jewishness and femininity, most infamously in the case of Otto Weininger.<sup>229</sup>

Boyarin therefore claims that in the 1890s Freud panicked at the discursive configuration imposed on him by three deeply intertwined cultural events: the racialization/gendering of antisemitism, fin de siècle production of sexualities, including the "homosexual," and sharp increase in contemporary Christian homophobic discourse (the "Christian Values" movement). These discourses produced a synergistic linkage between homophobia and antisemitism. By previously identifying himself as hysterical and as Fliess's eromenos (object of pederastic desire), Freud had been placing himself into the very categories that the antisemitic discourse of the nineteenth century would locate him: feminized, pathetic, queer—Jewish.<sup>230</sup> Knowingly internalizing this externally-imposed set of associations and essentially engaging in a process of assimilation, Freud sought to rework his theories in a direction that would cease to attract unwanted attention:

This ambivalent gendering was the reason that male Jews were particularly prone to hysteria in the medical imaginary of the nineteenth century: they were gendered as Victorian women. According to Thomas Sydenham, a mid seventeenth century

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<sup>228</sup> Boyarin, *Unheroic Conduct*, p. 215.

<sup>229</sup> For a comprehensive overview, see Nancy A. Harrowitz and Barbara Hyams, *Jews & Gender: Responses to Otto Weininger*, Temple University Press, 1995.

<sup>230</sup> Boyarin, *Unheroic Conduct*, pp. 208-9.

English medical writer, the prime candidates for (male) hysteria were "such male subjects as lead a sedentary or studious life, and grow pale over their books and papers." These men were enacting a male equivalent of the "female" pursuits of embroidery, tatting, and such, in short—although Sydenham surely did not realize it—almost a perfect portrait of the ideal Jewish male of eastern Europe, the pale, sedentary, studious Yeshiva -Bokhur, whose wife (and he did always end up with one) was ideally robust, energetic, and economically active.<sup>231</sup>

Freud's project, then, "was not even an alternative to assimilation with the culture of western Europe, but rather a fulfillment of the project of assimilation." "Assimilation... was a sexual and gendered enterprise, an overcoming of the political and cultural characteristics that marked Jewish men as a 'third sex,' as queer in their world. For Freud, Zionism was motivated as much by the Oscar Wilde trials as by the Dreyfus trial."<sup>232</sup>

It is no coincidence that Freud was profoundly influenced by viewing one of Herzl's plays, and was increasingly drawn toward Zionism.<sup>233</sup> For Herzl himself engaged in a parallel, gendered process of assimilation to gentile norms of masculinity. Herzl sought to renounce the rabbinic tradition, including its effeminate vision of the retiring male scholar, and instead to reclaim earlier models such as Samson and the Maccabees. Ideally he would have been happy if Jews were simply able to assimilate into the European majority, but the Dreyfus Trial proved for once and for all that this would never be possible. Instead, Herzl turned to the paradoxical Zionist ideal of a physically imposing Jew who, despite his fundamental assimilation to gentile conceptions of gender ideals, ironically was only able to assimilate by establishing his own state. If, for

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<sup>231</sup> Boyarin, *Unheroic Conduct*, p. 211.

<sup>232</sup> Boyarin, *Unheroic Conduct*, p. 222.

<sup>233</sup> Boyarin, *Unheroic Conduct*, p. 221.

Freud, it is the rejection of homosexuality and therefore femininity that restores one to normalcy, for Herzl it is “the duel that restores the Jew's honor and gets him out of the ghetto, not his willingness to take risks for the sake of downtrodden others.”<sup>234</sup> Similar to other colonialist Europeans, “Herzl has nothing but disdain for the two -thousand- year -old tradition of postbiblical Jewish literature and culture; the Bible and Goethe are more than worth the whole literature of the Jewish Diaspora.”<sup>235</sup>

Having exposed the assimilationist, regressive, anti-Talmudic masculinity of Freud, Herzl, and their devotees, Boyarin dedicates his final chapter to explicating the achievements of his “hero,” Bertha Papenheim, the mysterious patient “Anna O.,” who rose to become a radical Jewish feminist who bucked much of the rabbinic establishment while never abandoning, to Boyarin’s mind,<sup>236</sup> her full commitments as an Orthodox Jew.

In sum,<sup>237</sup> Boyarin’s sweeping argument runs as follows:

1. A close reading of key aggadic texts in the Bavli suggests that at least some Babylonian rabbis saw the ideal rabbinic male as one who acted in ways commonly associated with effeminacy in the Greco-Roman milieu.

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<sup>234</sup> Boyarin, *Unheroic Conduct*, p. 291.

<sup>235</sup> Boyarin, *Unheroic Conduct*, pp. 302-3.

<sup>236</sup> Boyarin, *Unheroic Conduct*, pp. 180-5, 326-351.

<sup>237</sup> For a useful chapter-by-chapter summary of the book, see Esther Fuchs’ review in the *Journal of the American Academy of Religion*, vol. 67, no. 4, Dec. 1999, pp. 870–3. For a fair summary combined with sharp criticism, see Judith Baskin’s review in *Criticism*, vol. 41, no. 1, 1999, pp. 124–8.



2. This remained the dominant (Ashkenazic<sup>238</sup>) view until the turn of the twentieth century, when a combination of factors led psychoanalysts and Zionists to repudiate the Talmudic ideal of masculinity.

3. The Talmudic conception of the ideal male was a repudiation of Greco-Roman manly ideals and, later, of the medieval courtly conception of knighthood.

4. The dedicated Talmudic Jew may legitimately embrace this view in crafting a vision for a softer, effeminate male in modern times.

Other scholars have echoed key elements of Boyarin's thesis. Jacob Neusner, for instance, without utilizing gendered language, roughly anticipated Boyarin's depiction of the ideal male in contending<sup>239</sup> that for the Rabbis of the Talmud,

a simple catalogue of permissible feelings comprises humility, generosity, self-abnegation, love, a spirit of conciliation to the other, and eagerness to please. A list of impermissible emotions is made up of envy, ambition, jealousy, arrogance, sticking to one's opinion, self-centeredness, a grudging spirit, vengefulness... [the tradition is] aiming at the cultivation of the humble and malleable person, one who accepts everything and resents nothing...<sup>240</sup>

Boyarin's thesis finds other parallels in the literature, particularly as underscored by historians of the modern period. To take just one particularly colorful example, ironically regarding a Zionist, we may point to the case of Siegmund Breitbart.<sup>241</sup>

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<sup>238</sup> Boyarin acknowledges that his reading represents only his perception of Ashkenazic Jewry, with which he has greater expertise. At the same time, he is quick to emphasize that he does not mean to thereby exclude legitimate retellings that convey the Sephardic Jewish experience. See *Unheroic Conduct*, p. 23, n. 71.

<sup>239</sup> Neusner, *Vanquished Nation, Broken Spirit: The Virtues of the Heart in Formative Judaism*, Cambridge University Press, 1987, p. 142. This section originally appeared as "Emotion in the Talmud," *Tikkun*, 1986, pp. 74–80.

<sup>240</sup> Cited and developed by Barbara Breitman, "Lifting up the Shadow of Anti-Semitism: Jewish Masculinity in a New Light," in *A Mensch among Men: Explorations in Jewish Masculinity*, Crossing Press, Freedom, CA, 1988, pp. 107–117.

<sup>241</sup> For secondary material on Breitbart, see Sharon Gillerman, "A Kinder Gentler Strongman? Siegmund Breitbart in Eastern Europe," in *Jewish Masculinities: German Jews, Gender, and History*, Indiana University

Breibart, known as the Iron Man, was a celebrated strongman on the vaudeville circus circuit who took large cities in Eastern Europe and the United States by storm with his stunning feats of strength in the first half of the 1920s.

Yet he was more than a proud, Zionist Jewish muscleman who, according to some reports, aspired to become General of a newly-formed Jewish army in Palestine. Intellectually curious, Breitbart amassed a substantial personal library which, according to one report, contained some 2,000 books on Roman history. He highly esteemed rabbis - hardly Herzlian on his part - and Jewish intellectuals. He performed for a group of Yiddish thinkers and wrote a personal letter of support on their behalf. He met and performed personally on behalf of the Radzhiner rebbe, donating thirty pounds of Passover flour to the rebbe's followers following the meeting.

Even more remarkable, despite his imposing stage persona, "Zishe" was eulogized by numerous individuals as exceptionally sweet and highly emotional. One reporter who met with Breitbart expected a tough guy. Instead, he subsequently characterized The Iron King as "the embodiment of *Edelkayt*." Similarly, the chief rabbi of the Orthodox Jewish Community (Adass Yisroel) in Berlin, Dr. Esra Monk, saw Breitbart as a "modern Samson the hero" who also possessed a tender demeanor. "It is greatly symbolic," Monk declared in his 1925 eulogy, "that for a man who broke chains, it was enough for one person's good word to render Zishe's heart soft as butter."

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Press, Bloomington, 2012, pp. 197–209; Gillerman, "Samson in Vienna: The Theatrics of Jewish Masculinity," *Jewish Social Studies*, vol. 9, no. 2, 2003, pp. 65–98; Gillerman, "Strongman Siegmund Breitbart and Interpretations of the Jewish Body," in *Emancipation through Muscles: Jews and Sports in Europe*, University of Nebraska Press, Lincoln, 2006, pp. 62–77; and Matthew Sherman, "Corporeality as a Weapon: Siegmund Breitbart's Embodiment of Muskeljudentum," *German Politics and Society*, vol. 30, no. 2, 2012, pp. 21–37. All details in our description of Breitbart appear in these sources.

Breitbart demonstrates that even the most powerful of males may simultaneously be soft and tender - Boyarin might say effeminate - on the inside.<sup>242</sup>

### III. 5. Scholarly Responses to *Unheroic Conduct*

While Boyarin's provocative reading of the rabbinic conception of effeminate masculinity received much fanfare, its assessment of rabbinic ideology received relatively little critical attention at first, with the overwhelming majority of early reviews focused on Boyarin's commentary on the second, modern part of the book.<sup>243</sup> At the same time, Boyarin's work has undeniably had a dramatic impact on the field as a whole. Rosen-Zvi makes the point well, calling *Unheroic Conduct* "a unique, indeed heroic, attempt to reconstruct a distinct Jewish discourse of masculinity, claiming for a unique type of manhood produced in the rabbinic academy."<sup>244</sup>

It is only recently that scholars have begun to challenge Boyarin's thesis, alternatingly obliquely and candidly, from a variety of vantage points, even as Boyarin had anticipated and addressed a number of these objections in his book.

Following the summary we provided for Boyarin's argument, we may divide these responses into four categories:<sup>245</sup>

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<sup>242</sup> Boyarin's reading of the Zionist-era shift is echoed by other thinkers. For instance, Danny Kaplan argues that the Israeli military can be seen as a sort of initiation rite ("The Military as a Second Bar Mitzvah: Combat Service as Initiation to Zionist Masculinity." *Imagined Masculinities: Male Identity and Culture in the Modern Middle East*, Saqi Essentials, London, 2006, pp. 127–144). According to Kosman, this perception of modern-day Israeli soldier masculinity is widely shared ("An Overview," pp. 169-170 with n. 76).

<sup>243</sup> Rosen-Zvi, "The Rise and Fall," p. 9.

<sup>244</sup> Rosen-Zvi, "The Rise and Fall," pp. 21-2.

<sup>245</sup> On a textual level, Admiel Kosman offers a contrasting reading of the story of Rabbi Yohanan and Resh Lakish, contending that "the intent of the narrative is to present these sages in a critical light, as being repositories of knowledge, while lacking the attribute of humility... the phallic model of the two males is surprisingly contrasted with the wife of Resh Lakish - despite her being a woman and apparently totally illiterate - as a spiritually mature model, who stands outside the exclusive club of Torah scholars." See Kosman, "R. Johanan and Reish Lakish—the Image of God in the Study Hall: 'Masculinity' versus 'Femininity'," *European Judaism*,

1. critiques of Boyarin's assertion of male effeminacy;
2. critiques of Boyarin's sweeping historical claims;
3. critiques of Boyarin's contrasting portrait of the Greco-Roman ideal male; and
4. critiques of Boyarin's assertion that we should adopt this rabbinic ethos, for the rabbis advocated effeminate masculinity for psychologically unhealthy reasons.

### 1. Challenges to Rabbinic Effeminacy

Reuven Kiperwasser, following his position as cited above, objects that the rabbinic characteristics that Boyarin sees as feminine should not be coded along gender lines at all. That the rabbis saw the ideal man as different from the culturally-dominant view of masculinity does not imply that men were coded as feminine:

... we can see how rabbinic masculinity aimed to construct itself as different from femininity, but no less different from the manliness of common men. Rabbinic manhood is far from the image of the typical Roman *vir*, but hardly as effeminized, as is claimed. It seems as if rabbinic masculinity was shaped by the advice of the heroine of the *תהיה גבר תשפיל את עצמך*—“be a man, humiliate yourself!”<sup>246</sup>

For Kiperwasser, while it is true that the Rabbis conceptualized the male differently than the Roman gladiator, the distinction should not be seen as running between masculinity

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vol. 43, no. 1, 2010, pp. 128–145. This is consistent with Kosman's larger interest in reading numerous aggadic passages as ironic and self-undermining. For other examples, see Kosman, “*Al ha-Shimush be-Shem Gibbor ke'Emtza'i Sifrutu be-Sippur ha-Talmudi be-Heksherim Migdari'im*,” in *Ve'Eleh Shemot*, vol. 4, Hebrew University, Jerusalem, 2004, pp. 61–73; and Kosman, “A Cup of Affront and Anger: Yaltha as an Early Feminist in the Talmud,” *Journal of Textual Reasoning*, <https://jtr.shanti.virginia.edu/volume-6-number-2/a-cup-of-affront-and-anger-yaltha-as-an-early-feminist-in-the-talmud/>.

<sup>246</sup> “Wives of Commoners,” pp. 444–5. The quote is a reference to a line in a sketch by the 1980s–1990s comedy group known as *הגשש החיוור*, in which one character shows another how to “be a man” by apologizing profusely to his wife and performing her bidding. The clip is available at <https://www.facebook.com/watch/?v=10151470947022211>.

and femininity, but between mastery and servility,<sup>247</sup> which need not be encoded as masculine and feminine.<sup>248</sup>

Ishay Rosen-Zvi also argues that Boyarin has not done enough to prove his argument that the rabbis coded males as effeminate. In a sense posing an even deeper critique than Kiperwasser, Rosen-Zvi contends that the very notion of the effeminate male is anachronistic. He draws on halakhic texts in arguing that the rabbis only considered purely biological considerations in their thinking about defining men and women:

... both the issue of eunuchs and of bodily defects suggest that categories of a “feminine man” and a “masculine woman” were foreign to the rabbis, and that sexual identity was for them not a hidden mystery to be disclosed by means of the science of physiognomy, but the product of a simple distinction between sexual organs.”<sup>249</sup>

To Rosen-Zvi’s examples we may add the biologically-driven rabbinic discussions of the androgynous.<sup>250</sup>

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<sup>247</sup> Ehrenkrook (“Effeminacy in the Shadow of Empire: The Politics of Transgressive Gender in Josephus's *Bellum Judaicum*,” *Jewish Quarterly Review*, vol. 101, no. 2, 2011, p. 155) stresses that “it is worth noting that although the literary antagonists in our passage clearly engage in what is presently categorized as homosexual behavior, that is, male-on-male sexual intercourse, a closer reading of this text indicates that the actual biological sex of the participants is really of no concern. Rather, by means of his invective, Josephus censures transgressive gender behavior, or what Michael Satlow calls ‘gender blurring,’ behavior that compromises masculinity. More specifically, in a world where gender was mapped not according to a taxonomy of fixed and clearly distinguishable “opposite” sexes but according to a hierarchy of phallic penetrators and their subordinate orifice receptors, the Gischalan cohort was guilty not of gay sex per se but of rendering themselves ‘not-men,’ of failing to maintain their proper place on a gendered ‘social pyramid.’” For more, see the sources cited in Ehrenkrook, n. 40.

<sup>248</sup> Boyarin might plausibly respond that he is operating in an intersectional framework in which there is a deep affinity between the axes of mastery-servility and masculinity-femininity.

<sup>249</sup> Rosen-Zvi, “The Rise and Fall,” p. 18.

<sup>250</sup> This follows the convincing arguments of Fonrobert in “Semiotics of the Sexed Body” and “Regulating the Human Body.” For Fonrobert’s position that the rabbis endeavored to maintain a simple, anatomically-based, dichotomous distinction between the male and female genders, see “Gender Duality.” For a recent alternative perspective that sees the androgynous as evidence for rabbinic gender dimorphism, albeit one that is not argued convincingly, see Gwynn Kessler, “Perspectives on Rabbinic Constructions”; Marianne Schleicher, “Constructions of Sex and Gender: Attending to Androgynes and Tumtumim through Jewish Scriptural Use,”

Rosen-Zvi's arguments notwithstanding, his claim of anachronism may be taking the case a bit too far. True, the assertion that women were viewed as stereotypically compassionate requires substantiation, but this does not mean that the rabbis had no associations whatsoever between being a male and manhood. Indeed, we will see that the very assertion that men wear armor and go out to war, two interrelated aspects of the prohibition against female cross-dressing, and the prohibition for a man to beautify himself like a woman, strongly suggest that the rabbis acknowledged - and even sought to form - associations between certain styles of dress with manhood and womanhood.

Admiel Kosman and Rosen-Zvi himself offer a variation on this critique, questioning Boyarin's reading of the rabbinic ethos as retiring and non-aggressive. Following Jeffrey Rubenstein,<sup>251</sup> they instead argue that the notion of rabbinic dialectics-as-warfare suggests that the rabbis redirected this violent masculine energy to the study of Torah. The Roman *vir* was not negated but sublimated, redirected from the battlefield to the study hall, where the Babylonian rabbis in particular regularly locked horns in ferocious debate.<sup>252</sup> And while Boyarin sees this as more of a counter-voice at the end of

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*Literature and Theology*, vol. 25, no. 4, 2011, pp. 422–435; and Joshua Levinson, “Cultural Androgyny in Rabbinic Literature,” in *From Athens to Jerusalem: Medicine in Hellenized Jewish Lore and in Early Christian Literature: Papers of the Symposium in Jerusalem, 9-11 September 1996*, Erasmus Publications, Rotterdam, 2000, pp. 119–140. Moshe Halbertal also agrees with Fonrobert's reading; see *The Birth of Doubt: Confronting Uncertainty in Early Rabbinic Literature*, Brown Judaic Studies, 2020, p. 185 with n. 16.

<sup>251</sup> Rubenstein, *The Culture*.

<sup>252</sup> See also Fonrobert, “The Semiotics of the Sexed Body”; and Robert Harris, “Sexual Orientation in the Presentation of Joseph's Character in Biblical and Rabbinic Literature,” *AJS Review*, vol. 43, no. 1, 2019, pp. 67–104.

the story of R. Yohanan and Resh Lakish, these scholars see it as the dominant Talmudic position.<sup>253</sup>

## 2. Challenges to the Distinction between the Rabbinic and Roman Ethos

As discussed, Michael Satlow contends that the rabbinic conception of masculinity is similar to that embraced by Greco-Romans, who also saw the pursuit of wisdom as essential to achieving self-mastery. This thesis, Satlow notes, cuts against the grain of Boyarin's claim that the rabbis intentionally eschewed contemporary conceptions of masculinity. This also leads him to a claim<sup>254</sup> reminiscent of Kiperwasser, namely that the portrayal of different genders is not truly associated with manhood and womanhood, but is in fact intended as a metaphor for hierarchical relationships in the Classical period:

Rabbinic masters might be feminized in the portrayal of their relationship with God, but their students are feminized in the portrayal of their relationship with their masters. In both cases, a relative social hierarchy is being worked out. This portrayal, however, in no way confuses what to the rabbis were very clear gender lines.<sup>255</sup>

## 3. The Historicity of Boyarin's Thesis

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<sup>253</sup> Boyarin acknowledged this notion of the rabbi-as-gliadiator and even noted its existence in Roman texts; see *Unheroic Conduct*, p. 135 with note 21. Unlike his critics, however, he sees this phenomenon as a rejection of Roman values rather than a redirection.

<sup>254</sup> "Try to Be," p. 38; see also *ibid.*, n. 86.

<sup>255</sup> Although Satlow's essay was published in 1996 and *Unheroic Conduct* in 1997, Satlow notes (n. 86) that Boyarin had already presented the crux of his thesis in a paper presented at the 1994 AAR/SBL Annual Meeting, entitled "Dis/Owning the Phallus: Male Sexuality and Power in Early Christianity and Judaism." Accordingly, Satlow states simply, "Boyarin's conclusions are different from the one presented here."

Others have rejected Boyarin's caricature of the ideal Jewish male as unhistorical.<sup>256</sup> Recent studies, particularly in the early modern and modern eras, shed new light on German Jewish masculinity. These studies explore how Jewish masculinity has been intimately bound together with anti-semitism and the "Jewish problem." Indeed, an important 2012 volume<sup>257</sup> can be read as a book-long argument that Boyarin's narrative is historically oversimplified and requires far more precision and nuance.

For instance, Andreas Gotman offers this methodological critique of the applicability of Boyarin's thesis to the early modern Jew:

No scholarly research has been conducted specifically on Jewish masculinity, male role models, or male sexuality in the early modern period, and studies on the so-called classical rabbinic period of late antiquity or on medieval Judaism are only of limited help for understanding early modern developments. In fact, early modern texts themselves need to be read very critically when it comes to representations of masculinity, and publications about early modern history have so far heavily relied on highly ideological sources. Often, scholars have not done much more than unsystematically cite from a variety of rabbinic responsa, or Mussar, literature. Yet as we have seen, norms and social practices typically stood in a rather precarious relationship to each other. Theological literature and legal prescriptions thus only provide us with a small part of the overall picture.<sup>258</sup>

Gotman also observes that the image of the effeminate Jewish male ironically draws on counterfactual anti-semitic tropes: "The idea that Jewish men differ from non-Jewish men by being delicate, meek, or effeminate in body and character runs deep in European history."<sup>259</sup> Gotman concludes<sup>260</sup> that "the current and often-discussed ideas of a Jewish

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<sup>256</sup> For a particularly sharp historical critique, illustrative of the larger differences in instincts between synchronic and diachronic scholars, see Judith Baskin's review, where she fumes that "in this stimulating but infuriating volume, ideology takes precedence over a convincing reading of the historical record" (p. 127).

<sup>257</sup> *Jewish Masculinities*.

<sup>258</sup> Gotman, "Respectability Tested," p. 33.

<sup>259</sup> Gotman, *Jewish Masculinities*, p. 1.

<sup>260</sup> Gotman, "Respectability Tested," p. 35.



soft masculinity... is rooted in the anti-Semitic stereotype of the Jewish man as not truly male and even effeminate.”<sup>261</sup> In fact, however, “the Jewish man of the pre-emancipatory period was far from passive or soft. Evidence from a variety of sources suggests that Jewish men acted ‘manly’ and vigorously and at times displayed openly aggressive conduct.”<sup>262</sup>

Boyarin, who is of course familiar with the anti-semitic trope, responds<sup>263</sup> that there are two elements to what it means to be a feminine male:

In the antisemitic imaginary of Christian Europe (and perhaps Muslim Africa and Asia as well), male Jews have been represented traditionally as female, but... this obtained only with respect to "the negative sense of the feminine." There is, however, a positive signification to "feminization" as well.

The vector of my theoretical- political work, accordingly, is not to deny as antisemitic fantasy but to reclaim the nineteenth -century notion of the feminized Jewish male, to argue for his reality as one Jewish ideal going back to the Babylonian Talmud.<sup>264</sup>

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<sup>261</sup> Among many other indications, the anti-semitic claim is perhaps best-captured by the recurring motif of Jewish male menstruation, which persisted for some 700 years. See Joshua Trachtenberg, *The Devil and the Jews: The Medieval Conception of the Jew and Its Relation to Modern Antisemitism*, The Jewish Publication Society, 2002, pp. 43-51; Irvn Resnick, “Medieval Roots of the Myth of Jewish Male Menses,” *Harvard Theological Review*, vol. 93, no. 3, 2000, pp. 241–263; Sander Gilman, *Jewish Self-Hatred: Anti-Semitism and the Hidden Language of the Jews*, Johns Hopkins University Press, 1992, pp. 74-5; John Beusterien, “Jewish Male Menstruation in Seventeenth-Century Spain,” *Bulletin of the History of Medicine*, vol. 73, no. 3, 1999, pp. 447–456; David Katz, “Shylock's Gender: Jewish Male Menstruation in Early Modern England,” *The Review of English Studies*, vol. 50, no. 200, 1999, pp. 440–462; and Henri Gregoire, *Essay on the Physical, Moral, and Political Reformation of the Jews*, Gale Ecco, 2018, cited by Resnick, *ibid.*, p. 253 n. 48. See also the Introduction to *German Jews, Gender, and History*, eds. Benjamin Maria Baader, et al., p. 1; and Gilman, *Freud, Race, and Gender*, p. 98.

<sup>262</sup> Based on our earlier description of his work, Elliott Horowitz’s *Reckless Rites*, which argues that Jewish post-second century C.E. violence is more prevalent in Jewish history than we are generally led to assume, similarly militates against the larger thrust of Boyarin’s thesis. At first glance, it therefore appears inconsistent that Boyarin contributed a glowing approbation for Horowitz’s book, which appears on the book jacket, in which he declares that “this is a book of tremendous importance that explores some of the most significant themes in Jewish history... This book represents a vitally significant reorientation of Jewish historiography. It will be controversial, no doubt, but it is certain to be a turning point in the field.” In fact, though, there is no contradiction. Boyarin, as he stresses time and again, is perfectly comfortable acknowledging the existence of opposing currents in Jewish thought and history; he merely wishes to amplify the one that he finds to be most compelling. Still, Boyarin’s endorsement is ironic, if not internally inconsistent.

<sup>263</sup> Boyarin, *Unheroic Conduct*, p. 11.

<sup>264</sup> Boyarin, *Unheroic Conduct*, p. xiv. See also pp. 3, 11.

For Boyarin, while some anti-Semitic tropes are entirely false, others contain a kernel of truth. The case of anti-Semitic caricatures of the effeminate male fall under the latter category.

To Boyarin's argument we may add another of our own: as Hume warned, we dare not conflate is with ought. The literature Boyarin draws from is qualitatively different from that of the early modern historians. The Talmud, in the end, is a prescriptive document. By contrast, the historians' primary sources simply describe how many Jewish males - typically highly secular and assimilated, in the case of modern Germany - in fact behaved.

Maria Benjamin Baader, who also objects to Boyarin on historical grounds, acknowledges that in at least one era, religious leaders did embrace the notion of the effeminate man. She notes that mid-nineteenth century German leaders such as Samson Raphael Hirsch and Adolf Jellinek praised femininity and idealized men's sensitive and tender sides.<sup>265</sup> However, Baader critiques Boyarin for supposing that this limited phenomenon is a natural outgrowth of rabbinic culture for well over a thousand years. Instead, for Baader,<sup>266</sup> the fact that nineteenth-century German Jewish religious leaders praised femininity and feminine virtues, and valorized men's sensitive, tender, and feminine character is an extension of contemporary ideas that were widely circulating

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<sup>265</sup> We will later complicate this argument, however, noting that Hirsch sees the prohibition against cross-dressing as intended to sharply delineate male and female roles.

<sup>266</sup> Baader, *Jewish Masculinities*, pp. 60-1.

among Christian religious preachers at the same time, not an outgrowth of longstanding rabbinic models.<sup>267</sup>

Boyarin would presumably respond that just because these were typical of mid-nineteenth century Jewish and general culture does not preclude the possibility that they were also countercultural in previous centuries. Further, Boyarin is quick to argue that his evidence was not intended to be purely historical in the first place:

I am decidedly not arguing for some essential, continuous Jewish countergendering, a working out of some national spirit or even cultural continuity that persists down through the ages through all the vicissitudes of Jewish history. Such romantic historiography runs contrary to my cardinal ideas and commitments. Rather than seeing the culture of the Babylonian Rabbis as an antecedent of Ashkenazi culture, implying a continuous essential Jewishness, I proffer the Talmud text as the most relevant intertextual matrix in the production of traditional Jewish cultures. Judith Perkins has recently described well the "Foucauldian" perspective that informs my work as well as hers: "My focus is writing itself as a historical agent as it enabled the institutional formation... and not on historical events or figures as such."<sup>268</sup>

#### 4. The Rabbinic View as Counterproductive

A final position acknowledges Boyarin's reading of rabbinic culture, but sees it as something to be eschewed, not embraced. Barbara Breitman, casting a psychoanalytic lens on the rabbinic turn away from military aggression, claims that the rabbis

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<sup>267</sup> Rosen-Zvi makes a parallel point, arguing that the trans-historical nature of Boyarin's project has obscured in-depth analyses of the rabbinic period: "The extraordinarily large scale of this project, along with its trans-historical objectives, however, obscures the distinctive character of the Talmudic gender economy, with its specific similarities to and differences from the contemporaneous surrounding cultures as well as later Jewish discourses." Rosen-Zvi therefore concludes:

"In the years that have passed since *Unheroic Conduct* no new synthesis has been offered, but several detailed studies have been conducted with regard to different sites, real as well as conceptual, in which masculine identities were studied, expressed, negotiated and contested: the house of study, laws of purity, bodily defects, evil inclination. Many other textual studies are needed, not very different from those undertaken in the context of women and femininity, before we can offer another generalization. Rabbinic masculinity remains, by and large, a field waiting to be ploughed" ("The Rise and Fall," pp. 21-2).

<sup>268</sup> Boyarin, *Unheroic Conduct*, p. 24. See also pp. 81-2.

compensated for generations-long anti-Semitic oppression by raising their own knowledge to the status of near-divinity, and by projecting their internalized rage onto Jewish women. Ultimately, for Breitman, this rage is counterproductive, because it turns Jewish men and women against one another, thereby disempowering Jewish men and women relative to the very hostile majority culture that led the rabbis to pit themselves against women in the first place.<sup>269</sup> On this view, the rabbis' effeminacy was an *unhealthy* response to anti-semitism, and worked against their own interests.

Boyarin<sup>270</sup> - correctly, in my view - is quick to reject Breitman simply because there is little proof "in traditional Jewish culture for 'the healthy aggression of growth' being 'fused with rage' or of 'vital life energy [being] lost.'"

Kosman<sup>271</sup> adopts something of a middle position, acknowledging that the rabbis felt an acute psychological need to respond to the toll of anti-semitism had inflicted. However, Kosman rejects Breitman, contending that the rabbis need not "direct any repressed aggression against the wife at home, because there was no repression, only redirection. The aggressive energy of the Jewish sage is guided into the stormy disagreements and struggles within the study hall, and the phallic striving is converted from the aspiration for physical victory to that of achievements in the realm of Torah study and character improvement."

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<sup>269</sup> Breitman is also cited and discussed by Brod, "Some Thoughts," pp. 90-2.

<sup>270</sup> Boyarin, *Unheroic Conduct*, pp. 148-9.

<sup>271</sup> Rosen-Zvi, "An Overview," p. 168, n. 68.

### III. 6. Law, Gender, and Masculinity

Whichever position we adopt in the debate between Boyarin and his interlocutors, the discourse surrounding *Unheroic Conduct* is undoubtedly the most wide-ranging, pivotal scholarly discussion regarding rabbinics and masculinity. Yet while aggadic, historical, and psychoanalytic texts and concepts figure prominently in the discussion, with the exception of Rosen-Zvi's response, *halakhah* is all but absent.

This limited role of *halakhah* in Jewish masculinity discourse is particularly striking when compared with the far more substantial place occupied by *halakhah* in feminist studies. Irshai's critique of Plaskow notwithstanding, the question of women's status in the halakhic system, as well as foundational questions regarding change and the halakhic process, have been a significant component of Jewish feminist discourse for nearly half a century. Given the practical import of questions regarding *halakhah* and egalitarianism, as well as larger controversies regarding women's place in the halakhic system and control of their bodies, this is not unexpected. Still, no matter the reason, there remains a gaping chasm between the sheer quantity of scholarly treatments of feminism and *halakhah* on the one hand, and masculinity and Jewish law on the other.

This trend holds not just for *halakhah*, but also for Israeli legal studies and masculinity.<sup>272</sup> Karin Carmit Yefet observes that

to this day, the legal conceptualization of masculinity is still under-explored. A tapestry of legal doctrines renders inconsistent ideological messages about what it means to be a "man." While a growing number of legal scholars have embarked on the deconstruction of various concepts of masculinity in Anglo-American law, Israel's jurisprudential inquiry into male gender identity remains at best embryonic. In particular, Israeli legal scholarship has done little to explore how

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<sup>272</sup> Not surprisingly, the intersection between masculinity and the law is a relatively new area as well. For a collection of essays on this theme, see Ann McGinley, et al., *Masculinities and the Law: A Multidimensional Approach*, NYU Press, 2012.

extensively stereotypes of masculinity permeate existing law and undermine the role of men as parents.”<sup>273</sup>

Similarly, in an important essay,<sup>274</sup> Eti Libman Offaim reports the "surprising" finding that "there is no legal writing employing masculinity theories" in regard to Israeli law.<sup>275</sup>

Even these limited discussions focus only on contemporary Israeli law, such as distribution of assets after divorce and army drafting. For instance, in the aforementioned study, Offaim uses David Gilmore’s concept of the struggle to become a “real man” as an analytical framework for assessing Israeli Supreme Court rulings concerning religious soldiers’ conscription. In regard to *halakhah*, the research is even more thin. But, as Irshai reminds us, halakhic materials are an essential data point in the attempt to sketch any comprehensive rabbinic portrait.<sup>276</sup> The paucity of research on *halakhah* and masculinity leaves a major lacunae in the field.

Any attempt to explore the intersection between masculinity and *halakhah* must also consider the larger scholarly feminist literature concerning the philosophy of law generally and *halakhah* in particular. Feminist scholars note that this literature, which presents differing views on fundamental questions such as what grants law its legitimacy, the social or political function of law, and the best hermeneutical theory with which to describe the process of legal interpretation, serves as a crucial backdrop against which to consider the extent to which legal systems can readily integrate feminist concerns and

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<sup>273</sup> Karin Carmit Yefet, “Feminism and Hyper-Masculinity in Israel: A Case Study in Deconstructing Legal Fatherhood,” *Yale Journal of Law and Feminism*, vol. 27, no. 1, 2015, pp. 49-50.

<sup>274</sup> Etti Libman Offaim, “Feminism, Men, and Masculinity: Reading Judgments Concerning Yeshivah Students’ Army Recruitment With Feminist Theory,” *HaMishpat*, vol. 16, 2011, pp. 343–374.

<sup>275</sup> Libman Offaim, “Feminism, Men, and Masculinity,” pp. 343, 347.

<sup>276</sup> Irshai, “Between Feminist and Gender Analysis.”

critiques.<sup>277</sup> We will therefore briefly review a number of major schools of thought in contemporary Western jurisprudence, and then consider their implications for feminist jurisprudence generally and *halakhah* in particular.

While the literature on jurisprudence is sprawling, for our purposes we may summarize by noting that legal scholars in the West have engaged in two central disputes over approximately the last two centuries. The first concerns what grants a rule the status of law, and the second centers on how judges make legal interpretations.

In the first vein, scholars consider what distinguishes law from morality, and why one is obligated to follow the rule of law. This dispute pits what are generally known as the natural law theorists and legal positivists against one another. Each school encompasses a wide range of variations, and the overarching dispute between the two schools is itself subject to widespread confusion.<sup>278</sup> Speaking generally, though, natural law theorists maintain that rational moral judgments serve as the conceptual foundation for law, or, at minimum, as is commonly referred to as “procedural” natural law, that moral judgments are necessary for the adjudication of law. The natural law tradition has precedent in antiquity, most notably in the thought of Aristotle<sup>279</sup> and the Stoics<sup>280</sup>; was

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<sup>277</sup> For an overview of the diversity of feminist views on jurisprudence, see Patricia Smith, “Feminist Jurisprudence,” in *A Companion to Philosophy of Law and Legal Theory*, Wiley-Blackwell, 2010, pp. 289–298.

<sup>278</sup> For natural law, see Philip Soper, “Some Natural Confusions about Natural Law,” *Michigan Law Review*, vol. 90, no. 8, 1992, pp. 2393–2423. For positivism, see W.J. Waluchow, “The Many Faces of Legal Positivism,” *The University of Toronto Law Journal*, vol. 48, no. 3, 1998, pp. 387–449.

<sup>279</sup> For a helpful summary, see George Duke, “Aristotle and Natural Law,” *The Review of Politics*, vol. 82, no. 1, 2020, pp. 1–23.

<sup>280</sup> Maryanne Cline Horowitz, “The Stoic Synthesis of the Idea of Natural Law in Man: Four Themes,” *Journal of the History of Ideas*, vol. 35, no. 1, 1974, pp. 3–16.

promulgated by Thomas Aquinas in the Middle Ages<sup>281</sup>; and was popularized by influential early modern thinkers such as Hugo Grotius<sup>282</sup> and John Selden, the latter of whom identified Noahide Law with natural law (i.e., law that can be derived from reason).<sup>283</sup> In the contemporary period, major figures associated with a more secular version of natural law theory include John Finnis,<sup>284</sup> who maintains that law upholds what he sees as the seven basic goods that comprise human fulfillment, and Lon Fuller, most closely identified with procedural natural law, who proposes eight “principles of legality” without which pronouncements by authority figures simply cannot be considered law.<sup>285</sup> Ronald Dworkin, Hart’s decades-long disputant, develops what may be thought of as a modified natural law theory. (We will return to Dworkin after discussing Hart and legal positivism.)

Legal positivism simply denies natural law theory’s claims that the foundations of law, or its procedures, require moral judgments. Positivists instead claim that the legitimacy of law derives from social facts alone.<sup>286</sup>

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<sup>281</sup> For an excellent review and discussion, see *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, ed. John Goyette, et al., Catholic University of America Press, 2004.

<sup>282</sup> Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*, Prolegomenon, Clarendon Press, Oxford, 1925.

<sup>283</sup> For a review, see Michael Bertram Crowe, "Eccentric Seventeenth-Century Witness to the Natural Law: John Selden (1584-1654)," *Natural Law Forum*, 1967, Paper 129, [http://scholarship.law.nd.edu/nd\\_naturallaw\\_forum/129](http://scholarship.law.nd.edu/nd_naturallaw_forum/129).

<sup>284</sup> John Finnis, *Natural Law and Natural Rights*, 2nd ed., Oxford University Press, Oxford, 2011.

<sup>285</sup> Lon L. Fuller, "Positivism and Fidelity to Law—A Reply to Professor Hart," *Harvard Law Review* 71, 1958, pp. 630-672. Fuller further developed his ideas in his 1964 classic *The Morality of Law*. See Fuller, *The Morality of Law: Revised Edition*, Yale University Press, 1969.

<sup>286</sup> For a thorough overview of legal positivism, see Jules L. Coleman and Brian Leiter, "Legal Positivism," in *A Companion to Philosophy of Law and Legal Theory*, Wiley-Blackwell, West Sussex, 2010, pp. 228–248.



The most famous early champion of legal positivism, the utilitarian John Austin, contends in his 1832 work *The Province of Jurisprudence Determined*<sup>287</sup> that law consists of the rules of a sole sovereign directed at a distinct political community, where the sovereign can enforce those rules by meeting non-compliance with punishment or other adverse consequences. While Austin's position is widely rejected by twentieth-century scholars, including positivists, it nonetheless serves to frame subsequent discussions, especially the positivism of H.L.A. Hart.

Hart<sup>288</sup> critiques Austin from numerous vantage points, rejecting the notion that law is only valid if issued by a single sovereign who possesses coercive powers. Hart also considers the ideas of Hans Kelsen, who claims that law is first and foremost aimed not at citizens, but at legal authorities, who are required to censure citizens in response to particular actions.<sup>289</sup> Hart rejects Kelsen's assertion that the law is aimed at authorities, but he does accept both Austin and Kelsen's fundamental proposition that law is binding because of an external force. For Hart, that force is a set of social customs that provide a foundation not only for the legitimate ways in which law is legislated, but also the ways in which legislators acquire that right in the first place. The most important of these rules is what Hart calls the "rule of recognition," which provides the framework of rules by

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<sup>287</sup> John Austin, *The Province of Jurisprudence Determined; and the Uses of the Study of Jurisprudence*, Hackett, 1998.

<sup>288</sup> H.L.A. Hart, "Positivism and the Separation of Law and Morals," *Harvard Law Review*, vol. 71, no. 4, 1958, pp. 593–629, republished in *Essays in Jurisprudence and Philosophy*, 1983, pp. 49–87; and Hart, *The Concept of Law*, 3rd edition, Oxford University Press, 2012.

<sup>289</sup> Hans Kelsen, "The Pure Theory of Law and Analytical Jurisprudence," *Harvard Law Review* 55, 1941, pp. 44–70. Kelsen maintains that law is characterized by a singular form and basic norm. The form of every law is that it is directed at the courts; the norm is that they are required to implement sanctions if certain behaviors occur. For Kelsen, then, law provides only *indirect* guidance to its subjects: it does not tell them what to do or what not to do; it merely tells officials what to do when subjects violate the law.

which a legislature is empowered to pass laws.<sup>290</sup> Hart's most prominent student, Joseph Raz, published a series of essays on legal positivism, which were collected in his 1979 book *The Authority of Law: Essays on Law and Morality*.<sup>291</sup> Raz differs with his teacher in the former's adoption of so-called "hard positivism," which posits that there is no overlap whatsoever between law and morality. Hart, by contrast, holds the position of "soft positivism," also known as "inclusive positivism," the view that law and morality can coincide such that moral reasoning is sometimes necessary for proper adjudication.<sup>292</sup>

We may think of the inestimably influential French historian and social critic Michel Foucault's ideas on law, as a radical critique of the legal positivist tradition.<sup>293</sup> Foucault begins with the positivist's initial assumption that law owes its legitimacy to social facts, yet he goes on to criticize many of the underlying assumptions long considered mainstream in Western legal circles. Legal positivism, following the social contract tradition, assumes that humans are generally free individuals who opt to forfeit specific freedoms by empowering legal bodies to legislate for the greater good of society. Foucault, however, insists that in modernity, law no longer emanates from a single source as it did in the pre-modern era, but from a range of sources in society, including schools, hospitals, the military, and

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<sup>290</sup> Hart, *The Concept of Law*, 1st ed., pp. 97-120.

<sup>291</sup> Joseph Raz, *The Authority of Law: Essays on Law and Morality*, Oxford University Press, 2009. See too Raz, "Authority, Law and Morality," reprinted in Raz, *Ethics in the Public Domain*, Clarendon Press, Oxford, 1994. Among other places, Raz further develops his position in Joseph Raz, *The Concept of a Legal System*, 2nd ed., Clarendon Press, Oxford, 1980, pp. 211–212.

<sup>292</sup> For a review of the so-called Hart-Raz debate, see Brian Leiter, "Beyond the Hart/Dworkin Debate: The Methodology Problem in Jurisprudence," *Naturalizing Jurisprudence*, 2007, pp. 153–182.

<sup>293</sup> See, for example, Ben Golder, "Rethinking the Subject of Postmodern Feminist Legal Theory: Towards a Feminist Foucaultian Jurisprudence," 28 Feb. 2009, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1350607](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1350607); Vanessa E. Munro, "Legal Feminism and Foucault - a Critique of the Expulsion of Law," *Journal of Law and Society*, vol. 28, no. 4, 2001, pp. 546–567; and Peter Fitzpatrick, *Foucault and Law Part III*, Routledge, 2017.

psychiatry.<sup>294</sup> As a result, we must no longer think of law as repressive (focused on restricting behaviors) but as productive (a creative element in the formation of self-identity).<sup>295</sup> This characterization is particularly applicable to Foucault's insistence that knowledge is contingent, meaning "that certain irreducibly central features of our present which we take to be necessary have in fact been... constructed,"<sup>296</sup> and his notion that law is a tool for the expansion and maintenance of power.<sup>297</sup>

Even as legal positivism remained the dominant view among Western jurists, in the mid-twentieth century Ronald Dworkin emerged as the leading critic of positivism generally and Hart in particular. Dworkin's critique of Hart<sup>298</sup> centers around Dworkin's argument that legal positivism leaves us with too many cases lacking a legal methodology for resolution.<sup>299</sup> Dworkin thinks this is rooted in the mistaken notion that law is determined only by rules, whereas in fact it is governed by both rules and principles. Whereas rules refer to direct instructions, principles are overarching legal values that are explicit or implicit in prior legal decisions. While not dispositive in the same way as rules, principles provide judges with a framework that enables them to arrive at an accurate ruling in each case.<sup>300</sup>

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<sup>294</sup> Douglas Litowitz, *Postmodern Philosophy and Law*, University Press of Kansas, 1997, chap. 4, pp. 56-78.

<sup>295</sup> Litowitz, *ibid.*, p. 70.

<sup>296</sup> Colin Koopman, "Foucault across the Disciplines: Introductory Notes on Contingency in Critical Inquiry," *History of the Human Sciences*, vol. 24, no. 4, 2011, p. 4.

<sup>297</sup> See Gerald Turkel, "Michel Foucault: Law, Power, and Knowledge," *Journal of Law and Society*, vol. 17, no. 2, 1990, pp. 170-193.

<sup>298</sup> For Dworkin, see Ronald Dworkin, *Taking Rights Seriously*, Harvard University Press, 1977; Dworkin, *A Matter of Principle*, Clarendon, 2001; and Dworkin, *Law's Empire*, Hart, 1998. For H.L.A. Hart's response, see "The New Challenge to Legal Positivism," *Oxford Journal of Legal Studies*, vol. 36, no. 3, 1979, pp. 459-475.

<sup>299</sup> Dworkin, "The Model of Rules," pp. 14-7.

<sup>300</sup> Dworkin, "The Model of Rules," *University of Chicago Law Review*, vol. 35, no. 1, 1967, pp. 14-46; reprinted in *Taking Rights Seriously*.

In Dworkin's later writings, which he does not explicitly connect to his earlier writings but may be thought of as providing a conceptual framework in which he situates his earlier ideas, Dworkin contends that to judge is to engage in an act of constructive interpretation.<sup>301</sup> This is not to say that legal rulings in what Dworkin terms "hard cases"<sup>302</sup> are arbitrary. Quite the opposite: by drawing on precedent, judges use "integrity" to make the larger legal system as coherent as possible. In this sense, a judge is akin to Hercules in the judge's attempt to heroically reconstruct the most "charitable" possible interpretation of the law.<sup>303</sup>

What precisely is the nub of the decades-long debate between Hart and Dworkin? While scholars have long grappled with this question, Scott Shapiro<sup>304</sup> has provided arguably the most lucid exposition of the Hart-Dworkin debate. He explains as follows:

Dworkin's basic strategy throughout the course of the debate has been to argue that, in one form or another, legality is ultimately determined not by social facts alone, but by moral facts as well. In other words, the existence and content of positive law is, in the final analysis, governed by the existence and content of the moral law. This contention, therefore, directly challenges and threatens to undermine the positivist picture about the nature of law, in which legality is never determined by morality but rather by social practice. For if judges must consider what morality requires in order to decide what the law requires, social facts alone cannot determine the content of the law. As one might expect, the response by Hart and his followers has been to argue that this dependence of legality on morality is either merely apparent or does not, in fact, undermine the social foundations of law and legal systems.

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<sup>301</sup> Dworkin, *Law's Empire*, p. 52.

<sup>302</sup> See Dworkin's "Is There Really No Right Answer in Hard Cases?" reprinted in *A Matter of Principle*, Harvard University Press, 1985; and Dworkin, "On Gaps in the Law," in *Controversies about the Law's Ontology*, eds. Neil MacCormick and Paul Amselek, Edinburgh University Press, 1991.

<sup>303</sup> Dworkin, "Hard Cases," *Harvard Law Review*, vol. 88, no. 6, 1975, pp. 1057–1109.

<sup>304</sup> Shapiro, "The Hart-Dworkin Debate: A Short Guide for the Perplexed," *SSRN*, 7 Mar. 2007, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=968657](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=968657).

We may now return to the question as to where Dworkin fits in the natural law camp. While Dworkin is not focused on the question of the conceptual foundation of law, he is setting forth a variation on procedural natural law: judges must use their moral judgment to weave the evidence into the most coherent possible narrative interpretation.

Broadly speaking, does *halakhah* lend itself to natural law, or does its commitment to revelation suggest that it must adopt a variation on legal positivism in which positive law is binding because of the divine command? Marvin Fox<sup>305</sup> has advanced the thesis that Judaism emphatically denies natural morality. J. David Bleich<sup>306</sup> similarly goes to great lengths to downplay the place of natural law in Judaism. Christine Hayes<sup>307</sup> presses the case for a minimalist reading of natural law, at least in rabbinic thought.

Others have been more receptive the role of natural law in the halakhic system, including R. Aharon Lichtenstein,<sup>308</sup> R. Yehuda Amital,<sup>309</sup> and David Novak.<sup>310</sup> Some, prominent among them R. Lichtenstein, have distinguished between pre-Sinai and post-Sinai, considering the relevance of *lex naturalis* before the Sinaitic revelation to be self-evident, but after revelation to be an open question.<sup>311</sup> It is further possible to claim that Judaism endorses

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<sup>305</sup> Fox, "Maimonides and Aquinas on Natural Law," *Dine Israel*, vol. 3, 1972, pp. 5-36.

<sup>306</sup> Bleich, "Judaism and Natural Law," *Jewish Law Annual* 7, 1988, pp. 5-42.

<sup>307</sup> Hayes, *What's Divine about Divine Law?* Princeton University Press, Princeton, 2015.

<sup>308</sup> Lichtenstein, "Does Judaism Recognize an Ethic Independent of *Halakha*?" in *Modern Jewish Ethics*, Ohio State University Press, 1975, pp. 62-88.

<sup>309</sup> Amital, *Jewish Values in a Changing World*, Yeshivat Har Etzion, Alon Shevut, 2005, chap. 2, pp. 19-43.

<sup>310</sup> Novak, *Natural Law in Judaism*, Cambridge University Press, 1988.

<sup>311</sup> Lichtenstein, "Does Judaism Recognize," pp. 65-8.

natural morality but not natural law (i.e., an ethical preference without a strict legal mandate).<sup>312</sup>

What are the implications of the natural law and legal positivist schools, as well as Foucault's criticism, for feminist jurisprudence? While many thinkers do not discuss feminist jurisprudence in relation to natural law and legal positivism, some feminist scholars have seized on the legal positivist movement, which contends that law's validity derives from social facts rather than the law's intrinsic merit, as an opening to introduce increased flexibility into the legal system.<sup>313</sup> After all, if the legitimate basis for law rests not on the inherent morality of law but on mere social convention, shifting cultural norms can lead to the legislation of new laws that are more closely aligned with feminist commitments such as equality. Yet others are skeptical that positivism can offer a sufficient basis for a feminist jurisprudence. As Margot Stubbs puts it sharply,

The key reason why it has been so observably difficult to develop a feminist critique of law relates directly to the conceptual limitations of the definition of law provided in the legal-positivist tradition. A feminist critique of law cannot be expressed within a framework that is predicated on the autonomy of the law - that is, one based on an understanding of law as a neutral and independent structure that is supposedly uninvolved as an institution in the repression of women.<sup>314</sup>

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<sup>312</sup> Lichtenstein, *ibid.*, p. 64.

<sup>313</sup> See, for example, Leslie P. Francis, "Feminist Philosophy of Law, Legal Positivism, and Non-Ideal Theory," in *The Routledge Companion to Feminist Philosophy*, Routledge, New York, 2017, pp. 701-712.

<sup>314</sup> Margot Stubbs, "Feminism and Legal Positivism," *Journal of Australian Law and Society*, vol. 63, 1986, pp. 63-91.

For Stubbs, positivism fails to consider the deeper structural problems that feminist critics seek to expose. Margaret Davies similarly offers that feminist skepticism toward legal positivism is due to the perception that positivism is overly hierarchical in nature.<sup>315</sup>

Yet others note that Dworkin's distinction between rules and principles can also be useful for feminist jurists, who might look to identify wider legal principles that can bring the law more in line with feminist sympathies.<sup>316</sup>

It is not surprising that Foucault's skepticism regarding the motivation and legitimacy of law-making bodies has been embraced by many third-wave feminist legal theorists.<sup>317</sup> Many feminists have also been attracted to Foucault's claims that attitudes toward sexual activity shifted dramatically in the 19th century in a conservative direction,<sup>318</sup> which suggests that conservative views are not nearly as traditional as we might otherwise be led to believe, and his emphasis on the ways in which the ruling class uses law to control the body.<sup>319</sup> Still others remain unconvinced that Foucault can serve as a paradigm for a feminist jurisprudence.<sup>320</sup>

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<sup>315</sup> Margaret Davies, "Feminism and the Flat Law Theory," *Feminist Legal Studies*, vol. 16, no. 3, 2008, pp. 281–304.

<sup>316</sup> The natural law movement, most closely associated with scholars such as John Finnis and Robbie George, is commonly understood to be inconsistent with feminist aims. See, for example, John Finnis, *Natural Law and Natural Rights*, Oxford University Press, 2011; Finnis, "Natural Law Theory: Its Past and its Present," *The American Journal of Jurisprudence*, vol. 57, no. 1, 2012, pp. 81–101; and Robert George, "Natural Law," *The American Journal of Jurisprudence*, vol. 52, no. 1, 2007, pp. 55–75.

<sup>317</sup> See Lois McNay, *Foucault and Feminism: Power, Gender and the Self*, Polity Press, Germany, 2013.

<sup>318</sup> Michel Foucault, *The History of Sexuality*, Penguin Books, 2020.

<sup>319</sup> Foucault, *Discipline and Punishment: The Birth of the Prison*, Vintage Books, 1977, esp. pp. 3–32. For the connection to feminism, see, for example, Shane Phelan, "Foucault and Feminism," *American Journal of Political Science*, vol. 34, no. 2, 1990, pp. 421–40.

<sup>320</sup> Nancy Hartsock, "Foucault on Power," in *Feminism and Postmodernism*, Routledge, New York, 1990, pp. 157–172; Jana Sawicki, "Foucault and Feminism: A Critical Reappraisal," in *Disciplining Foucault*, 2020, pp. 95–109; and Lois McNay, *Foucault and Feminism*.

Turning to positivism and halakhically-committed feminists, Tamar Ross considers the possibility that legal positivism might be helpful for the Orthodox feminist, but argues that it is ultimately insufficient as a tool for effecting halakhic change.<sup>321</sup> Elsewhere, Ross notes that feminism's critique of Jewish law as patriarchal raises questions about the very legitimacy of the halakhic system.<sup>322</sup> Another author similarly maintains that the moral problems posed by feminism are so severe that they raise questions about traditional views concerning divine biblical authorship.<sup>323</sup> Ronit Irshai adds that a strong commitment to legal positivism runs the risk of actually discouraging the jurist from introducing changes.<sup>324</sup>

Irshai draws on Foucault in advocating for halakhic change.<sup>325</sup> In one context, she echoes the more common point of emphasis among feminist scholars in underscoring Foucault's teaching that law is a political tool wielded by those in power.<sup>326</sup> Elsewhere, however, she emphasizes the inverse point, namely that precisely because Foucault argues that there is no single source of power in modern society, Foucault actually empowers all

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<sup>321</sup> Ross, *Expanding the Palace*, pp. 71-99, esp. 98-9.

<sup>322</sup> Tamar Ross, "Modern Orthodoxy and the Challenge of Feminism," in *Constructing Faith*, 2016, pp. 185–231.

<sup>323</sup> Norman Solomon, *Torah from Heaven: The Reconstruction of Faith*, Littman, London, 2012, pp. 248-258.

<sup>324</sup> Ronit Irshai, *Fertility and Jewish Law: Feminist Perspectives on Orthodox Responsa Literature*, Brandeis University Press, 2012, p. 5 and p. 284 note 4.

<sup>325</sup> "Gender Critical Approach," pp. 63-4. See also her comments in response to a proposed halakhic innovation by R. Yoel bin-Nun in *Nekuda* 268, *Shevat* 2004, pp. 34–5.

For further discussion of Foucault and Jewish feminism, see the important remarks of Tamar Ross in "The Contribution of Feminism to Halakhic Discussion: *Kol be-Isha Erva* as a Test Case," *Emor*, no. 1, January 2010 on pp. 14-7; and Ross, *Expanding the Palace*, pp. 95-6. See also Shira Wolosky, "Foucault and Jewish Feminism: The *Mehitza* as Dividing Practice," *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, no. 17, 2009, pp. 9–32.

<sup>326</sup> Irshai, *Fertility and Jewish Law*, Afterword, pp. 269-275.



those who are committed to the law to effect change.<sup>327</sup> In this sense, while Irshai differs from Adler, who does not draw on Foucaultian themes in *Engendering Judaism*, and from Ross, who cites Foucault only for his view of law as preserving power structures, Irshai nonetheless resembles Adler and Ross in her emphasis on the role of the halakhically-committed community in effecting change.

The second major subject debated by legal scholars concerns the question of how judges actually go about making their decisions.<sup>328</sup> The second half of the 19th-century has been widely noted for the rise of legal formalism.<sup>329</sup> This school of thought perceives law as a sort of science or closed system of rational rules, whose characteristics can be defined with

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<sup>327</sup> See Michel Foucault, *The History of Sexuality: An Introduction*, Knopf Doubleday Publishing Group, United Kingdom, 2012, p. 94; and Foucault, *Power/knowledge: Selected Interviews and Other Writings, 1972-1977*, New York, Pantheon Books, 1980, pp. 88-91.

For elaborations on this more inclusive theme in Foucault, see Michael Gallagher, “Foucault, Power and Participation,” *The International Journal of Children's Rights*, vol. 16, no. 3, 2008, pp. 395–406; and Hubert L. Dreyfus, “Being and Power: Heidegger and Foucault,” *International Journal of Philosophical Studies*, vol. 4, no. 1, 1996, pp. 1–16.

<sup>328</sup> The relationship between these two major debates in legal theory, natural law versus positivism and formalism versus realism, is subject to countless disputes and further widespread confusion. Brian Leiter has been particularly influential in arguing for a strong relationship between positivism and realism; see his “Legal Realism and Legal Positivism Reconsidered,” *Ethics*, vol. 111, no. 2, 2001, pp. 278–301. For our purposes, it is most straightforward to treat the two debates as distinct from one another.

<sup>329</sup> See, for instance, Morton J. Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy*, Oxford University Press, 1994; and Horwitz, “The Rise of Legal Formalism,” *The American Journal of Legal History*, vol. 19, no. 4, 1975, pp. 251–264. For classic treatments and critiques of legal formalism, see Duncan Kennedy, *The Rise & Fall of Classical Legal Thought*, BeardBooks, 2006; William M. Wiecek, *The Lost World of Classical Legal Thought: Law and Ideology in America, 1886-1937*, Oxford University Press, 1998; and Grant Gilmore and Philip Bobbitt, *The Ages of American Law*, Yale University Press, 2014. See also Duncan Kennedy’s description of formalism in “Three Globalizations of Law and Legal Thought: 1850–2000,” *The New Law and Economic Development*, pp. 19–73.

For a defense of legal formalism, see Ernest J. Weinrib, “Legal Formalism: On the Immanent Rationality of Law,” *Yale Law Journal*, vol. 97, no. 6, 1988, pp. 949–1016.

precision and whose correct application is dependent upon an objectively accurate understanding of antecedent legal principles.<sup>330</sup>

By contrast, the 1920s and 1930s see the rise of a school of thought known as legal realism, which acknowledges the lack of scientific certainty associated with legal decision-making, and recognizes that in the real world judges regularly introduce external considerations such as public policy in arriving at their rulings.<sup>331</sup> Among many others, this line of thinking is closely associated with Oliver Wendell Holmes and his famed essay, “The Path of the Law.” Holmes notes that law is not about pure theory but about its realistic application. As he puts it, “if we take the view of our friend the bad man we shall find that he does not care two straws for the axioms or deductions, but that he does want to know what the Massachusetts or English courts are likely to do in fact... The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.”<sup>332</sup>

The field of Critical Legal Studies (CLS), which developed in the 1970s as both an extension of and response to legal realism,<sup>333</sup> emphasizes the subjectivity and contingency

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<sup>330</sup> This movement also enjoyed parallels in the emergence of new methods of Talmud study. See Norman Solomon, *The Brisker Method Reconsidered the Analytic Movement: Haym Soloveitchik and His Circle*, Scholars Press, 1993; Chaim Saiman, “Legal Theology: The Turn to Conceptualism in Nineteenth-Century Jewish Law,” *Journal of Law and Religion*, vol. 21, no. 1, 2006, pp. 39–100; Samuel Levine, “Richard Posner Meets Reb Chaim of Brisk,” *Jewish Law and American Law*, vol. 2, 2018, pp. 142–170; Marc Shapiro, “The Brisker Method Reconsidered,” *Tradition: A Journal of Orthodox Jewish Thought*, vol. 31, no. 3, 1997, pp. 78–102; and Yosef Lindell, “A Science like Any Other? Classical Legal Formalism in the Halakhic Jurisprudence of Rabbis Isaac Jacob Reines and Moses Avigdor Amiel,” *Journal of Law and Religion*, vol. 28, no. 1, 2013, pp. 179–224.

<sup>331</sup> For an overview of legal realism, see Brian Leiter, *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy*, Oxford University Press, 2010; and Brian Leiter, “American Legal Realism,” *The Blackwell Guide to the Philosophy of Law and Legal Theory*, Blackwell Publishers, Malden, 2006.

<sup>332</sup> Oliver Wendell Holmes, “The Path of the Law,” 10 *Harvard Law Review* 457, 1897.

<sup>333</sup> Among others, Duncan Kennedy is widely considered a founder and leading thinker in the field. See his *A Critique of Adjudication*, Harvard University Press, 1998. See also Kennedy, “Cost-Reduction Theory as Legitimation,” *Yale Law Journal*, vol. 90, no. 5, 1981, pp. 1275–1283. For an excellent overview of this school of thought, see Alan Hunt, “The Theory of Critical Legal Studies,” *Oxford Journal of Legal Studies*, vol. 6, no. 1, 1986, pp. 1–45.

inherent to legal decision-making, particularly its implicit bias against minority groups. Proponents of CLS<sup>334</sup> point to a series of internal contradictions that run through traditional liberal legal discourse: whether cases should be determined by simple mechanical analytical processes or by local, situational factors; whether values or desires are subjective or objective; and whether human action is seen as rooted in free will or is predetermined by existing structures. Further, proponents of CLS contend that mainstream legal discourse privileges certain unstated values as the “mainstream” or “dominant” values without acknowledging this explicitly.

Where do halakhists fall in the debate between formalists and realists? Unlike in the general legal community, in which realism has been the dominant school of thought for a hundred years, Orthodox scholars’ assessment of *halakhah* inclines strongly toward legal formalism. This is as expected: a more closed, scientific view of *halakhah* can help its leading exponents to defend the integrity and independence of the halakhic legal system.<sup>335</sup>

E.W. Thomas, a sharp critic of legal formalism, formulates the formalist perspective well:

the institutional pressure that leads judges to remain committed to the outdated declaratory theory or, if not committed to it, to continue to act as if it were a valid theory, is readily evident. It assists to absolve judges from personal responsibility for their decisions. Responsibility can be transferred to that amorphous corpus, ‘the law’,

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<sup>334</sup> See Mark Kelman and Mark G. Kelman, *A Guide to Critical Legal Studies*, Harvard University Press, 1987, pp. 3-4.

<sup>335</sup> See, for example, Benjamin Brown, “Formalism and Values: Three Models (Heb.),” *Iyyunim Hadashim be-Philosophia shel ha-Halakhah*, 2008, pp. 233–258, esp. p. 244. See also Adiel Schremer, “Toward Critical Halakhic Studies,” *Tikvah Center Working Paper*, NYU School of Law, 2010, pp. 1-39, esp. p. 15; J. David Bleich, *Contemporary Halakhic Problems*, vol. 1, Ktav, New York, 1977, p. xv; and Bleich, *Contemporary Halakhic Problems*, vol. 4, Ktav, New York, 1995, pp. xiii-xviii.

For a fascinating linkage between contemporary debates over legal formalism and Haym Soloveitchik and David Hartman’s sharply contrasting readings of Maimonides’s *Epistle on Martyrdom*, see Yair Lorberbaum and Haim Shapira, “Maimonides’ *Epistle on Martyrdom* in the Light of Legal Philosophy,” *Dine Israel* 25, 2008, pp. 123–69. See, though, Soloveitchik’s rejoinder, “A Response to Lorberbaum and Shapira: Maimonides’ *Epistle on Martyrdom* in the Light of Legal Philosophy,” *Dine Israel* 25, 2011, pp. 163-172.

which they are merely interpreting. It also militates against the criticism that the judges are setting themselves above the law. The charge of arbitrariness is avoided when judges purport to propound, or make the pretence of propounding, a pre-existing law. Finally, the theory also deflects the charge that judicial decisions are retrospective and undemocratic... In addition, the declaratory view, or any less absolute derivative of that view, makes it appear that the outcome of a case is unrelated to the identity of the particular judge. The decision can be presented as a decision that is neither personal to the judge nor an arbitrary exercise of the law-making power.<sup>336</sup>

The legal formalist position is also often identified with R. Joseph Soloveitchik, particularly as developed in his work *The Halakhic Mind*.<sup>337</sup>

Yet others, most notably Yohanan Silman, Hanina Ben-Menahem, and Yair Lorberbaum have proposed that formalism in fact might not be the most accurate depiction of how *halakhah* is actually determined.<sup>338</sup>

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<sup>336</sup> E.W. Thomas, *The Judicial Process: Realism, Pragmatism, Practical Reasoning and Principles*, Cambridge University Press, 2005, p. 57. Cited by Schremer, p. 15 note 48.

<sup>337</sup> Joseph Soloveitchik, *The Halakhic Mind*, London, The Free Press, 1998. For discussions of the pre-War Germany neo-Kantian background to Soloveitchik's views, see Lawrence Kaplan, "Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah," *Jewish Law Annual* 7, 1988, pp. 139-197; Jonathan Sacks, "Rabbi J. B. Soloveitchik's Early Epistemology: a Review of 'the Halakhic Mind,'" *Tradition: A Journal of Orthodox Jewish Thought*, vol. 23, no. 3, 1988, pp. 75-87; Heshey Zelcer and Meir Zelcer, "A Note on the Original Title for *The Halakhic Mind*," *Hakirah* vol. 23, Fall 2017, pp. 73-80; Avram Montag and William Kolbrener, "*Halakhic Mind*," *Tradition: A Journal of Orthodox Jewish Thought*, vol. 31, no. 4, 1997, pp. 90-4; and Shubert Spero, "Rabbi Joseph Dov Soloveitchik and the Philosophy of Halakha," *Tradition: A Journal of Orthodox Jewish Thought*, vol. 30, no. 2, 1996, pp. 41-64.

Daniel Rynhold convincingly argues that there is a direct line from *The Halakhic Mind* to Soloveitchik's otherwise enigmatic essay "Confrontation" on interfaith dialogue. See Rynhold, "The Philosophical Foundations of Soloveitchik's Critique of Interfaith Dialogue," *Harvard Theological Review*, vol. 96, no. 1, 2003, pp. 101-20.

For additional, competing presentations of Soloveitchik's views, see David Hartman, "The Halakhic Hero: Rabbi Joseph Soloveitchik, Halakhic Man," *Modern Judaism*, vol. 9, no. 3, 1989, pp. 249-73; and Moshe Meiselman, "The Rav, Feminism and Public Policy: An Insider's Overview," *Tradition: A Journal of Orthodox Jewish Thought*, vol. 33, no. 1, 1998, pp. 5-30.

<sup>338</sup> For examples of scholars advocating for variations on halakhic realism and generally pushing back against formalism, see Yohanan Silman, "Halakhic Determinations of a Nominalistic and Realistic Nature: Legal and Philosophical Considerations" (Heb.), *Dine Israel* 12, 1984-5, pp. 249-266; Hanina Ben-Menahem, *Judicial Deviation in Talmudic Law*, 1st ed., Routledge, 1991; Ben-Menahem, "The Myth of Formalism: (Mis)Readings of Jewish Law from Paul to the Present" (November 9, 2010). Hebrew University of Jerusalem Legal Research Paper No. 17-5; Yonatan Brafman, "'Greeters of the Law,'" *Harvard Theological Review*, vol. 112, no. 3, 2019, pp. 407-417; and Avinoam Rosenak, "Truth Tests, Educational Philosophy and Five Models of the Philosophy of Jewish Law," *HUC Annual* 78, 2009, pp. 149-182. For those who make the broader case for a closer alignment

Where do feminist thinkers fall on these questions? Put bluntly, “‘Formalism’ in legal interpretation is often berated and repudiated” by feminists.<sup>339</sup> After all, formalism severely restricts the degree of flexibility available to the jurist. It is therefore not surprising that many feminists see legal formalism as antithetical to their aims, and legal realism and CLS as far more consistent with their approach.<sup>340</sup>

CLS has proven particularly amenable to feminists. By offering a fundamental critique of the nature and place of law in modern capitalist society, CLS also lends itself to those seeking to critique the patriarchal roots of Western law.<sup>341</sup> Irshai<sup>342</sup> puts it this way:

The move from a perspective of necessity to one of contingency was central to the Critical Legal Studies (cls) movement... Judges, cls proponents would argue, are

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between *halakhah* and non-formalist legal theories, see Brafman, “Critical Philosophy of Halakha (Jewish Law): The Justification of Halakhic Norms and Authority,” Columbia University, *Academic Commons*, 2014; Brafman, “New Developments in Modern Jewish Thought: From Theology to Law and Back Again,” *The Cambridge Companion to Judaism and Law*, 2017, pp. 287–314; and Adiel Schremer, “Realism in Halakhic Decision-Making: The Medieval Controversy Concerning Examination of Lungs (*Plugat Ha-Re’a*) as a Test Case,” *Dine Israel* 28, 2011, pp. 97-143. See also Moshe Halbertal, “David Hartman ve-Haphilosophia shel ha-Halakhah,” in *Mehuyavut Yehudit Mithadeshet: Al Olamo ve-Haguto shel David Hartman*, Mekhon Shalom Hartman, Jerusalem, 2001, pp. 13–35. For an updated presentation of halakhic realism, see Yair Lorberbaum, “Halakhic Realism,” *Dine Israel* 30, 2015, pp. 9-77.

<sup>339</sup> Catharine MacKinnon, *Women’s Lives, Men’s Laws*, Harvard University Press, 2007, p. 2.

<sup>340</sup> For a synopsis of both feminists’ qualms with legal realism and CLT and their embrace of these theories, and a call for a new feminist history and school of feminist realism, see Mae C. Quinn, “Feminist Legal Realism,” *Harvard Journal of Law and Gender*, vol. 35, no. 1, 2012, Washington University in St. Louis Legal Studies Research Paper No. 12-02-01.

<sup>341</sup> For an overview of Critical Legal Studies in general, see Alan Norrie, *Critical Legal Studies*, 1998, Routledge Encyclopedia of Philosophy, Taylor and Francis, <https://www.rep.routledge.com/articles/thematic/critical-legal-studies/v-1>.

For feminism and Critical Legal Studies, see Linz Audain, “Critical Legal Studies, Feminism, Law and Economics, and the Veil of Intellectual Tolerance: A Tentative Case for Cross-Jurisprudential Dialogue,” *Hofstra Law Review*, vol. 20, no. 4, 2002, pp. 1017-1104; and Richard Bauman, “Feminism and Law,” in *Critical Legal Studies*, 2021, pp. 163–181.

For a critique of the conflation of Critical Legal Studies and feminist legal theory, see Carrie Menkel-Meadow, “Feminist Legal Theory, Critical Legal Studies, and Legal Education or the Fem-Crits Go to Law School,” *Journal of Legal Education*, vol. 38, 1988, pp. 61–85.

<sup>342</sup> Irshai, *Fertility and Jewish Law*, pp. 270-1.

not “bound” by the law in a sense that precludes a broad exercise of discretion, and the adjudicatory act is not as absolute as it is said to be.<sup>343</sup>

Feminist scholars of *halakhah* similarly tend to reject formalistic conceptions of law, with some singling out Soloveitchik for criticism.<sup>344</sup> Irshai<sup>345</sup> also cites Critical Legal Studies as another approach to the philosophy of law that is amenable to the sensibilities of Orthodox feminists. CLS may be similarly beneficial to our study of Jewish law and masculinity. In addition to the explicit arguments set forward by the texts, CLS proposes that the concrete legal conclusions themselves implicitly presuppose prior assumptions about the questions at hand. Not just specific rulings, but also the halakhic ambiguities and larger modes of argument utilized by decisors, can alert us to the existence of alternative potential halakhic conclusions.<sup>346</sup>

Irshai<sup>347</sup> also points to the hermeneutical theories set forward by Stanley Fish<sup>348</sup> in his debate with Owen Fiss<sup>349</sup> as being especially amenable to feminist interpretations of law.

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<sup>343</sup> See also Irshai, “Toward a Gender Critical Approach.”

<sup>344</sup> See Tamar Ross, “Orthodoxy, Women, and Halakhic Change” (Heb.), in *The Quest for Halakha: Interdisciplinary Perspectives on Jewish Law*, ed. Amichai Berholz, Yediot Aharonot/Beit Morasha, Tel Aviv, 2003, pp. 387–438; *Expanding the Palace*, pp. 69–78; and “Modern Orthodoxy,” pp. 8–10. Irshai is particularly forceful in emphasizing this point; see her *Fertility and Jewish Law*, pp. 12–4; Irshai, “Judaism, Gender and Human Rights: The Case of Orthodox Feminism,” in *Religion and the Discourse of Human Rights*, ed. Hanoach Dagan, et al., The Israel Democracy Institute, Jerusalem, 2014, pp. 412–438; and Irshai, “Tamar Ross: An Intellectual Portrait,” in *Tamar Ross - Constructing Faith, Library of Contemporary Jewish Philosophers*, ed. Hava Tirosh-Samuels and Aaron W. Hughes, Brill, Boston, 2016, pp. 1–40.

<sup>345</sup> Irshai, *Fertility and Jewish Law*, pp. 270–1.

<sup>346</sup> See Irshai, *Fertility and Jewish Law*, Introduction, p. 11: “This method aims to identify the practical consequences of legal rules and practices that are perceived as gender-neutral and objective but actually result in discrimination against women.”

<sup>347</sup> “Gender Critical Approach,” *ibid.* See also Irshai, “Halakhic Discretion and Gender Bias: A Conceptual Analysis” (Heb.), *Democratic Culture*, vol. 16, 2014, pp. 141–85.

<sup>348</sup> Stanley Fish, “Fish v. Fiss,” *Stanford Law Review*, vol. 36, no. 6, 1984, pp. 1325–1347.

<sup>349</sup> Owen Fiss, “Objectivity and Interpretation,” *Stanford Law Review*, vol. 34, no. 4, 1982, pp. 739–763.

While Fiss rejects formalism, he insists that the goal of the interpreter is to isolate an objective meaning of the text. For Fiss, legal principles necessarily precede the adjudication of any particular case. Fish, by contrast, argues that no such objective interpretation is available or necessary. Instead, it is sufficient that all knowledge be situated within the community of interpreters.<sup>350</sup> Irshai links Fish to Foucault, noting that both thinkers assign a central role to the community of interpreters. She goes on to call for a “halakhic genealogy” along the lines of Foucault’s projects on madness and sexuality.<sup>351</sup>

Tamar Ross similarly identifies themes that overlap with elements of realist and CLS principles. In particular, she pinpoints three overarching halakhic methodologies that are particularly amenable to feminist sensibilities: a rejection of the notion of jurisprudential objectivity; a preference for consequentialism and considerations of context over formalistic arguments; and judicial empathy and an ethic of caring, with special regard to the needs of minorities.<sup>352</sup>

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<sup>350</sup> For a fascinating treatment arguing for a greater confluence between R. Soloveitchik and Fish’s hermeneutics, see William Kollbrenner, “No ‘Elsewhere’: Fish, Soloveitchik, and the Unavoidability of Interpretation,” *Literature and Theology*, vol. 10, no. 2, 1996, pp. 171–90.

<sup>351</sup> Irshai, “Gender Critical Approach,” pp. 67-70; *Fertility and Jewish Law*, p. 270.

In terms of tools available for effecting practical halakhic change, Ross enumerates a number of approaches: apologetics, reviving neglected practices, voluntary increased participation, establishment of context-related concepts, overarching halakhic principles, creative explanations of halakhic lacunae, and cases where decisors have long ignored past halakhic stipulations (“Modern Orthodoxy,” pp. 7-14). Irshai similarly identifies both local halakhic rules and larger halakhic principles as agents for halakhic change (“Gender Critical Approach,” pp. 73-7).

For a different take emphasizing how external threats interfere with internal gender developments in Israel, see Ruth Halperin-Kaddari and Yaacov Yadgar, “Between Universal Feminism and Particular Nationalism: Politics, Religion and Gender (in)Equality in Israel,” *Third World Quarterly*, vol. 31, no. 6, 2010, pp. 905–920.

<sup>352</sup> Ross, “The Contribution of Feminism,” pp. 25-7. See too Irshai, *Fertility and Jewish Law*, pp. 311-4.

In an important essay, Moshe Halbertal demonstrates that the methodological approach of the Hartman *beit midrash* is distinctive in its rejection of halakhic formalism on the one hand and academic philological-historical study on the other, eschewing both in favor of a rigorous approach that seeks to unearth the deeper values undergirding Torah texts.<sup>353</sup> While in this essay he does not focus on feminist themes, Halbertal's discussion is relevant to feminist halakhic jurisprudence because it suggests that larger motifs, such as equality, are essential to a full understanding of *halakhah*. In this spirit, Tamar Ross and Ronit Irshai observe that the challenge of feminism leads some traditionalist authorities to double down on halakhic formalism, insisting that in confronting proposed feminist innovations, we must set aside all overarching values other than unquestioning halakhic obedience.<sup>354</sup> More broadly, setting aside those jurists who are influenced by Carol Gilligan's account of the qualitative difference between male and female conceptions of law,<sup>355</sup> Irshai forcefully contends that any honest attempt to grapple with contemporary feminist criticism must confront the underlying critique of patriarchy.<sup>356</sup>

### **Robert Cover and Feminist Jurisprudence**

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<sup>353</sup> Halbertal, "David Hartman ve-Haphilosofia shel ha-Halakhah."

<sup>354</sup> Ross, *Expanding the Palace*, pp. 68-9; Irshai, "Gender Critical Approach," pp. 70-3, and *Fertility and Jewish Law*, pp. 12-4.

<sup>355</sup> Gilligan, *In a Different Voice*. For an intriguing attempt to locate numerous overlaps between Gilligan's difference feminism and Jewish law, notwithstanding the male provenance of the latter, see Steven Friedell, "The 'Different Voice' in Jewish Law - Some Parallels to a Feminist Jurisprudence," *Indiana Law Journal*, vol. 67, no. 4, 1992, pp. 915-949.

<sup>356</sup> Irshai, *Fertility and Jewish Law*, Introduction, pp. 1-16.



Also highly influential for feminist scholars has been the jurisprudential theory of Robert Cover as laid out in his magisterial essay “Nomos and Narrative,” which provides one of the most influential accounts of law in modern times. Cover argues that we tend to analyze legal questions by too narrowly considering their meaning. (For example, what exact vehicles are included under the statute that one may not drive a vehicle in the park?)<sup>357</sup> Instead, Cover contends that all nomos, or law, is embedded in a particular narrative, against whose backdrop we consider difficult legal questions that arise.<sup>358</sup> The law is intended to build and maintain a communal structure animated by a set of overarching values, and therefore cannot be considered in a vacuum. The nomos is analogous to a bridge from our current station to a more ideal one, a bridge to what Cover, citing Richard Steiner, terms “alterity.”<sup>359</sup> The purpose of the law is to move community members closer to a full realization of their own ideals.

At this juncture, Cover introduces his distinction between paideic and imperial law.<sup>360</sup> If law is to help construct a community rooted in a larger narrative, paideic law is essential. This is law whose nature is educational; it ensures that the next generation is reared on the norms and values of the community. Yet the study of the law, Cover astutely observes, citing the rabbinic principle of “*elu ve’elu divrei Elokim Hayyim*,” “these and these are the words of the living God,”<sup>361</sup> leads to multiple interpretations. Even as they examine the same corpus,

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<sup>357</sup> Cover, p. 7.

<sup>358</sup> Cover, pp. 7-10.

<sup>359</sup> Cover, p. 9.

<sup>360</sup> Cover, pp. 12-3.

<sup>361</sup> Bavli *Eruvin* 13b, *Gittin* 6b.

scholars inevitably develop conflicting understandings as to the underlying narrative that is intended to unite the community. For this reason, another aspect of law, imperial law, is needed. Following imperial law, laws are strictly enforced, ensuring the continuity of the community while allowing for multiple interpretations of the significance of the law.<sup>362</sup>

The larger implication of Cover's approach is to heighten the role of narrative in jurisprudence, and to shift the perspective on law from one of stasis to one that encourages the development of new narratives, even as the law cannot veer too dramatically from its initial course.<sup>363</sup>

Some legal scholars have used Cover, especially his implicit discussion of radically divergent meanings of law, as a basis for a feminist theory of law.<sup>364</sup> Cover's account offers communities the opportunity to move toward alternative, non-patriarchal models of law while maintaining allegiance to existing codified law.<sup>365</sup> Others have observed that the very notion of narrative dovetails with feminists' predilection for drawing on personal narrative to convey their ideas.<sup>366</sup>

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<sup>362</sup> Cover, pp. 15-8.

<sup>363</sup> Cover's ideas have also spurred numerous conversations about the relationship between Jewish and secular law. Many have commented on Cover's heavy reliance on Jewish law as a model for his own approach. See, for example, Suzanne Last Stone, "In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," *Harvard Law Review*, vol. 106, no. 4, 1993, pp. 813–894. Others have taken the inverse tack, using Cover as a model for thinking about Jewish law. Samuel Levine, for example, uses Cover to analyze the interplay between halakhah and aggadah. See Levine, "Halacha and Aggadah: Translating Robert Cover's Nomos and Narrative," *Jewish Law and American Law*, vol. 2, 2019, pp. 1–41.

<sup>364</sup> Carol Weisbrod, "Practical Polyphony: Theories of the State and Feminist Jurisprudence," [https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1135&context=law\\_papers](https://opencommons.uconn.edu/cgi/viewcontent.cgi?article=1135&context=law_papers), p. 998.

<sup>365</sup> Celina Romany, "Ain't I a Feminist?" *Yale Journal of Law and Feminism*, vol. 4, no. 1, Fall 1991, p. 23.

<sup>366</sup> Judith Roof, "The Feminist Foundations of Narrative Theory," *The Cambridge Companion to Narrative Theory*, 2018, pp. 72–86; and Daniel Farber and Suzanna Sherry, "Telling Stories out of School: An Essay on Legal Narratives," *Stanford Law Review*, vol. 45, no. 4, 1993, pp. 807–855.

Similarly, we have already seen that Rachel Adler<sup>367</sup> relies heavily on Cover in seeking to develop a feminist halakhic ethos.<sup>368</sup> And even as Tamar Ross<sup>369</sup> critiques Adler for being overly reliant on *vox populi*,<sup>370</sup> Ross herself notes elsewhere<sup>371</sup> that Cover lends himself to a feminist interpretation of *halakhah*.<sup>372</sup> Seeking to accommodate both tradition and innovation, Ross ultimately draws on Rav Kook to develop her theology of cumulative revelation.<sup>373</sup>

In sum, then, Orthodox feminists tend to find the most support for their proposed agenda in the ideas of Foucault, the legal realists, CLT, and Robert Cover, even as Ross finds all these to be ultimately unsatisfying, leading her to develop her notion of cumulative revelation.

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<sup>367</sup> Adler, *Engendering Judaism*, pp. 34-6.

<sup>368</sup> Irshai also references Cover positively in concluding her book. See *Fertility and Jewish Law*, p. 275. The title of Cover's book also serves to frame Irshai's review of feminist trends in Israel; see Ronit Irshai and Tanya Zion Waldoks, "Israeli Modern-Orthodox Feminism: Between Nomos and Narrative" (Hebrew), *Mishpat u-Mimshal* 15, 2013, pp. 233-327.

<sup>369</sup> Ross, *Expanding the Palace*, p. 156.

<sup>370</sup> For a highly influential treatment of the limitations and opportunities available for those seeking to apply Cover to contemporary feminist activism, see Thomas Ross, "Despair and Redemption in the Feminist Nomos," *Indiana Law Journal* 69, 1993, pp. 101-136.

<sup>371</sup> Tamar Ross, "The Contribution of Feminism to Halakhic Discussion: *Kol be-Isha Erva* as a Test Case," *Emor*, no. 1, January 2010, pp. 37-69. See also Ronit Irshai, "Public and Private Rulings in Jewish Law (Halakhah): Flexibility, Concealment, and Feminist Jurisprudence," *Journal of Law, Religion and State*, vol. 3, no. 1, 2014, pp. 25-50.

<sup>372</sup> Unsurprisingly, some Islamic scholars seek to navigate similar tensions. For a parallel discussion in Islam, see Ziba Mir-Hosseini, "Muslim Women's Quest for Equality: Between Islamic Law and Feminism," *Critical Inquiry*, vol. 32, no. 4, 2006, pp. 629-645.

<sup>373</sup> Ross, *Expanding the Palace*, chap. 10, pp. 184-212.

### III. 7. Additional Gaps in the Field

Beyond the limited treatments of *halakhah* and masculinity, we may point to a number of additional gaps in the field. With the exception of the emphasis on rabbinics and modern German history, there is little analysis of the core questions surrounding Jewish masculinity from other periods and key texts in Jewish history. Further, as noted earlier, much of the work on these time periods centers on historical realia, not prescriptive rabbinic texts. Additionally, while discussions of male embodiment, as exemplified in the work of Englander, are beginning to emerge, they remain quite limited.

Recent critiques of masculinity studies point to another limitation of discussions of rabbinic masculinity. Scholars have noted the tendency for discussions of masculinity to take place in a vacuum that is disconnected from femininity. But, as Jeff Hearn<sup>374</sup> notes in a study critiquing the use of the term “masculinity” in current academic discourse, this is self-evidently problematic. Michael Kimmel, a leading masculinities scholar, puts the point starkly:

Can we imagine a history of masculinity that does not place the relations between women and men as the central analytical process? To do so would write women back into historical invisibility, and this time in the guise of exploring gender. Certainly women and men, as gendered actors, deserve more than that.<sup>375</sup>

This point is not only intuitive but also flows from the work of prominent gender studies theorists. Simone de Beauvoir’s *The Second Sex*, for example, revolves around the thesis that by being relegated to the status of “Other,” woman has been the subject of

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<sup>374</sup> Jeff Hearn, “Is Masculinity Dead?”

<sup>375</sup> Michael Kimmel, “Book Reviews,” *Gender & Society*, vol. 5, no. 1, 1991, pp. 120-1.

long-standing oppression by man. In agreement with Hegelian and Sartrean philosophy,<sup>376</sup> de Beauvoir finds that the self needs otherness in order to define itself as a subject; the category of otherness, therefore, is necessary in the constitution of the self as a self. As she explains in her Introduction, woman “is the incidental, the inessential, as opposed to the essential. He is the Subject, he is the Absolute - she is the Other.”<sup>377</sup> On this view, studying masculinity without femininity may well be furthering this same process of “Othering” that many masculinity scholars seek to combat.

Yet others argue for the converse. According to Kosman’s critique of Gilmore, masculinity is merely the repeated denial by one who claims: “I am not a female.” On this view, too, for our purposes the conclusion is much the same: it is not possible to study the subject of masculinity without considering the status of women.

Indeed, one need not be an anthropologist to appreciate that gender roles generally do not exist in isolation from one another. If the basic driving force in human society is self-preservation, while men and women may negotiate the precise role that each contributes to survival, they can hardly be considered independently of one another.

If this is the case, a halakhic study examining the roles of men and women simultaneously will prove particularly valuable. The prohibition against cross-dressing affords us such an opportunity.

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<sup>376</sup> De Beauvoir and Sartre’s intimate and intellectual “open relationship” is the subject of an extensive literature. Their relationship is best captured in the letters they exchanged. These are preserved in Jean-Paul Sartre’s *Witness to My Life: The Letters of Jean-Paul Sartre to Simone De Beauvoir, 1926-1939*, Scribner’s, New York, 1992 (edited by de Beauvoir herself!); and Simone de Beauvoir’s *Letters to Sartre*, published posthumously by Quintin Hoare, Arcade, New York, 1993.

<sup>377</sup> De Beauvoir, *The Second Sex*, p. xix.

In sum, then, there are a number of significant gaps in both the method and substantive conclusions in the field of Jewish masculinity studies. In regard to method, there is insufficient analysis of halakhic material, synchronic analyses tracing the arc of a particular topic over a longer period of time, examination of contemporary responsa, and treatment of femininity and masculinity together. In regard to substantive issues, a number of key questions also remain the subject of dispute or simply have not received enough attention: Do the rabbis convey an image of the ideal male as a warrior, a self-disciplined scholar, an effeminate yet sensual male, or a mix of all three? Is masculinity a given or something that must be achieved? Is masculinity tenuous? Are men seen as anxious about their masculinity?

Beyond these gaps, we stand to benefit from incorporating a number of key recent theoretical contributions to the study of *halakhah*. A burgeoning set of studies point to the larger significance of halakhic texts beyond offering concrete halakhic guidance. In particular, there has been an efflorescence of such studies in regard to Mishnah,<sup>378</sup> but these studies have gone even beyond the Mishnah, as Chaim Saiman documents in his recent monograph *Halakhah*.

While at first glance the rules governing men and women's clothing would not appear to lend themselves to being purely theoretical, in fact the question of women donning armor may not have been very practical, if at all, at numerous key junctures in our history.

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<sup>378</sup> See Rosen-Zvi, "Orality, Narrative, Rhetoric: New Directions in Mishnah Research," *AJS Review*, vol. 32, no. 2, 2008, pp. 235–249. On p. 242, Rosen-Zvi summarizes this approach: "According to the new studies, these narratives are by and large a result of second-century debates, fashioning and redaction, and should, accordingly, be taken to represent the concerns of that post-Temple era. The Temple and its worship were studied, reshaped, and even reinvented as part of the second century's all-inclusive legal system, according to the academic needs and interests of its sages."

The topic of *lo yilbash* offers another dimension for our consideration. Moshe Halbertal<sup>379</sup> draws attention to the phenomenon of rabbinic teachings that part with the face reading of biblical texts in extreme fashion, contending that very often the Rabbis were motivated by moral considerations in their interpretations. Along similar lines, we may probe whether the rabbinic value system led the Rabbis to interpret *lo yilbash* in a manner that is inconsistent with the face reading of the biblical text.

In seeking to begin filling in these gaps, this dissertation considers the larger subject of Jewish conceptions of masculinity through the study of halakhic material, specifically the prohibition against cross-dressing. This area is especially ripe for analysis, as it is a relatively focused subject, comprising one biblical verse and corresponding rabbinic and halakhic texts, which enables a thorough consideration of the relevant texts. Further, we can reasonably expect many of the discussions regarding barring men from dressing as women, and women as men, to make implicit or explicit assumptions about the meaning of masculinity and femininity. To enable us to unearth those assumptions, it is important to begin with some remarks about the wider literature on the subject of cross-dressing.

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<sup>379</sup> Moshe Halbertal, *Mahapeikhot Parshaniyyot be-Hithavutan: Arakhim ke-Shikkulim Parshani'im be-Midreshei Halakhah*, Magnes Press, 1999.

## Chapter 3 - An Introduction to Cross-Dressing

### I. Introduction

A fast-growing body of general scholarship on the subject of cross-dressing has accumulated in recent decades.<sup>380</sup> We will briefly review some key elements of the general literature with an eye toward those aspects that will prove illuminating to our analysis of the halakhic materials.

### II. An Overview of Contemporary Scholarship on Cross-Dressing

#### II. 1. General Scholarly Concerns

Contemporary scholarship on cross-dressing is concerned with questions such as the best terminology with which to refer to this phenomenon;<sup>381</sup> the sub-division of cases of cross-dressing into distinct categories;<sup>382</sup> the prevalence of cross-dressing in different eras and geographic areas;<sup>383</sup> identifying various motivations for cross-dressing;<sup>384</sup> whether the existence of the phenomenon challenges traditional assumptions about

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<sup>380</sup> Seminal works in the field include Vern Bullough and Bonnie Bullough, *Cross Dressing, Sex, and Gender*. University of Pennsylvania Press, 1993, widely considered the classic in the field; Marjorie Garber, *Vested Interests: Cross-Dressing & Cultural Anxiety*. Routledge, 1992; and Valerie Hotchkiss, *Clothes Make the Man: Female Cross Dressing in Medieval Europe*. Garland, 1996.

<sup>381</sup> Contemporary scholars largely prefer the term “cross-dressing” to “transvestism,” which carries negative connotations due to its association with medical disorders (Bullough and Bullough, *Cross Dressing*, p. vii). Jamie Capuzza and Leland Spencer explain: “Eventually, the transvestite label fell out of favor because it was deemed to be derogatory; cross-dresser has emerged as a more suitable replacement” (*Transgender Communication Studies: Histories, Trends, and Trajectories*, Lexington Books, 2015, p. 174).

<sup>382</sup> Bullough and Bullough (pp. vii-viii) note that “cross-dressing” can refer to one who seeks to pass as a member of the opposite sex or to someone who wears clothing belonging to the opposite sex without trying to pass. “Drag,” however, specifically denotes someone who intentionally wears clothing meant to exaggerate the fact that it is clearly a costume. They add that while many typically think of cross-dressing as an outward phenomenon, some cross-dressers wear only undergarments associated with the opposite sex.

<sup>383</sup> In chapter 1, Bullough and Bullough cite many examples of cross-dressing to support their contention that cross-dressing is “ubiquitous” (p. 18).

<sup>384</sup> Dianne Sachko Macleod, “Cross-Cultural Cross-Dressing: Class, Gender and Modernist Sexual Identity,” in *Orientalism Transposed: The Impact of the Colonies on British Culture*, Routledge, 2018, chap. 4, pp. 63-85.



gender and sex<sup>385</sup> or manifests underlying male anxiety;<sup>386</sup> the relationship of cross-dressing to homosexuality;<sup>387</sup> and the role of cross-dressing in many tribal and pagan rituals as a rich, if ambiguous, source for understanding gender roles.<sup>388</sup>

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<sup>385</sup> This argument is most famously associated with Judith Butler, who lays out her ideas in *Gender Trouble*. Many other scholars argue forcefully for this perspective, often under Butler's influence. See, for example, Jean Howard, "Crossdressing, the Theatre, and Gender Struggle in Early Modern England," *Shakespeare Quarterly*, vol. 39, no. 4, 1988, pp. 418–440, esp. pp. 418–9; Peter Berek, "Cross-Dressing, Gender, and Absolutism in the Beaumont and Fletcher Playsm" *SEL Studies in English Literature 1500-1900*, vol. 44, no. 2, 2004, pp. 359–377, esp. p. 373; David Cressy, "Gender Trouble and Cross-Dressing in Early Modern England," *The Journal of British Studies*, vol. 35, no. 4, 1996, pp. 438–465; and Anita Stoll and Dawn Smith, *Gender, Identity, and Representation in Spain's Golden Age*, Bucknell University Press, 2000. For a similar argument in context of medieval cross-dressing, see Hotchkiss, *Clothes Make the Man*.

<sup>386</sup> For a representative passage, see James Eli Adams, "The Banality of Transgression?: Recent Works on Masculinity," *Victorian Studies*, vol. 36, no. 2, 1993, p. 208:

"Empiricist social history and post-structuralist cultural studies share an approach to norms of masculinity as sites of profound internal stress and instability, whether that site is understood in terms of a humanist selfhood or as the decentered subject of Lacanian desire. Within these approaches, the understanding of "manhood" depends importantly on the analysis of transgression, as a dynamic which defines and energizes the authority of the norm. Understood in this light, masculinity, like other cultural norms, underscores the banality of transgression—"banality" in the sense of Hannah Arendt's often-misunderstood notion of the banality of evil. Transgression, in other words, is not a radically alien or "unimaginable" phenomenon, but is a constant, central presence of our imaginative lives, whose authority can be felt in the intensity with which it is resisted."

See also Charlotte Suthrell, *Unzipping Gender: Sex, Cross-Dressing and Culture*, Berg, 2004. For fiction, see Ann Heilmann, "(Un)Masking Desire: Cross-Dressing and the Crisis of Gender in New Woman Fiction," *Journal of Victorian Culture*, vol. 5, no. 1, 2000, pp. 83–111. For a similar collection of studies on transvestism in the ancient Mediterranean world, see Margherita Facella, et al., *TransAntiquity: Cross-Dressing and Transgender Dynamics in the Ancient World*, Routledge, Taylor & Francis Group, 2017. On Shakespearean England, see Howard, "Crossdressing, the Theatre, and Gender Struggle"; David Cressy, "Gender Trouble and Cross-Dressing"; and Efrat Tseĕlon, *Masquerade and Identities Essays on Gender, Sexuality, and Marginality*, Routledge, 2003.

<sup>387</sup> See Garber, *Vested Interests*, chap. 6; Vern Bullough, "Transvestites in the Middle Ages," *American Journal of Sociology*, vol. 79, no. 6, 1974, pp. 1381–1394, esp. p. 1393. Bullough and Bullough maintain that the association between these two emerged only in Great Britain in the 18th century (pp. x, 120–2). Gail Hawkes ("Dressing-up — Cross-Dressing and Sexual Dissonance," *Journal of Gender Studies*, vol. 4, no. 3, 1995, pp. 261–270) holds that any association between the two ironically supports the very hegemonic heterosexual system that cross-dressing often seeks to undercut. See also Ethel Spector Person and Lionel Ovesey, "Homosexual Cross-Dressers," *Journal of the American Academy of Psychoanalysis*, vol. 12, no. 2, 1984, pp. 167–186.

<sup>388</sup> For Australian and African tribes, see Bullough and Bullough, pp. 16–7. For Native Americans, see Arnold Pilling, "Cross-Dressing and Shamanism Among Selected Western North American Tribes," *Two-Spirit People: Native American Gender Identity, Sexuality, and Spirituality*, University of Illinois Press, Urbana, 1997, pp. 69–99. For Black Seminoles, see Evelyn Blackwood, "Sexuality and Gender in Certain Native American Tribes: The Case of Cross-Gender Females," *Signs: Journal of Women in Culture and Society*, vol. 10, no. 1, 1984, pp. 27–42.

To take just one of the aforementioned examples, motivations for cross-dressing vary widely and include safety,<sup>389</sup> increased professional and personal opportunity,<sup>390</sup> evasion of responsibilities such as mandatory drafts for men,<sup>391</sup> avoidance of censure for homosexual activity,<sup>392</sup> making a political statement,<sup>393</sup> role playing<sup>394</sup> or exploring one's gender identity,<sup>395</sup> making a statement about the nature of sexual identity;<sup>396</sup> sexual or transgressive thrills,<sup>397</sup> cultic-religious reasons,<sup>398</sup> and more.<sup>399</sup> Potential motivations are so varied that some leading scholars conclude that “we can offer no definitive explanation for why people cross dress.”<sup>400</sup>

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<sup>389</sup> One excellent example is the case of Francina Gunning, who was advised to dress like a man for safety when returning from France to Holland, and was then pressed into army service by Napoleonic officers (Dekker, Rudolf M., et al., *The Tradition of Female Cross-Dressing in Early Modern Europe*, Macmillan Press., 1988, p. 62).

<sup>390</sup> Garber, *Vested Interests*, pp. 41-66.

<sup>391</sup> For a strident presentation that reviews this subject and more, see Greeny Valbuena, “De-Segregating Attire: How Appearance Has Guided History,” *DePaul Journal of Women, Gender and the Law*, vol. 7, no. 2, 2018, pp. 103-134.

<sup>392</sup> Bullough and Bullough, pp. 203-225.

<sup>393</sup> Susan Gubar, “Blessings in Disguise: Cross-Dressing as Re-Dressing for Female Modernists.” *The Massachusetts Review*, vol. 22, no. 3, 1981, p. 478.

<sup>394</sup> Garber, pp. 120-7.

<sup>395</sup> Garber, pp. 21-32.

<sup>396</sup> Butler, *Gender Trouble*, pp. 185-193.

<sup>397</sup> Linda Morris, *Gender Play in Mark Twain: Cross-Dressing and Transgression*, University of Missouri Press, 2007.

<sup>398</sup> Regarding the cult of Ishtar, see Bullough and Bullough, p. 29.

<sup>399</sup> See, for example, Mihir Upadhyaya and Panagiota Korenis, “Cross-Dressing as a Defense Mechanism against Loss in a Bisexual Male,” *Journal of Gay & Lesbian Mental Health*, vol. 22, no. 4, 2018, pp. 412–420.

<sup>400</sup> Bullough and Bullough, p. 363.

## II. 2. Cross-Dressing at Carnivals

There is also extensive scholarly interest in the ubiquity of cross-dressing in carnivalesque environments, particularly as numerous cultures otherwise shun such activity in everyday life. This is especially relevant to the halakhic literature, in which we find numerous parallels to this transgressive carnivalesque exception. Some scholars propose that this leniency is intended to enable men and women to get in touch with another aspect of their gender identity while undermining communal gender norms,<sup>401</sup> while others propose that such activity ultimately serves to reify those norms.<sup>402</sup>

## II. 3. Between Male and Female Cross-Dressing

One further scholarly insight is particularly pervasive throughout the literature, and will bear heavily on our halakhic analysis: in numerous cultures, it was considered far more acceptable for women to dress as men than the opposite.<sup>403</sup> In Christendom, many women were known to dress like male saints.<sup>404</sup> There are also numerous recorded cases of women dressing as male warriors to strengthen their influence or control over an

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<sup>401</sup> For examples, see Bullough and Bullough, p. 66.

<sup>402</sup> See Garber, p. 66. See also Chaim Saiman, “The Inverted Halakhah of Simhat Torah,” *The Lehrhaus*, available at: <https://www.thelehrhaus.com/holidays/the-inverted-halakhah-of-simhat-torah>.

<sup>403</sup> See James Mahalik, et al., “Differential Reactions to Men and Women's Gender Role Transgressions: Perceptions of Social Status, Sexual Orientation, and Value Dissimilarity,” *The Journal of Men's Studies*, vol. 12, no. 2, 2004, pp. 119–132; and Judith Butler, “Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory,” *Theatre Journal*, vol. 40, no. 4, 1988, pp. 519–531.

<sup>404</sup> For a comprehensive review, see Bullough and Bullough, pp. 51-64.

army.<sup>405</sup> It follows that “research has shown that men who transgress gender role norms are punished more harshly than women.”<sup>406</sup> As Vern Bullough puts it:

There are many examples of cross-gender behavior among medieval women, but almost none among medieval men. Technically, the Bible prohibits any cross-gender behavior that involves impersonation of the opposite sex... Generally, however, in the medieval period, this statement was applied only to men, and not to women.<sup>407</sup>

While the phenomenon of harsher attitudes toward male cross-dressers is well-established, the reasons for this are unclear and likely varied.<sup>408</sup> It is fair to assume, however, that anxiety about men foregoing their masculinity goes a long way in helping to account for the discrepancy.

### III. Jewish Studies and Cross-Dressing

Despite the burgeoning interest in this field over the last few decades, and notwithstanding the more substantial general literature regarding the underlying reasoning for the prohibition in Deuteronomy,<sup>409</sup> relatively little has been written on the

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<sup>405</sup> The most famous case in history is arguably that of Joan of Arc. For current academic perspectives on her 1430-1431 trial, see Bonnie Wheeler and Charles T. Wood, *Fresh Verdicts on Joan of Arc*. Garland, 1996.

<sup>406</sup> Saul Feinman, “A Status Theory of the Evaluation of Sex-Role and Age-Role Behavior.” *Sex Roles*, vol. 10, no. 5-6, 1984, pp. 445–456. For similar evidence regarding the medieval period, see Hotchkiss, *Clothes Make the Man*, chap. 2. Debbie Kerkhoff concludes her unpublished dissertation with the following remarks, which make abundantly clear just how wide-ranging this phenomenon was: “Whether idolized or anathematized, however, Early Christianity’s notorious transvestites shared one thing in common: all of them were women. By contrast, male transvestites are almost entirely absent from the writings of the first few Christian centuries. While women adopted male attire for spiritual growth and practical convenience, men, the silence seems to suggest, had nothing to gain by putting on female dress – and accordingly did not stray into transvestite practice.” See also Maria Doerfler, “Coming Apart at the Seams: Cross-Dressing, Masculinity, and the Social Body in Late Antiquity,” in *Dressing Judeans and Christians in Antiquity*, Routledge, 2019, pp. 37–53.

<sup>407</sup> Vern Bullough, “On Being a Male in the Middle Ages,” in *Medieval Masculinities: Regarding Men in the Middle Ages*, University of Minnesota Press, Minneapolis, 1994, p. 34.

<sup>408</sup> Mahalik, et al., p. 121.

<sup>409</sup> We will review these in chapter 4.

subject in rabbinic and post-rabbinic scholarship. Of those studies, few engage deeply with gender analysis. For example, Tobi Liebman dedicated a 2002 Master's Thesis to the subject.<sup>410</sup> The thesis provides a valuable overview of different commentators' views on the reasons for and scope of the prohibition, but is focused on exegesis rather than the larger corpus of *halakhah*, and does not engage deeply with gender studies. Similarly, Yaakov Spiegel<sup>411</sup> discusses various halakhic texts regarding cross-dressing for joyous occasions (e.g., Purim, Simhat Torah, weddings, and the like) and offers a valuable historical overview of the literature, but also does not engage with the gender studies scholarship. Lena Roos<sup>412</sup> cites halakhic texts and gender theory in an analysis of Sefer Hasidim's leniencies in cases of emergency, but evinces insufficient understanding of halakhic principles. This leads the author to claim evidence of insights regarding gender theory where there is insufficient support for her thesis.<sup>413</sup>

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<sup>410</sup> "The Jewish Exegetical History of Deuteronomy 22:5: Required Gender Separation or Prohibited Cross-Dressing?" *McGill University*, 2002.

<sup>411</sup> "The Prohibition 'Shall Not Wear' During a Joyous Mitzvah Celebration and a Manuscript 'Responsum' of R. Yehiel Bassan," *Sidra*, vol. 24-25, 2010, pp. 459–471.

<sup>412</sup> "Cross-Dressing among Medieval Ashkenazi Jews," *Nordisk Judaistik/Scandinavian Jewish Studies*, vol. 28, no. 2, 2017, pp. 4–22.

<sup>413</sup> Yet other essays touch on cross-dressing briefly as part of a larger analysis, but do not focus on the issues in any depth. See, for example, Schleicher, "Constructions of Sex and Gender," p. 425; Fonrobert, "The Semiotics," p. 83; Caryn Reeder, "Gender, War, and Josephus," p. 79. Regarding Philo's view on lesbianism, see Admiel Kosman and Anat Sharbat, "'Two Women Who Were Sporting with Each Other': A Reexamination of the Halakhic Approaches to Lesbianism as a Touchstone for Homosexuality in General," *Hebrew Union College Annual*, vol. 75, 2004, pp. 50-1. Elliott Horowitz notes this theme only tangentially in *Reckless Rites* (pp. 15, 37). Boyarin only touches upon the practice of cross-dressing on Purim in his "Introduction: Purim and the Cultural Poetics of Judaism-Theorizing Diaspora," *Poetics Today*, vol. 15, no. 1, 1994, pp. 1–8, as well as in his remarks regarding Torah study and cross-dressing, which we discussed in chapter 2. For Rebbe Nachman's transgressive references to cross-dressing in his stories, see Justin Lewis, "Divine Gender Transformations in Rebbe Nahman of Bratslav," *Nordisk Judaistik/Scandinavian Jewish Studies*, vol. 26, no. 1-2, 2008, p. 39. For a review of the phenomenon of gender-neutral clothing and cross-dressing as reflected in the Cairo Geniza, see Ora Molad-Vaza, "'Woman Shall Not Wear That Which Pertaineth unto a Man Neither Shall a Man Put on a Woman's Garment' - Dress and Gender in the Cairo Geniza Documents," *Yad Moshe*, vol. 29, 2018, pp. 55–83.

Michael Satlow<sup>414</sup> does relate in a significant way to this prohibition, however briefly. Satlow claims that the Tannaitic texts opposing cross-dressing were concerned with men cross-dressing in order to engage in homosexual activity, notwithstanding the Babylonian Talmud's understanding that the concern was for heterosexual activity.<sup>415</sup> Satlow, however, does not marshal significant evidence in support of this hypothesis. It is not generally cited by subsequent scholars, presumably due to its speculative nature.

Beyond the studies mentioned, there are numerous historical and conceptual analyses of "Bakhtinian" Jewish practices, carnivalesque behaviors that subvert traditional practices through irony and chaos, on days such as Purim.<sup>416</sup> Scholar-educator Yehuda Brandes considered the nature of the prohibition in the halakhic literature and beyond.<sup>417</sup> And Ronit Irshai recently utilized rabbinic teachings on cross-dressing to lend support to a non-binary view of sex in rabbinic law.<sup>418</sup> Yet with the exception of Irshai's recent analysis, almost none of these addresses cross-dressing in a manner informed by a thorough understanding of contemporary gender scholarship. Further, scholars have not considered halakhic texts against the backdrop of the scholarly finding that cross-dressing males in the Greco-Roman, medieval, and early modern worlds were largely treated more

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<sup>414</sup> Satlow, "They Abused Him Like a Woman," p. 2.

<sup>415</sup> *Nazir* 59a.

<sup>416</sup> For example, see Harold Fisch, "Reading and Carnival: On the Semiotics of Purim." *Poetics Today*, vol. 15, no. 1, 1994, pp. 55–74; and Trisha Gambaiana Wheelock, *Drunk and Disorderly: A Bakhtinian Reading of the Banquet Scenes in the Book of Esther*, Baylor University, 2008, [https://baylor-ir.tdl.org/bitstream/handle/2104/5281/Trisha\\_Wheelock\\_phd.pdf?sequence=1](https://baylor-ir.tdl.org/bitstream/handle/2104/5281/Trisha_Wheelock_phd.pdf?sequence=1).

<sup>417</sup> Yehuda Brandes, "A Man's Article and a Woman's Garment," *The Old Will Be Renewed*, Hebrew University, Jerusalem, 1999, pp. 169–199.

<sup>418</sup> Irshai, "Cross-Dressing in Jewish Law."

leniently than females, as well as the implications of this topic for the field of rabbinic masculinity.

Clearly, there is much that remains to be analyzed regarding rabbinic rulings regarding cross-dressing alongside the larger unresolved questions regarding rabbinic masculinity, including the extent to which Jewish opposition to cross-dressing is intended to protect men from the threat of losing their masculinity.<sup>419</sup> To set the stage for an analysis of the rabbinic literature, we turn to the biblical text.

## **Chapter 4 - Biblical Texts on Cross-Dressing**

### **I. Introduction**

This chapter studies the biblical verse that prohibits cross-dressing. We will contend that notwithstanding the opposite trend in later, halakhic literature, the face reading of the verse suggests that the prohibition on women is either comparable to or broader in scope than the one imposing restrictions upon men.

### **II. The Biblical Text**

The starting point for any discussion of the prohibition against cross-dressing is the verse in Deuteronomy 22:5:

לא יהיה כלי גבר על אשה ולא ילבש גבר שמלת אשה כי תועבת יקוק אלקיך כל עשה אלה

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<sup>419</sup> On this subject in biblical contexts, see the fascinating discussion on the book of Job as a commentary on precisely this question in Hans Kosmala, "The Term Geber in the Old Testament and in the Scrolls." *Congress Volume Rome 1968*, pp. 159–169, as well as the summary in Harold Vedeler, "Reconstructing Meaning in Deuteronomy 22:5: Gender, Society, and Transvestitism in Israel and the Ancient Near East," *Journal of Biblical Literature*, vol. 127, no. 3, 2008, p. 472.

There<sup>420</sup> shall not be a man's vessel upon a woman, and a man shall not wear a woman's dress,<sup>421</sup> for anyone who performs these things is an abomination to the Lord your God.<sup>422</sup>

At first glance, the fact that the prohibitions upon men and women are taught in a single verse might be taken to suggest that the range of cases covered by each prohibition is roughly comparable to one another. Yet a close reading reveals that the two prohibitions are formulated quite differently from one another. The category encompassed by the man's prohibition seems relatively straightforward: he is prohibited from donning a woman's "*simplah*." While the precise meaning of "*simplah*" is not entirely clear, the prohibition's general parameters seem fairly straightforward: the verse appears to be limited to a man who wears a woman's clothing, whether more narrowly or broadly defined, and does not outlaw a man from donning women's accouterments or mimicking other behaviors associated with women's beautification (e.g., looking in a mirror).

By contrast, there are numerous exegetical ambiguities in regard to the prohibition upon a woman. First, the meaning of "*yihyie*" is less clear than "*yilbash*," the term used for a man. Is the prohibition for a woman to *don* a man's "*keli*" or for her to *have* the "*keli*" upon her? For instance, if a woman willingly allows someone else to place a man's

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<sup>420</sup> Unless otherwise indicated, all translations of Hebrew texts in this study are my own.

<sup>421</sup> We have translated *simplah* as garment, following NEB. Hilary Lipka, ("The Prohibition of Cross-Dressing." *TheTorah.com*, <https://www.thetorah.com/article/the-prohibition-of-cross-dressing>) NJPS, NEB, and RSV all render *simplah* "clothing." While these differences are meaningful, we will see that they are far closer to one another than the range of definitions offered for "*keli*," which a woman is prohibited to don. For a Karaite interpretation, see Yefet Ben Eli, quoted in Orah Mulad Wazza, "*Lo Yihyie Keli Gever*."

<sup>422</sup> Many classic translations are imprecise. NJPS, for example, renders: "A woman must not put on man's apparel, nor shall a man wear a woman's clothing; for whoever does these things is abhorrent to the Lord your God." This ellides the fact that the verse does not directly instruct a woman not to put on a man's clothing, but for men's clothing not to be upon her. It is also striking that NJPS translates "*simplat*" as a reference to women's clothing in general. Robert Young's literal translation (*The Holy Bible: Young's Literal Translation*, [http://www.ultimatebiblelibrary.com/Youngs\\_Translation.pdf](http://www.ultimatebiblelibrary.com/Youngs_Translation.pdf)), does account for the active/passive distinction, though he too translates "*simplah*" as a "garment" instead of a dress.



garment upon her, does she still violate the prohibition?<sup>423</sup> If so, do the same parameters apply to men? Second, the term “*keli*” is subject to an array of possible translations. Elsewhere in the Bible this word carries meanings ranging from clothing to weapons to food utensils to any personal property. What does it denote here? Third, the verse’s selection of the term “*gever*” instead of “*ish*,” the simplest counterpart to “*isha*,” seems suggestive. What meaning might this choice of terminology add? Beyond questions of scope, the reference to abomination is ambiguous. What exactly about cross-dressing renders it an abomination, and, relatedly, what is the underlying rationale for the biblical prohibition?<sup>424</sup>

### III. The Rationale for the Prohibition

The absence of a clear rationale coupled with the terminology of “abomination” prompted scholars to offer a range of explanations for the reasoning behind this prohibition, which is unique in the extant Ancient Near East literature.<sup>425</sup> Harold

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<sup>423</sup> For the discussion among recent halakhic decisors, see chapter 11 of this study.

<sup>424</sup> On the language of abomination in the Bible, see Mary Douglas, “Deciphering a Meal,” *Daedalus*, vol. 101, no. 1, 1972, pp. 61–81; Delbert Hillers, “Analyzing the Abominable: Our Understanding of Canaanite Religion,” *The Jewish Quarterly Review*, vol. 75, no. 3, 1985, pp. 253–269; William Hallo, “Biblical Abominations and Sumerian Taboos,” *The Jewish Quarterly Review*, vol. 76, no. 1, 1985, pp. 21–40; Susan Ackerman, “The Queen Mother and the Cult in Ancient Israel,” *Journal of Biblical Literature*, vol. 112, no. 3, 1993, pp. 385–401; and Tikva Frymer-Kensky, “Pollution, Purification, and Purgation in Biblical Israel,” in *Studies in Bible and Feminist Criticism*, Jewish Publication Society, Philadelphia, PA, 2006, pp. 399–414.

On there being both cultic and ethical meanings to “abomination,” see Vedeler, “Reconstructing Meaning,” p. 465 n. 21; Köhler Ludwig and Walter Baumgartner, *The Hebrew and Aramaic Lexicon of The Old Testament*, Brill, 1996, pp. 1702-4; and Francis Brown, et al. *A Hebrew and English Lexicon of the Old Testament*. Clarendon Press, 1892, pp. 1072-3. The term first appears in Deuteronomy, and most of the references to this expression are clearly cultic; see, e.g., Deut. 12:31; 17:1; 23:19; 27:25. A few are ethical, however, such as in 25:15-16. For discussion on this distinction, see Hallo, “Biblical Abominations,” and A. N. Wilson, *The Book of the People: How to Read the Bible*. Harper Perennial, 2016, pp. 97-9.

<sup>425</sup> For a brief summary, see Jeffrey Tigay, *JPS Torah Commentary: Deuteronomy*, JPS, 1996, p. 200 with n. 11-14. Most telling is Tigay’s recognition that there are several plausible explanations, and that none is decisive.

Vedeler<sup>426</sup> understood that the Bible wished to distance the Israelites from Ancient Near Eastern cultic practices, some of which involved cross-dressing, most famously the Mesopotamian cult of Ishtar.<sup>427</sup> Others such as P.J. Harland<sup>428</sup> and Nili Sacher Fox<sup>429</sup> critiqued Vedeler for presuming that evidence regarding Mesopotamian rituals is necessarily revealing about the prevalence of those rituals in other locations, especially given that there is no evidence for cross-dressing cultic ritual practices among the immediate neighbors of the Hebrews in Canaan or Egypt. Anthony Phillips<sup>430</sup> instead sees this as an example of anti-Canaanite sexual legislation, not necessarily along cultic lines but in opposition to pagan sexual looseness in general. This interpretation, however, fails to account for the lack of reference to sexual depravity in the surrounding verses in Deuteronomy. C.M. Carmichael<sup>431</sup> offers a third interpretation, explaining that cross-dressing could potentially provide access for men and women looking to engage in inappropriate sexual relations during times of war: women in illicit heterosexual activity, and men in homosexual activity. Harland,<sup>432</sup> however, rejects this interpretation: if the

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<sup>426</sup> Vedeler, “Reconstructing Meaning.”

<sup>427</sup> For a review of the current state of literature on the cult of Ishtar, see Louise Pryke, *Ishtar*, Routledge, 2017.

<sup>428</sup> P.J. Harland, “Menswear and Womenswear,” *The Expository Times*, vol. 110, no. 3, 1998, pp. 73–6.

<sup>429</sup> Nili Sacher Fox, “Gender Transformation and Transgression: Contextualizing the Prohibition of Cross-Dressing in Deuteronomy 22:5,” in *Mishneh Todah: Studies in Deuteronomy and its Cultural Environment in Honor of Jeffrey H. Tigay*, Eisenbrauns, Winona Lake, Indiana, 2009, pp. 49–71.

<sup>430</sup> Anthony Phillips, *Deuteronomy. Commentary by Anthony Phillips*, Cambridge University Press, 1973, p. 145.

<sup>431</sup> Calum Carmichael, *The Laws of Deuteronomy*, Cornell University Press, 1974, pp. 147–8. See also Carmichael, “A Time for War and a Time for Peace: The Influence of the Distinction upon Some Legal and Literary Material,” in *Studies in Jewish Legal History; Essays in Honour of David Daube*, Jewish Chronicle Publications, London, 1974, pp. 50–3.

<sup>432</sup> *Ibid.*

concern is for wartime sexual behaviors, we would have expected military references in the verses surrounding the prohibition against cross-dressing. Yet such references are absent.<sup>433</sup> To this we may add that while Carmichael cites Ugaritic cross-dressing practices as precedents, much like Vedeler's invocation of Mesopotamian cultic practices, these seem too distant to offer an immediate context for the biblical prohibition. Finally, it should be noted that even Carmichael himself does not seem fully convinced by this possibility; he notes the parallels to other instances of "unnatural or undesirable mixtures," which suggests an alternative explanation we will elaborate below.

Citing Hittite and other Ancient Near Eastern rituals as evidence, Harry Hoffner offers a fourth approach, arguing that the biblical prohibition is a reaction against the magical power that some pagan tribes attributed to objects such as the bow, which was associated with masculinity, and the spindle and mirror, symbols of femininity. Hoffner claims that in some contemporaneous cultures, if such a symbol was used by a member of the "wrong" sex, that individual could be stripped of his or her sexual potency. Hoffner theorizes that such magical incantations were likely viewed as attempts to strip the Jewish God of his power over fertility, and were therefore seen by the Bible as an "abomination."<sup>434</sup> While Hoffner's interpretation is ingenious, scholars are skeptical, as the context omits any reference to magic, just as it fails to mention anything about pagan

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<sup>433</sup> In general, many scholars note the apparent lack of organizational coherence to the set of laws at the beginning of Deut. 22. Lipner, for example, observes that "Deut. 22:5 is part of a group of eight laws (Deut. 22:1–12) that appears to be miscellaneous and unrelated."

<sup>434</sup> Harry Hoffner, "Symbols for Masculinity and Femininity: Their Use in Ancient Near Eastern Sympathetic Magic Rituals," *Journal of Biblical Literature*, vol. 85, no. 3, 1966, pp. 326–334, especially pp. 333–4.

cults, illicit relations, or warfare. As Sacher Fox sums up her response to all the viewpoints we have reviewed, “In the final analysis... the regulation in Deuteronomy, which bans all Israelites from dressing as the opposite sex, makes no mention of magical rites, cult practices, or military contexts.”<sup>435</sup>

Cornelius Houtman offers the fifth and most plausible approach, to which Carmichael alludes, namely that mixing males and females endangers the very fabric of creation.<sup>436</sup> This fits well with the prohibitions against forbidden mixtures,<sup>437</sup> which appear just a few verses later in the same chapter in Deuteronomy.<sup>438</sup> Harland<sup>439</sup> advances a variation on Houtman’s thesis: while the immediate concern of cross-dressing is that it may lead to illicit relations, the larger concern is ultimately one of maintaining borders between the sexes. Harland thus proposes an ideological connection between the biblical sex laws, especially the prohibition of homosexuality, and the rule against cross-dressing, all of which are intended as “a rejection of actions which might confuse or mix sexual identity.”<sup>440</sup> For the Bible, such behavior “infringe[d] the natural order of creation which

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<sup>435</sup> Sacher Fox, p. 68.

<sup>436</sup> Cornelius Houtman, “Another Look at Forbidden Mixtures,” *Vetus Testamentum*, vol. 34, no. 2, 1984, pp. 226–8.

<sup>437</sup> This parallels the work of Mary Douglas on Leviticus. See Douglas, *Purity and Danger: An Analysis of Concept of Pollution and Taboo*, Routledge, 2010, pp. 54–71. See also Carmichael, *The Laws of Deuteronomy*.

<sup>438</sup> Deut. 22:9–11.

<sup>439</sup> Harland, “Menswear and Womenswear,” pp. 75–6. See also Mark George in “Masculinity and Its Regimentation in Deuteronomy,” in *Men and Masculinity in the Hebrew Bible and Beyond*, Sheffield Phoenix Press, Sheffield England, 2010, pp. 64–83, esp. p. 72, who sees this prohibition as reflecting the importance for the Bible generally, and Deuteronomy in particular, to regimenting the gendered lives of the Israelite and not blurring gender boundaries.

<sup>440</sup> Harland, “Menswear and Womenswear,” p. 76.

divided humanity into male and female,”<sup>441</sup> which was one way Israel showed itself to be holy to God.

Sacher Fox makes an argument along similar lines, agreeing that the prohibition was intended to preserve gender distinctions between men and women. As to why these distinctions were considered important to the Israelites, particularly as there is evidence that some of their neighbors were far less dogmatic about gender dimorphism,<sup>442</sup> Sacher Fox proposes that “Israelite clans were regularly in danger [such] that they felt compelled to tightly control their community hierarchies, in particular to protect the role of males as protectors and women as nurturers...” The small Israelite *pater familial* was always in danger of going hungry. As a result, “to maintain social order and family integrity, the patriarchal system of this basically agrarian society would have enforced the delineation of gender lines and roles in traditional fashion.”<sup>443</sup>

Lipka goes one step further than Fox, arguing that the prohibition is not just aimed at ensuring that traditional gender roles were upheld in the face of constant danger, such that men defended the Israelites and women bore their children. Instead, Lipka proposes that both elements of the prohibition are intended to protect men’s place in society:

Keeping the accouterments of manhood away from women is a way to ensure that women stay in their “proper” social place... [and] a man who has something feminine about his dress would not be considered manly, so the second part of the prohibition is also about protecting manhood and its accouterments.<sup>444</sup>

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<sup>441</sup> Ibid.

<sup>442</sup> See Sacher Fox, “Gender Transformation,” pp. 53-62.

<sup>443</sup> Sacher Fox, “Gender Transformation,” p. 70.

<sup>444</sup> As noted in chapter two, there is a substantial general and Jewish literature suggesting that manhood is not taken for granted, but must be proved and reinforced by the males in society. In the general literature, this has

Lipka is suggesting a linkage between the cross-dressing prohibition and male anxiety regarding the security of his status in a patriarchal society. We will demonstrate that an element of anxiety is at play in numerous rabbinic texts as well.

Thus, notwithstanding the verse's ambiguity and the variety of interpretations that have been proposed, recent scholarship increasingly sides with the view that cross-dressing is an inherently objectionable act that undermines the natural and important distinctions among God's chosen people.<sup>445</sup>

Having considered the rationale for the biblical prohibition, we now turn to the questions we raised regarding the scope and language of the woman's prohibition. In some cases, the rationale for the prohibition helps us to decide among and account for some of the textual ambiguities that we previously noted.

#### IV. The Meaning of "*Keli*"

The NJPS<sup>446</sup> and NEB<sup>447</sup> translations render *keli* "man's apparel" and "article of man's clothing" respectively. This interpretation suggests that a woman is barred from wearing a relatively wide range of items. It further suggests that while a man is prohibited

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been widely attributed to Gilmore's *Manhood in the Making*. For a Jewish formulation of this perspective, see especially Satlow, "Try to Be," p. 21.

For a feminist perspective on this verse, see Judith Antonelli, *In the Image of God: A Feminist Commentary on the Torah*, Rowman & Littlefield, 2004, pps. 467-9; and Ellen Frankel, *Five Books of Miriam: The First Torah Commentary from a Woman's Point of View*, Jewish Publication Society, 1998, p. 273. Tobi Liebman, "The Jewish Exegetical History of Deuteronomy 22:5," p. 105, however, asserts that "feminist writings on Deut. 22:5 do not offer any new insight into the meaning of the verse's prohibitions."

<sup>445</sup> See too Daniel Boyarin, "Rabbis and Their Pals; or, Are There Any Jews in 'The History of Sexuality'?" (Heb.) *Zemanim*, vol. 52, 1995, pp. 50-66, 97.

<sup>446</sup> *The Torah: The Five Books of Moses: A New Translation of the Holy Scriptures According to the Masoretic Text*, Jewish Publication Society, 1985.

<sup>447</sup> *The New English Bible*. Oxford, 1970.

from wearing a specific type of female clothing (“*simplah*”), a woman may not wear any male garment.

A second school of thought defines *keli* even more broadly, maintaining that the generic term “*keli gever*” includes men’s clothing, weaponry, or related objects. For example, Nili Sacher Fox understands the term to mean “gear” or “outfit,” which she defines as follows: “Aside from apparel, ‘gear/outfit’ can include weapons, hunting equipment, or other gendered objects categorized by society as ‘male.’”<sup>448</sup> Hilary Lipka<sup>449</sup> follows Sacher Fox’s rendering, holding that essentially any object worn or perhaps even held specifically by men falls under the scope of the prohibition.

Yet others incline in the opposite direction, reading “*keli gever*” in a more narrow vein. Harry Hoffner,<sup>450</sup> writing against the backdrop of the aforementioned Hittite and Ugaritic practices, contends that “the term ‘*keli*’ in this context is certainly not a garment, but an implement or weapon,” in all likelihood a specific reference to the bow.<sup>451</sup> This follows from his theory linking cross-dressing to ancient magic. Vedeler, drawing on Acadian parallels to the word *keli*, initially suggests that *keli* refers to a man’s “container” (though Vedeler never clarifies what sort of container is categorized as male), but ultimately follows Hoffner in defining “*keli*” as a weapon.<sup>452</sup>

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<sup>448</sup> Sacher Fox, “Gender Transformation and Transgression,” p. 65 with n. 62.

<sup>449</sup> Lipka, “The Prohibition of Cross-Dressing.”

<sup>450</sup> Hoffner, “Symbols for Masculinity and Femininity.”

<sup>451</sup> Hoffner, “Symbols for Masculinity and Femininity,” p. 333 with n. 43.

<sup>452</sup> Sacher Fox, “Reconstructing Meaning,” pp. 469-470.

## V. “*Gever*” Versus “*Ish*”

Hoffner and Vedeler, among others, maintain that while *ish* denotes a biological male, *gever* suggests an individual acting in a fashion that is masculine in character, lending support to their view that “*keli*” denotes a weapon in our context.<sup>453</sup> This may be because *gever* derives from *gibbor*, which is utilized in the Bible in reference to physical strength<sup>454</sup> (e.g., Genesis 10:8-9; Joshua 7:14, 17,18; Judges 30:5; Jeremiah 41:16),<sup>455</sup> rabbinic usage notwithstanding<sup>456</sup> (*Avot* 4:1).<sup>457</sup> Other scholars, however, would likely contend that this is not decisive, for a few reasons. First, *gever* is sometimes used in the Bible in ways that do not specifically illustrate the unique characteristics of men. Second, following Sacher Fox, it is plausible that the term “*gever*” actually comes to broaden the term to mean anything associated specifically with men: clothing, weapons, and more. Thus, while the appearance of the root “*GVR*” instead of “*ish*” is suggestive, it does not offer clear-cut support for one interpretation or another.

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<sup>453</sup> Sacher Fox, “Reconstructing Meaning.”

<sup>454</sup> Lipka (“The Prohibition of Cross-Dressing,” n. 8) summarizes the biblical evidence as follows: “In every usage of the term גבר with one exception (Job 3:3), the term refers to an adult male. The intensive form of the noun גבר is גבור, which is used to denote a man who is considered the epitome of hegemonic masculinity, noteworthy for his exceptional strength, bravery, and/or leadership ability, often in the context of warfare.”

<sup>455</sup> For a similar analysis, see Marc Brettler, “Happy Is the Man,” pp. 202-3, who argues that the title “*gever*” denotes not just a male, but “a person who acts as a hegemonic male,” which was understood in biblical times to refer to a man going out to war. See especially Kosmala, “The Term Geber.” See also Thomas Hentrich, “Masculinity and Disability in the Bible,” in *This Abled Body: Rethinking Disabilities in Biblical Studies*, Society of Biblical Literature, Atlanta, 2007, pp. 73–87; and Moshe Bar Asher, “The Clause ‘The Lord Is a Man of War’ (ה' אִישׁ מִלְחָמָה) and Its Reflexes throughout the Generations,” in *The Reconfiguration of Hebrew in the Hellenistic Period: Proceedings of the Seventh International Symposium on the Hebrew of the Dead Sea Scrolls and Ben Sira at Strasbourg University, June 2014*, Brill, Leiden, 2018, pp. 1–15.

For a larger feminist critique of the inconsistency in translations of *gevurah*, see Suzanne McCarthy, et al. *Valiant or Virtuous?: Gender Bias in Bible Translation*. Wipf & Stock, 2019, chap. 1.

<sup>456</sup> On *Avot* 4:1 and Roman analogues, see Satlow, “Try To Be,” esp. p. 27.

<sup>457</sup> On rabbinic ambivalence toward warfare, see Richard Marks, “Dangerous Hero.”



## VI. The Scope of the Biblical Prohibition

Ambiguities notwithstanding, men and women's prohibitions appear to be analogous in scope, and it is even plausible that the prohibition on women is wider. The interpretations of biblical scholars, particularly regarding the scope of the prohibition, provide a useful framework for considering later, rabbinic views. For it is precisely the implication that *simlat isha* is comparable to or even wider than *keli gever* that rabbinic literature will overturn.

### Chapter 5 - *Targumim* and Rabbinic Texts: *Lo Yilbash* and the Rabbinic Man

#### I. Introduction

Having reviewed the biblical literature, we now turn to the rabbinic texts, beginning with the *Targumim*. We will observe that even as the biblical verse tends toward reciprocity and perhaps even suggests that the prohibition upon the woman is broader than that upon the man, the rabbinic texts radically reverse this trend, severely

curtailing the scope of the prohibition upon women and dramatically expanding the prohibition upon men. As part of this move toward polarization of the twin prohibitions, numerous halakhic texts suggest that *lo yilbash* is a lens through which we may probe rabbinic attitudes towards masculinity, particularly regarding how the rabbis “crafted” the ideal male and concerning rabbinic recognition of anxious masculinity.

## II. *Targumim*<sup>458</sup>

### II. 1. Introduction

In general, the chronology of the major *Targumim* is subject to scholarly dispute.<sup>459</sup> Because the precise chronological order of the *Targumim* is not essential to our argument, we may set aside this thorny question. Instead, while proceeding in roughly chronological order, we will focus on the conceptual import of each Targumic interpretation. While there is not necessarily any inherent connection between these texts,

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<sup>458</sup> Because our focus is on rabbinic interpretations of cross-dressing, we have not analyzed other texts such as the Septuagint, Samaritan Bible, Dead Sea Scrolls, Philo, and Josephus. For a summary and brief discussion of these texts as they pertain to our verse, see Liebman, “The Jewish Exegetical History,” pp. 9-18, 23-4. On the Dead Sea Scrolls, see the sources cited in Rosen-Zvi, “*Takhshitim Gavri'im*,” p. 4 with n. 9.

It is worth pointing out for our purposes that, as noted by Lipka, Philo (*On the Virtues*, Translated by Walter T. Wilson, Brill, 2011, p. 47) suggests that the maintenance of distinctive clothing for men and women is essential for men to retain their military “courage.” While there is no evidence that the Rabbis read Philo, his ideas did influence a number of Church Fathers, including Tertullian (155-220 C.E.), who, in *On the Veiling of Virgins* 14:2 (Tertullian, et al., *The Writings of Quintus Sept. Flor. Tertullianus: With the Extant Works of Victorinus and Commodianus*, T. & T. Clark, 1870), condemned cross-dressing and saw women’s modest outward and gender-appropriate dress as reflective of inner virtue. See too Heather Barkman, *Tertullian's Views of Gender, Baptism, and Martyrdom through the Examples of Thecla and Perpetua*, Library and Archives Canada, 2011, pps. 68-9. It is plausible that the *Targumim* and rabbinic texts were implicitly responding to this perspective by presenting alternative interpretations of the verse.

<sup>459</sup> For an excellent current view of the field, see Martin McNamara, “*Targumim*,” in *The Oxford Encyclopedia of the Books of the Bible*, vol. 2, Oxford University Press, Oxford, 2011, pp. 341–356, and sources cited therein. For a book-length treatment, see Paul Flesher and Bruce Chilton, *The Targums: A Critical Introduction*, Brill, 2011. See also Philip Alexander, “Jewish Aramaic Translations of Hebrew Scriptures,” *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity*, Van Gorcum, 1988, pp. 242–253.

we will demonstrate that a common thread nonetheless ties together the four *Targumim* we will consider.

## II. 2. Onkelos

*Targum Onkelos*<sup>460</sup> renders:

לא יהי תקון זין דגבר על אתא ולא יתקן גבר בתקוני אתא ארי מרחק קדם ה' אלקך כל עביד אלין:

There may not be an accoutrement of a male's weaponry on a woman, and a man may not beautify himself with accoutrements of a woman, because anyone who performs these is distant from before the Lord your God.

Read against the backdrop of the range of plausible interpretations we considered in the previous chapter, Onkelos assumes a far narrower scope of stringency for women than for men. He interprets “*keli gever*” as weaponry, while outlawing a man from beautifying himself with feminine accoutrements or accessories.<sup>461</sup> Further, Onkelos's identification of armor with man's clothing is striking, and provides an initial indication that the Rabbis saw armor as the ideal male ornament.<sup>462</sup> Even more remarkable, depending on his exact dates, which are unknown, or assuming that these lines are not from the earliest stratum of Onkelos,<sup>463</sup> it appears highly unlikely that Jewish men would have been wearing armor

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<sup>460</sup> *Torat Hayyim, Sefer Devarim*, 7th ed. Mossad ha-Rav Kook, Jerusalem, 1997, Deut. 22:5, p. 188.

<sup>461</sup> Still, Onkelos's language appears to downplay any conceptual difference between the respective prohibitions upon men and women. He uses the term “*tikkun*” three times, once in respect to the woman and twice for the man, suggesting a fundamental analogy between them. And while he does differentiate between the items that men and women are prohibited from wearing - women may not beautify themselves with weaponry, and men with women's beauty objects - the overall impression one gets is that the two prohibitions are fundamentally cut from the same cloth. Both a man and woman are barred from beautifying themselves in the manner of the opposite sex; it is just that beautiful accouterments are defined as male weaponry and female beauty objects.

<sup>462</sup> This would seem to cut against Boyarin's thesis in *Unheroic Conduct*. In defense of Boyarin, we might argue, as we did previously in chapter 2, that Boyarin never sought to present his view as the dominant view in rabbinic literature, but merely one legitimate strand of thought. Further, it is possible to see the identification of male clothing as armor not as an ideal, but as a concession intended to coax men to abandon classical Greco-Roman notions of fashion.

<sup>463</sup> See McNamara, “*Targumim*,” pp. 343-344.

on a regular basis at the time these words were composed. Of course, Onkelos is operating primarily as a biblical commentator, and refers to the biblical era when, with the entry to Canaan, Jewish men would soon be expected to bear weapons and don armor. Still, it is noteworthy that he specifically interprets women's prohibition in a fashion that all but erases its contemporary relevance.

### II. 3. Neofiti

Targum Neofiti,<sup>464</sup> a Palestinian Targum of unknown authorship,<sup>465</sup> renders:

לא יהווי מני זיינה דגבר על אתה ולא ילבש גבר לבוש דאתה ארום סני ומרחק קדם ה' אלהכון כל דעביד אלין.

There shall not be the clothing of a man's weapons upon a woman, and a man may not wear the clothing of a woman, because anyone who does these is despised by and distanced from the Lord your God.

Neofiti concurs with Onkelos that *keli* refers specifically to armor. At the same time, he appears to maintain that a man is barred from wearing all women's clothing, eschewing both a more narrow reading that limits the prohibition to a cloak in particular (the literal rendering of "*simplah*"), but also implicitly rejecting Onkelos's wider reading, which outlaws a man from wearing women's adornments in general. Despite his partial disagreement with Onkelos, Neofiti also indicates that the scope of the prohibition on men is substantially wider than that which is outlawed for women.

### II. 4. Pseudo-Jonathan to Deuteronomy

Pseudo-Jonathan<sup>466</sup> writes:

<sup>464</sup> *Targum Neofiti*. [https://digi.vatlib.it/view/MSS\\_Neofiti.1](https://digi.vatlib.it/view/MSS_Neofiti.1), Deut. 22:5, pp. 410v-411r.

<sup>465</sup> Philip Alexander, "Jewish Aramaic Translations."

<sup>466</sup> Moshe Ginzberger, *Targum Yonatan ben Uziel al ha-Torah*, Calvary and Co., Berlin, 1903, Deut. 22:5, pp. 337-338.

לא יהוון גוליינ דציצית ותפילין דהינן תיקוני גבר על איתא ולא יספר גבר שיחייה וערייתיה ובי  
 אנפוי לאיתחמאה היך נשא ארום מרחק קדם יי אלקכון הוא { כל דעביד אלין }

There shall not be garments of *tzitzit* and *tefillin*, which are accoutrements of men, on a woman; and a man may not cut [the hair of] his armpits or intimate areas or face in order to appear like women; for he is distanced from before the Lord your God {any who does these}.

Pseudo-Jonathan takes a very different tack from the other *Targumim*. It identifies the man's beautifying garments, which are forbidden for women to don, not as weaponry but as *tzitzit* and *tefillin*, perhaps suggesting that both are to be viewed as adornments.<sup>467</sup> The man, by contrast, is barred from cutting the hairs in various parts of his body in order to appear like a woman.

Pseudo-Jonathan's identification of "*keli ge'ever*" with ritual adornments arguably renders the prohibition upon women far more practical than for Onkelos and Neofiti. Additionally, Pseudo-Jonathan defines the man's prohibition quite differently from Onkelos and Neofiti: it is not defined as donning clothing at all. Instead, consistent with then-cultural norms,<sup>468</sup> the man is barred from grooming himself in certain locations.

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<sup>467</sup> This would be consistent with a significant body of evidence in rabbinic texts. Regarding *tzitzit*, particularly the symbolism of the *tekhelet* dye, see Israel Ziderman, "Purple Dyeing in the Mediterranean World: Characterisation of Biblical Tekhelet," in *Colour in the Ancient Mediterranean World*, BAR Publishing, Oxford, 2004, pp. 40–45. For the association between *tefillin* and ornaments, see Mishnah *Shabbat* 6:1-4 and Yinon and Rosen-Zvi, "*Takhshitim Gavri'im, Takhshitei Nashim*," p. 7. See also Babylonian Talmud, *Mo'ed Katan* 21a. For the dispute between the Karaites and rabbinic scholars as to whether phylacteries are a mere metaphoric symbol or an actual adornment, see Abraham Habermann, "The Phylacteries in Antiquity," in *Eretz-Israel: Archaeological, Historical and Geographical Studies, Zalman Shazar Volume*, Israel Exploration Society, Jerusalem, 1971, pp. 174–177 with n. 2. Some scholars, such as Lipka, contend that Pseudo-Jonathan seems to be more motivated by rabbinic polemics than by determining the face reading of the verse. For our purposes, however, the question of motivation is beside the point; Pseudo-Jonathan's words stand on their own.

<sup>468</sup> Until recent times, it was generally the norm in the West for men not to cut their pubic hair. See Lyndsey Craig and Peter Gray, "Pubic Hair Removal Practices in Cross-Cultural Perspective," *Cross-Cultural Research*, vol. 53, no. 2, 2018, pp. 215–237. See also Sara Ramsey, et al. "Pubic Hair and Sexuality: A Review." *The Journal of Sexual Medicine*, vol. 6, no. 8, 2009, pp. 2102–2110. Along similar lines, the Babylonian Talmud (*Sanhedrin* 21a) cites a homily that it was a sign of Jewish women's beauty that they did not have armpit or pubic hair, implying that men generally did not remove these hairs.

Notably, all three areas are secondary sexual characteristics. This strongly suggests that sexuality is considered an essential part of one's masculinity, and that the Torah seeks to bar a man from acting in a way that detracts from his sexual distinctiveness.

Further, the final three words - "anyone who does these" - are omitted in the London manuscript of Pseudo-Jonathan.<sup>469</sup> According to this text, Pseudo-Jonathan may be suggesting that only a man who cross-dresses is viewed as an abomination, not a woman. This would suggest that transvestism may be more objectionable for a man than for a woman, which would be consistent with the larger trends we noted in the general literature, and which may be consistent with the tendency we have observed among the *Targumim* to downplay the practical scope of women's prohibition.

Finally, the interpretations of men's garb as armor and as *tefillin* and *tzitzit* may be conceptually closer to one another than one might initially assume. There is a significant body of evidence suggesting that *tefillin* and *tzitzit*, with their protective, enwrapping, and adorning elements, might be seen as a rabbinic substitutes for armor, much as the dialectic of Torah study is a type of warfare, and the study hall a scholarly battlefield.<sup>470</sup>

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<sup>469</sup> Some scholars maintain that the London manuscript is the most accurate version of Pseudo-Jonathan. See Joseph Fitzmyer's book review, "Targum Pseudo-Jonathan of the Pentateuch: Text and Concordance," *Theological Studies*, vol. 46, no. 4, 1985, pp. 712-4.

<sup>470</sup> While at first glance there is a contradiction between Pseudo-Jonathan's comments to Deuteronomy and Judges, in fact all available evidence indicates that Pseudo-Jonathan to the Pentateuch and to Prophets are not closely related, and certainly were not composed by the same author. See McNamara, "*Targumim*," p. 348. For the study hall as battlefield, see Rubenstein, *The Culture*, p. 48, and our earlier discussion at notes 190-193.

## II. 5. Pseudo-Jonathan to Judges

This text, which has parallels in *Yalkut Shimoni*<sup>471</sup> and a number of other texts,<sup>472</sup> suggests that the prohibition centers around women's behaviors, not their dress, further differentiating the prohibition of men from that of women. These texts comment on Yael's assassination of Sisera. In her paeon, Deborah declares<sup>473</sup>:

ידה ליתד תשלחנה וימינה להלמות עמלים והלמה סיסרא מחקה ראשו ומחצה וחלפה רקתו

Her hand reached for the tent pin and her right [hand] for the workman's hammer; she smote Sisera, annihilated his head, and shattered and pierced his temple.

Targum Pseudo-Jonathan<sup>474</sup> comments:<sup>475</sup>

טבתא יעל אתת חקר שלמא דקימת מה דכתיב בספר אורייתא דמשה לא יהוי תקון זין דגבר על אתתא ולא יתקן גבר בתקוני אתתא אלהן ידהא לסכתא אושית וימינא לארזפתא דנפתין למתבר רשיעין נאנוסין מחתיה לסיסרא תברת רישיה פצעת מוחיה אעברת סכתא בצדעיה.

Good is Yael, wife of Heber the Shulamite, who fulfilled that which is written in the biblical book of Moses, “there shall not be weaponry of a man on a woman,

<sup>471</sup> *Yalkut Shimoni*, vol. 2, Wagschal, Jerusalem, no. 56, p. 708.

<sup>472</sup> This interpretation also appears in a variety of other *midrashim*, and is cited by Pseudo-Rashi to *Nazir* 59a (s.v. *Talmud lomar*).

Scholars are in agreement that Rashi did not write the commentary to *Nazir* that appears on the Talmudic page under his name. Instead, the commentary is widely attributed to Rashi's son-in-law R. Judah ben Nathan. However, Jacob Nahum Epstein (“*Peirushei Ha-Rivan u-Feirushei Vermayza*,” *Tarbiz*, vol. 4, no. 2-3, 1932, pp. 153–192, esp. pp. 153-169), argues that the literary evidence suggests that the work was not composed by R. Judah ben Nathan or any other French scholar, but by an anonymous German scholar from Worms - and not Mainz, as yet others contend. See also Avraham Grossman, *Hakhmei Ashkenaz ha-Rishonim: Korotehem, Darkam be-Hanhagat ha-Tzibbur, Yetziratam ha-Ruhanit, me-Reishit Yishuvam ve'Ad li-Gezeirot 856 (1096)*, Magnes Press, Hebrew University, Jerusalem, 2001, p. 216 with n. 275; and Yisrael Ta-Shma, *Ha-Sifrut ha-Parshanit la-Talmud be-Eiropah uvi-Tzefon Afrikah: Korot, Ishim ve-Shitot*, vol. 1, Magnes Publications, 1999, pp. 52-3.

<sup>473</sup> Judges 5:26.

<sup>474</sup> *Mikraot Gedolot: Nevi'im u-Ketuvim, Shoftim, Ha-Meir le-Yisrael*, Jerusalem, p. 54.

<sup>475</sup> While at first glance there is a contradiction between Pseudo-Jonathan's comments to Deuteronomy and Judges, in fact all available evidence indicates that Pseudo-Jonathan to the Pentateuch and to Prophets are not closely related, and certainly were not composed by the same author. See McNamara, “*Targumim*,” p. 348 with n. 18.

and a man may not beautify himself with the accouterments of a woman.” She extended her hand to the tent peg, and aligned it with smith’s hammer, to destroy the evil and violent ones. She struck Sisera, broke his head, punctured his brain, and passed the tent peg through his temple.

This Targum seems to be looking to explain why Yael smote Sisera with a tent peg instead of a more conventional weapon, offering *lo yilbash* as the solution. (The parallel in Yalkut Shimoni explicitly elaborates this point.) This interpretation of the prohibition, while largely mirroring that of Onkelos and Neofiti, in fact may offer a somewhat wider definition of the prohibition incumbent upon women. For the former *Targumim*, the prohibition may be for a woman to don armor; it is not clear that weapons are included. Pseudo-Jonathan to Judges, by contrast, makes it clear that conventional weapons of war are included as well.<sup>476</sup> While not decisive on its own, we will see that some later authorities take this to mean that women are barred not from *dressing* like a man, but from *acting* like one, which would even more sharply distinguish the two prohibitions from one another: men are prohibited from dressing like women, and women from acting in a fashion that is quintessentially masculine.<sup>477</sup>

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<sup>476</sup> See David Tuvia Strauss, “*Nesiat Kelei Neshek le’Isha*,” *Mahenekha*, vol. 3, 2008, pp. 73-4, who argues that according to Targum and Rashi, the very act of a woman using a weapon - not just wearing armor - constitutes a violation of the prohibition.

<sup>477</sup> For a contemporary formulation of the latter interpretation, specifically in regard to Pseudo-Rashi, see Strauss, “*Nesiat Kelei Neshek*,” p. 74, where he contends that the man and woman’s prohibitions are qualitatively different from one another. It should be noted that while Strauss thinks that R. Eliezer ben Yaakov is adding a second track - a woman is prohibited from both dressing like a man and going to war like a man - a more convincing reading is that R. Eliezer ben Yaakov only prohibits going out to war. In any case, the basic thrust of what Strauss sees as R. Eliezer ben Yaakov’s second prohibition is consistent with the second interpretation we have offered.



In sum, while these four *Targumim* offer a range of views concerning the scope of the prohibition upon men, they all narrow the woman's prohibition by limiting it to military or religious adornments.<sup>478</sup>

### III. Tannaitic Texts

#### III. 1. Sifre<sup>479</sup>

Numerous, though not all, rabbinic texts echo the broader trend in the *Targumim* to enlarge the scope of the prohibition upon men while reducing that of women. This expansive view of the man's prohibition is consistent with the key position of R. Eliezer Ben Yaakov, whose view is first presented in the Sifre and further developed in the Babylonian Talmud.

Sifre<sup>480</sup> seems to present two diametrically opposed Tannaitic views:

לא יהיה כלי גבר על אשה, וכי מה בא הכתוב ללמדנו, שלא תלבש אשה כלי לבנים והאיש לא יתכסה צבעונים תלמוד לומר תועבה, דבר הבא לידי תועבה זהו כללו של דבר שלא תלבש אשה כדרך שהאיש לובש ותלך לבין האנשים והאיש לא יתקשט בתכשיטי נשים וילך לבין הנשים רבי אליעזר בן יעקב אומר מנין שלא תלבש אשה כלי זיין ותצא למלחמה תלמוד לומר לא יהיה כלי גבר על אשה והאיש לא יתקשט בתכשיטי נשים תלמוד לומר ולא ילבש גבר שמלת אשה.

“There shall not be a man's vessel upon a woman.” What does the verse come to teach us? That a woman should not wear white clothing, and the man should not cover himself in colored [clothing]? The verse states, “an abomination” - something that leads to an abomination. This is the general principle of the matter: that a woman may not dress in the manner that a man dresses and walk among the men, and a man may not adorn himself with the ornaments of women and walk among the women. Rabbi Eliezer son of Jacob says, Whence that a woman may not wear weapons and go out to war? The verse states, “There shall not be a

<sup>478</sup> See Figure 1 at the end of this chapter for a brief summary of the Targumic interpretations of the scope of the prohibition.

<sup>479</sup> For a scholarly introduction to the Sifre to Deuteronomy, see Hermann Strack and Gunter Stemberger, *Introduction to the Talmud and Midrash*, Varda Books, 2004, pp. 270-3. See also Menahem Kahana, “The Halakhic Midrashim,” in *The Literature of the Sages, Liturgy, Poetry, Mysticism, Contracts, Inscriptions, Ancient Science and the Languages of Rabbinic Literature*, vol. 3, Royal Van Gorcum, Assen, 2006, pp. 95–100.

<sup>480</sup> Louis Finkelstein, *Sifre im Emek ha-Netziv*, vol. 3, 1977, pp. 253-4.

man's vessel upon a woman." And [whence that] a man may not adorn himself with the ornaments of women? The verse states, "And a man shall not wear a woman's dress."

The Tana Kama engages with the verse in Deuteronomy in two noteworthy ways. On one hand, both his opening question and resolution lead us to a novel reading of the verse.

The Tana Kama appears to assume that *ab initio*, cross-dressing does not fall under the category of "abomination," and it is therefore difficult to understand the beginning of the verse in light of its conclusion.<sup>481</sup> This leads the Tana Kama to revise his understanding of the reasoning for the prohibition in a way that resembles the interpretation of Carmichael, discussed in chapter 3: the concern, at least one that rises to the level of abomination, is not the intrinsically objectionable nature of the act of cross-dressing, but the potential result of actual sexually illicit behavior.<sup>482</sup>

The novel explanation for the reasoning notwithstanding, in another respect the Tana Kama's interpretation is consistent with the simple reading of the verse. He seems to see the two prohibitions as essentially mirror images of one another: a man is barred from wearing a woman's ornaments, and a woman from donning a man's clothing, both so that they do not mingle with members of the opposite sex. In this respect, the Tana Kama would reject all four *Targumim* we examined; he appears to understand that women are barred from wearing all men's clothing. The only distinction between men and women is that women are barred from wearing male clothing, and men from wearing

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<sup>481</sup> See, for example, *Pseudo-Rashi Nazir* 59a s.v. *im le-lamed*, and *Peirush ha-Rosh* ad loc.

<sup>482</sup> While the concern of cross-dressing in order to enter the chambers of the opposite sex might seem far-fetched, there is some evidence of this phenomenon in the Ancient Near East. As Sacher Fox points out, "The practice of women infiltrating the military is well known from the Ugaritic legend of Aqhat, in which the heroine, Pughat, wears the garments and gear of a soldier beneath her own clothes when she ventures into battle to avenge her brother's death" ("Gender Transformation," p. 67). On medieval motivations for cross-dressing, see Lena Roos, "Cross-dressing among Medieval Ashkenazi Jews."

female *ornaments*. This is most simply understood on the basis of the assumption that women in the rabbinic period tended to wear jewelry more than men<sup>483</sup>; as such, women needed to wear men's clothing to pass as men, whereas men needed to wear jewelry to pass as women. For the Tana Kama, then, while not identical, the criteria for men and women to violate *lo yilbash* seem to be basically parallel.

R. Eliezer ben Yaakov, however, asserts that “a woman may not wear weapons and go out to war,” while “a man may not adorn himself with the ornaments of

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<sup>483</sup> This is evident from numerous passages in the Mishnah. See, for example, *Shabbat* 6:1-4.

women.”<sup>484</sup> R. Eliezer ben Yaakov, in rejecting the Tana Kama,<sup>485</sup> appears to essentially restate the position of Onkelos<sup>486</sup>: women may not wear weapons, and men may not wear female accoutrements.<sup>487</sup>

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<sup>484</sup> This suggests that for R. Eliezer ben Yaakov, in contrast to the Tana Kama, who follows the verses insofar as they seem to fundamentally equate the scope of prohibitions upon men and women, R. Eliezer ben Yaakov’s view is closer to that of the *Targumim*, which tend to see the prohibitions upon men and women as different from one another.

It is worth contrasting this interpretation of R. Eliezer ben Yaakov with that of Pseudo-Jonathan. As a practical matter, they share little in common: Targum bars women from wearing men’s ritual garments, while R. Eliezer ben Yaakov prohibits them from donning men’s armor. And while Pseudo-Jonathan understands that a man may not shave certain parts of his body hair, R. Eliezer ben Yaakov holds that he is barred from wearing women’s ornaments. More fundamentally, Pseudo-Jonathan seems to distinguish between the two prohibitions in the opposite direction than R. Eliezer ben Yaakov. For Pseudo-Jonathan, the woman is barred from *appearing* like a man (by wearing his ritual garments), while a man may not *act* like a woman (by shaving), albeit for the purpose of passing as a woman. For R. Eliezer ben Yaakov, however, the distinction runs along opposite lines: the woman may not *act* like a man (by wearing armor and going out to war), while a man is barred from *appearing* like a woman by donning her ornaments. This suggests that whereas for Pseudo-Jonathan a man is more heavily identified by his clothing than a woman, the opposite is the case for R. Eliezer ben Yaakov (following Englander’s description of the non-Slobodka *yeshivot*).

As an alternative interpretation, one might seek to claim that in fact R. Eliezer ben Yaakov fundamentally equates between the prohibitions upon the male and female. Perhaps he holds that both men and women are barred from beautifying themselves in the manner of the opposite sex; it is just that donning armor was the only manner in which men beautified themselves beyond the clothing they wore. In support of this interpretation, we might point to Onkelos, who, while only prohibiting women from donning armor, still presents the woman’s prohibition as one of beautification.

However, for a number of reasons this interpretation is insufficient to account for the position of R. Eliezer ben Yaakov. First, the *baraita* goes out of its way to call one “*tikkunei nashim*” and the other “*kelei zayyin*.” Had he intended *kelei zayyin* as a prime example of male adornments, R. Eliezer ben Yaakov could have easily used the same terminology of “*tikkunei anashim*” and given the example of armor - just as Onkelos did. That R. Eliezer ben Yaakov invokes only *kelei zayyin* suggests that these are prohibited as a category unto themselves, not merely as an example of male beautification. Further, R. Eliezer ben Yaakov’s emphasis on going out to war, not just donning armor, strongly suggests that the prohibition is about something other than not primarily about women donning men’s accouterments. (We will see that this emerges even more clearly in the Bavli’s presentation of R. Eliezer ben Yaakov.) Additionally, one might imagine other practical cases in which a woman might violate the prohibition, such as if she were to cut her hair extremely short or don a fake beard. That R. Eliezer ben Yaakov omits reference to any such cases suggests that his comments were made exclusively in regard to armor.

Further, the Talmud (*Shabbat* 63a) rules that armor is not considered an adornment nowadays, in which case it becomes even more difficult to contend that R. Eliezer ben Yaakov - who is cited in the Bavli as well - holds that women may not wear armor because of its attractiveness. That R. Eliezer ben Yaakov references the word *gever*, which is often associated with male strength and wartime, further reinforces the reading that he is focused specifically in military activities. Finally, the fact that the case of armor was not practical more or less from the moment it was originally propounded, suggests that R. Eliezer ben Yaakov was more interested in conveying a larger message about men and armor than in imposing a practical prohibition.

R. Eliezer ben Yaakov's interpretation may also hint at a deeper theme. Not only does he sharply differentiate between the rules governing a man and woman, but he also may underscore the extent to which it is difficult to pin down what it means to be a man. For his views regarding the two prohibitions lead us to a striking conclusion. For a man to resemble a woman is relatively straightforward: if he wears women's ornaments or clothing, he violates "*lo yilbash*." Yet for a woman to resemble a man is a far more difficult achievement, and one that is more ill-defined. This is consistent with that of Gilmore and Satlow: masculinity is not simply a status, but an achievement of sorts. Further, the range of viewpoints, especially when considering both the Tana Kama and R. Eliezer ben Yaakov, as to how a woman is considered to behave in a masculine fashion, may suggest that Jewish masculinity is not clearly defined, and is therefore subject to a wide range of interpretations.

<sup>485</sup> The relationship between R. Eliezer ben Yaakov's statement and that of the Tana Kama is unclear. Is R. Eliezer offering an alternative resolution to the Tana Kama's question regarding "abomination?"

One might propose that R. Eliezer ben Yaakov agrees with the Tana Kama's explanation of the underlying reasoning for the prohibition - the concern of illicit relations - and merely disputes the circumstances in which this applies to women. Yet this interpretation seems problematic. Unlike the Tana Kama, R. Eliezer ben Yaakov specifically omits any mention of walking among the opposite sex. This suggests that in his view, the prohibition applies even to one who does not cross into opposite-gender spaces while wearing the distinctive items of the opposite sex, which quite possibly suggests that the concern for illicit relations is irrelevant to the rationale for *lo yilbash*. Further, as noted earlier, while the concern for illicit relations can help to explain the invocation of the word "abomination," it does not reflect the immediate context in Deuteronomy and from the outset is an unlikely explanation for the prohibition.

It therefore seems more likely that R. Eliezer ben Yaakov disagrees with the Tana Kama about not only the scope of the prohibition, but also its underlying reasoning. In this interpretation, R. Eliezer ben Yaakov would maintain that even where there is no immediate concern for intercourse, the very act of cross-dressing qualifies as an abomination, either because such breakdowns in sexual dimorphism are likely to eventually lead to promiscuity (similar to Phillips in chapter 4), or because they are objectionable in of themselves (similar to Houtland, Sacher Fox, and Lipka). As to the textual motivation for R. Eliezer ben Yaakov to read the verse in this manner, the term "*gever*" may have led him to introduce the motif of weapons. Numerous later commentaries suggest this; see, for example, Barukh ha-Levi Epstein, *Sefer Tosefet Berakhah*, Moreshet, Tel Aviv, 1964, p. 168.

<sup>486</sup> This is likely no coincidence; scholars have noted Sifre Deuteronomy's larger influence on Onkelos. See Israel Drazin, *Targum Onkelos to Deuteronomy: An English Translation of the Text with Analysis and Commentary*, Ktav, 1982, pp. 8-10, 43-7.

<sup>487</sup> One important point remains unclear: does R. Eliezer ben Yaakov reject the Tana Kama entirely, or does he accept the Tana Kama that all cross-dressing is prohibited, and add two additional cases? Here too one may argue the point in both directions. Either way, there is an undeniable lack of symmetry: whereas men are barred from wearing all women's beauty products (similar to Onkelos), women are not permitted to wear armor. Further, it is not even clear that a woman is forbidden from wearing armor without going to war. R. Eliezer ben Yaakov emphasizes that she may not "wear weaponry and go out to war"; one may reasonably contend that in his opinion, a woman who dons men's weaponry and does not go out to war may not be in violation of the prohibition.

If the latter reading is correct, it emerges that for R. Eliezer ben Yaakov, *not only is the quintessential male dressed in armor, but it is essential to his character that he fights on the battlefield*. Neither point fits neatly with Boyarin's thesis. Instead, if the latter reading is correct, R. Eliezer ben Yaakov appears to view the rabbinic conception of masculinity and femininity as divided along the classic Roman lines of activity versus passivity. For a summary, see Michael Satlow, "They Abused Him," especially p. 14, where he writes that "To be like a woman... means to be penetrated." See also Kosman, "An Overview," pp. 166-7, and the sources he cites in n. 65. For a review of Roman sources, see Jason von Ehrenkrook, "Effeminacy," p. 149 with n. 15. In regard to beards, see Maria Doerfler, "Coming Apart," p. 42 with n. 20.

In any case, R. Eliezer ben Yaakov, who maintains that men are barred from wearing women's ornaments, and that the prohibition applies even outside the context of intermingling between the sexes, represents a significant expansion of the scope of the prohibition beyond the face reading of the biblical text - one which the Tana Kama apparently contests.

### III. 2. Midrash Tannaim

Midrash Tannaim was compiled by R. David Zvi Hoffman, and represents his best reconstruction of the Tannaitic *midrash halakhah* on Deuteronomy from the school of Rabbi Yishmael.<sup>488</sup> (By contrast, the Sifre is widely attributed to the school of Rabbi Akiva.) As the section on *lo yilbash* also appears in the Cairo Geniza,<sup>489</sup> where it is attributed directly to Rabbi Yishmael, it has a higher likelihood of authenticity than other citations, and is deserving of scholarly attention. That version of the Sifre reads:

לא יהיה כלי גבר על אשה ר' ישמעאל אומ' בא הכת' ללמדך הרחק מן הכיעור ומן הדומה לכיעור שלא יחשדוך אחרים בעבירה הא כאיזה צד האישי לבוש בגדי אשה והאשה סבורה לאיש שהוא אשה ונמצאו באין לידי עבירה לפיכך לא יתקשט האיש כתכשיטי אשה ולא אשה כתכשיטי איש ולא ילבש חלוק של צורות ולא טלית של שלטים: ד"א לא יהיה כלי גבר על אשה וכי מה בא הכת' ללמדינו שלא תלביש אשה כלי לבנים והאיש לא יתכסה צבעונין ת"ל כי תועבת ה' אלהיך דבר הבא לידי עבירה זה הוא כללו של דבר שלא תלבש אשה מה שהאיש לובש ותלך לבין האנשים והאיש לא יתכסה ולא יתקשט בתכשיט נשים וילך לבין הנשים: ר' אליעזר בן יעקב אומר מנ' שלא תלבש אשה כלי זיין ותצא למלחמה ת"ל לא יהיה כלי גבר על אשה ומנ' לאיש שלא יתקשט בתכשיטי נשים ת"ל ולא ילבש גבר שמלת אשה או [לא] יעשה כן (ת"ל) מפני גוים ומפני לסטים ת"ל כי תועבת ה' אלה' כל עו' אלה:

The vessel of a man shall not be on a woman. R. Ishmael says, The verse comes to teach you, Distance from ugliness and from that which is similar to ugliness, so that others will not suspect you of sin. In what manner? If a man is garbed in a woman's clothes, and the woman thinks that the man is a woman, and as a result

<sup>488</sup> See Strack and Stremberger, *Introduction*, pp. 273-5.

<sup>489</sup> *Cairo Geniza*, New York, JTS: ENA 3002.15 - ENA 3002.18.

they come to sin. Therefore a man may not adorn himself with a woman's adornments, nor a woman with a man's adornments. Nor may he wear a shirt of figures or a spotted garment: Another interpretation: The vessel of a man shall not be upon a woman. What does the verse come to teach us? That a woman may not wear white clothing, and a man may not cover himself with colored [clothing]? The verse teaches, "for it is an abomination to the Lord your God": a matter that leads to sin. This is the principle of the matter: that a woman may not wear what a man wears and walk among the men, and a man may not cover himself nor be adorned with an adornment of women, and walk among the women. Rabbi Eliezer son of Jacob says, Whence that a woman may not wear weapons and go out to war? The verse states, "A man's vessel may not be upon a woman." And [how do we know that] a man may not adorn himself with the ornaments of women? The verse states, "And a man shall not wear a woman's dress." Perhaps one may not do so due to gentiles or bandits? The verse teaches, "For the abomination of the Lord your God is anyone who does this."

Against the Tana Kama, R. Yishmael seems to be emphasizing that cross-dressing is prohibited whether or not one actually engages in sexually illicit activity, as the concern is not that one will actually come to engage in illicit relations, but the mere fact that others will suspect him or her of such activity. It is also noteworthy that both R. Yishmael and the Tana Kama seem to view the two prohibitions in parallel, against the view of R. Eliezer ben Yaakov.

Further, the last line seems to suggest that the invocation of abomination teaches us that one may cross-dress for purposes of physical protection from gentiles or bandits. Read in context, this line seems to present R. Eliezer ben Yaakov's response to the Tana Kama. The Tana Kama had derived from this verse that the concern is for actions that lead to sexual impropriety. In the Sifre from the school of R. Akiva, we were left to conjecture how R. Eliezer ben Yaakov responds to the reading of the Tana Kama. Yet the Sifre of R. Yishmael appears to offer an account of R. Eliezer ben Yaakov's response. The verse's clause regarding "abomination" does not come to teach the general parameters of the prohibition, but exceptional ones; to wit, that if one's motivation is to

save a life, it is inconceivable that such an individual would be viewed by God as an abomination. Accordingly, for R. Eliezer ben Yaakov, the final clause teaches that only one who acts with illicit intentions is barred from cross-dressing, but not a man or woman who is coerced by gentiles and robbers. He thus reads the final clause differently than the Tana Kama, who maintains that the reference to abomination teaches that cross-dressing is prohibited because it may lead to illicit relations.

#### IV. Yerushalmi

The Yerushalmi never explicitly refers to the prohibition of *lo yilbash*.<sup>490</sup> The only case the Yerushalmi<sup>491</sup> addresses which may be relevant to *lo yilbash* is that of a man looking in a mirror:

אין רואין במראה בשבת אם היתה קבועה בכותל רבי מתיר וחכמין אוסרין רבי אחא בשם רבי בא טעמא דהדין דאסר פעמים שהיא רואה נימא אחת לבנה והיא תולשתה והיא באה לידי חיוב חטאת והאיש אפילו בחול אסור שאינה דרך כבוד שלשה דברים התירו לבית רבי שיהו רואין במראה ושיהו מספרין קומי ושיהו מלמדין את בניהן יונית שהיו זקוקין למלכות

One may not look at a mirror on Shabbat. If it was affixed in the wall, Rebbe permits it, but the Hakhamim prohibit it. Rabbi Aha in the name of Rabbi Abba: The reason for the one who prohibits is that sometimes he will see one white hair, and she will pluck it out, and she will come to be liable for a sin offering. And a man is prohibited even during the week, because it is not the way of respect. Three things were permitted to the house of Rebbe: that they may look at a mirror; that they may have the hair in front of their heads cut, and that they may teach their children Greek, because they were needed [to represent the Jewish community] before the monarchy.

<sup>490</sup> Satlow, “He Abused Her,” p. 12, notes this omission in passing but does not elaborate.

It is difficult to extrapolate anything broader about the Yerushalmi’s view regarding the scope of *lo yilbash*, both because the Yerushalmi is far from comprehensive, and because the expanded prohibition already appears prominently in the Tannaitic material.

<sup>491</sup> *Shabbat* 6:1, 7d.



The Talmud is presumably drawing on the Tosefta,<sup>492</sup> which teaches:

ישראל המסתפר מן הגוי רואה במראה מן הכותי אין רואה במראה התירו לבית רבן גמליאל להיות רואין  
במראה מפני שהן זקוקין למלכות

A Jew who receives a haircut from a gentile may look in a mirror; from a heathen, he may not look in a mirror. [The rabbis] permitted the house of Rabban Gamliel to look in a mirror because they were needed [to represent the Jewish community] before the monarchy.

The Yerushalmi adds that for a man to look in a mirror is not “*derekh kavod*,” the way of respect, presumably because it demeans a man by lowering him to the level of a female.

## V. Bavli

In a number of contexts, the Babylonian Talmud expands the prohibition in numerous directions. Taken together, these *sugyot* constitute a far-reaching departure from the face reading of the verse, outstripping the Sifre and apparently representing a new stage of development in the broadening of the prohibition.

### V. 1. *Nazir* 58b-59a<sup>493</sup>

The Sifre appears in the Babylonian Talmud in a slightly restructured fashion. It is important to cite the larger context of the discussion in the Bavli:<sup>494</sup>

אמר רב מיקל אדם כל גופו בתער מיתבי המעביר בית השחי ובית הערוה הרי זה לוקה  
Rav said: A person may lighten all of his body with a razor. There is an objection:  
“One who removes the armpit or place of immodesty (pubic hair) receives lashes!

<sup>492</sup> Moshe Shmuel Zuckerman, *Tosefta al Pi Kitvei Yad Erfurt u-Vienna*, Sifrei Wahrman, Jerusalem, 1963, *Avodah Zarah* 3:1, p. 463.

<sup>493</sup> All texts from the Bavli and Yerushalmi are taken from the *Ma'agarim* website.

<sup>494</sup> For a rereading of the passage in *Nazir* that links the prohibition of cross-dressing to homoeroticism, see Satlow, "They Abused Him," p. 12. Satlow's reading, however, is speculative in the extreme.

לא קשיא הא בתער הא במספרים והא רב נמי בתער קאמר כעין תער  
 There is no difficulty: this is with a razor, this is with scissors. But did not Rav  
 also speak about a razor? He was speaking about something similar to a razor.<sup>495</sup>

אמר רבי חייה בר אבא אמר רבי יוחנן המעביר בית השחי ובית הערוה הרי זה לוקה מיתבי העברת  
 שיער אינה מדברי תורה אלא מדברי סופרים מאי לוקה דקאמר מדרבנן  
 Rabbi Hiyya son of Abba said in the name of Rabbi Yohanan: One who removes  
 [the hair of] the armpit and place of modesty receives lashes. There is an  
 objection: The removal of hair is not [a] biblical prohibition but a rabbinic  
 prohibition. What is "lashes," which it states? From the rabbis.

איכא דאמרי אמר ר' חייה בר אבא אמר ר' יוחנן המעביר בית השחי ובית הערוה לוקה משום לא  
 יהיה כלי גבר על אשה מיתבי העברת שיער אינה מדברי תורה אלא מדברי סופרים הוא דאמר כי  
 האי תנא דתניא המעביר בית השחי ובית הערוה הרי זה עובר משום לא יהיה כלי גבר על אשה  
 Some say: Rabbi Hiyya son of Abba said in the name of Rabbi Yohanan: One  
 who removes the armpit and pubic hair receives lashes, due to "The vessel of a  
 man shall not be on a woman."<sup>496</sup> There is an objection: "The removal of hair is  
 not [a] biblical prohibition but a rabbinic prohibition?! His opinion is the like this  
 Tanna, as it states in a *baraita*, "One who removes [the hair of] the armpit and  
 place of modesty has violated "The vessel of a man shall not be on a woman."

מאי דריש ביה מיבעי ליה לכדתניא לא יהיה כלי גבר על אשה מאי תלמוד לומר אם לא ילבש איש  
 שמלת אשה ואשה שמלת איש הרי כבר נאמר תועבה היא ואין כאן תועבה  
 What does he derive from it? He needs it for that which is stated in a *baraita*:  
 "There will be no male's vessel on a woman." What does the verse come to teach  
 us? If it is that a man may not wear the blouse of a woman, and a woman [may  
 not wear] the blouse of a man, it is already stated, "It is an abomination," and  
 there is no abomination here!

אלא שלא ילבש איש שמלת אשה וישב בין הנשים ואשה שמלת איש ותשב בין האנשים רבי אליעזר  
 בן יעקב אומר מנין שלא תצא אשה בכלי זיין למלחמה ת"ל לא יהיה כלי גבר על אשה ולא ילבש גבר  
 שמלת אשה שלא יתקן איש בתיקוני אשה<sup>497</sup>

<sup>495</sup> A number of Geonim had manuscripts with substantial differences. We will consider those in a later chapter.

<sup>496</sup> Other manuscripts (MS Vilna and MS Winitzia 280-283) cite "*ve-lo yilbash gever simlat isha*" here, whereas the manuscript we are using (MS Munich 95) cites the first half of the verse, which describes the prohibition upon women. Given that this line is providing a prooftext for a prohibition that devolves upon men, it likely should be read as referencing the verse as a whole. Indeed, the Vatican manuscript has the same language as Munich but adds the word "וגו", etc., immediately after citing "*lo yihiye al isha keli kever*." Most simply understood, then, all extant manuscripts are in agreement that the Talmud derives the biblical prohibition for men to depilate pubic and armpit hairs from the words "*ve-lo yilbash gever simlat isha*."

<sup>497</sup> Strikingly, MS Munich 95 has the second ruling of R. Eliezer ben Yaakov as a "*davar aher*," alternative version of R. Eliezer ben Yaakov. This suggests that R. Eliezer ben Yaakov does not prohibit both female adornments to men and armor to women, but either one or the other. (Vatican 110-111 cites both prohibitions without providing a prooftext for the second ruling, namely for men to wear women's adornments.) While this possibility is intriguing, we will not analyze this position in depth because it is inconsistent with not only the other Bavli manuscripts but also the Sifre, and because it does not appear to have had any subsequent influence in halakhic discourse.

Rather, [it comes to teach that] a man may not wear the shirt of a woman and sit among the women, and a woman [may not wear] the shirt of a man and sit among the men. Rabbi Eliezer son of Jacob says, Whence that a woman may not go out to war with weapons? The verse states, “A man’s clothing may not be on a woman.” And “a man shall not wear a woman’s blouse” [teaches] that a man may not fix himself up with the fixings of a woman.<sup>498</sup>

אמר רב נחמן: בנזיר מותר. ולית הילכתא כוותיה.

Rav Nahman said: For a nazirite it is permissible [to cut armpit hair]. And the law is not in accordance with his opinion.

אמרו ליה רבנן לר"ש בר אבא: חזינא ליה לרבי יוחנן דלית ליה! אמר להון: מחמת זקנה נשרו.  
The rabbis said to Rabbi Shimon son of Abba: I have seen Rabbi Yohanan, who does not have armpit hair! He said to them: It fell out due to old age.

ההוא דאיתחייב נגידא קמיה דרבי אמי, איגלאי בית השחי חזייה דלא מגלח, אמר להון רבי אמי:  
שיבקה, דין מן חבריא הוא.

There was one who was liable to lashes before Rabbih Ami. The armpit was revealed. He saw that he had not shaved it. Rabbi Ami said to them: Leave it; this one is one of the group [who are strict upon themselves].

בעא מיניה רב מרבי חייא: מהו לגלח? אמר ליה: אסור. אמר ליה: והא קא גדל! א"ל: בר פחתי, זמן יש לו, כל זמן שהוא גדל נושר.

Rav inquired of Rabbi Hiyya: May he shave? He said to him: It is prohibited. He said to him: But it grows [uncomfortably]! He said to him: Son of noblemen, the hair has a [limited] time; so long as it grows, it falls out [on its own].

בעא מיניה רב מרבי חייא: מהו לחוך? אמר ליה: אסור. בבגדו, מהו? א"ל: מותר. איכא דאמרי, בעא מיניה: בתפלה בבגדו, מאי? א"ל: אסור. ולית הילכתא כוותיה.

Rav inquired of Rabbi Hiyya: May one rub [off one’s armpit hair]? He said to him: It is prohibited. With his clothing, what is the law? He said to him: It is permissible. Some say, He inquired of him: During prayer with clothing, what is the law? He said to him: It is prohibited. And the law is not in accordance with his opinion.

The Babylonian Talmud seems to understand that the removal of hair is subject to

a biblical prohibition according to R. Eliezer ben Yaakov. Additionally, a close

<sup>498</sup> Steinzaltz renders: “a man may not adorn himself with the ornaments of women” (<https://www.sefaria.org/Nazir.59a.1?lang=en>). This, however, does not seem to be the meaning of “*tikkun*,” particularly in the Bavli, which extends the scope of the prohibition far beyond ornamentation. We have therefore preferred “fixing,” which comes closer to capturing the far broader scope in the Bavli.

comparison between the text in the Sifre and the Babylonian Talmud suggests that the latter goes even further than the Sifre: whereas the Sifre formulated the position of R. Eliezer ben Yaakov as prohibiting a woman to don weapons and go out to war, the Talmud states that a woman may not go out to war while donning weapons. The difference is subtle but significant: while the Sifre's formulation suggests that women violate the prohibition when they don weapons *and* go out to war, the Babylonian Talmud indicates that fundamentally, there is only one criterion for the prohibition: engaging in battle with male instruments of war. This lends support to the contention that for Rabbi Eliezer ben Yaakov, while a man is barred from *dressing* like a woman, a woman is barred from *acting* like a man.

Furthermore, there is another telling shift in the language of R. Eliezer ben Yaakov from the Sifre to *Nazir*: in the Sifre he is cited as prohibiting a man from adorning himself with a woman's adornments ("לא יתקשט בתכשיטי נשים"), while in the Talmud the language is less clear, but seems to encompass women's beautification in general ("לא יתקן איש בתיקוני אשה"), possibly suggesting a wider scope of prohibition for R. Eliezer ben Yaakov than the Sifre. This fits well with the context of Talmud *Nazir*, which is discussing the case of hair-cutting - a case that is more plausibly encompassed by the language of "*tikkunei isha*," but not that of "*tahshitei nashim*," and that fits better with the especially expansive view of the prohibition that we find elsewhere in the Bavli.

There are a number of additional observations worth making about the passage in *Nazir*. First, as we will explore in greater depth at the end of this chapter, it is striking that the entire *sugya* revolves around the topic of hair cutting. In this vein, R. Yohanan's teaching that "one who removes [the hair of] the armpit and place of modesty receives

lashes” gives particular prominence to hair-cutting as an act prohibited by *lo yilbash*. At the same time, it is striking that the Talmud does not refer literally to cutting hair but to lightening one’s load or “removing” an item near one’s armpit or pubic hairs. This suggests that more important than the act of haircutting is the result of remaining without such hairs, specifically leaving those areas uncovered.

Additionally, a few more points that will emerge in the writings of later halakhists but have firm grounding in the Talmud, should be mentioned at this juncture. First, the very distinction between whether one cuts his hair with a razor or scissors would appear to suggest that the result is more central to the prohibition than the action; this question is taken up by R. Moshe Feinstein<sup>499</sup> and a number of modern and contemporary authorities. Second, the case of the man who received lashes before R. Ami suggests that at least in regard to pubic and armpit hair, there is a value assigned to individual stringency. Third, Rav’s contention that one should be permitted to shave if his armpit hair causes him pain, suggests that *lo yilbash* may have limited application in cases where one is motivated not by beauty but a desire to reduce one’s suffering or discomfort.

## V. 2. *Shabbat 94b*<sup>500</sup>

Another passage in the Babylonian Talmud further extends the prohibition:

תניא נמי הכי הנוטל מלוא פי הזוג בשבת חייב וכמה מלא פי הזוג שתיים רבי אליעזר אומר אחת  
 ומודים חכמים לרבי אליעזר במלקט לבנות מתוך שחורות אפילו אחת [שהוא] חייב ודבר זה אפ'  
 בחול אסור משום שנאמר לא ילבש גבר שמלת אשה

<sup>499</sup> Moshe Feinstein, *Iggerot Moshe*, vol. 2, *Yoreh De'ah* 1:82, Noble Press, 1959, p. 144; *Iggerot Moshe*, vol. 6, *Yoreh De'ah* 2:61, Noble Press, 1982, pp. 149-151.

<sup>500</sup> See also the parallel passage in *Makkot 20b*.

It was similarly taught in a *baraita*: One who removes [enough hair] to fill the opening of scissors on Shabbat, is liable. And how much is enough to fill the opening of the scissors? Two [hairs]. Rabbi Eliezer says: One. And the Sages agree with R. Eliezer in the case of one who plucks white hairs from among black hairs, that he is liable even for one. And this is prohibited even on weekdays, as it states: “A man shall not wear a woman’s garment.”

This passage appears<sup>501</sup> to take for granted that a man who plucks white hairs from among black hairs violates the biblical prohibition against cross-dressing, which is consistent with Bavli *Nazir*’s expansive reading of R. Eliezer ben Yaakov. In fact, this is doubly consistent with the thrust of the passage in *Nazir*: the prohibition upon a man is not limited to donning clothing but includes various forms of feminine beautification, and again is discussed in relation to hair<sup>502</sup> - although this passage extends the scope of prohibited hairs beyond the secondary sexual characteristics.

### V. 3. *Avodah Zarah* 29a

The Babylonian Talmud, once again discussing hair grooming, states:

ת"ר ישראל המסתפר מגוי רואה במראה וגוי המסתפר מישראל כיון שהגיע לבלוריתו שומט את ידו

The Rabbis taught: A Jew who receives a haircut from a gentile may look in a mirror. And a gentile who receives a haircut from a Jew - once [the barber] reaches the forelock, he pulls back his hand.<sup>503</sup>

<sup>501</sup> R. Yom Tov Ashbeli, *Hiddushei ha-Ritva: Masekhtot Makkot u-Pesahim, Mossad ha-Rav Kook*, 1995, s.v. *ve-davar*, p. 221 is inclined to believe that the Talmud follows the Tana Kama and only means to prohibit hair-plucking on a rabbinic basis. However, his interpretation does not reflect the straightforward reading of the Talmud.

<sup>502</sup> It is striking that nearly all the expansions of *lo yilbash* discussed in the Babylonian Talmud concern male hair-plucking. This requires further analysis, but may be related to recent scholarship regarding the unique perspective of Babylonians concerning hair plucking. See Noah Benjamin Bickart, “He Found a Hair and It Bothered Him: Female Pubic Hair Removal in the Talmud,” *Nashim: A Journal of Jewish Women's Studies & Gender Issues*, vol. 35, 2019, pp. 128–152, esp. pp. 142-3. See too Yaakov Elman, “Some Aspects of Interreligious Polemic in the Babylonian Talmud,” in *Bridging between Sister Religions: Studies of Jewish and Christian Scriptures Offered in Honor of Prof. John T. Townsend*, Boston, Leiden, 2016, pp. 175–194, esp. 189-191.

<sup>503</sup> The second case in the *baraita*, that of a gentile whose hair is shorn by a Jew, concerns the subject of idolatry. For our purposes, it is the first part of the *baraita* that is pertinent.

While the Bavli does not say so explicitly, the implication appears to be that outside the context of receiving a haircut - in other words, where there is no danger - a Jewish male may not look at a mirror when his hair is being cut. While the Babylonian Talmud never explicitly states the reasoning for this prohibition, it may be most simply explained on the basis of *lo yilbash*, as the medieval commentators widely take for granted.<sup>504</sup> However, another passage<sup>505</sup> cites a debate about the permissibility of using a mirror on Shabbat due to concern that one may use the mirror itself in violation of Shabbat. The fact that this debate is local to Shabbat seems to suggest that there is no prohibition for a man to use a mirror during the weekday. Thus, these two passages in the Bavli appear to contradict one another on the question of whether a man who uses a mirror violates *lo yilbash*. While later commentators will offer a variety of plausible solutions to this tension, there does seem to be some ambiguity as to whether or not men may look in a mirror. Further, even if this practice falls under the rubric of *lo yilbash*, it is not entirely clear whether the prohibition is biblical or rabbinic. Still, the simplest reading of the passage in *Avodah Zarah* is that looking at a mirror is outlawed for men under the rubric of *lo yilbash*, which would represent yet another expansion of the scope of *lo yilbash* in the Bavli.

#### V. 4. *Shabbat* 50b

The Talmud teaches:

אמימר ומר זוטרא ורב אשי הוו יתבי אייתיו לקמייהו ברדא אמימר ורב אסי משו ידיהו מר זוטרא לא משא ידיה. אמרו ליה לא סבר לה מר להא דאמר רב ששת ברדא שרי אמר להו רב מרדכי בר מיניה דהוא דאפילו בחול נמי לא סבירא ליה משום דסבר לה כי הא דתניא מגרד אדם גילדי צואה וגילדי

<sup>504</sup> See, e.g., Tosafot s.v. *ha-mistaper* and *Hiddushei ha-Ritva: Masekhet Avodah Zarah*, 1st ed., Mossad ha-Rav Kook, 2007, s.v. *ro'eh*, p. 116.

<sup>505</sup> *Shabbat* 149a.

מכה שעל בשרו בשביל צערו ואם בשביל ליפות את עצמו אסור משום שנאמר ולא ילבש גבר שמלת  
 אשה ואינהו כמאן סברוה כי הא דתניא רוחץ אדם פניו ורגליו בכל יום בשביל קוניהו משום  
 שנאמר כל פעל ה' למענהו

Ameimar, Mar Zutra and Rav Ashi were sitting. A lotion [*barda*<sup>506</sup>] came before them. Ameimar and Rav Ashi washed; Mar Zutra did not wash. They said to him: “Does the master not hold like what Rav Sheshet said, ‘Lotion is permissible?’” Rav Mordechai said to them, “Exclude the master, for even on the weekday he does not hold like him. [Rather] he holds like that which is taught in a *baraita*, ‘A person may scrape off layers of filth and layers of a wound that are on his skin, due to his pain. But if it is to beautify [himself], it is prohibited.’” And like whom do they hold? Like that which is stated in a *baraita*: “A person may wash his face, hands, and feet every day for the sake of his Master, as it states, ‘Every act of God is for His sake.’”

While the Talmud does not provide an explicit rationale for the stringent position, the straightforward reading is that Mar Zutra refused to use the lotion due to the prohibition of *begged isha*. Thus, this passage suggests that the removal of a scab - or even dirt by washing one’s face - might be subject to *lo yilbash*. Further, while there are some indications in the passage that the primary view is the lenient one - the majority view holds that *barda* is permissible, and the passage concludes with a defense of the lenient opinion<sup>507</sup> - the Talmud’s reasoning seems to acknowledge that in principle *lo yilbash* applies to all forms of beautification by a male. After all, the Talmud could have chosen to defend the lenient view based on the argument that such beautification is not effeminate in nature. Instead it opts for a different reasoning, explaining that Ameimar and Mar Zutra were lenient because their intention was not to beautify for their own

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<sup>506</sup> Earlier on the same page, the Talmud defines *barda* as a mixture of one-third aloe, one-third myrtle, and one-third violets.

<sup>507</sup> Numerous medieval commentators similarly understand that the Talmud inclines toward leniency. See, for instance, Ritva *ibid.* s.v. *ve'im*. Similarly, Maimonides, Tur, and Shulhan Arukh do not cite this prohibition in their respective codes.



sakes, but for the sake of God.<sup>508</sup> This suggests that in principle, all agree that the application of lotion in order to beautify oneself can theoretically fall under the rubric of *lo yilbash*. Further, the citation from Proverbs regarding washing one's face, hand, and feet suggests that we might have prohibited those too, if they were not also performed for the sake of God.

It is also worth considering this passage against the backdrop of the other passages in the Bavli, all of which apply *lo yilbash* to hair grooming. On the one hand, this passage clearly indicates that in principle, *lo yilbash* can apply beyond hair grooming.<sup>509</sup> Still, the fact that the concluding thrust of the Talmud is toward leniency may suggest a greater degree of Babylonian concern in regard to hair grooming in particular.<sup>510</sup>

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<sup>508</sup> Commentators discuss whether the lenient position is rooted in the idea that humans are created in the image of God, or a broader point that one must be clean in order to serve God properly and represent him in a dignified fashion on earth. Rashi (s.v. *bishvil*), for example, provides both interpretations.

<sup>509</sup> Yehuda Aryeh Leib Alter, *Sefat Emet al ha-Shas*, vol. 1, pub. Yitzhak Meir Alter, 1931, *Shabbat* 50b, s.v. *ve'inhu*, p. 102, claims that Mar Zutra only prohibits one from using *barda* because it beautifies the man by removing his hairs. This, however, is distant from the plain reading of the text.

<sup>510</sup> It is noteworthy that the Babylonian Talmud does not appear to consider a man wearing perfume to be in violation of *lo yilbash*. See *Berakhot* 43b with Moses Maimonides, *Mishneh Torah, Sefer ha-Madda, Hotza'at Shabse Frankel*, 2001, *Hilkhot Deiot* 5:9, pp. 76-77; and Maimonides, *Mishneh Torah, Sefer Ahavah, Hotza'at Shabse Frankel*, 2009, *Hilkhot Berakhot* 7:14, p. 278, which discourage a scholar from wearing perfume. This suggests that fundamentally men are permitted to wear perfume. Moreover, the Talmud's apparent objection to a scholar wearing perfume is to avoid the appearance of one looking to attract women sexually, which is likely not the same concern as *lo yilbash*. The Yerushalmi adopts a far more negative stance toward men and perfume than the Babylonian Talmud, though it never invokes *lo yilbash*. This distinction is consistent with recent scholarly findings that it was considered common male behavior to wear perfume in Roman Palestine and Babylonia, even as there are some suggestions of rabbinic ambivalence regarding this practice. For the Palestinian background, see Deborah A. Green, *The Aroma of Righteousness: Scent and Seduction in Rabbinic Life and Literature*, Pennsylvania State University Press, 2011, pp. 19-63. Andreas Lehnardt ("The Scent of Women: Incense and Perfume in Talmud Yerushalmi Sheqalim 5:2," in *Introduction to Seder Qodashim: A Feminist Commentary on the Babylonian Talmud V*, Mohr Siebeck, Tübingen, 2012, pp. 23-31) offers a brief overview key rabbinic texts and concludes: "Evidently, the use of perfume by men and women was commonly accepted in Jewish daily life in Roman Palestine. Although this fact has been known for a long time, it has not been researched until recently... In bPes 65a (parallels bQid 82b) it is emphasized that the world cannot exist without perfume dealers" (p. 27).

Beyond the question of hair, the common denominator in the Babylonian Talmud is that these are all cases in which a man can easily come to violate *lo yilbash* by a very minor act, such as shaving one's hair or cutting just a white strand, looking in a mirror, and removing a scab. None of these qualify as wearing ornaments, and perhaps not even as beautifying oneself in the positive sense of the term, but merely making sure that there is nothing incongruous about one's appearance. In this sense, all the cases cited in the Babylonian Talmud fit neatly with the Talmud *Nazir*'s generic terminology of one who "fixes" himself in the way of a woman, not merely one who dons female ornamentation.

Further, the Babylonian Talmud, beyond citing the dispute between the Tana Kama and R. Eliezer ben Yaakov, *never* discusses the case of a woman who violates this prohibition. This suggests that the scope of real cases, beyond full-fledged cross-dressing, in which women violate the prohibition is vanishingly small, uninteresting, or both. Any which way, the clear impression is that men can violate the prohibition in a host of ways through seemingly minor actions, whereas it is far less likely - and more difficult - for a woman to violate *lo yilbash*.

In sum, the early rabbinic sources seem to present two general threads in regard to *lo yilbash*. Following the face reading of the biblical verse, the Tana Kama and R. Yishmael appear to cast men and women as more or less equal in regard to *lo yilbash*, while the *Targumim*, R. Eliezer ben Yaakov, and Bavli draw a sharp distinction between the two, expanding the prohibition upon men and minimizing the scope of the prohibition upon women.

## VI. Men in Armor

The *Targumim*, R. Elizer ben Yaakov in the Sifre, and the Bavli sharply depart from *peshuto shel mikra* by dramatically expanding the scope of men's prohibition while limiting the scope of women's prohibition. Following Halbertal, such a departure alerts us to the possibility that rabbinic exegesis in this case is heavily motivated by prior assumptions about gender.

Further, all the *Targumim* with the exception of Pseudo-Jonathan, as well as R. Eliezer ben Yaakov and a set of *midrashim* commenting on the verse in *Shoftim* regarding Yael, further distance the two prohibitions from another by suggesting that women are specifically barred from wearing armor, and possibly from bearing weapons or engaging in acts of war.

The position associating *lo yilbash* with wearing armor can best be understood against the backdrop of the evidence that the rabbis tended to view male armor-wearing as a non-Jewish activity. Numerous scholars, Boyarin among them,<sup>511</sup> have elaborated this point, noting that in the wake of the Bar Kochba rebellion, the third failed revolt against Rome in as many generations, the Rabbis embraced a quietistic position that located the locus of Jewish masculinity in Torah study and halakhic observance.<sup>512</sup> This

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<sup>511</sup> Boyarin, "Tricksters, Martyrs, and Appeasers: 'Hidden Transcripts' and the Diaspora Arts of Resistance," *Theory and Criticism: An Israeli Forum*, vol. 10, 1997 (Heb.), pp. 145–162. See also Boyarin, "Masada or Yavneh? Gender and the Arts of Jewish Resistance," in *Jews and Other Differences: The New Jewish Cultural Studies*, University of Minnesota Press, Minneapolis, 1997, pp. 306–329; and *Unheroic Conduct*, p. 273.

<sup>512</sup> Reuven Firestone, *Holy War in Judaism: The Fall and Rise of a Controversial Idea*. Oxford University Press, 2012, pp. 72-6; David Aberbach, *Major Turning Points in Jewish Intellectual History*. Palgrave Macmillan, 2003, pp. 45-72; and Nicholas Holtz Anderson, "The De-Evolution of the Jewish Warrior: Self-Identity as 'Warrior' through Jewish Literature from 200 B.C.E. to 200 C.E.," *Hebrew Union College*, 2008, esp. pp. 107-135.

Ironically, while we will note that the association between men and armor is contrary to the basic thrust of Boyarin's larger thesis in *Unheroic Conduct*, Boyarin himself notes that the rabbis dissociated men and armor in the wake of the Bar Kochba rebellion. See Boyarin, "Tricksters, Martyrs, and Appeasers: 'Hidden Transcripts' and the Diaspora Arts of Resistance," *Theory and Criticism: An Israeli Forum*, vol. 10, 1997 (Heb.), pp. 145–

emphasis persisted for well over a millennium, until arguably as late as the rise of the Zionist movement and even until today.<sup>513</sup> Extant medieval *Haggadot*, from the time of the 13th century on, portray the *rasha*, evil son, as the quintessential warrior.<sup>514</sup> Certainly, medieval Jews, Ashkenazim and Sephardim alike, did not generally think positively about Crusader warriors.<sup>515</sup>

Similarly, midrashic portrayals of warriors, biblical and post-biblical alike, are highly ambivalent.<sup>516</sup> King David was not permitted to build the Temple because of his violent actions.<sup>517</sup> Metal may not be used in the construction or use of the Temple altar.<sup>518</sup> A priest who killed may not recite the priestly blessing.<sup>519</sup> A Talmudic passage prohibits bringing a weapon into the study hall.<sup>520</sup> *Midrashim* regularly reinterpret biblical references to warfare as allusions to Torah scholarship.<sup>521</sup>

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162. See also Boyarin, “Masada or Yavneh? Gender and the Arts of Jewish Resistance,” in *Jews and Other Differences: The New Jewish Cultural Studies*, University of Minnesota Press, Minneapolis, 1997, pp. 306–329; and *Unheroic Conduct*, p. 273.

<sup>513</sup> Boyarin, *Unheroic Conduct*, pp. 277–312.

<sup>514</sup> See Mindy Schwartz, “The Wicked Son as a Warrior in European Haggadot of the 14th–17th Century,” *Yeshiva University*, 2018, Unpublished Honors Thesis.

<sup>515</sup> In chapter 6 of his post-Spanish Expulsion account *Shevet Yehudah*, Solomon ibn Verga recalls Crusader attacks from 1320. See Jeremy Cohen, “From Solomon Bar Samson to Solomon Ibn Verga: Tales and Ideas of Jewish Martyrdom in *Shevet Yehudah*,” in *Studies in Medieval Jewish Intellectual and Social History: Festschrift in Honor of Robert Chazan*, Brill, Leiden, 2012,” pp. 282–3.

<sup>516</sup> Richard Marks, “Dangerous Hero.”

<sup>517</sup> I Chronicles 22:8.

<sup>518</sup> Mishnah *Middot* 3:4.

<sup>519</sup> *Berakhot* 32b.

<sup>520</sup> *Sanhedrin* 82a.

<sup>521</sup> Marks, *ibid.*

Similarly, some scholars have proposed that chapter 6 of Mishnah *Shabbat*, which rules that a man may not wear a number of items of clothing associated with warfare on Shabbat, is intended to dissuade the donning of military paraphernalia by Jewish males in general, and not just on Shabbat due to concerns of carrying. One Mishnah<sup>522</sup> makes the point clear:

לא יצא האיש לא בסוּף, ולא בקֶשֶׁת, ולא בתַרְסִיס, ולא בְּאַלְהָ, ולא בְּרִמָּח. וְאִם יָצָא, סָבַב סָטָאת. רַבִּי אֱלִיעֶזֶר אוֹמֵר, תִּכְשִׁיטִים הֵם לוֹ. וְחֻכְמִים אוֹמְרִים, אֵינָן לוֹ אֶלָּא לְגִנְיִי, שֶׁנֶּאֱמַר וְכָתַתּוּ סַרְבוֹתָם לְאֵיתִים וְחִנִּיתוּתֵיהֶם לְמִזְמוֹרוֹת.

A man may not go out [on Shabbat] with a sword, nor with a bow, nor with a pointed shield, nor with a circular shield, nor with a spear. And if he went out, he is liable to bring a sin-offering. Rabbi Eliezer says: They are ornaments for him. And the Rabbis say: They are nothing other than a disgrace, as it states: “And they shall beat their swords into plowshares and their spears into pruning hooks.”

The exchange is telling. No other ruling in this chapter of *Shabbat* explicitly addresses the ethical merit of wearing any particular type of clothing or ornamentation. Instead, as the Tosefta notes, it simply considers whether a particular item qualifies as clothing or ornament, and whether one may go out with that object on Shabbat. Yet here, the Rabbis argue that arms are not ornamental precisely because they are degrading. The message is clear: while men may technically wear armor in most instances, it should be avoided unless absolutely necessary.

Professor Saul Lieberman<sup>523</sup> has similarly read a number of the rulings in Mishnah *Shabbat* 6:2 and 6:4, which prohibit men from going out with certain weapons and armor on Shabbat, as intended to discourage Jewish men from wearing these items

<sup>522</sup> 6:4. Text from Kaufman MS A50.

<sup>523</sup> See Lieberman, *Yevanim v-Yevanut be'Eretz Yisrael*, 2nd ed., *Mossad Bialik*, 1984, pp. 253-4; and Lieberman, *Tosefta Kifshutah: Seder Mo'ed*, vol. 3, Jewish Theological Seminary, 1962, p. 64.

altogether. This is particularly true of the “*sandal ha-mesumar*,” “the spiked sandal,” which apparently caused significant damage to the Jewish community.<sup>524</sup>

True, in recent years, some scholars have claimed that this narrative is oversimplified. Perhaps best known, Elliot Horowitz has forwarded the controversial thesis that Jews in fact have regularly acted violently toward their gentile neighbors on Purim.<sup>525</sup> Stefanie Weisman notes that numerous scholars think that at least some highly assimilated Jews fought in the Roman army during the 3rd and 4th centuries C.E.<sup>526</sup> As discussed in chapter 2, historians have taken umbrage at Boyarin’s suggestion that all Jewish men were pacifists through much of rabbinic history, pointing to the physical violence taken up by Jews in the 19th century.<sup>527</sup> Yet even these scholars tend to acknowledge that these are significant but limited phenomena, and that, on the whole, quietism reigned supreme.

It is precisely against this background that the association between men and armor regarding *lo yilbash* is remarkable. Even as the Rabbis sought to move men away from the battlefield to “the four cubits of Jewish law,” R. Eliezer ben Yaakov and numerous *Targumim* go out of their way to identify armor as the quintessential masculine garment.

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<sup>524</sup> Bavli *Shabbat* 60a, Yerushalmi *ibid.* 8a.

<sup>525</sup> Horowitz, *Reckless Rites*.

<sup>526</sup> Stefanie Weisman, “Militarism in the Wall Paintings of the Dura-Europos Synagogue: A New Perspective on Jewish Life on the Roman Frontier,” *Shofar: An Interdisciplinary Journal of Jewish Studies*, vol. 30, no. 3, 2012, pp. 1–34.

<sup>527</sup> Gotman, *Jewish Masculinities*, p. 35.

And the Bavli, notwithstanding its extremely critical stance toward armed rebellion against the Romans,<sup>528</sup> cites and amplifies this view.

What is more, certainly by the time of the compilation of the Bavli, this law was exceedingly impractical; the likelihood that a man reading the Mishnah would wear armor and go out to battle, never mind a woman, was, in all likelihood, vanishingly small.<sup>529</sup> It seems that the Sifre and R. Eliezer ben Yaakov, followed by subsequent authorities, sought to retain the *theoretical* image of man as a warrior.<sup>530</sup> The rabbinic conception of the male Jewish warrior is consistent with the findings of Rosen-Zvi and other Mishnah and rabbinics scholars who emphasize that rabbinic texts are often best understood as didactic, reimagined realities rather than as literal historical descriptions.

Further, R. Eliezer ben Yaakov's position points to a wider trend in rabbinic literature, as developed by Dror and Rosen-Zvi,<sup>531</sup> in which the Rabbis' comparison between rabbinic scholars and warriors went much further than their depictions of the pitched battles of the study hall. Instead, numerous areas of Jewish law were perceived as

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<sup>528</sup> Michael Berger, "Taming the Beast: Rabbinic Pacification of Second-Century Jewish Nationalism," in *Belief and Bloodshed: Religion and Violence across Time and Tradition*, Rowman & Littlefield, Lanham, 2007, pp. 47–62.

<sup>529</sup> For a typically eloquent presentation of this idea, see Jonathan Sacks, *The Politics of Hope*, Jonathan Cape, London, 1997, pp. 149-157.

One might respond that in fact, it is realistic to think that at least some Jewish men fought for the Roman army. This, however, is insufficient to resolve the question. Numerous scholars acknowledge that any Jews fighting for the Roman army were almost certainly already highly assimilated into Roman culture, far from the intended audience of the Mishnah, and unlikely to significantly influence other Jews. Second, the position of R. Eliezer ben Yaakov is recorded in the Bavli, which by all accounts was not compiled in a time or place when Jewish men donned armor.

<sup>530</sup> We may make a similar observation regarding *Keilim* 11:8, which offers male armor as a counterpart to female ornaments regarding questions as to what objects are susceptible to impurity.

<sup>531</sup> Dror and Rosen-Zvi "*Takhshitim Gavri'im, Takhshitim Nashi'im.*"

supplanting the beauty of physical armor with the beauty of one who is physically surrounded by objects of mitzvah,<sup>532</sup> including *mezuzah*,<sup>533</sup> *tefillin*,<sup>534</sup> and *milah*.<sup>535</sup> Prayer<sup>536</sup> plays a similarly protective role. The Talmud's portrayal of Torah study as combat dovetails perfectly with this motif.

Taken together, the rabbinic embrace of symbolic items of warfare does not fit very well with the effeminate male of Boyarin, for whom the eschewal of symbols of warfare, rather than their reappropriation and valorization on the theoretical plane, seems quite problematic. Of course, Boyarin is extremely careful to circumscribe his claim: all he wants to do is prove that there is *one legitimate strand* in Talmudic and rabbinic thought that supports his notion of the effeminate male. Accordingly, the suggestion that R. Eliezer ben Yaakov - and many others, for that matter - saw things differently does not invalidate his thesis. Still, it is undeniable that these halakhic texts appear to speak a rather different language than the *aggadot* amplified in *Unheroic Conduct*.

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<sup>532</sup> Yet other *mitzvot*, such as *lulav*, are compared to actual weapons. See *Midrash Rabba*, vol. 2, *Hotza'at Avida Da'at u-Meida*, Jerusalem, *Vayikra Rabba Emor no. 30*, p. 86; and *Midrash Shoher Tov*, vol. 1, *Zikhron Aharon*, Jerusalem, *Tehillim 17*, p. 159.

<sup>533</sup> *Menahot 33b*.

<sup>534</sup> *Mo'ed Katan 15a* identifies *tefillin* as “*pe'er*,” the adornment referred to in Ezekiel 24:17.

<sup>535</sup> *Menahot 43b*: “Rabbi Eliezer ben Yaakov says: Anyone who has phylacteries on his head, phylacteries on his arm, ritual fringes on his garment, and a *mezuzah* on his doorway is strengthened from all so that he will not sin, as it is stated: ‘And a threefold cord is not quickly broken.’ And it states: ‘The angel of the Lord encamps round about them that fear Him, and delivers them.’”

While there is extensive biblical evidence that *tzitzit* were considered adornments in the Ancient Near East, the Rabbis do not appear to have emphasized this aspect of *tzitzit*. I have therefore not included *tzitzit* in the list of male adornments.

<sup>536</sup> See *Berakhot 33b* regarding R. Hanina ben Dosa and the snake. *Tzitzit* plays a protective role against sin. The role of *tzitzit* as protecting against physical harm, while appearing in a number of later kabbalistic texts, is not emphasized in rabbinic literature.



In sum, even as the Rabbis made *lo tihyeh al isha* all but irrelevant as a practical matter, they conveyed a profound message regarding the imagery of masculinity, insisting that men remain warriors even if they no longer were fighting on the physical battlefield.

## VII. Crafting the Unadorned Male Body

There are, then, two respects in which the “school of thought” represented by R. Eliezer ben Yaakov departs sharply from the plain meaning of the biblical text. First, men alone are barred not only from cross-dressing, but from beautifying themselves in any manner in the manner of women. Second, women are barred from wearing men’s clothing and armor. What is the significance of this dual trend? Why do these two go hand-in-hand?

Apparently, the rabbis did not just echo those who follow Gilmore in seeing masculinity as anxious and uncertain: even if largely impractical, the rabbis went out of their way to message to men that women could not usurp the greatest symbol of their masculinity. At the same time, manhood was also defined negatively, specifically by the eschewal of feminine beauty. In Onkelos and the Bavli, the biblical prohibition upon men is expanded from “*simlah*” to encompass not just all women’s clothing and ornamentation, but also all forms of feminine beauty, and possibly to all forms of beauty, feminine or otherwise. In effect, *lo yilbash* was taken to mean that rabbinic men should not concern themselves with their outward appearances. Beautification ought to be reserved for women. Men, however, should remain unadorned.

This analysis lends a degree of credence to Admiel Kosman’s claim regarding the nature of masculinity in rabbinic and general cultures. Critiquing Gilmore, who claimed

that to be a man is an achievement, Kosman contends that to be a man is defined in the negative sense: to be a true man is simply not to be a woman. While this may not be true in regard to the activities or character of a man, it would appear that the predominant strand in rabbinic thought adopts a variation on Kosman's thesis: to be a man is to act in a particular way, but it is also simply to avoid the pursuit of beauty, which is coded as effeminate.

### **VIII. Virility, Pubic and Armpit Hairs, and Anxious Masculinity**

We have demonstrated that the texts regarding *lo yilbash* suggest that the Rabbis viewed Torah and *mitzvot* as a kind of spiritual armor, and that, in the very same sources, they sought to discourage men from physical beautification. What is the significance of the juxtaposition of these two propositions in the position of R. Eliezer ben Yaakov and those who adopt his position?

One possibility, following Michael Satlow,<sup>537</sup> is that this confluence falls in line with the rabbinic ideal of the life of the mind. Male physical beauty is but a distraction from the life of righteousness and intellectual contemplation. This perspective dovetails well with a concept developed by Max Kaddushin,<sup>538</sup> who contends that the Rabbis advocated a position of instrumental asceticism. While the Rabbis had no inherent objection to enjoyment of the pleasures of this world, they recognized that physical pleasures can easily distract one from focusing on the more refined life of the mind and

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<sup>537</sup> For an overview of Satlow's position comparing Rabbinic and Roman virtues of the self-disciplined intellectual life, see chapter two.

<sup>538</sup> Max Kadushin, *Organic Thinking: A Study in Rabbinic Thought*, Binghamton University, 2001, pp. 53-9.

*mitzvot*.<sup>539</sup> Satlow himself develops a slightly different notion, namely that asceticism is not merely an instrument toward achievement of Torah study, but an inherent part of that process.<sup>540</sup>

Seen from this vantage point,<sup>541</sup> the rabbinic eschewal of male beauty dovetails neatly with the image of the warrior. By fighting against and defeating the evil inclination, one can achieve the idyllic rabbinic lifestyle. On this view, both dimensions of *lo yilbash* are intended to help craft, practically and conceptually, the new rabbinic man.

There is, however, a second possibility. The emphasis on armor and weaponry may be seen as part of a larger conception of manhood, and not just in regard to defeating one's inner demons. Manhood is defined by aggression, virility, and an active intellectual life. Further, as Boyarin argues convincingly, the rabbis saw the ideal male as sexually virile and, perhaps above all, capable of bearing children. Taken to an extreme, however, this aggressive instinct can lead to violence. It must therefore be redirected from the physical to the spiritual, embodied not by muscles but by *mitzvot*. On this interpretation, the rabbinic insistence on maintaining the image of male-as-warrior conveys a psychologically astute, reassuring message to men: The rabbinic man need not fear the prospect of emasculation.

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<sup>539</sup> See, for example, *Avot* 6:4: "Such is the way [of a life] of Torah: you shall eat bread with salt, and rationed water shall you drink; you shall sleep on the ground, your life will be one of privation, and in Torah shall you labor. If you do this, "Happy shall you be and it shall be good for you": "Happy shall you be" in this world, "and it shall be good for you" in the world to come."

<sup>540</sup> Michael Satlow, "'And on the Earth You Shall Sleep': 'Talmud Torah' and Rabbinic Asceticism," *The Journal of Religion*, vol. 83, no. 2, 2003, pp. 204–225.

<sup>541</sup> Eliezer Diamond, "The Way of Torah as Askesis: An Ascetic Conceptualization of the Life of 'Mitzvah,'" *CrossCurrents*, vol. 57, no. 4, 2008, pp. 563–577; and Diamond, *Holy Men and Hunger Artists: Fasting and Asceticism in Rabbinic Culture*, Oxford University Press, 2004.

Perhaps the most compelling evidence from our *sugya* in favor of the latter interpretation is the central role occupied by men's hair in the literature of *lo yilbash*. For while there is a good amount of evidence that the rabbis saw hair growth generally as a sign of virility, this is particularly true in regard to pubic and armpit hair growth, both of which, as noted, are secondary sexual characteristics. Many rabbinic texts regarding *lo yilbash* present pubic and armpit hair depilation as paradigmatic examples of the prohibition, which suggests that the rabbis acknowledged and honored men's sexual anxieties in their expansive treatment of *lo yilbash*.

Before reviewing this literature, it is worth making a few brief remarks regarding the presence of this anxiety in the general and rabbinic literature. The notion that male pubic hair was a sign of male virility is rooted in Roman ideas and texts, and was embraced in medieval Europe, where male hair was widely seen a sign of virility and masculinity.<sup>542</sup>

Grooming one's secondary sexual hairs is laden with sexual anxiety. There is evidence for this point going back as far as Greco-Roman writings. This anxiety was associated with a common theory circulating that heat is associated with hair growth and virility, signs of true masculinity. Aristotle, Galen, and later writers explained in discussing the four humours that hair resulted from bodily fluids that were potentially dangerous for humans. Men, who were naturally hot and dry, cooked these fluids into

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<sup>542</sup> Steven Adams, "Male Body Hair Depilation in Jewish Law," *Hakirah, The Flatbush Journal of Jewish Law and Thought*, vol. 29, 2021, pp. 213-6.

semen; any excess fluids were turned into hairs, which enabled the fluids to exit through skin pores. Thus male hairs came to symbolize virility.<sup>543</sup>

The Talmud makes a similar point in excruciating fashion. Commenting on the brutal narrative of *pilegish be-Giv'ah*, one passage<sup>544</sup> analyzes what precisely prompted the husband to expel his wife. The Talmud concludes that two events transpired: he found a fly (in his food) and a string. Where did he find the string? One Talmudic view explains that he was enraged because he found the string around his penis, stirring his fear that she sought to castrate him. Similarly, another Talmudic passage<sup>545</sup> asserts that Amnon despised Tamar because she had wrapped a pubic hair around his penis and castrated him. The Talmud concludes that this act was intentional on her part. Freud, suffice it to say, was not the first Jew to diagnose the male fear of castration.

With this background in mind, we may turn to *lo yilbash*. It is striking that a set of commentators, such as Pseudo-Jonathan, contend that the verse in Deuteronomy, may be understood as proscribing men from shaving armpit, pubic, and facial hair.

Similarly, Midrash Aggadah<sup>546</sup> reads:

לא יהיה כלי גבר על אשה – ונכנס למקום אנשים לזנות.  
 וכן לא ילבש גבר שמלת אשה – והוא יכנס במקום הנשים לזנות.  
 ד"א לא ילבש גבר – שלא יעביר בבית השחי ובית הערוה בתער כדרך שהנשים עושים.

There shall not be a male vessel on a woman - and she enters the place of men to engage in illicit sexual activity.

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<sup>543</sup> Penny Howell Jolly, "Pubics and Privates: Body Hair in Later Medieval Art," in *The Meanings of Nudity in Medieval Art*, Routledge, 2012, pp. 183–206.

<sup>544</sup> *Gittin* 6b.

<sup>545</sup> *Sanhedrin* 21a.

<sup>546</sup> Solomon Buber Solomon. *Midrash Agadah al Hamishah Humshei Torah*, vol. 2, *He'Asor*, 1961, Deut. 22:5, p. 304.

And similarly a man may not wear a woman's blouse - And he will enter the place of women to engage in illicit sexual activity.

Another interpretation, a man shall not wear - that he may not remove [the hair] of the armpit and pubic area with a razor in the manner that the women do.

This latter interpretation is remarkable, not only because it goes out of its way to specify armpit and pubic hair, but also because the Midrash does not offer a parallel second interpretation for women. This suggests that the Midrash pays special attention to the prohibition that devolves upon men, perhaps seeing it as more significant or practical than the prohibition upon women.

Medieval commentators, while writing much later on, lend further support to this contention. Rashi's interpretation closely follows this midrashic view:

לא יהיה כלי גבר על אשה: שתהא דומה לאיש, כדי שתלך בין האנשים; שאין זו אלא לשם נאוף

There shall not be upon a woman a man's vessel — that she be similar to a man, in order to walk among the men, for this can only be for the purpose of adultery.

ולא ילבש גבר שמלת אשה. לילך לישוב בין הנשים. ד"א — שלא ישיר שער הערונה ושער של בית השחי

And a man shall not wear a woman's dress. To go to stay amongst women. Another explanation - that he may not remove the hair of the genitals and the hair beneath the armpit.

Perhaps most striking is Rashi's conspicuous choice to closely follow this midrash, and to ignore the position of R. Eliezer ben Yaakov in favor of this view.<sup>547</sup>

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<sup>547</sup> Pseudo-Jonathan also specifies hair depilation in his explanation of the verse, but he includes armpit, pubic, and facial hair.

R. Moses of Coucy<sup>548</sup> also follows this trend, going out of his way to specify this prohibition before citing any other Talmudic rulings. R. Yaakov of Corvée<sup>549</sup> does much the same, offering major prominence to armpit and pubic hair:

שלא ילבש גבר שמלת אשה שנאמר (דברים כ"ב) לא ילבש גבר שמלת אשה. פ"י כדי לנאף. ויש בכלל זה העברת שער של בית השחי ובית הערוה בתער. ובמספרים כעין תער מדרבנן הוא דאסור. ואפי' שלא כעין תער בעל נפש לא יעבור. וכן שלא לראות במראה לשום קישוט.

[The 33rd command is] that a man may not wear a woman's blouse, as it states, "A man may not wear a woman's dress." The explanation is: in order to engage in adultery. And included in this is the removal of armpit and pubic hair with a razor. And with scissors resembling a razor, it is rabbinically prohibited. And even not like a razor, one possessing a righteous soul may not violate. And similarly, that one may not peer in a mirror for the sake of adornment.

The proclivity of commentators to closely identify *lo yilbash* with cutting pubic and armpit hairs helps to account for its ubiquity in the Bavli. The passage in *Nazir* (58b-59a) is mostly concerned with this topic. The Talmud cites a dispute whether the prohibition for a man to depilate his pubic hair is rabbinic or biblical, and appears to maintain that this question is contingent on the dispute between the Tana Kama and R. Eliezer ben Yaakov. The Talmud then discusses the permissibility of cutting these hairs unusually or indirectly, such as with one's hand or by holding the instrument with a glove. That the Talmud spills a substantial amount of ink on this issue in particular is noteworthy, and raises the question as to why.<sup>550</sup>

<sup>548</sup> Moshe ben Yaakov, *Sefer Mitzvot Gedolot*, vol. 3. Schlesinger, Jerusalem, 1989, *Lo Ta'aseh* 60, pp. 56-7.

<sup>549</sup> *Sefer Mitzvot Katan*, *ibid.*

<sup>550</sup> On female pubic hair depilation in the Bavli, see Noah Bickart, "He Found a Hair."

It is highly plausible that armpit and pubic hair depilation merit special attention because they constitute a particularly salient example of *lo yilbash*, which served as a rabbinic vehicle for expressing and codifying anxieties about masculinity.

This also helps to explain an important aspect of later halakhic discussions about hair cutting. According to extant manuscripts of the passage in *Nazir*, the Talmud seems to rule that it is prohibited for a man to use a razor to cut pubic, armpit, or other body hair, but permissible with scissors. However, a version of *Nazir* 58b widely attributed to the Geonim suggests that while a man may cut the hair on the rest of his body with scissors, this leniency does not apply to pubic and armpit hair.<sup>551</sup> The reasoning for the latter distinction between types of hair is not entirely clear. One possibility is that this is simply a function of women's behavior: women use scissors to cut pubic and armpit hairs, but not other body hair. However, the alternative is that depilating armpit and pubic hair is intrinsically more objectionable than other hairs. This is readily understandable if we assume that this prohibition is closely connected to masculine sexual anxiety.

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<sup>551</sup> See Tosafot *Nazir* 59a s.v. *ha-hu, amar, ba'i*; *Yevamot* 48a s.v. *lo*. For a brief synopsis of the two major views and additional citations, see Beit Yosef *Yoreh De'ah* 182, s.v. *ha'avarat, u-mah she-katav*, and *katvu ha-Geonim*, in *Tur Yoreh De'ah*, vol. 3, *Makhon Yerushalayim*, pp. 552-6. For a more comprehensive list of citations, see Shlomo Yosef Zevin, *Encyclopedia Talmudit*, vol. 34, Talmudic Encyclopedia Institute, Jerusalem, *lo yilbash*, n. 234-235.



## Chapter 6 - Medieval Authorities: Between the Majority and Maimonides

### I. Introduction

We have established that one highly influential strand in rabbinic literature dramatically expands the scope of *lo yilbash* for men beyond the face reading of the biblical text, first including any feminine ornaments (R. Eliezer ben Yaakov in the Sifre), and then any acts of beautification that are associated with women (Bavli). R. Eliezer ben Yaakov widens the gap by limiting the prohibition upon women to armor specifically.<sup>552</sup> Another viewpoint, represented by the Tana Kama, appears to deny that expansion, seeing the prohibitions upon men and women as fundamentally analogous. We will demonstrate that the medievals can be broadly divided between Ashkenazic and Sephardic authorities in Christian lands, who tended to differentiate between men and

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<sup>552</sup> This is the simple reading of his view. See below, however, Maimonides's interpretation, discussed below.

women, thereby upholding the reading of *lo yilbash* as a rabbinic commentary on the unique responsibilities associated with masculinity, and the Maimonidean school, which downplays those differences and gender associations.

## II. The Halakhic Ruling

First, medieval authorities debate whether we rule like the Tana Kama or R. Eliezer Ben Yaakov. This dispute may be a proxy for determining the extent to which the rabbis differentiated the man's prohibition from that of the woman.

A number of authorities appear to rule in accordance with the Tana Kama, or cite those who accepted his opinion. In his commentary to the Torah, R. Shlomo Yitzhaki<sup>553</sup> draws heavily on the language of the Tana Kama, emphasizing the concern for mingling with members of the opposite sex and illicit relations. This leads R. Eliyahu Mizrahi<sup>554</sup> to conclude that Rashi sides with the Tana Kama, even as Rashi also references the opinion of R. Eliezer ben Yaakov. R. Isaac of Corvée<sup>555</sup> similarly draws on the language of the Tana Kama, writing that men and women may not dress “in order to engage in incest.” R. Avraham of Montpellier<sup>556</sup> cites an opinion that ruled in accordance with the Tana Kama. R. Levi ben Gerson<sup>557</sup> also appears to rule the same way.

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<sup>553</sup> Rashi s.v. *lo, ve-lo, ki. Torat Hayyim Devarim*, ad loc.

<sup>554</sup> Eliyahu Mizrahi, *Humash ha-Re'em, Sefer Devarim*, Petah Tikvah, 1992, Deut. 22:5 s.v. *lo*, p. 242.

<sup>555</sup> Yitzhak Mi-Corvée, *Sefer Mitzvot Katan, Mefitzei Or*, Jerusalem, 1959, no. 33, p. 26.

<sup>556</sup> Avraham Ben Yitzhak, *Peirush R. Avraham Min ha-Har, Nazir*, Hebrewbooks, 1962, *Nazir* 59a, s.v. *lefi*, p. 240.

<sup>557</sup> Levi ben Gershon, *Peirush Ralbag al ha-Torah*, Deut, 22:5, available at <https://mg.alhatorah.org/Full/Devarim/22.5#e0n6>.

Yet there are multiple considerations in favor of ruling like R. Eliezer ben Yaakov. While we typically rule in favor of a Tana Kama over another disputant, there is a general principle that in disagreements between R. Eliezer ben Yaakov and others, we follow the former because “*mishnat R. Eliezer ben Yaakov kav ve-naki*,” “the mishnah of R. Eliezer son of Jacob is measured and clean,”<sup>558</sup> meaning that he was extremely selective and only issued rulings when he was extremely confident in his position.<sup>559</sup> One might respond that this principle does not apply in our case: as the formulation refers specifically to the “mishnah” of R. Eliezer ben Yaakov, the commentators dispute whether this principle applies specifically to a Mishnah in which R. Eliezer ben Yaakov adopted a position, or even a *baraita*,<sup>560</sup> such as in our case. Still, this is one possible argument in favor of ruling against the Tana Kama.<sup>561</sup>

The fact that the final view in the Talmud (*Nazir* 59a) attributes R. Eliezer ben Yaakov’s position to R. Yohanan, a highly influential Amoraic authority, seems to lend additional support for accepting his view.<sup>562</sup> Further, the passage in the Bavli (*Shabbat* 94b, *Makkot* 20b) proscribing a man from plucking his white hairs is most simply understood in consonance with the view of R. Eliezer ben Yaakov.<sup>563</sup> More broadly, then,

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<sup>558</sup> *Yevamot* 49b.

<sup>559</sup> See Itamar Metzger, *Seder Tannaim va'Amoraim*, vol. 2, *Makhon Naveh Asher*, no. 19, p. 50.

<sup>560</sup> For example, Tosafot *Gittin* (52b s.v. *halakhah*) and Haggahot Ashri (to Rosh *Bava Kama* 4:5), among others, cite authorities that limit this ruling to a Mishnah. However, Rashi (*Kiddushin* 62b s.v. *ke-man*; *Yevamot* 49b s.v. *mishnat, le-girsatenu, kav*), Rashbam (*Bava Batra* 138a s.v. *yorshin*), and Rosh (*Beitzah* 1:7) extend the principle to *beraytot* as well.

<sup>561</sup> Beit Yosef (*Yoreh De'ah* 182, *ibid.*, s.v. *lo tilbash*) contends that Maimonides holds like R. Eliezer ben Yaakov for this reason.

<sup>562</sup> For example, *Eruvin* 74a rules that we follow R. Yohanan against Rav and Shmuel.

<sup>563</sup> Beit Yosef, *ibid.*, s.v. *ve'im liket*.

R. Eliezer ben Yaakov's position seems to animate the larger thrust of the other passages in the Bavli that explore the parameters of *lo yilbash*.

It is therefore not surprising that the majority of medieval authorities follow R. Eliezer ben Yaakov, including R. Eliezer of Metz,<sup>564</sup> R. Moses of Coucy,<sup>565</sup> *Sefer ha-Hinnukh*,<sup>566</sup> and R. Menahem ha-Meiri,<sup>567</sup> and R. Judah Mintz.<sup>568</sup> And while he does not rule explicitly on the Tanaitic debate, Maimonides is widely understood, most prominently by R. Joseph Karo<sup>569</sup> as having ruled like R. Eliezer ben Yaakov. A number of biblical commentators,<sup>570</sup> including Midrash Lekah Tov,<sup>571</sup> Hezekiyah ben Manoah,<sup>572</sup> and Bayha ben Asher<sup>573</sup> interpret *keli gever* as weaponry, which also appears to draw

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<sup>564</sup> R. Eliezer of Metz, *Sefer Yereim*, vol. 3, *Makhon Torah she-Bikhtav*, 2014, no. 385-6, pp. 367-370. He argues from both the principle of “*mishnat R. Eliezer ben Yaakov kav ve-naki*” and from the fact that R. Yohanan rules like R. Eliezer ben Yaakov.

<sup>565</sup> Moshe Ben Yaakov, *ibid.*, *Sefer Mitzvot Gedolot*, vol. 3. Schlesinger, Jerusalem, 1989. *Lo Ta'aseh* 60, pp. 56-7.

<sup>566</sup> *Sefer ha-Hinnukh im Beiur Minhag Hinnukh*, vol. 3, 10th ed., *Makhon Yerushalayim*, 1997, no. 542, pp. 328-9.

<sup>567</sup> Menahem ha-Meiri, *Beit ha-Behirah - Nedarim, Nazir, Sotah, Makhon ha-Talmud ha-Yisraeli ha-Shalem*, 1960, *Nazir* 59a s.v. *ve-hu*, pp. 162-3.

<sup>568</sup> Judah Mintz, *She'eilot u-Teshuvot Mahari Mintz u-Maharam Padua*, Fischer and Deutscher, 1882, no. 17 s.v. *al devar*, pp. 31a-32a.

<sup>569</sup> *Kesef Mishneh, Mishneh Torah Hilkhot Avodah Zarah* 12:10 s.v. *lo*, *Sefer ha-Madda* *ibid.*, p. 187; *Beit Yosef Yoreh De'ah* 182, *ibid.*, s.v. *lo*.

<sup>570</sup> Spiegel assumes, as we did in chapter 4, that *peshuto shel mikra* refers to wearing clothing of the opposite sex; see Spiegel, “Clothing Swapping between Men and Women on Special Days,” *Rishonim ve'Aharonim: Mehkarim be-Toldot Yisrael Mugashim le'Avraham Grossman, Merkaz Zalman Shazar le-Toldot Yisrael*, Jerusalem, 2010, p. 329; and Spiegel, “The Prohibition ‘Thou Shall Not Wear,’” p. 459, n. 1.

<sup>571</sup> Tuviah Ben Eliezer. *Midrash Lekah Tov*, Wagschal, 1986, Deut. p. 74.

<sup>572</sup> Hezekiyah ben Manoah, *Hizkuni* s.v. *lo. Torat Hayyim Devarim*, *ibid.*

<sup>573</sup> Bahaye Ben Asher, *Rabbeinu Bahaye al ha-Torah*, vol. 3, 11th ed., *Mossad ha-Rav Kook*, 1994, s.v. *lo*, pp. 384-5.

upon the view of R. Eliezer ben Yaakov in regard to the prohibition upon women. R. Joel Sirkes<sup>574</sup> exaggerates only slightly in asserting that “all decisors rule like R. Eliezer ben Yaakov.”

### III. R. Eliezer ben Yaakov: Rejection or Addition?

Beyond the question of the halakhic ruling, medieval scholars debate whether R. Eliezer ben Yaakov denies the interpretation of the Tana Kama, or merely adds a further set of actions that fall under the rubric of *lo yilbash*.

On its face, the question might seem strange. R. Eliezer ben Yaakov appears to disagree with the Tana Kama. This also appears to be the simple reading of the aforementioned biblical commentators, as well as Onkelos and Neofiti: by translating “*keli gever*” as armor, they indicate that this is the only case in which a woman violates the prohibition. Yet this would seem to require us to ignore the plain meaning of the biblical text, which would appear to violate the rabbinic dictum that “*ein mikra yotzei midei peshuto*,” “a verse does not leave its plain meaning.”

At first glance, R. Eliezer of Metz, who rules in favor of R. Eliezer ben Yaakov, appears to suggest that the verse refers exclusively to a woman who dons armor. However, Yereim also writes explicitly that “a woman [may not wear] a man’s dress that has no analog among women’s clothing.” While at least one commentator<sup>575</sup> maintains that R. Eliezer of Metz sees armor as a paradigm for all men’s clothing,<sup>576</sup> the face

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<sup>574</sup> *Yoreh De'ah* 182 s.v. *ve-yesh*.

<sup>575</sup> Strauss, “*Nesiat Kelei Neshek*,” p. 75.

<sup>576</sup> Similar to Maimonides below.

reading of Yereim is that “*keli gever*” denotes two distinct cases: everyday men’s clothing and armor.<sup>577</sup>

R. Eliezer of Metz adds one point that may seem as an aside for our immediate purposes, but is in fact quite revealing. The first extant authority to address the question of cross-dressing for frivolous purposes, he writes:

וללבוש אפ'י עראי ודרך שחוק אסור שהרי לא חלק הכתוב בין קבע לעראי ולפי שראיתי בני אדם  
שלובשים מלבושי נשים עראי לשחוק והוקשה בעיני כתבתי כן. ויוצרו יתן בלבנו יראתו ואהבתו  
ויעמידנו על אמתת דרכי תורתו.<sup>578</sup>

Cross-dressing even in an impermanent, joking manner is prohibited, for the verse did not distinguish between permanent and impermanent. And I have written this since I have seen men who wear women’s clothing temporarily as a joke, and it was difficult in my eyes. May our creator place in our hearts His fear and love, and place us on the truthful pathways of His Torah.<sup>579</sup>

While we will return to the halakhic considerations regarding frivolous cross-dressing, for now we will suffice with two observations. First, it is interesting that he specifically notes that he observed men cross-dressing. It is possible that he addresses this case, not the inverse case of women cross-dressing for frivolous purposes, simply because he only observed men behaving in this fashion. But it is also possible that his comments betray additional sensitivity or opposition to the case of men who cross-dress. Second, his closing remark, “May our creator place in our hearts His fear and love, and place us on the truthful pathways of His Torah,” is revealing. That he goes out of his way to add this

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<sup>577</sup> This latter reading would follow R. Moses of Coucy, whose view we will outline presently. See *Haggahot Maimanivot, Hilkhoh Avodah Zarah* 12:10:6, p. 188.

<sup>578</sup> *Sefer Yereim* 385-6, *ibid.*

<sup>579</sup> Numerous medieval scholars had the following additional words in their version of the text: "ולפי שראיתי בני אדם שלושים במלבושי אשה עראי וגם האשה במלבושי איש עראי במשתאות של חתן וכלה וגם בעניינים הרבה כתבתי כן. And I have written this since I have seen men wearing women’s clothing temporarily, as well as women in men’s clothing temporarily, at feasts of a groom and bride and in many situations." For a brief review of the textual variants of the Yereim, see Spiegel, “*The Prohibition*,” pp. 463-4.

line suggests that he views *lo yilbash* not just as a biblical prohibition, but as a more profound problem that strikes at the very heart of living a life animated by fear and love of God. Here too, it is possible that he is motivated by the fundamental misconstrual of divine service manifest in any frivolity. But a man opting to dress like a woman might have been so unexpected that R. Eliezer of Metz's incredulous comments may have been the rabbinic equivalent to shaking one's head in disbelief.

R. Moses of Coucy<sup>580</sup> adopts the same reading, ruling like R. Eliezer ben Yaakov while contending that the latter also accepts the Tana Kama's view, explicitly invoking the reasoning of "*ein mikra yotzei midei peshuto.*" Thus, for R. Moses, both a man and woman may not wear the opposite sex's clothing so as not to lead to illicit relations; further, a man may not wear women's accoutrements, and a woman may not wear armor, which constitutes a category in its own right.<sup>581</sup> This suggests that these medieval Ashkenazic authorities viewed armor as quintessential male clothing, a conclusion that, once again, suggests a different direction than the one preferred by Boyarin in *Unheroic Conduct*.

#### IV. Sefer Hasidim

Sefer Hasidim offers one of the few practical halakhic medieval accounts regarding women's cross-dressing.<sup>582</sup> That he does so in order to rule leniently underscores the ubiquity of what we have identified as the dominant view, particularly

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<sup>580</sup> Yaakov ben Moshe, *Sefer Mitzvot Gedolot*.

<sup>581</sup> This reading eventually became universally accepted in practice. Thus, for example, R. Mordekhai Yafeh (*Levush Yoreh De'ah* 182:1) reads R. Eliezer ben Yaakov in the same fashion as R. Moses of Coucy, and also invokes "*ein mikra yotzei midei peshuto.*"

<sup>582</sup> R. Yisrael Isserlein, *She'eilot u-Teshuvot Terumat ha-Deshen*, vol. 1, *Or ha-Hayyim*, 2016. no. 197, cites and discusses the ruling of Sefer Hasidim.

among Ashkenazic authorities, who tended to emphasize strictures upon men and leniencies for women.

עת לעשות לה' הפרו תורתך (תהלים קי"ט קכ"ו) (אע"פ שאמרה התורה) דברים כ"ב ה' (לא יהיה כלי גבר על אשה ולא ילבש גבר שמלת אשה אם צרו אויבים על העיר או אם הולכים בדרך ואם ידעו שהם נשים ישכבום תלכנה במלבושי אנשים ואף בחרב כדי שיהיו סבורים שהם אנשים ואם אין שם אלא עשרה מאנשים ויש שם כמה נשים תחגורנה חרב כדי שיהיו סבורים שהם אנשים ולא יזיקום.<sup>583</sup>

A time to act for God; they have abrogated your Torah. Even though the Torah said, "there shall not be a man's vessel on a woman, and a man may not don a woman's blouse," if enemies lay siege on the city, or if they are walking on the road and, if they knew they were women, they would sleep with them, they may walk with the clothing of men, and even with a sword, so that think think they are men. And if there are only ten men there, and a few women, they may gird themselves with swords, so they think they are men, and will not harm them.

מעשה באשה יפת תואר שהלכה בדרך עם בעלה ועשתה משער של חברתה זקן והניחה על פנים שלה והרואה אותה סבור שהיא איש וניצלה, וכגון בחורים שאין להם זקן מלבישים בגדי נשים להנצל או לבוש נכרי להטעות האויבים כגון רבי מאיר אצבעו אחד הכניס בדבר האיסור ואצבעו השני הכניס בפיו.<sup>584</sup>

It occurred regarding a beautiful woman, who went on the road with her husband, and made a beard from her friend's hair, and put it on her face. In this way, one who sees her would think she is a man, and she would be saved. And regarding young men who lack a beard, and wear women's clothing to be saved, or gentile clothing to trick the enemies, such as Rabbi Meir, who inserted one finger in a prohibited item and his second finger in his mouth.

האשה שהלכה בדרך ושמעה שפוגעים בה גוים ויראה פן ישכבו עמה יכולה ללבוש בגדי כומרת כדי שיהיו סבורים שהיא כומרת ולא ישכבו עמה. ואם היא שמעה שפריצי ישראל יפגעו בה כמו כן מותרת ללבוש מלבוש נכרית ולומר היא גויה. ויכולה לומר להם שהיא תצעוק ותלשין עליהם. וגם יכולה לצעוק קודם כדי שיבואו גוים לעזור לה אע"פ שיהרגו הפריצים.<sup>585</sup>

A woman who went on the road and heard that gentiles are attacking her, and she fears that they may lie with her, may wear the clothes of a nun, so that they think her a nun, and will not sleep with her. And if she heard that the promiscuous Jews will harm her, she may similarly wear gentile clothing and claim that she is a gentile. And she may say to them that she will scream and report on them [to the

<sup>583</sup> Yehuda he-Hasid, *Sefer Hasidim*, 12th ed., *Mossad ha-Rav Kook*, Jerusalem, 1993, no. 200, pp. 191-2.

<sup>584</sup> *Ibid.*, no. 201.

<sup>585</sup> *Ibid.*, no. 702, p. 438.



authorities]. And she may also scream earlier, so that gentiles come to assist her, even though they will kill the promiscuous [Jews].

As a legal matter, the ruling of Sefer Hasidim in these three passages is straightforward. While cross-dressing is generally prohibited, both men and women may do so as a matter of absolute necessity for purposes of saving a life. Yet it is still striking that Sefer Hasidim opens with the phrase from Psalms, which is usually reserved for rare crises in which a major tenet of the Torah must be set aside. This suggests that the prohibition against women cross-dressing is not merely a prohibition like any other, but somehow more foundational to the Torah's core principles, although Sefer Hasidim does not explain how or why.

It is also noteworthy that Sefer Hasidim seems to assume that aside from life-threatening situations, a woman may not carry a sword, even outside of a military context. This is consistent with the Maimonidean school, which, we will show, holds that the prohibition is primarily concerned with a woman's appearance rather than her activities.

Perhaps most important, it is telling that outside of the question of frivolous cross-dressing on carnivalesque holidays, Sefer Hasidim presents the only extant practical halakhic discussion concerning female cross-dressing throughout the Middle Ages. Among the Ashkenazic authorities, his discussion, which considers female violations of *lo yilbash* alongside those of men, is the exception that proves the rule.<sup>586</sup>

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<sup>586</sup> The rulings of Sefer Hasidim are cited and discussed in Lena Roos, "Cross-Dressing among Medieval Ashkenazi Jews."

## V. Maimonides

Maimonides presents a striking counterpoint to the reading of the aforementioned medieval scholars, offering a comprehensive exposition of the view that the respective prohibitions upon men and women are fundamentally parallel, and are not a commentary on masculinity. Ironically, he reaches this position not by ruling like the Tana Kama, but by reading R. Eliezer ben Yaakov in a manner that renders the latter's view nearly indistinguishable from that of the Tana Kama. In doing so, Maimonides anchors his ruling in his larger viewpoints regarding the reasoning for the commandments.<sup>587</sup> We will contend, however, that even Maimonides is ultimately unable to fully escape the implications of the rabbinic texts that differentiate men and women regarding *lo yilbash*.

Maimonides addresses the prohibition of *lo yilbash* in three of his major works, which we will consider in chronological order: the *Book of the Commandments*, *Mishneh Torah*, and *Guide to the Perplexed*. Maimonides demonstrates halakhic and philosophical consistency across these three treatments. This also offers a useful case study for exploring the extent of Maimonides's willingness to overlook the clear implication of the Talmud when he is motivated by prior philosophical principles to which he is strongly devoted.

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<sup>587</sup> On the unity of Maimonides's legal and philosophical thought, see Isadore Twersky, *A Maimonides Reader*, 1972, Introduction, p. 8. For discussions of Twersky's unity theme, see Jacob Dienstag, "Twersky's 'Introduction to Maimonides,'" *The Jewish Quarterly Review*, vol. 72, no. 2, Oct. 1981, pp. 140–4; and Warren Zev Harvey, "Review of A Maimonides Reader by Isadore Twersky," *TRADITION*, vol. 13, no. 2, 1972, pp. 159–165. Hyam Maccoby ("Maimonides Then and Now," *Commentary Magazine*, <https://www.commentary.org/articles/hyam-maccoby/maimonides-then-and-now/>. Accessed 23 Nov. 2021), contends that "the greatest contribution of [Twersky's] work to the understanding of Maimonides is his continual demonstration of the extraordinary unity of the whole of Maimonides's literary output."

### V. 1. *Book of the Commandments*

We will first analyze Maimonides's treatment of these prohibitions in his *Book of the Commandments*.<sup>588</sup> Before we cite and consider his presentation, it is worth noting the larger context in which Maimonides presents these prohibitions. The immediately preceding negative commandments include following the ways of the gentiles (30), soothsaying (31), astrology (32), interpreting omens (33), witchcraft (34), casting spells (35), inquiring of Ov (36) and Yidoni (37), and conjuring the dead (38). This clearly situates our commandments among the prohibitions Maimonides sees as intended to combat paganism. That these prohibitions appear toward the beginning of the negative commandments further indicates their importance in Maimonides's larger legal-philosophical system.<sup>589</sup>

Maimonides writes:

והמצוה הל"ט היא שהזהירונו גם כן מהמשך אחר חקות הכופרים שתהיינה הנשים לובשות בגדי האנשים ותתקשטנה בתכשיטיהם והוא אמרו יתעלה (תצא כב) לא יהיה כלי גבר על אשה. וכל אשה שתתקשט באחד מתכשיטי האנשים המפורסמים בעיר ההיא שזה הוא תכשיט מיוחד לאנשים לוקה:

The thirty-ninth commandment is that He also prohibited us from following the laws of the heretics, that women wear men's clothing and adorn themselves with men's adornments. And this is that which it states, "There shall not be a vessel of a man on a woman" (Tetze 22). And any woman who adorns herself with one of the male adornments that are widely-known in that city as unique for men, receives lashes.

Maimonides uses the terms "also" and "the laws of the heretics," clearly associating this commandment with the previous ones concerning idolatry. He also mentions nothing about armor or anything pertaining to men's weaponry, suggesting that the prohibition

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<sup>588</sup> Moses Maimonides, *Sefer ha-Mitzvot, Hotza'at Shabse Frankel*, 1995, Negative Commandments 39-40, pp. 305-6.

<sup>589</sup> Indeed, he begins with fifty-eight consecutive negative commandments whose primary purpose is to distance the Jewish people from idolatry and its practitioners.

specifically encompasses men's clothing or ornaments. Thus, even if he were to ban a woman from wearing armor or carrying weapons - as we will soon see that he does elsewhere - that would presumably be because those too constitute men's clothing.

Maimonides continues:

והמצוה הארבעים היא שהזהיר האנשים גם כן מהתקשט בתכשיטי הנשים והוא אמרו יתעלה (שם) ולא ילבש גבר שמלת אשה. וכל אדם שהתקשט גם כן או לבש מה שהוא מפורסם במקום ההוא שהוא תכשיט המיוחד לנשים לוקה. ודע שזאת הפעולה, כלומר היות הנשים מתקשטות בתכשיטי האנשים או האנשים בתכשיטי הנשים, פעמים תיעשה לעורר הטבע לזמה כמו שהוא מפורסם אצל הזונים ופעמים ייעשה למינים מעבודת עבודה זרה כמו שהוא מבואר בספרים המחוברים לזה. והרבה מה שיושם בתנאי בעשיית קצת הטלאסם וייאמר אם היה המתעסק בו אדם ילבש בגדי נשים ויתקשט בזהב ופנינים והדומים להם ואם היתה אשה תלבש השריין ותזדיין בחרבות. וזה מפורסם מאד אצל בעלי דעת זאת:

The fortieth commandment is that He prohibited men too from donning women's ornaments. And this is what it says, "A man shall not don a woman's blouse." And any man who adorns himself in this way, or wears that which is widely-publicized in that place to be a unique ornament for women, receives lashes. And know that this action, namely women donning men's ornaments, and men donning women's ornaments, is sometimes done to stir the desire for illicit relations, as is expounded by those who stray. And sometimes it is performed for types of idolatry, as is expounded in the relevant literature. And much of that which is set forth regarding the conditions of some talismans. And it states that if a man was involved in this, he should wear women's clothing and beautify himself with gold and pearls and the like. And if she was a woman, she should wear armor and gird herself with swords. And this is well-publicized among devotees of this religion.

Maimonides offers two reasons for the prohibition: concern for illicit sexual activity and idolatrous rites. He references pagan literature in support of the latter contention, much as he cites the Sabians in the third section of the *Guide* as evidence that numerous commandments are designed to distance Jews from pagan practices.<sup>590</sup> Accordingly, Maimonides presents the two cross-dressing prohibitions as similar in scope, implicitly

<sup>590</sup> Here, Maimonides draws on the Sabeian literature, which he famously cites elsewhere in the *Guide* in support of his assertions regarding the practices of biblical pagans. For the larger history of the role of Sabeian literature in Jewish thought, see Jonathan Elukin, "Maimonides and the Rise and Fall of the Sabians: Explaining Mosaic Laws and the Limits of Scholarship," *Journal of the History of Ideas*, vol. 63, no. 4, 2002, pp. 619–637.

rejecting any exegetical inference that the prohibitions' differing formulations suggest a qualitative distinction.<sup>591</sup> Similarly, he calls both prohibitions "actions," eliding any attempt to distinguish between "yihye" and "yilbash." And because the motif of masculinity is irrelevant to the two reasons he provides, he ignores the term "gever."<sup>592</sup>

## V. 2. *Mishneh Torah*

In his *Mishneh Torah*,<sup>593</sup> Maimonides writes:

העברת השיער משאר הגוף כגון בית השחי ובית הערוה אינו אסור מן התורה אלא מדברי סופרים והמעבירו מכין אותו מכת מרדות, במה דברים אמורים במקום שאין מעבירין אותו אלא נשים כדי שלא יתקן עצמו תיקון נשים, אבל במקום שמעבירין השיער [הנשים ו] <sup>594</sup>אנשים אם העביר אין מכין אותו, ומותר להעביר שיער שאר איברים במספריים בכל מקום.

The removal of hair from other parts of the body, such as from the armpits and sexual region, is not forbidden by the Torah but from the words of the Scribes, and the one who removes it receives rabbinic lashes. When are these words stated? Concerning a place where only women remove it, so that he will not imitate the practice of women. But in a place where [women and] men remove hair, if he removed, we do not give him lashes. And in all places, it is permitted to remove the hair of other limbs with a pair of scissors.

<sup>591</sup> For a comprehensive analysis of Maimonides's view on the relation between *peshat*, *halakhah*, and philosophical principles, see Mordechai Cohen, *Opening the Gates of Interpretation: Maimonides's Biblical Hermeneutics in Light of His Geonic-Andalusian Heritage and Muslim Milieu*, Brill, 2011. For a discussion of Maimonides's view alongside Spinoza's sharp critique of Maimonides's exegetical method, see James Diamond, "Maimonides, Spinoza, and Buber Read the Hebrew Bible: The Hermeneutical Keys of Divine 'Fire' and 'Spirit' (Ruach)," *The Journal of Religion*, vol. 91, no. 3, 2011, pp. 320–343.

<sup>592</sup> This is not to suggest that Maimonides sees no difference between men and women. Quite the opposite: particularly in the *Guide to the Perplexed* he draws sharp distinctions, most prominently in 3:8, where he identifies men with form and women with matter. For a particularly insightful discussion, see Avraham Melamed, "Maimonides on Women: Formless Matter or Potential Prophet?" in *Perspectives on Jewish Thought and Mysticism: Proceedings of the International Conference Held by the Institute of Jewish Studies, University College London, 1994, in Celebration of Its Fortieth Anniversary, Dedicated to the Memory and Academic Legacy of its Founder Alexander Altmann*, Harwood Academic Publishers, Amsterdam, 1998, pp. 99–134. For a contrarian argument that Maimonides's attitude toward women was unusually enlightened for a man of his time and place, see Joel Kraemer, *Maimonides: The Life and World of One of Civilization's Greatest Minds*, Doubleday, 2008, pps. 336–343. For a general discussion of how this fits into the larger scheme of the *Guide*, see Josef Stern, *The Matter and Form of Maimonides's Guide*, Harvard University Press, 2013.

<sup>593</sup> *Laws of Idolatry* 12:9–10. *Mishneh Torah, Sefer ha-Madda, Hotza'at Shabse Frankel*, 2001, pp. 187–8.

<sup>594</sup> This phrase is absent in the extant manuscripts of *Mishneh Torah*, but does appear in the printed versions. See *Frankel*, p. 187. It would appear that the practical difference between the two versions concerns a case in which it is the norm for both men and women to shave. The simple view would be to rule permissively in such a case, but one can make a plausible argument for stringency.

לא תעדה אשה עדי האיש כגון שתשים בראשה מצנפת או כובע או תלבש שריון וכיוצא בו או שתגלח ראשה כאיש, ולא יעדה איש עדי אשה כגון שילבש בגדי צבעונין וחלי זהב במקום שאין לובשין אותן הכלים ואין משימים אותו החלי אלא נשים הכל כמנהג המדינה, איש שעדה עדי אשה ואשה שעדתה עדי איש לוקין, המלקט שערות לבנות מתוך השחורות מראשו או מזקנו משילקט שערה אחת לוקה מפני שעדה עדי אשה, וכן אם צבע שערו שחור משיצבע שיער לבנה אחת לוקה, טומטום ואנדרוגיגנוס אינו עוטף כאשה ולא מגלח ראשו כאיש ואם עשה כן אינו לוקה.

A woman shall not adorn herself with man's adornment, for instance placing on her head a mitre or a helmet, or wearing a coat of armor, and the like, or have her hair shorn like a man. And a man may not adorn himself with a woman's adornments, such as wearing colored clothing or golden ornaments, in a place where only women wear such articles and put on such ornaments. Everything follows the custom of the land. A man who wore the ornaments of a woman, and a woman who wore the ornaments of a man, receives lashes. One who collects white hairs from black ones of his head or beard, once he collects one hair he receives lashes, for he wore a woman's ornamentation. And similarly, if he dyed his hair black, as soon as he dyes a single black hair, he receives lashes. A *tumtum* and androgynous does not wrap like a woman, not cut one's hair like a man. But one who did so does not receive lashes.

Before analyzing the text, we may first note that the context is highly suggestive:

Maimonides discusses these rules in *The Laws of Idolatry* (as will Arba'ah Turim and Shulhan Arukh after him). This follows the reasoning he has already provided for the prohibition.

As in *Sefer ha-Mitzvot*, here too Maimonides formulates the prohibition for men and women in essentially identical fashion. He subsumes women who wear armor under the larger prohibition barring women from dressing like men. And while he forbids women from wearing armor, in contrast to the face reading of R. Eliezer ben Yaakov, he says nothing about women going to war. The context in *The Laws of Idolatry* confirms that he sees both prohibitions as closely related to the concern of following the pagans' immoral ways.

A similar analysis holds for Maimonides's treatment of the positions of the Tana Kama and R. Eliezer ben Yaakov. Maimonides never clearly references this Tannaitic dispute. In the *Book of the Commandments* and *Guide to the Perplexed*, he references women wearing armor as an example of superstitious pagan practices performed for the sake of sexual arousal. Still, his inclusion of women wearing armor in the prohibition, particularly in *Mishneh Torah*, led later commentators to conclude that he rules in accordance with R. Eliezer ben Yaakov.<sup>595</sup>

But while Maimonides may have ruled in accordance with R. Eliezer ben Yaakov, his reading of the R. Eliezer ben Yaakov is heavily flavored by Maimonides's prior philosophical commitments. He minimizes the dispute between the Tana Kama and R. Eliezer ben Yaakov; for instance, it seems nearly certain that for Maimonides, the Tana Kama and R. Eliezer ben Yaakov are in agreement regarding the underlying reasons for the prohibition. Further, he indicates that R. Eliezer ben Yaakov agrees with the Tana Kama that women may not wear men's clothing generally, and he simply holds that this category encompasses ornaments associated with war. And in light of both the placement of this law in *Mishneh Torah* and his conceptual framing in *Sefer ha-Mitzvot* and *Guide to the Perplexed*, it is clear that Maimonides's decisive influence was his understanding of the concerns of illicit sexuality and especially paganism, the latter being one of the overarching themes in his understanding of the reasoning for the *mitzvot* as a whole.<sup>596</sup>

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<sup>595</sup> *Kesef Mishneh* 12:10 s.v. *lo*; *Bayyit Hadash Yoreh De'ah* 182; *Hagahot ha-Gra Yoreh De'ah* 182:6, in Yosef Karo, *Shulhan Arukh Yoreh De'ah*, vol. 2, Akiva Yosef, 1977, p. 254. This would follow the view of R. Moshe of Coucy that R. Eliezer ben Yaakov agrees with the Tana Kama because *ein mikra yotzei midei peshuto*.

<sup>596</sup> For a comprehensive treatment of this subject, see Isadore Twersky, *Halakhah va-Haggot: Kavei Yesod be-Mishnato shel ha-Rambam*, vol. 1 and 2, Open University of Israel, 1991 and 1995.

Maimonides's philosophical commitments help to account for an additional anomaly. The Talmud in *Nazir* seems to maintain that according to R. Eliezer ben Yaakov, one who shaves his armpits and sexual regions violates the biblical prohibition of adorning himself like a woman. Yet Maimonides, who apparently follows R. Eliezer ben Yaakov, nonetheless rules that “the removal of hair from other parts of the body, such as from the armpits and sexual region, is not forbidden by the Torah but from the words of the Scribes.” This seems to outright contradict the Talmud’s linkage between these two rulings. Indeed, presumably on the basis of this passage, R. Moses of Coucy rules that such depilation is biblically proscribed.<sup>597</sup> How do we resolve this contradiction?<sup>598</sup>

On the textual level, the simplest explanation is that Maimonides rules in accordance with the first position cited in the Talmud, which simply denies the connection between these two rulings. Yet conceptually, as R. Yosef Karo<sup>599</sup> points out, Maimonides’s ruling also allows him to remain internally consistent: he apparently maintains that even for R. Eliezer ben Yaakov, a man violates *lo yilbash* only if the feminine adornment is outwardly visible; anything else involves a rabbinic prohibition at most.

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<sup>597</sup> See Beit Yosef *Yoreh De'ah* 182 s.v. *lo tilbash*.

<sup>598</sup> Regarding the apparent contradiction with the Talmud, in a classic letter to the scholars of Lunel (Joshua Blau, *Responsa of Maimonides*, vol. 1, *Makhon Yerushalayim*, 2016, no. 345), Maimonides writes that he prefers to rule like a clear-cut Talmudic passage over a casuistic back-and-forth. For this reason, Maimonides may have downplayed the complex linkage in *Nazir* between the Tana Kama and R. Eliezer ben Yaakov’s reading of the verses and the case of the removal of hidden hair. Yet others (Bakh, *Yoreh De'ah* 182) propose that a close reading of *Nazir* suggests that in fact the Talmud itself presents two views as to whether or not R. Eliezer ben Yaakov necessarily prohibits depilation of hidden hair on a biblical level.

<sup>599</sup> *Kesef Mishneh*, *ibid.*, 12:10 s.v. *lo*.



Be that as it may, in light of the striking consistency in which he addresses our subject, Maimonides's logic seems clear. Both the pagan practices and potential for illicit sexuality are concerned not with one's inward but outward appearance. Apparently, to Maimonides's mind cultic cross-dressing was evident to the onlooker. And one certainly would need to appear outwardly like the opposite sex to enter such spaces without arousing suspicion. Maimonides draws the conclusion that shaving one's armpits and sexual regions is a mere rabbinic violation.

It is therefore far from coincidental that Maimonides omits mention of much of the passage in the *Sifre* and Bavli in *Nazir*, as his prior assumptions were far more decisive than the *Sifre* or Talmud's presentation of the dispute between the Tana Kama and R. Eliezer ben Yaakov.

Seen from this perspective, Maimonides's disinterest in the view of R. Eliezer ben Yaakov ironically reinforces our aforementioned analysis of R. Eliezer ben Yaakov. We argued that R. Eliezer ben Yaakov seems to maintain a qualitatively different conception of the prohibition incumbent upon men and that upon women. For his own reasons, Maimonides was attracted to the position that the two prohibitions are mirror images of one another, and refashioned R. Eliezer ben Yaakov's unique designation of women wearing armor and men wearing women's ornaments into mere examples of the larger principles at play.<sup>600</sup> Ironically, then, Maimonides's disinterest in R. Eliezer ben Yaakov's

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<sup>600</sup> In general, Maimonides was inclined to rely on straightforward logic more heavily than the Talmudic evidence regarding many of his halakhic decisions. See, for example, Shimshon Ettinger, "On the Place of Legal Logic in Maimonides's *Mishneh Torah*" (Heb.), *Shenaton ha-Mishpat ha'Ivri*, vol. 14-5, 1988, pp. 1-30, esp. pp. 16-7. See also Avraham Bromberg, *Mekorot le-Piskei ha-Rambam*, Mossad ha-Rav Kook, 1947. On the role of the *Sifre* specifically in Maimonidean codification, see Jacob Nahum Epstein, "*Mekhilta ve-Sifre be-Sifre Ha-Rambam*," *Tarbiz*, vol. 6, 1935, pp. 99-138.

formulation implicitly acknowledges that his view is not motivated by the language of the latter.<sup>601</sup>

### V. 3. *Guide to the Perplexed*

Maimonides's presentation in his *Guide to the Perplexed*<sup>602</sup> reinforces our analysis of his view. He writes:

והנה בארנו בחיבורנו הגדול שהקפת פאת ראש ופאת זקן' אסור מפני שהוא תיקון 'כמרי עבודה זרה'. והיא הסיבה גם כן לאיסור ה'שטענז' כי כן היה תקון הכמרים גם כן היו מקבצים בין הצומח ובעל החיים בלבוש אחד והיה חותם אחד מן המוצאים בידו - תמצא זה כתוב בספריהם: והיא הסיבה גם כן באמרו "לא יהיה כלי גבר על אשה ולא ילבש גבר שמלת אשה" - תמצאהו בספר טומטום יצוה שילבש האיש בגד אשה צבוע כשיעמוד בכוכב נוגה ותלבש האשה השריון וכלי המלחמה בעמדה למאדים. ובו גם כן אצלי סיבה אחרת והיא - שזוה הפועל מעורר התאוה ומביא למיני זנות:

We have already explained in our great composition that shaving the “corner of the head and corner of the beard” is forbidden because it is an adornment of “idolatrour priests.” This is also the reason for the prohibition of “mingled stuff,” for this was an adornment of the priests, who also mingled vegetal and animal substances in a single garment at the same time, and it was one of the seals found in his hands; you will find this written in their books. This is also the reason for that which it states, “There shall not be a man’s vessel on a woman, nor shall a man wear a woman's dress.” You will find it in the book of Tumtum,<sup>603</sup> which commands that a man put on a woman's colored garment when standing before the star Venus<sup>604</sup> and that a woman should put on armor and weapons of war when standing before Mars. In my opinion there is also another reason for this, namely - that action arouses the desire and leads to promiscuity.

Although some of the references in *The Guide* are obscure and rely on authors whose work is no longer extant, the larger thrust is clear. As in his organizational scheme in *Mishneh Torah*, he treats *hakafat ha-rosh* and *lo yilbash* side-by-side, as befits not just

<sup>601</sup> R. Yitzhak of Corbeil (Negative Commandment 33) counts them as a single *mitzvah*, perhaps suggesting a conceptual view similar to that of Maimonides.

<sup>602</sup> 3:37. *Moreh Nevukhim*, Trans. Michael Schwartz, vol. 2, Tel Aviv University Press, 2002, p. 562.

<sup>603</sup> Maimonides refers to a number of Arabic books that were ascribed to an Indian author by the name of Tumtum. For details, see Schwartz, vol. 2, p. 527, n. 52. Maimonides also references Tumtum’s pagan works in *Guide* 3:29, 3:41, and 3:46.

<sup>604</sup> See Schwartz, p. 562, n. 39. Regarding Mars, see *ibid.*, n. 40.

their practical similarity but their linkage to idolatry. His treatment of *kilayim* in the same passage may also be telling, as *kilayim* appears just a few verses after cross-dressing in Deuteronomy. Yet whereas others argued that this juxtaposition suggests that both prohibitions center on not mingling different types of divinely-inscribed categories, for Maimonides they are both about opposition to idolatry, to which he also adds the concern of promiscuity for *lo yilbash* as almost an afterthought.

In sum, Maimonides implicitly rules like R. Eliezer ben Yaakov while reinterpreting R. Eliezer ben Yaakov to fit Maimonides's prior assumptions about *ta'amei ha-mitzvot*. All indications are that for Maimonides, the Tana Kama and R. Eliezer ben Yaakov adopt the same underlying reason for the prohibition; R. Eliezer ben Yaakov simply accepts the Tana Kama, and merely adds armor as an additional instance of male clothing. Most striking, there is no hint in Maimonides that women may not go to war or fight like men. For Maimonides, the prohibition against women wearing armor is fundamentally no different than the prohibition for women to wear men's hats; both are centered on dressing - not behaving - like the opposite gender.

Finally, all these rulings are subject to cultural change. The definition of male clothing - including armor - appears to be dependent on the times.<sup>605</sup>

#### **V. 4. Maimonides on Men and *Lo Yilbash***

Yet his remarkable attempts at internal consistency notwithstanding, further examination of his discussion in *Mishneh Torah* suggests that even Maimonides fails to fully avoid the Talmudic implication that there is a substantial distinction between men

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<sup>605</sup> This will carry implications for contemporary discussions of women serving in the army; see our discussion in chapter 11.

and women. Maimonides's emphasis throughout 12:10 is on both male and female ornamentation, with much of the law dedicated to outlining specific instances of male and female garments and ornamentation. As if to clinch the point, after noting that the determination of male and female garb follows local custom, he sums up: “A man who wore the ornaments of a woman, and a woman who wore the ornaments of a man, receives lashes.” Given the internal logic of his argument, the law could have ended before this point.

Yet Maimonides does not end there. Instead, following the ruling that appears twice in the Bavli,<sup>606</sup> he adds that a man who pulls even a single white hair from among black hairs receives lashes, “because he wore a woman’s ornamentation.” He then adds, without any direct textual source, that a man who dyes a single hair black similarly receives lashes. Reading 12:10 straight through from a structural standpoint, these lines seem to be appendages rather than part of Maimonides's core argument.

In truth, from a legal perspective, his position is not as unexpected as it might seem. At the beginning of the law he rules that a woman who shaves her head like a man receives lashes, since this too is considered the ornamentation of a man. There too, the woman does not don any physical ornaments, but merely adopts the appearance of a man. Still, Maimonides's emphasis on even a single hair seems curious: does the man look different to the onlooker simply because he has removed or dyed a single strand of hair? And what of Maimonides's earlier ruling that if something is not visible to the onlooker, there is no biblical prohibition? Indeed, this is precisely the critique issued by R.

Avraham ben David in his gloss: “It is not logical that he receives lashes for just one. For

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<sup>606</sup> *Shabbat* 94b, *Makkot* 20b.

they only said that it is prohibited (not that one receives lashes). And furthermore, what ornamentation of a woman is there with one [hair]? It is not recognizable at all?!”

Interestingly, the commentaries who seek to defend Maimonides do so primarily by appealing to the Talmudic text that serves as a precedent for his ruling, which on its face does not appear to differentiate between one hair and more.<sup>607</sup> While this is true, Raavad’s objection is rooted in the internal logic of Maimonides, which seems inconsistent with the conclusion that one receives lashes for just one hair. What is more, this distinction - as is underscored by Maimonides's conspicuous decision to present this ruling *after* his summary statement - sharply differentiates the degree of stringency of men and women from one another. Apparently, even Maimonides was forced to acknowledge that the Talmudic evidence treats the man with unique stringency. In the first section of his ruling, he explains that both a man and woman violate the prohibition if they appear like the opposite sex. Maimonides now adds that for men, even an effeminate act of beautification is prohibited, no matter the outcome.<sup>608</sup>

## **VI. Sefer ha-Hinnukh and Meiri**

Sefer ha-Hinnukh’s<sup>609</sup> discussion of our topic shows the thoroughgoing influence of Maimonides. Like Maimonides, he prohibits women from wearing armor, makes no mention of women going to war, and clarifies that armor is just an instantiation of the larger prohibition against women wearing men’s clothing. By only mentioning the cases

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<sup>607</sup> See, for example, *Kesef Mishneh* 12:10, s.v. *katav*.

<sup>608</sup> It is important to add that Maimonides exercised a decisive influence on subsequent halakhic authorities, including R. Joseph Karo, who cites Maimonides nearly verbatim in *Shulhan Arukh* (*Yoreh De'ah* 182:5), R. Avraham Yafeh (*Levush Yoreh De'ah* 182:5); see too Mordekhai Yafeh, *Levush Malkhut - Levush Ateret Zahav*, vol. 3, Alexander Lubitch, 1821, 102b), and R. Avraham Danzig (*Hokhmat Adam, Sha'arei Issur ve-Heiter* 90:2).

<sup>609</sup> *Sefer ha-Hinnukh*, *ibid*.

of a man who removes white hairs or dyes his hair black, he implies that one who removes hairs that are not publicly visible does not violate the biblical prohibition. He does part ways subtly with Maimonides in two ways. First, he cites the concern for illicit relations prior to that of idolatry, and generally seems mostly concerned with promiscuity, as opposed to Maimonides, whose greater concern is that of idolatry. Second, he explains that Onkelos specifically offers the case of armor because it is inherently unsuitable for women. This seems to contravene Maimonides's view that armor is fundamentally no different than other forms of male clothing, and would seemingly be subject to changes in cultural norms like all other clothing.<sup>610</sup>

R. Menahem ha-Meiri<sup>611</sup> also appears to follow the general path of Maimonides:

והוא שאמרו לא יהיה כלי גבר על אשה ולא ילבש גבר שמלת אשה מה תלמוד לומר אם ללמד שלא ילבש איש שמלת אשה ולא אשה שמלת איש אי אפשר לומר כן שהרי כתיב תועבה היא ואין כאן תועבה אלא שלא ילבש איש שמלת אשה וישב בין הנשים ולא אשה שמלת איש ותשב בין האנשים וכן שלא תצא בכלי זין למלחמה כללו של דבר שלא ישתמש זה בדבר הנהוג לזה דרך תחבולה והכנת ניאוף וכן שלא יתקן איש בתקוני אשה כגון כחול ופקוס וכיוצא באלו

And this is that which it states, “there shall not be a man’s vessel on a woman, and a man may not don a woman’s blouse.” What does it come to teach us? If it is to teach that a man shall not wear a woman’s blouse and a woman a man’s dress, it is impossible to say this - for it says that it is an abomination, yet this is not an

<sup>610</sup> Interestingly, *Sefer ha-Hinnukh* does note that he first proposed these two explanations for the prohibition independently, and only afterward found that Maimonides had offered the same two reasons.

On the *Hinnukh*’s allegiance to Maimonides, see Elyakim Krumbein, “*Demuto Shel ha-Rambam be-Sefer ha-Hinnukh*,” *Netu'im*, vol. 16, 2010, pp. 111–130; Ephraim Kanarfogel, “Restoring Spanish Torah Study to Its Former Glory: On the Goals and Intended Audiences of *Sefer ha-Hinnukh* and its Exposition of *Ta’amei ha-Mizvot*,” *Dine Israel*, vol. 32, 2018, pp. 39–53. Kanarfogel notes that “*Sefer ha-Hinnukh* is primarily a work of pedagogy which sought to bring the didactic value of Maimonides’s *Mishneh Torah*, along with the author’s additional teachings and observations, to a wider audience, and to provide and promote a robust range of Torah study for that audience” (p. 41). Kanarfogel similarly notes that “the largest number of named citations (by far) in *Sefer ha-Hinnukh* comes from the works of Maimonides, especially *Mishneh Torah* (but including also *Sefer ha-Mitsvot* and *Moreh Nevukhim* as well, as a distant third); and *Sefer ha-Hinnukh*’s view accords with positions or rulings of Maimonides in quite a number of unspecified instances in addition” (pp. 43–4). See also Israel Ta-Shema, *Studies in Medieval Rabbinic Literature*, vol. 2, Bialik Institute, 2004, pp. 287–88, who compares *Sefer ha-Hinnukh* to R. Yom Tov Ashbeli’s *Sefer ha-Zikaron* in its aim to present Maimonides and Nahmanides as the structural pillars of Sephardic scholarship.

<sup>611</sup> *Beit ha-Behirah*, *Nazir* 58b, *ibid*.

abomination. Rather, it means that a man may not wear a woman's clothing and sit among the women, and a woman may not wear a man's garment and sit among the men. And similarly, that she may not go out with weapons to war. The general principle of the matter is that one may not use items that are normally used by the other as a form of trickery and preparation for incest; and similarly, that a man may not decorate himself with the accoutrements of a woman, such as powder or engravings.

In this passage, Meiri first describes the view of the Tana Kama, and then adds that a woman similarly may not wear armor while going out to war. Overall, this closely echoes Maimonides's view, but, as in the case of the Hinnukh, with two differences. First, unlike Maimonides (and Sefer ha-Hinnukh), Meiri invokes R. Eliezer ben Yaakov's language of "going out in armor to war." It is unclear whether Meiri means to subtly part ways from Maimonides by requiring that a woman engage in warfare to violate the prohibition, or that fully agrees with Maimonides, but, as a commentator on the Talmud, is simply paraphrasing the language of the passage on which he is commenting. Second, following the language of the Tana Kama, he only mentions the concern for illicit relations, not paganism. This is not surprising, both because Meiri is operating as a Talmudic commentator and is more likely to remain closer to the Talmudic text, and because for all his indebtedness to Maimonides, he does part ways with the latter on the centrality of idolatry among the reasons for the commandments, as well as in regard to his larger understanding of that which is most objectionable about pagan practices. Either way, his overall orientation certainly falls in line with the school of Maimonides.<sup>612</sup>

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<sup>612</sup> This is consistent with Meiri's general tendency to echo many of Maimonides's conclusions, both philosophically and halakhically. On his philosophical indebtedness to Maimonides, see Moshe Halbertal, *Bein Torah le-Hokhma: Rabbi Menahem ha-Meiri u-Va'alei ha-Halakhah ha-Maimuniyim be-Provence*, Magnes Press, 2000. Menahem Kellner puts it in this way: "One of the few great Talmudists in Jewish history who can be called a Maimonidean in the fullest sense of the term was R. Menahem ben Solomon of the House of Meir, known as the Meiri" ("Maimonides's Disputed Legacy," in *Traditions of Maimonideanism*, Brill, Leiden, 2009, p. 255).

Yet, perhaps also analogous to Maimonides, Meiri too hints at a possible distinction between men and women. After referring to the mutual prohibitions against cross-dressing, he adds that a woman may not wear armor and go out to war, as this too can lead to adultery. He formulates this as part of the general, controlling principle in our case. Only then does he add that a man may not beautify himself in the way of women. Meiri's presentation seems to suggest that this additional prohibition upon men is unrelated to the concern for adultery, but stands on its own. This would suggest that men may not cross-dress due to the concern for adultery, and may not wear women's adornments as a distinct prohibition in its own right. If this is the case, Meiri offers an important example of a Maimonidean who, in his own way, is unable to avoid the inescapable conclusion that men are treated more stringently than women.



## Chapter 7 - Pubic and Armpit Hair Depilation in Islamic and Christian Lands

### I. Islamic Lands

We have contended that the centrality of male armpit and pubic hair depilation to *lo yilbash* suggests that the rabbis saw this as a central site for halakhic expression of male anxieties about virility. What, then, is the law if the cultural norms surrounding male hair depilation were to change?

This was not a hypothetical question for Jews of Islamic lands, where the overwhelmingly common practice was for Muslim men to remove their pubic hairs for purposes of hygiene.<sup>613</sup> Jewish men generally did the same, following the countryside,<sup>614</sup> R. Hai Gaon and R. Sherira Gaon<sup>615</sup> defended this practice,<sup>616</sup> even as they prohibited it for those living in the few known Arab lands where only women shaved their pubic hairs.<sup>617</sup> But it was not just these luminaries who tackled this question; in analogous fashion to the Talmudic discussion, the Geonim and Sephardic *rishonim* spilled much ink on this issue. This in of itself strengthens our contention that the very ubiquity of

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<sup>613</sup> Adams, pp. 198-200, notes that in the 8th century, Islamic hadith, oral law, required men and women to shave their axillary and pubic hairs regularly.

<sup>614</sup> B.M. Levin, *Otzar ha-Geonim: Nedarim, Nazir, Sotah*, vol. 11, Wagshal, 2002, pp. 199-200 notes that “all the rabbis in the two yeshivot [Sura and Pumbedita] shaved their armpit and pubic hairs for more than 200 years.”

<sup>615</sup> Ibid.

<sup>616</sup> Maimonides's view on this is unexpectedly opaque considering the popular practice of depilation throughout Islamic lands, including Egypt. Maimonides writes that in a location where such behavior is typical, one does not receive lashes. For a review of the varying interpretations of Maimonides, see *She'eilot u-Teshuvot Yehaveh Da'at*, vol. 6, *Hazon Ovadia*, Jerusalem, 1998-1999, no. 49, pp. 262-5.

<sup>617</sup> Adams, "Male Body Hair Depilation." See also Elliot Horowitz, "Between Cleanliness and Godliness: Aspects of Jewish Bathing in Medieval and Early Modern Times," in *Tov Elem: Memory, Community and Gender in Medieval and Early Modern Jewish Societies*, The Bialik Institute, Jerusalem, 2011, pp. 29-33.

discussions concerning the depilation of pubic and armpit hair suggests that *lo yilbash* was a site for the preservation of male virility.<sup>618</sup>

## II. Responses from Jews of Christian Lands

By contrast, rabbis living in Germanic and French communities upheld the ruling of the Talmud, and were apparently unfamiliar with the lenient practice of Jews of Muslim lands until sometime in the 13th century.<sup>619</sup> It is only at this point, beginning in places such as Provence, which tended to encounter Sephardic practices before the Jewish communities of northern France and Germany, that we find non-Sephardic authorities beginning to encounter the practice of Jews under Islam. In a number of cases, they responded incredulously.<sup>620</sup> While this strong response may simply be attributed to the fact that the widespread lenient practice flatly contradicted the Talmudic ruling on the subject, it seems that more was at stake. Thus Meiri<sup>621</sup> writes:

דברים אלו אע"פ שאינו מן התורה ראוי להזהר עליהם וכל שכן שראוי לתלמידים ליהדר בכך הרבה מפני שהמון עמי ארץ מקילין בה ונעשית להם כהיתר ספרו בכאן מעשה שראו באחד מן הגדולים שלא היה לו שער בבית השחי והיו מתמיהים עליו עד שנודע להם שמתוך זקנה נשרו וכן ספרו באחד שנתחייב מלקות לפני אחד מן החכמים ובית דינו ונתגלה בית השחי שלו וראוהו שלא נתגלה ואמר להם שבקוה דמן חבריא הוא:

These matters, even though it is not from the Torah, it is appropriate to warn one about them, and all the more so is it fitting for students to be extremely careful in this matter for the ignorant masses are lenient in this regard, and it has become for them like a permissible matter. Here [in our passage] they told a story of those who saw one of the greats who did not have armpit hair, and they were perplexed about him, until it became known to them that they had fallen out due to old age. And they similarly told of one who was liable to lashes before one of the scholars

<sup>618</sup> See Adams starting on p. 213.

<sup>619</sup> Adams, pp. 217-221.

<sup>620</sup> Adams, *ibid.*, cites numerous examples.

<sup>621</sup> *Beit ha-Behirah* to *Nazir* 58b, s.v. *devarim*.

and his court, and his armpit hair was exposed, and they saw that he had not shaved. And he saw to them, “Leave him alone, for he is among the pious group.”

Meiri advises that the pious should distance themselves from pubic hair depilation even if it is technically permissible. Yet with the exception of a comment of R. Nissim in regard to mirrors,<sup>622</sup> nowhere else in this area of *halakhah* do we encounter the notion of a pious individual being especially stringent. Indeed, it is difficult to understand the notion of ideal and non-ideal behavior as applied in this context: if the masses are in violation of the law, then scholarly students should be stringent as a matter of strict law. And if their acts are permissible because it has become the norm to shear these hairs, then what reason is there for stringency? Yet if we understand Meiri as reflecting not only a strict halakhic concern about mimicking feminine beauty activities, but a deeper concern about preserving masculinity, these objections make more sense: even if an act becomes technically permissible, we should still not be encouraging men to sacrifice their virility, which is essential to their identities.

Later, as reports of such leniencies reached rabbis living in Christian Spain, we again find tensions flaring. After reporting this leniency, a number of authorities, including R. Nissim<sup>623</sup> and R. Joseph ibn Haviv<sup>624</sup> rule that while it is technically permissible for a man to groom these parts of his body in a place where this is the norm, the “*haverim*,” more pious ones, refrain from such activity. Their presentation is quite similar to that of Meiri.

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<sup>622</sup> See below, chap. 8.

<sup>623</sup> R. Nissim, Commentary to Alfasi, *Avodah Zarah* 9b s.v. *ro'eh*.

<sup>624</sup> *Nimmukei Yosef* to Alfasi *Makkot* 4a, s.v. *Amar Rav*.

In a remarkable responsum, R. Shlomo ben Aderet<sup>625</sup> goes even further. In his reading, Rabbi Ami was not acting out of supererogatory piety, but was simply following a law that most simply did not properly observe. R. Aderet explains that if an act *is meant to be unique to women*, even if men begin to practice that behavior, the behavior remains prohibited. In other words, R. Aderet maintains that there are two types of feminine ornamentation: that which is merely a product of a particular culture, and that which is inherently appropriate for women but not for men. The former is subject to cultural changes, but not the latter. This is a remarkable stringency, which reinforces the conclusion that depilation of secondary sexual hair was far more than just another application of *lo yilbash*, but a clash where the question of rabbinic masculinity was being played out on the halakhic battlefield.

### III. R. Hai Gaon, Hair, and the Maintenance of Masculinity

Most telling is the attitude expressed in R. Hai's response<sup>626</sup> to those men of Islamic lands who did not depilate their pubic hairs. His comments provide clear evidence that at stake was not just a technical halakhic question, but the very notion of masculinity. He writes:

ואף עד עכשיו יש בערב מי שהם בני הערבים ישמעאלים ובני יקטן שמנהגם כן כי הגבר בהעברת בית השחי ובית הערוה רואין אותו חלש כנשים. ואנשי אותן מקומות עכשיו אסור להעביר בית השחי ובית הערוה שלהם. אבל אנשי מקומות הללו בזמן הזה אין בין הנשים והאנשים הפרש בזה. אלא כששומעים שיש הפרש במקומות תמהין בזאת ואומרים הללו בעלי גבורה. וכולן בעיניהם כנשים.

And even until now, there are in Arab lands those who are children of Arabs, Ishmaelites and the children of Yoktan, whose custom is such [to not cut these hairs], for when a man removes armpit and pubic hair, they see him as weak as women. And the people of those locales are now prohibited from removing their armpit and pubic hairs. But [for] the men of these places nowadays, there is no

<sup>625</sup> Shlomo Ben Aderet, *She'eilot u-Teshuvot ha-Rashba*, vol. 4, Jerusalem, 1960, no. 90, p. 20.

<sup>626</sup> *Otzar ha-Geonim*, *ibid.*

distinction between men and women in this respect. Rather, when they hear that there is a distinction among places, they are bewildered by this and say, “Are these strong men?” And they are all in their eyes like women.

R. Hai Gaon’s words make the point explicit: both sides of contemporary practice and the halakhic debate agree that one’s behavior with regard to armpit and pubic hair is a sign of manly strength. The only question is whether it is more masculine *to* groom or *not to* groom these areas.<sup>627</sup>

That Jewish law lent its support to these anxieties suggests that the rabbis endorsed male anxiety about castration and emasculation, particularly as it related to sexual virility.<sup>628</sup> The extensive literature surrounding these questions makes it clear that the rabbis endorsed this concern as legitimate, and saw *lo yilbash* as directly “protecting” one’s masculinity. Indeed, despite the chasm between Ashkenazic and Sephardic practice, both groups implicitly endorse contemporary non-Jewish anxieties regarding emasculation. Anxiety, rabbinic and non-rabbinic, was alive and well.

The comparison to earlier historical stages is particularly telling. The biblical law, according to numerous scholarly interpretations that we reviewed in chapter 4, was intended as a rejection of contemporary mores. Tannaitic law, particularly that of R. Eliezer ben Yaakov, goes out of its way to embrace contemporary assumptions about armor as authentic male dress. By the time we reach the Geonim and *rishonim*, we find a

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<sup>627</sup> This concern takes on added significance within a halakhic context, where secondary sexual characteristics, particular hair, establish one’s status as a halakhic adult (Mishnah *Nidda* 6:11). Within this framework, the removal of one’s pubic hair was liable to be seen as a removal of one’s badge of masculine honor.

<sup>628</sup> For more on this theme, see Richard Rubenstein, “The Significance of Castration Anxiety in Rabbinic Mythology,” *Psychoanalytic Review*, vol. 50, no. 2, 1963, pp. 129–152. See also Daniel Boyarin, “Jewish Masochism: Couvade, Castration, and Rabbis in Pain,” *American Imago*, vol. 51, no. 1, 1994, pp. 3–36.

full embrace of contemporary non-Jewish mores in regard to depilation and fear of emasculation.

## **Chapter 8 - Reductio ad Absurdum in Medieval Texts**

### **I. Introduction**

Perhaps the greatest indication of the extent to which the scope of *lo yilbash* for men had ballooned is the manner in which it ultimately turned into a reductio ad absurdum in the Middle Ages. The notion that men are prohibited from engaging in any acts of beautification proved quite difficult to uphold in practice. Where do we draw the line, for example, between being beautiful and neat? And is there a distinction between adding beauty and avoiding ugliness? And what if the prohibition is largely contingent upon the man's intent; can that be upheld in practice?

### **II. Mirror on the Wall**

The permissibility of men using mirrors provides an excellent illustration of the murky space in which halakhists now found themselves. We noted that there is an apparent contradiction between two Talmudic passages: *Avodah Zarah* 29a teaches that it is generally prohibited for a man getting a haircut to use a mirror for grooming, while *Shabbat* 149a, which discusses the usage of a mirror on Shabbat specifically, seems to imply that there is no halakhic concern with a man using a mirror to beautify himself during the week.

The medieval commentators offer four solutions to this quandary. Tosafot<sup>629</sup> and R. Asher<sup>630</sup> maintain that while the passage in *Avodah Zarah* is discussing men, the section in Shabbat concerns only women. According to this view, there is no indication from the passage in *Shabbat* that a man is permitted to use a mirror.

A second interpretation, offered by Tosafot<sup>631</sup> and R. Nissim,<sup>632</sup> answers that while the passage in Shabbat addresses men and women alike, it concerns a locale where men are accustomed to using mirrors, and there is therefore no halakhic objection. R. Nissim adds that in any case, even where it had become the norm, pious men should nonetheless refrain from using a mirror.

Finally, Mordekhai<sup>633</sup> offers two additional resolutions. First, perhaps the passage in *Shabbat* 149a refers specifically to members of the household of Rebbe, who received a special dispensation to look in mirrors to beautify themselves for their advocacy work with the local governmental authorities.<sup>634</sup> In this view, Mordekhai would acknowledge

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<sup>629</sup> Tosafot *Avodah Zarah* 29a s.v. *ha-mistaper*.

<sup>630</sup> *Rosh Avodah Zarah* 2:11.

<sup>631</sup> *Ibid*.

<sup>632</sup> R. Nissim, Commentary to Alfasi *Avodah Zarah*, 9b, s.v. *ha-ro'eh*.

<sup>633</sup> Mordekhai, *Avodah Zarah* 816.

<sup>634</sup> It is noteworthy that Maimonides makes no mention of this prohibition. While this may be because he believes that it was not considered unusual in his milieu for men to use a mirror, it is also possible that this flows from his larger desire to bring the male and female prohibitions as much in line as possible, and to define both as one who wears the “accoutrements” of the other sex. While his broad definition of accoutrement allows him to subsume hair grooming under the rubric of ornamentation, the use of a mirror may extend beyond the scope of the prohibition, leading Maimonides to prefer alternative explanations of the conflicting passages in the Talmud. For instance, he might prefer Mordekhai’s suggestion that there the Talmud does not formulate an intrinsic prohibition for men to look in the mirror, but merely to pluck white hairs. Alternatively, Maimonides may have simply maintained that the passages in *Avodah Zarah* and *Shabbat* debate this issue, and, in line with his larger understanding of *lo yilbash*, Maimonides rules in favor of the passage in *Shabbat*, which suggests that the only prohibition for a man to use a mirror concerns the laws of Shabbat, not *lo yilbash*.

that using a mirror during the week is prohibited for most men. Second, Mordekhai proposes that the passage in *Avodah Zarah* does not mean to prohibit usage of a mirror outright, but merely means that one may not use a mirror to pluck white hairs from black ones. According to this final interpretation, which is rejected outright by Tosafot,<sup>635</sup> there is no evidence in the Babylonian Talmud that a man may not look in the mirror. Thus, four medieval readings of the Talmud emerge: looking in a mirror is prohibited to men without any stated exceptions (Tosafot #1); looking in the mirror is prohibited to men in locales where it is not the norm for men to use mirrors, but permissible where they do use mirrors (Tosafot #2); looking in the mirror is generally prohibited for men but permissible for members of Rebbe's household (Mordekhai #1); and looking in a mirror is permitted to men with no indication to the contrary (Mordekhai #2).

As a matter of practical *halakhah*, it is widely accepted that in principle, men may not look in a mirror even on weekdays.<sup>636</sup> Prohibiting men from using mirrors caused confusion among halakhic decisors, raising numerous scenarios that were apparently prohibited but which *poskim* found difficult to accept. The scope of the prohibition had been broadened to such an extent that it now ran the risk of making life unlivable for men. What if one needs a mirror so as not to injure himself while shaving, or to examine an eye wound? What about one who uses a mirror to groom his hair to go to work, a date, or synagogue? Where do we draw the line between avoiding embarrassment, grooming, and beautifying?

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<sup>635</sup> Ibid.

<sup>636</sup> Yaakov ben Asher, *Arba'ah Turim, Yoreh De'ah* 156, p. 344; and Yosef Karo, *Shulhan Arukh, Yoreh De'ah* 156:2, p. 154.



### III. The Role of Intention

The only logical recourse was to build in certain basic limitations to the prohibition. Some cases were more straightforward, such as when one is motivated to beautify oneself in a way that would otherwise be prohibited in order to avoid embarrassment, physical pain, or financial loss. Thus, Tosafot<sup>637</sup> clarifies that one may certainly use a mirror to avoid harming oneself or to examine an eye illness. Similarly, in discussing the permissibility of using a *barda* lotion to remove one's facial scabs, the Talmud<sup>638</sup> rules that one may do so if he intends to avoid pain (*mishum tza'aro*). Tosafot<sup>639</sup> adds that the same holds for one who uses the lotion in order to avoid public embarrassment, "because there is no suffering greater than this."

Along similar lines, R. Shlomo Ben Aderet<sup>640</sup> writes that one who has scabs in his armpit may cut the hair in that region to reduce one's suffering. While he initially explains that this is true because cutting one's armpit hair with scissors only constitutes a rabbinic violation, he adds that this would be true even for a biblical violation, as the individual's intention is not to beautify himself but to reduce his pain. He also notes that the Talmud in *Nazir*<sup>641</sup> provides support for this conclusion when it notes that had it not been for the fact that the armpit hair eventually falls out on its own, one would have been

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<sup>637</sup> Ibid.

<sup>638</sup> *Shabbat* 50b.

<sup>639</sup> Tosafot *Shabbat* 50b, s.v. *bishvil*.

<sup>640</sup> Shlomo Ben Aderet, *She'eilot u-Teshuvot ha-Rashba*, vol. 5, Jerusalem, 1960, no. 271, p. 114.

<sup>641</sup> 59a.

permitted to cut the armpit hair in order to avoid the pain caused by overgrowth.<sup>642</sup> Similarly, Mordekhai<sup>643</sup> rules that one may cut the hair off his hands if he would otherwise be embarrassed to walk out in public.

Yet even in these cases, there is an implicit acknowledgement that one's motivation plays an essential role in determining the scope of the prohibition. This puts the *halakhah* in a difficult position: the permissibility of the act is contingent upon the person's intention, even though this is impossible for us to discern. Tosafot<sup>644</sup> acknowledge the point and conclude, "and the One who peers into hearts knows" a person's true intentions.

To differentiate between permissible and impermissible acts of male beautification, then, the medievals began to assign increasing value to the role of one's intention in the prohibition. This too demonstrates just how far we have come from the plain meaning of the biblical text, which simply describes one's actions ("a man may not wear a woman's dress") and appears to omit any reference to intention. And to the extent that intention does matter in the rabbinic reading, we would expect the relevant consideration to be the Tana Kama's concern that cross-dressing may lead to promiscuity, not whether one intends to beautify oneself, remove an ugly blotch, or avoid injury. That the medieval scholars were required to clarify these points shows just how far we have come: even a man dressing himself in a manner in no way reminiscent of a woman could theoretically violate the prohibition, if not for this emphatic clarification on

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<sup>642</sup> See also Rashi, s.v. *ve-ha* and Tosafot, ad loc., both of whom interpret the passage in the same fashion as Shlomo ben Aderet.

<sup>643</sup> Mordekhai, *Shabbat no. 327*.

<sup>644</sup> *Nazir*, *ibid*.

the part of a number of authorities. Needless to say but tellingly, there is no such parallel discussion for women who are required to get short haircuts for medical reasons, and in the process end up appearing like men. This is a sign as to how much the scope of the prohibition incumbent upon a man has ballooned over the course of halakhic history. But it is also a sign that the range of acts prohibited to men had reached their outer limits, making way for new developments in the halakhic discourse surrounding *lo yilbash*.

## **Chapter 9 - The Early Modern Period: Restoring Reciprocity**

### **I. Cross-Dressing on Celebratory Occasions**

Whereas the dominant trend through the medieval period was to increasingly widen the gap between the scope of *lo yilbash*<sup>645</sup> for men and women, in the early modern period, halakhic literature saw a new emphasis on men and women equally as subjects of the prohibition in regard to actual cross-dressing rather than male beautification.<sup>646</sup> This was associated with the increasing frequency of rabbinic protests against the popular practice of cross-dressing on holidays. This new focus brought to light new halakhic issues that had not previously received significant consideration, particularly the role of motivation for cross-dressing in the violation of *lo yilbash*. More significant for our purposes, even as halakhic rulings swing back toward areas of reciprocal prohibition, there is still evidence that the rabbis were more troubled by the

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<sup>645</sup> Although until this point we have used the term *lo yilbash* specifically in discussing the prohibition upon men, for the sake of simplicity we will continue to use the same term to refer to the prohibitions upon both men and women.

<sup>646</sup> To be clear, this is not to suggest that there was any change in the actual halakhic viewpoints we have explored regarding the scope of men's and women's prohibitions, but simply that the locus of halakhic discourse shifted significantly.

phenomenon of male cross-dressing than that of females; anxiety regarding the forfeiture of masculinity was alive and well. Finally, this discourse introduced a new association between *lo yilbash* and the more general value of modesty, which would become a centerpiece of halakhic discussions of *lo yilbash* beginning in the middle of the twentieth century.

### I. 1. Early Discussions

The question of cross-dressing for frivolous purposes had already arisen in the medieval period, with R. Eliezer of Metz, an outstanding student of R. Jacob Tam, having ruled negatively. As he is the first known authority to address the question of cross-dressing for frivolous purposes, it is worth returning to his remarks:

וללבוש אפ"י עראי ודרך שחוק אסור שהרי לא חלק הכתוב בין קבע לעראי ולפי שראיתי בני אדם שלובשים מלבושי נשים עראי לשחוק והוקשה בעיני כתבתי כן. ויוצרונו יתן בלבנו יראתו ואהבתו ויעמידנו על אמתת דרכי תורתו.<sup>647</sup>

Cross-dressing even in an impermanent, joking manner is prohibited, for the verse did not distinguish between permanent and impermanent. And I have written this since I have seen men who wear women's clothing temporarily as a joke, and it was difficult in my eyes. May our creator place in our hearts His fear and love, and place us on the truthful pathways of His Torah.<sup>648</sup>

It is striking that R. Eliezer of Metz specifically notes that he observed men cross-dressing. It is possible that he addresses this case, not the inverse case of women cross-dressing for frivolous purposes, simply because he only observed men behaving in this fashion. But it is also possible that his comments betray additional sensitivity or

<sup>647</sup> Eliezer mi-Metz, *Sefer Yereim*, *ibid*.

<sup>648</sup> Numerous medieval scholars had the following additional words in their version of the text: "ולפי שראיתי בני אדם שלובשין במלבושי אשה עראי וגם האשה במלבושי האיש עראי במשתאות של חתן וכלה וגם בעניינים הרבה כתבתי כן. And I have written this since I have seen men wearing women's clothing temporarily, as well as women in men's clothing temporarily, at feasts of a groom and bride and in many situations." For a brief review of the textual variants of the Yereim, see Spiegel, "The Prohibition," pp. 463-4.

opposition to the case of men who cross-dress. To opt to dress like a woman might have been so jarring that R. Eliezer's additional comments were almost a rabbinic form of shaking one's head in disbelief.

As Spiegel notes,<sup>649</sup> additional texts corroborate the existence of this phenomenon in the Jewish community during the Middle Ages. For example, R. Kalonymous ben Kalonymous (14th century, Arles, France) in his *Even Bohen*<sup>650</sup> also opposed this practice. He too protests specifically against young men who had the practice of cross-dressing on Purim:

ובארבעה עשר לחודש אדר, בחורי ישראל לכבוד ולהדר, יתפארו ויתהללו, כי ישתגעו וכי יתהללו...  
זה ילבש שמלת אשה ולגרותיו ענקים, וזה יתחקה כאחד הריקים, תוף ומחול שמחה ושלישים, אלו  
עם אלו אנשים עם נשים.

And on the fourteenth of the month of Adar, the young men of Israel of splendor and nobility, boast and praise, that they be crazed and rejoice... one wears the dress of a woman and for his neck pearls, and this one is drawn like one of the empty ones,<sup>651</sup> timbrel and dance, happiness and triangle, these with these, men with women.

In his *Sefer Hasidim Tinyana*,<sup>652</sup> R. Moses the Priest, the Rosh's nephew, also warned against such impropriety, again singling out males for such bad behavior:

טובה תנחל ושלוח תירש, אם תשמור מלאו דלא ילבש גבר שמלת אשה, כגון בחורי אל תהיה  
הנותנים צעיף בראשיהם ולובשי בגדי נשים בחנוכה ובפורים ובעת נשואין, אל תהיה מהם בדבר  
הרע הזה.

<sup>649</sup> Spiegel, "Clothing Swapping," esp. pp. 330-1.

<sup>650</sup> Kalonymous ben Kalonymous, *Even Bohen*, Lemberg, 1865, p. 29.

<sup>651</sup> This is most simply understood as a reference to ill-behaved gentiles, suggesting that such behavior may have been borrowed from non-Jewish carnival practices. In Germany, for example, historians speculate that Jews may have borrowed this practice from the Fastnacht festival, which falls out near the time of Purim. On German Jews' participation in the Fastnacht, see Yisrael Yuval, "*Takanot Neged Ribbuy Geirushin be-Germanya be-Meah ha-Tet Vav.*" *Zion*, vol. 48, 1983, n. 16.

<sup>652</sup> Moshe ha-Kohen, *Sefer Hasidim Tinyana*, Mordekhai Tzederbaum, 1910, p. 15a.

Good you shall earn and respite you shall inherit, if you guard from the negative commandment of “a man shall not wear the dress of a woman.” Do not be like those young men who place a scarf on their heads and wear women’s clothing on Hanukkah and Purim and during the time of a wedding. Do not be among them in this evil matter.<sup>653</sup>

R. Moses’s admonition suggests that at least in some communities, cross-dressing was practiced by young men on Hanukkah in addition to Purim. Indeed, while Purim was to become the day most closely associated with this practice, the responsa literature addresses communities in which it was common practice to cross-dress on Purim, Hanukkah, Simhat Torah, and possibly Shavuot,<sup>654</sup> as well as at weddings, Maimouna celebration, and perhaps circumcisions.<sup>655</sup> More significant for our purposes, it was specifically men who were cross-dressing.

In each of these cases, it is not entirely clear why only men are called out for cross-dressing, not women. One possibility is that, factually speaking, only men cross-dressed on these holidays, whether because men were more prone to take risks, or for psychological reasons we will analyze below in our discussion of R. Zvi Horowitz. Another possibility is that in fact both men and women cross-dressed, yet the rabbis still only protested against the men’s behavior. This could simply be because only men were the primary audiences of the rabbis (although this in itself is suggestive for the respective roles of men and women at that time). Alternatively - and more interesting for our purposes - it is possible that culturally speaking, particularly in light of wider gentile

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<sup>653</sup> R. Moshe ha-Kohen was active in the second half of the 13th century. See Spiegel, “Clothing Swapping,” p. 332.

<sup>654</sup> Spiegel, “Clothing Swapping,” p. 339.

<sup>655</sup> Spiegel, “Clothing Swapping,” pp. 340-6.

medieval trends, the rabbis were particularly perturbed by the existence of male cross-dressing, which was culturally far more objectionable and provoked far greater anxiety than female cross-dressing. The rabbis' protest against men only, then, may tell us something quite significant about male anxiety: for the cross-dressers, protesters, or both.

### I. 2. 15th-17th Century Debates

R. Judah Mintz (1405-1508) - the first to address both men and women who engaged in this raucous behavior - is the first known authority to have defended in writing the practice of cross-dressing for Purim.<sup>656</sup> Noting that his father had ruled leniently in this matter, and responding vociferously to a certain R. Pachu who had defamed his teachers' reputation, R. Mintz presents two arguments in defense of this practice. He first cites Tosafot's position that a man may use a mirror to avoid embarrassment. From here R. Mintz deduces that one only violates *lo yilbash* if one has intent for adultery. In our case, since there is intent for holiday merriment, not adultery, *lo yilbash* does not apply. Second, he compares our case to one in which it is common practice for both men and women to wear a particular item or beautify themselves in a specific way, such as the case of pubic hair depilation in Islamic lands. Since it is customary for men and women to wear one another's clothing on Purim, it is comparable to a locale in which a particular garment is worn by men and women, and *lo yilbash* is inapplicable.

Mahari Mintz's responsum is cited by R. Moses Isserles<sup>657</sup>:

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<sup>656</sup> Judah Mintz, *She'eilot u-Teshuvot Mahari Mintz*, *ibid*.

<sup>657</sup> Gloss to *Orah Hayyim* 696:8, in Yosef Karo, *Shulhan Arukh Orach Hayyim*, vol. 3, Akiva Yosef, 1977, p. 196.

ומה שנהגו ללבוש פרצופים בפורים, וגבר לובש שמלת אשה ואשה כלי גבר, אין איסור בדבר מאחר שאין מכוונין אלא לשמחה בעלמא; וכן בלבישת כלאים דרבנן. וי"א דאסור, אבל המנהג כסברא הראשונה.

And that which they had the practice to wear costumes on Purim, and a man wears a woman's dress and a woman a man's vessel, there is no prohibition in the matter since they only intend for mere rejoicing; and the same for wearing rabbinically prohibited clothing admixtures. And some say it is prohibited, but the custom is like the first opinion.

It is widely assumed that R. Isserles's sympathetic presentation notwithstanding, subsequent authorities overwhelmingly opposed this practice.<sup>658</sup> Indeed, in *Darkhei Moshe*,<sup>659</sup> R. Isserles himself appears to adopt a more critical stance toward the ruling of R. Mintz, commenting that while there is a legitimate defense for the common practice, "it is good to be stringent and to worship God with joy, and for that joy to be tempered by awe."

But recent research by Yaakov Spiegel,<sup>660</sup> including the publication of previously unpublished manuscripts such as a lenient responsum of R. Yehiel Bassan,<sup>661</sup> has demonstrated that in fact there were more authorities who ruled leniently than previously recognized, particularly in 15th-century Italy and 17th-century Turkey.<sup>662</sup> Aside from R.

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<sup>658</sup> This includes luminaries such as R. Ephraim Lunschitz (*Olelot Ephraim*, Tel Aviv Lunschitz, Ephraim, 1877, p. 65a), R. Joel Sirkes (*Bakh Yoreh De'ah* 182 s.v. *lo tilbash*), R. David Segal (*Taz* ad loc., 4), R. Shabtai Rapoport (*Shakh* ad loc., 7), R. Hayyim Benveniste (*Kenesset ha-Gedolah, Orach Hayyim*, vol. 1, *Makhon ha-Ketav*, 2012, p. 499; *Sheyarei Kenesset ha-Gedolah, Yoreh De'ah*, vol. 2, *Makhon ha-Ketav*, 2008, to *Tur Yoreh De'ah* 182:3, p. 41a); Dovid Beirish Gotlieb, *Yad ha-Ketanah*, vol. 2, 1859, p. 278a-280b; R. Avraham Danzig (*Binat Adam* 74 to *Hokhmat Adam* 90:3); R. Hayyim Azulai (*Birkei Yosef Orach Hayyim*, Reuven Barukh, 1860, 696:13, p. 499); Be'er Heitev (gloss to *Orach Hayyim*, ad loc.); R. Yehiel Epstein (*Arukh ha-Shulhan Orach Hayyim* 696:12); R. Joseph Te'omim (*Mishbetzot Zahav Orach Hayyim* 696:5); and R. Israel Kagan (*Mishnah Berurah Orach Hayyim*, ad loc., 696:30).

<sup>659</sup> To *Tur Orach Hayyim* 696 s.v. *katav*.

<sup>660</sup> Spiegel, "Clothing Swapping," p. 460.

<sup>661</sup> Spiegel, "The Prohibition."

<sup>662</sup> Herman Pollack theorizes that there was a greater stringency and fear of pushback in the wake of the Chmielnicki Massacre, leading to greater stringency ("A Historical Inquiry Concerning Purim Masquerade



Mintz, numerous Italian authorities ruled leniently when asked about cross-dressing on *Simhat Torah*, even as others strongly registered their disapproval. Spiegel again demonstrates that when the matter arose in Izmir and Istanbul in the 1600s, there were prominent rabbinic voices on both sides.<sup>663</sup>

### I. 3. Consensus in the 17th Century and Beyond

By the end of the seventeenth century, however, with cross-dressing still common on Purim and other occasions,<sup>664</sup> halakhic discourse shifted sharply and authorities settled with near unanimity on the stringent ruling.<sup>665</sup> For example, Spiegel notes that after the discussion of R. Hayyim Benveniste,<sup>666</sup> who was strongly inclined toward stringency but dared not overrule his older rabbinic colleagues, not a single Sephardic authority is known to have ruled leniently,<sup>667</sup> though Spiegel does acknowledge that R. Hayyim Palache<sup>668</sup> suggests that there may be room for leniency if a man wears a woman's

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Attire," *Proceedings of the World Congress of Jewish Studies: History of the Jews in Europe*, vol. 4, World Union of Jewish Studies, Jerusalem, 1977, pp. 230-1).

<sup>663</sup> Spiegel also comments that the greater degree of leniency in Italy regarding wedding celebrations appears to coincide with the overall greater degree of leniency regarding these matters among the general populace, particularly the influence of the Venetian festival. In general, Italian Jews tended to be heavily involved in society and were influenced accordingly ("Clothing Swapping," p. 342). Spiegel is not convinced, however, that Italian Jews were primarily influenced by their non-Jewish neighbors in regard to cross-dressing on Purim, and sees it as more likely that this practice came to Italian Jews from German Jewry. For the relevant secondary sources, see Spiegel, "Clothing Swapping," p. 335, n. 23. See too, Pollack, "A Historical Inquiry," pp. 231-234.

<sup>664</sup> Spiegel, "Clothing Swapping," pp. 331, 352.

<sup>665</sup> Today one is hard-pressed to find any authorities, including Sephardim, who endorse this practice. R. Ovadia Yosef, for example, stridently opposes cross-dressing and other raucous Purim practices, such as playing the role of the "Purim rabbi" (*She'eilot u-Teshuvot Yehaveh Da'at*, vol. 5, 2nd ed. *Hazon Ovadia*, Jerusalem, 1983, no. 50, pp. 221-7; see also *Hazon Ovadia Purim, Makhon Me'or Yisrael*, Jerusalem, 2003, pp. 199-201). R. Yosef also forbids one's children to cross-dress on any of these occasions.

<sup>666</sup> *Kenesset ha-Gedolah, Orah Hayyim* 695, *ibid*.

<sup>667</sup> Spiegel, "The Prohibition," p. 466.

<sup>668</sup> Hayyim Palache, *She'eilot u-Teshuvot Lev Hayyim*, vol. 3, *Hayyim Avraham Deshen*, 1890, 3:26, p. 34b.

garment that was previously unworn, and that R. Hayyim David ha-Levi<sup>669</sup> held that even though it is appropriate for one to act stringently, the practice is simply too widespread for us to ban effectively today.<sup>670</sup> R. Moshe Glasner<sup>671</sup> and R. Moshe Stern<sup>672</sup> similarly ruled leniently, contending that intent for idolatry or incest is a prerequisite for the violation of *lo yilbash* and that cross-dressing on Purim involves neither. Exceptions notwithstanding, the overwhelming majority of decisors ruled stringently from the late-17th century until today.<sup>673</sup>

On one level, this emerging consensus represents a general protest against what were perceived as the dangerously antinomian instincts animating these actions, as well as the deeply problematic outcomes of this boundary-breaching behavior. But at least one protester, R. Zvi Horowitz of Frankfurt, makes it clear that the attraction of Jews to cross-dressing met a deeply-rooted psychological need. Horowitz declared<sup>674</sup>:

עוד ראוי לעורר את לב העם על שבעו"ה חדשות מקרוב באו, ומכסין פניהם שקוראים מאסקיהרט ומחליפים שמלות שהולכים זכרים ונקבות על באל זכרים לנקיבות וכן להיפך, ונכשלין מיד בלאו דלא ילבש גבר שמלת אשה ולא תלבש אשה שמלת גבר... ומלבד זה הדבר תמוה, שבלילה מדמין הזכרים עצמן לנשים ושמחין מאוד, ומיד בבוקר מברכין שלא עשני אשה, וכן רוקדין כל הלילה בתופים ובמחול[ות], וביום הולכין בפחד ובהלה מעול הגלות.

<sup>669</sup> Hayyim Dovid ha-Levi, *Mekor Hayyim*, vol. 4, *Va'adah le-Hotza'at Kitvei ha-Gaon Rabbi Hayyim ha-Levi*, Tel Aviv, 1988, 234:4 with n. 23, p. 364.

<sup>670</sup> Spiegel acknowledges that some Hasidic works provide a justification of cross-dressing, arguing that changes from daily routines can effect a great increase in joy, particularly on Purim. He also points to an intriguing comment in R. Joseph Engel's *Derashot Otzerot Yosef*, (Vienna 1909, *Derashah le-Shabbat Shuvah*, pp. 36-7, available at <https://www.hebrewbooks.org/pdfpager.aspx?req=5730&st=&pgnum=293&hilite=>), where R. Engel attempts to justify the practice of cross-dressing using a homiletical idea.

<sup>671</sup> Moshe Glasner, *Dor Revi'i*, vol. 2, Safra, Jerusalem, 1877, no. 46, p. 45a.

<sup>672</sup> Moshe Stern, *Responsa Be'er Moshe*, vol. 8 no. 7, Simcha-Graphic, 1987, pp. 17-19.

<sup>673</sup> Spiegel, "The Prohibition," p. 465.

<sup>674</sup> Zvi Horowitz, *Lahmei Todah*, Offenbach, 1816, p. 14a. Available at <https://hebrewbooks.org/pdfpager.aspx?req=7451&st=&pgnum=50&hilite=>.

It is further fit to awaken the heart of the nation to the fact that due to our many sins, newcomers have come from nearby, and cover their faces with what are called masks, and they change into skirts. For the men and women walk in the evening, men as women, and so too the opposite, and immediately stumble on the prohibition of “a man shall not wear the dress of a woman, and a woman shall not wear the dress of a man”... and aside from this the matter is bewildering, for at night the males make themselves resemble women and are very joyous, and immediately in the morning they recite the blessing “who did not make me a woman.” And similarly, they dance all night with timbrels and circles, and by day they walk in fear and trembling from the yoke of the exile.

This is a remarkable passage that offers significant insight into the motivations for cross-dressing revelers. Ironically, in mocking the glaring inconsistency between the Jewish men’s nighttime and daytime behavior, R. Horowitz appears to express a deep understanding of Jewish men’s need for a psychological escape from the burdens of exile and perhaps from guilt born of misogyny. Yet even though the cross-dressing may be explicable from a Bakhtinian standpoint, for R. Horowitz it is ultimately objectionable not only because of *lo yilbash*, but also precisely on account of its absurdity. While he understands its motivation, he sees this not as a healthy psychological outlet but an act of self-delusion and denial.

It is also striking that he inaccurately substitutes the words “*lo yilbash isha simlat gever*” for the correct quotation, “*lo yihiye al isha keli gever.*” This error seems to be more than a slip of the pen. Instead, it bespeaks an approach to *lo yilbash* that focuses on cross-dressing per se, and which in turn begets a more reciprocal view of the prohibition. Thus, while technically incorrect, the language “*simlat gever*” captures the new direction halakhic discourse has begun to take.

Many rabbinic protesters against holiday cross-dressing also expressed deep concern with the perceived breaches of modesty manifest in this behavior. Alongside this concern for promiscuity, there is a tendency among these decisors to invoke the logic of

the Tana Kama, who links the prohibition to concerns of adultery, and appears to draw a clear parallel between the prohibitions that rest upon men and women. The new emphasis on the reasoning of the Tana Kama - which, again, does not necessarily imply a rejection of R. Eliezer ben Yaakov but simply a new set of emphases in contemporary halakhic discussions - neatly encapsulates the return to reciprocity.

For instance, R. Shlomo Ephraim Lunschitz (Poland and Prague, 1550-1619) rails against holiday cross-dressing, colorfully describing the extent of the crass sexual improprieties that went hand-in-hand with violations of *lo yilbash*:

אך מה שראיתי בימים אלו שהוקמו לשמוח בהם לשם שמים... נשמע קול צוחה על היין בראש כל חוצות יתהללו ותבקע הארץ לקול היוצא על בליעתם וישנו את טעמם ומראיהם לתת על פניהם מסוה עד שנהפך לאיש אחר ואין לו מכיר כי כלם אשה וכל הנשים יתנו על פניהם כסות עיניהם יהיו חליפות שמלות היו לנשים כי על כל גבר יהיו כלי... ואשה כלי זיינה עליה וחמשים עלו בנות ישראל מזויינים בכל שלטי הגבורים.<sup>675</sup>

However, that which I observed during these days, which were established to celebrate upon them for the sake of heaven... a crying voice over wine was heard; they were frivolous in the front of all outdoor spaces. The earth split at the voice that emerged from their swallowing. They changed their sanity and appearances to place on their faces a mask until he was transformed to another person and none could recognize him, for they were all as women. And all the women placed an eye cover over their faces; there were changes of clothing to women, for on every man there was a woman's vessel... and a woman's "weaponry" is on her. And the daughters of Israel ascended "armed" with all the shields of the warriors.

R. Moshe Rivkes<sup>676</sup> also strongly opposes this practice by emphasizing the trampling of modesty standards, and noting that "many degrees and destructions were born of this, and praiseworthy is the one who nullifies them." R. Yehuda Ashkenazi<sup>677</sup> similarly declares that "one who fears the word of God will distance his children and

<sup>675</sup> *Olelot Ephraim*, *ibid*.

<sup>676</sup> *Be'er ha-Golah Yoreh De'ah* 182:5 s.v. *be'Orah Hayyim*.

<sup>677</sup> *Be'er Heitev Orah Hayyim* 696:8.

household members from any such prohibition and breaching of modesty boundaries.”<sup>678</sup>

These objections foreshadow 20th-century halakhic discourse, in which *lo yilbash* will regularly appear as shorthand for breaches in modesty standards.

## II. The New Role of Intent and the Return to Reciprocity

Alongside the sharply increasing rabbinic association between cross-dressing and promiscuity, we find new applications of the concept of intent. While some commentators had read the *Tana Kama* as ruling that one does not violate the biblical prohibition unless one cross-dresses for the purpose of engaging in adultery,<sup>679</sup> that position had been effectively set aside as a matter of practical *halakhah* from the Talmud through the Middle Ages, whether because we rule like R. Eliezer ben Yaakov, because the *Tana Kama* never required such intent, or because the rabbis prohibited cross-dressing even in cases where no intent for adultery was present. Instead, to this point, the question of intention had merely been used as a necessary device for determining whether or not a man intended to beautify himself. But now, in response to R. Mintz’s claim that one does not violate the prohibition of *lo yilbash* unless he has intent for adultery, leading authorities begin to take up this question. And while the majority<sup>680</sup> of decisors reject this lenient position, in formulating their reasoning, those authorities present conflicting views on the precise role and nature of the intent needed, if any, to violate *lo yilbash*.

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<sup>678</sup> On the question of the authorship of *Be'er Heitev*, see Yehiel Dov Waller, “*Mahadurot Be'er Heitev le-Shulhan Arukh* (1),” *Yeshurun*, vol. 17, 2006, pp. 825–840; and “*Mahadurot Be'er Heitev le-Shulhan Arukh* (2),” *Yeshurun*, vol. 19, 2007, pp. 835–857.

<sup>679</sup> *Pseudo-Rashi Nazir* 59a s.v. *lo*, *Peirush ha-Rosh* ad loc.

<sup>680</sup> R. Mordekhai Yafeh, *Levush Orah Hayyim* 696:8, *ibid.*, is one of the few who rules leniently.

In rejecting R. Mintz, R. Joel Sirkes<sup>681</sup> nonetheless acknowledges the prerequisite of two types of intent. First, one only incurs a prohibition if his intent is to appear like a member of the opposite sex. Accordingly, one may cross-dress to protect oneself from heat or rain. Second, to violate the prohibition, it is not enough to simply wear one another's clothing; instead, one must seek to *beautify* oneself in the garb of the opposite sex. These prerequisites notwithstanding, R. Sirkes goes on to reject R. Mintz in favor of the stringent position of R. Eliezer of Metz, arguing that we cannot compare frivolity to protection from the elements. Holiday cross-dressing is performed for the purpose of adopting the accoutrements of a woman for frivolous purposes, and is prohibited. Still, in a nod to the apparently massive popularity of this practice, R. Sirkes acknowledges that it is best not to protest publicly because people will not listen anyway, and it is better that they violate unintentionally than intentionally. In lieu of public protests, R. Sirkes urges individual heads of household to warn their family members not to engage in such crass behavior.

R. David ha-Levi Segal<sup>682</sup> accepts his father-in-law R. Sirkes's ruling, though he seems to conflate R. Sirkes's two criteria - intention to appear like the opposite sex and intention for beauty.

R. Shabtai ha-Kohen Rapaport,<sup>683</sup> however, expresses sharp reservations about R. Sirkes's prooftexts. He concludes that, at the very least, if one dresses fully like the opposite sex, he is in violation of the prohibition no matter his intention. R. Rapaport,

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<sup>681</sup> R. Sirkes, *Bayyit Hadash, Yoreh De'ah* 182 s.v. *lo tilbash, ve-yesh*.

<sup>682</sup> R. Segal, *Turei Zahav*, *ibid.* 4.

<sup>683</sup> R. Rapaport, *Siftei Kohen*, *ibid.* 182:7.

then, appears to maintain that the prohibitions against cross-dressing and beautification are qualitatively different from one another: the former is objectively prohibited in its own right, whereas the latter, if we accept R. Sirkes, requires two distinct types of intention for one to be in violation.<sup>684</sup>

R. Hayyim Beneviste<sup>685</sup> makes a number of claims in rejecting the lenient view of R. Mintz, two of which are particularly worthy of note. First, he insists that even those who hold that intention for adultery is a prerequisite for one to violate the prohibition only make that claim on the biblical level. On the rabbinic level, however, all agree that no intention for adultery is necessary. Second, he critiques the application of this leniency to the case of frivolous cross-dressing on Purim. After all, if men and women are dressed up in this manner and mingle with one another, the situation can easily lead to illicit behavior, and so is subject to the prohibition. This leads him to insist, contrary to R. Sirkes, that not only is such behavior biblically prohibited, but we must publicly denounce these actions, for we are required to publicly protest any biblical prohibition that is explicit in the Torah.<sup>686</sup> He therefore maintains, contrary to R. Sirkes, that one who

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<sup>684</sup> Similarly, see the suggestion of R. Hayyim Azulai (*She'eilot u-Teshuvot Torah Lishmah*, Yosef Katzuri, 1973, no. 214, pp. 154-5), that only when wearing men's complete clothing, such as *tzitzit*, does a woman violate the prohibition no matter her intent; however, when she wears *tefillin*, which are a mere ornament, then we follow R. Sirkes and take her intention into account.

For a more modest version of this position, see Shalom Schwadron, *She'eilot u-Teshuvot Maharsham*, vol. 2, *Makhon Hatam Sofer Yerushalayim*, 1973, 2:234, pp. 223-4, who argues from Yael's case that even R. Sirkes would agree that would should ideally avoid cross-dressing, even for non-decorative purposes.

<sup>685</sup> Beneviste, *Knesset ha-Gedolah* to Beit Yosef *Orah Hayyim* 695:4. See also *Sheyarei Keneset ha-Gedolah* to Tur Yoreh De'ah 182:3, *ibid*.

<sup>686</sup> *Beitzah* 30a.

wears the opposite sex's clothing for protective purposes (for example, to protect from heat and rain) also violates the biblical prohibition.

R. Dov Berish Gotlieb<sup>687</sup> is cited by R. Zvi Hersch Shapira<sup>688</sup> as going to an even further extreme, contending that as long as one intends to dress like the opposite sex, one incurs a biblical violation.<sup>689</sup> R. Joseph Teomim<sup>690</sup> rules that this is the case only when one fully cross-dresses, but not when one wears clothing of the opposite sex over one's clothing while clearly recognizable as one's own sex.

The entire discourse surrounding intent and *lo yilbash* is inextricably bound with the return to reciprocity in the early modern period. On one level, the halakhic discussion emerges from a discussion of the permissibility of cross-dressing on holidays. More significantly, it returns us to the concerns of the Tana Kama and promiscuity, an "equal-opportunity" ruling that does not distinguish between men and women. It also introduces the related category of modesty, which would eventually set the stage for a reversal in which women were to become subject to even greater structures than men in the contemporary period. But first, the 19th-century will see a new twist on the theme of reciprocity, perhaps even restoring us to the original biblical reasoning for the prohibition.

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<sup>687</sup> Dovid Beirish, *Yad ha-Ketannah*, vol. 2, Königsberg, 1859, Laws of Idolatry chap. 6, Negative Commandment 56, pp. 278a-280b.

<sup>688</sup> Zvi Hersch Shapira, *Darkhei Teshuvah*, vol. 5, Talpiot, 1954, *Yoreh De'ah* 182:9, p. 246a.

<sup>689</sup> *Darkhei Teshuvah* (ibid., 10) also cites R. Avraham Danzig's (*Binat Adam* 74) staunch opposition to cross-dressing on Purim.

<sup>690</sup> Joseph Teomim, *Mishbetzot Zahav Orach Hayyim* 696:5, in *Shulhan Arukh* p. 120; cited by Yisrael Meir Kagan, *Mishnah Berurah ha-Menukad Oz Ve-Hadar*, vol. 6, *Oz Ve-Hadar*, 2015, 696:30, p. 163.



## **Chapter 10 - The 19th Century: The Rise of Essentialism**

### **I. Introduction**

The previous chapter reviewed the beginnings of the return to reciprocity in the early modern period. While the shift began with concerns about the possibility of holiday cross-dressing and sexual promiscuity, by the 19th century the dual prohibition was

increasingly being justified by a set of variations on the claim that there are inherent differences<sup>691</sup> between men and women.<sup>692</sup>

## II. R. Hirsch

R. Samson Raphael Hirsch (1808-1888) represents an outstanding example of this new trend.<sup>693</sup> In his commentary to Deut. 22:5,<sup>694</sup> R. Hirsch contends that according to the Tana Kama, the prohibition of *lo yilbash* is due to the concern for illicit relations. Accordingly, the prohibition only applies if one cross-dresses with promiscuous intent. R. Eliezer ben Yaakov, whose opinion we accept as a matter of practical *halakhah* and whose outlook R. Hirsch seeks to promote, fundamentally disagrees. R. Hirsch explains the latter:

According to this view, the intent of the Torah is not to prohibit a person from concealing one's sex by wearing clothing of the opposite sex. Rather, the Torah prohibits to each sex that which is fitting for the other sex. A man may not preoccupy himself in his outer appearance in a manner that befits the nature of a woman, and a woman may not appear in the garb of a craft that is fitting for the nature of a man [i.e., war].

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<sup>691</sup> But see R. Moshe Shick (*She'eilot u-Teshuvot Maharam Shick, Yoreh De'ah*, Munkatsch, 1881, no. 173, p. 53b), who upholds the "intention for adultery" approach to the prohibition of cross-dressing.

<sup>692</sup> This new trend fits with new 19th century trends distinguishing between the natures of men and women. See Lynn Abrams and Elizabeth Harvey, *Gender Relations in German History: Power, Agency and Experience from the Sixteenth to the Twentieth Century*. Duke University Press, 1997, esp. chap. 1, 4, and 5; and Baader, *Gender, Judaism, and Bourgeois Culture in Germany, 1800-1870*, Indiana University Press, 2006. In an essay, Baader summarizes as follows: "According to nineteenth-century ideas of gender characteristics, the female sex was by nature endowed with a high propensity for morality and religious feeling, and women fulfilled indispensable functions as mistresses of the house, wives, and mothers" ("Jewish Difference and the Feminine Spirit of Judaism in Mid-Nineteenth-Century Germany," in *Gender, Judaism, and Bourgeois Culture*, p. 53).

<sup>693</sup> See Baader, "Jewish Difference," who situates Hirsch's views regarding gender roles in context of mid-19th century Germany's emphasis on the inherent sanctity of women and their importance to the family.

<sup>694</sup> Samson Raphael Hirsch, *The Pentateuch: Deuteronomy*, United Kingdom, Isaac Levy, 1966, pp. 431-2.

Hirsch explicitly identifies femininity with outward appearance, and masculinity with war. *Lo yilbash* is a mechanism by which the Torah seeks to preserve these essentialist distinctions.

In *Horeb*,<sup>695</sup> R. Hirsch offers a variation on this theme, situating the natural distinction between sex roles in a larger theological context. Hirsch begins by developing the notion that not only one's soul, but also one's body, including one's outward appearance, is sacred and distinctive. Thus, when God created man and woman with different anatomical features, he intended to fundamentally differentiate them from one another. It is for this reason that the Torah prohibited cross-dressing: both men and women are obliged to fulfill their mandates by maintaining the uniqueness of their respective appearances.

What are those unique elements? Hirsch elaborates:

For this reason [the Torah] designated specific actions in regard to clothing. The ornaments and beautifying objects worn by women may not be worn by men, and similarly a woman may not wear the clothes of a man, nor any ornamentation or beautifying objects which are designated for male dress. To build a fence, the rabbis of blessed memory prohibited ornaments for men to an extreme degree, even in regard to matters unrelated to their external appearance, so that they would not place their interests in the beauty of the body and decoration of skin and hair, which are beautiful exclusively for women.

Here, Hirsch perfectly encapsulates the new trend toward reciprocity by declaring that men and women may not wear one another's clothing and beauty objects. Tellingly, he formulates each prohibition in identical terminology to the other, despite the technical imprecision in his words. Thus, in analogous fashion to R. Horowitz, he writes "*lo tilbash isha simlat gaver*" instead of the original "*lo yihiye al isha keli gever*."<sup>696</sup> Here, unlike in

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<sup>695</sup> Samson Raphael Hirsch, *Horeb*, 7th ed., The Soncino Press, 2002, chap. 64, pp. 304-5.

<sup>696</sup> Similarly, see our discussion of the German R. Zvi Horowitz in chapter 9.

his *Commentary to the Torah*, there is no explicit mention of men's armor. He recognizes the extreme scope of the prohibition upon men, but casts this not as the primary motif of the prohibition but as a secondary one. And he follows Maimonides (as understood by Beit Yosef) in drawing a distinction between visible and non-visible cross-dressing on the level of the biblical prohibition. Hirsch downplays the distinction between men and women, arguing that fundamentally the two prohibitions are two sides of the same coin: inherent natural differences between men and women. In so doing, he also sidesteps any implication of male anxiety.

This explanation differs in emphasis from his *Commentary to the Torah* in that in *Horeb*, instead of contrasting the importance of women's outward appearance with men's aggressive natures (per R. Eliezer ben Yaakov), Hirsch stresses the inherent importance of the outward appearance of man and woman. Either way, in both cases Hirsch adopts a nature-based explanation for the rule against cross-dressing. Further, by eschewing the view of the Tana Kama, explicitly in his *Commentary to the Torah* and implicitly in *Horeb*, he selects a nature-based explanation over one centering on concerns for promiscuity.<sup>697</sup>

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<sup>697</sup> Hirsch's insistence on natural gender roles may be connected to his conservative polemics against the nascent Reform movement and the influence of *Wissenschaft des Judentum*. The common denominator between the latter involved the importance of historical change, whether in regard to Jewish practice or to accounting for the development of Jewish ideas. Hirsch pushed back against both and came to champion a relatively ahistorical account of Torah and Judaism. This manifested itself in many ways. To take just one example, he came to see the Oral Torah as transhistorical and even the primary revelation from God. See Michah Gottlieb, "Oral Letter and Written Trace: Samson Raphael Hirsch's Defense of the Bible and Talmud," *Jewish Quarterly Review* 106:3, 2016, pp. 316–351. We may conjecture that this ahistorical sensibility also led him to prefer a fixed view of male and female roles.

### III. R. Naftali Zvi Judah Berlin

R. Naftali Zvi Judah Berlin (1816-1893) also straddles the line between more and less essentialist interpretations in interpreting R. Eliezer ben Yaakov, and, like R. Hirsch, seems to offer different variations on this theme in his writings.

In his commentaries to the verse in Deuteronomy<sup>698</sup> and Tractate *Nazir*,<sup>699</sup> Netziv argues that for R. Eliezer ben Yaakov there are two types of cross-dressing scenarios that can lead men and women to engage in sexually illicit behaviors. First, a man or woman may disguise oneself by dressing like the opposite sex in order to act upon illicit intentions. This is the position of the Tana Kama, and, in analogous fashion to R. Moses of Coucy and others, Netziv maintains that R. Eliezer ben Yaakov accepts this ruling as well. However, R. Eliezer ben Yaakov adds that even one who wears a single garment of the opposite sex also violates the prohibition when wearing a garment that it is the opposite sex's unique nature to wear. This includes women who wear armor, and men who wear women's beauty objects. However, for Netziv, unlike Hirsch, this act is not objectionable in its own right. Instead, Netziv reasons that since this is unnatural behavior on the part of the man or woman, it is particularly likely that he or she will do so for a sustained number of days in order to overcome his or her nature and establish a new habit. This dramatically increases the likelihood that someone who cross-crosses will engage in illicit relations.<sup>700</sup> Thus, R. Eliezer ben Yaakov acknowledges that one who

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<sup>698</sup> Naftali Zvi Yehuda Berlin, *Ha'Emek Davar*, vol. 5, *Hotza'at Yeshivat Volozhin*, 1999, Deut. 22:5 s.v. *lo*, p. 241.

<sup>699</sup> Naftali Zvi Yehuda Berlin, *Meromei Sadeh*, vol. 3, 1956, *Nazir* 59a s.v. R. Eliezer ben Yaakov, pp. 105-6.

<sup>700</sup> On the significance of Netziv's acknowledgement of the human capacity to overcome our inborn limitations, see Perl, Gil S. "'No Two Minds Are Alike': Tolerance and Pluralism in the Work of Netziv," *The Torah u-Madda Journal*, vol. 12, 2004, p. 82.

wears a single garment that is not unique to the nature of the opposite sex, but just happens to be worn by men or women in that particular society, has not violated *lo yilbash*. According to this analysis, while the ultimate concern is for promiscuity, the distinction between natural and unnatural clothing belonging to each gender is essential to the view of R. Eliezer ben Yaakov.

In his commentary to the Sifre,<sup>701</sup> Netziv takes the argument one step further. Here too, Netziv introduces the same dichotomies between fully disguising oneself and wearing just one garment; and between wearing one garment that is naturally worn by the opposite sex, versus donning clothing one that incidentally happens to be commonly worn by another sex in that society. However, here he argues that R. Eliezer ben Yaakov holds that one who wears one garment naturally associated with the opposite sex violates *lo yilbash* not because such an action is likely to lead to illicit relations, but is problematic in its own right because it blurs sex distinctions.<sup>702</sup>

#### **IV. R. David Zvi Hoffman**

R. David Zvi Hoffman (1843-1921)<sup>703</sup> offers yet another interpretation that weaves together the concern for illicit relations and the undermining of God's natural order. He begins by inquiring as to common denominator between the seemingly unrelated commandments at the beginning of chapter 22 in Deuteronomy, including the commandment to assist one's friend with packing and unpacking, *lo yilbash*, kindness

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<sup>701</sup> *Sifre im Emek ha-Netziv*, vol. 3, 1977, pp. 253-4.

<sup>702</sup> However, in his responsum on this subject, R. Ovadia Yosef, *She'eilot u-Teshuvot Yabia Omer*, vol. 6, 2nd ed. Jerusalem, 1986, *Yoreh De'ah* no. 14, pp. 189-194), R. Ovadia Yosef seems to fully equate Netziv's presentation in *Emek ha-Netziv* and *Meromei Sadeh*. (He does not cite *Ha'Emek Davar*.)

<sup>703</sup> David Zvi Hoffman, *Sefer Devarim, Nezah*, Tel Aviv 1959, commentary to Deut. chap. 22, p. 428.

toward animals, and erecting a fence in one's own home (the law of *ma'akeh*). He answers by proposing that the common denominator of these commandments is that the Torah's commands encompass acts of kindness toward both living creatures and the natural state of affairs that God created. All of the commands that appear in this section fall under one or both of these categories. To this R. Hoffman adds that only our case is called an abomination, because it not only violates the tenets of kindness toward God's creations, but can also lead to abominable acts. Our case is therefore more severe than admixtures of plants or animals, which lack intelligence and will not be led to illicit activities due to the violation of *kilayim*.<sup>704</sup>

### **V. R. Barukh ha-Levi Epstein**

R. Barukh ha-Levi Epstein (1860-1941)<sup>705</sup> utilizes an essentialist approach to account for R. Eliezer ben Yaakov's focus on armor: weaponry constitutes a category of prohibition in its own right, for the reason that it is the way of man to make war, not women.<sup>706</sup> He also raises the possibility that this is linked to the biblical verse's choice of the term "*gever*," which is associated with battle, instead of "*ish*."<sup>707</sup>

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<sup>704</sup> For a modern interpretation that combines concerns for sexual impropriety and paganism, see Joseph Hertz, who writes, "An interchange of attire between man and woman would promote immodesty and, in consequence, immorality. This law is probably directed against rites in Syrian heathenism, which included exchange of garments by the sexes and led to gross impurities" (Hertz, *The Pentateuch and Haftorahs*, Soncino Press, 1958, p. 843). See also Gunther Plaut, *The Torah: A Modern Commentary*, Union of American Hebrew Congregations, 1981, p. 1485.

<sup>705</sup> *Torah Temimah* *ibid.*, Deut. 22:5:2, n. 41, p. 301.

<sup>706</sup> *Kiddushin* 2b.

<sup>707</sup> See, however, his comments in *Tosefet Berakhah* (*ibid.*, p. 170), where he suggests that the prohibition might only apply to a woman who wields a weapon on the battlefield.

## VI. R. Mordekhai Yehudah Leib Winkler

R. Mordekhai Yehudah Leib Winkler (1844-1932)<sup>708</sup> offers a somewhat different take on this motif, which manifests the discourse of natural gender differences and *halakhah* by emphasizing not the inherent difference between men and women, but the notion that men are not permitted to reverse the natural course of events, whereas women are. For this reason men are prohibited to dye or remove white hairs: this is contrary to human physiology, which eventually causes all the pigment from one's hair to be removed. He uses this to explain the passage in *Shabbat*, which rules that one may remove scabs, in a striking fashion: the Talmud means to say that since such an action is not contrary to human nature but rather restores the man to his original, most complete state, he is not in violation of a prohibition. "This," he claims, "is that which it derives from the verse 'Every divine act is for Him,' meaning, this is how God fashioned him from the beginning of the creation of most people."

What R. Winkler does not explain is why women may act against the natural course of the aging process, whereas men may not. After all, left to natural evolution, women's hair is just as likely to whiten as that of men. His reading of the passage in *Shabbat* seems to suggest that men only are barred from seeking to beautify themselves by running counter to the inevitabilities of aging: masculinity, yet again, is more strictly circumscribed than femininity. It must be "natural," or else is it effeminate. On this reading of human nature, far from seeking to eliminate male anxiety or the ease with

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<sup>708</sup> Mordekhai Leib Winkler, *She'eilot u-Teshuvot Levushei Mordekhai, Yoreh De'ah Mahadurah Kama*, pub. *Levushei Mordekhai*, 2011, no. 100, p. 121.



which one may forfeit one's masculinity, the theory of essentialism is rooted in precisely that anxiety.

The naturalist position may also be tied to an innovative responsum of R. Moshe Mordekhai Epstein,<sup>709</sup> who proposes that the very act of a man seeking to beautify himself may itself be prohibited.<sup>710</sup>

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<sup>709</sup> Moshe Mordekhai Epstein, *She'eilot u-Teshuvot Levush Mordekhai*, Solomon Jerusalem, 1946, no. 24, pp. 28a-b.

<sup>710</sup> For a similar suggestion, see R. Menashe Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 12, *Makhon Mishneh Halakhot Gedolot*, 2008, no. 72, pp. 29-30, who asserts that one may not beautify oneself in any way due to both *lo yilbash* and *lo tahmod*. He cites the example of Joseph in support of his contention that the Torah opposes male beautification.

## Chapter 11 - Contemporary Developments: Confronting Feminism

### I. Introduction

By this point in our analysis, we have seen the halakhic literature on *lo yilbash* evolve quite significantly over the course of two millenia. Arguably, however, the most dramatic shifts only begin to unfold in the second half of the twentieth century. In this contemporary era, *poskim* increasingly cite essentialist understandings of *lo yilbash* that establish men and women's societal roles alongside instrumental concerns for promiscuity<sup>711</sup> in prohibiting women from engaging in a wide variety of activities. In doing so, they often propose novel readings of the classical texts, develop novel halakhic categories for the adjudication of *lo yilbash*, and offer remarkably expansive applications of *lo yilbash*.

Striking as these rulings might be, we need not hypothesize why they emerge specifically at this moment in time. Many contemporary authors make it abundantly clear that they are motivated by a desire to combat the perceived dangers posed by the feminist revolution. The strong inclination of *poskim* to rule stringently leads them to read halakhic texts in unexpected new ways; place greater emphasis on texts that typically figure less prominently in the determination of practical *halakhah*; overlook leniencies more widely accepted in previous eras; and in some instances even extend *lo yilbash* to cases that do not involve clothing or accouterments at all, but merely activities that are generally associated with the opposite sex. At the same time, a growing number of *poskim* have noted and questioned these new applications of *lo yilbash*.

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<sup>711</sup> For the distinction between essentialist and instrumental explanations for *lo yilbash*, see Ronit Irshai, "Cross-Dressing in Jewish Law," discussed below.

These trends are particular to contemporary halakhic questions concerning women. By contrast, for the most part, *poskim* do not tend to rule with a unique degree of stringency regarding men. This is a striking reversal of the trend we previously identified in which the rabbis minimized the prohibition upon women while dramatically expanding that upon men.

To a degree, these trends are not entirely novel. Essentialist sex role arguments already figured prominently in 19th-century halakhic discourse.<sup>712</sup> And some stringent contemporary rulings regarding women may be at least partly traced to a 19th-century ruling of R. Avraham Danzig,<sup>713</sup> who prohibits a woman from carrying a cane in order to enhance her appearance.<sup>714</sup> In other words, much as the Bavli prohibits men from using “the accouterments of women,” R. Danzig outlaws women from beautifying themselves in the ways of men. And while R. Danzig's understanding does not accord with the straightforward interpretation of R. Eliezer ben Yaakov, who mentions only women and weaponry, it is consistent with a simple reading of Maimonides, who rules that women may not wear male adornments, and whose opinion is codified in Tur<sup>715</sup> and Shulhan Arukh.<sup>716</sup> Nonetheless, these significant points of continuity notwithstanding, contemporary discussions represent a remarkable departure from prior periods.

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<sup>712</sup> Of course, one might argue that those arguments themselves represent a partial response to new questions about women's roles in society. See Kathryn Hughes, “Gender Roles in 19th-Century Victorian Patriarchy,” *British Library*, 29 May 2020, <https://www.bl.uk/romantics-and-victorians/articles/gender-roles-in-the-19th-century>.

<sup>713</sup> Avraham Danzig, *Hokhmat Adam im Binat Adam* 90:3, *Mekor Sefarim*, 1996, p. 285.

<sup>714</sup> Following R. Yoel Sirkes, R. Danzig does acknowledge that if her intention is simply to support herself and not to enhance her appearance, there is no prohibition (*Binat Adam* no. 74, *ibid.*, pp. 64-67).

<sup>715</sup> Yaakov ben Asher, *Yoreh De'ah* 182.

<sup>716</sup> Yosef Karo, *Yoreh De'ah* 182:5.

In light of our prior analysis, we may frame this dramatic development in light of our larger interpretation of *lo yilbash* as a response to central questions surrounding masculinity. During the periods of time in which the Targumim, Tannaitic material, and Babylonian Talmud were composed, many Rabbis, perhaps recognizing the new instability of masculinity in the wake of the Bar Kochba rebellion, used *lo yilbash* as a means through which to reconstruct and protect men's unique status. In doing so, they crafted an image of man that simultaneously drew upon and departed from prior Jewish and non-Jewish models. Because it was men themselves who stood to benefit from deeper self-understanding, rabbinic lawmakers focused their discourse and rulings overwhelmingly on male actions and attitudes. For this reason, the overwhelming thrust of the early rabbinic discussions of *lo yilbash* concerned men.

If that status is unstable, it comes as no great surprise, at least in retrospect, that the model of rabbinic masculinity is perceived as being threatened by women who had imbibed the spirit of feminism. But precisely because the challenge to men's roles in the contemporary era comes not from within men but without, *lo yilbash* now becomes a tool to combat the phenomenon of women adopting men's roles in the community. This meant that even as it fundamentally serves the same ends of sustaining the meaning of masculinity, *lo yilbash* is now ironically directed primarily at women rather than men.

Most recently, we encounter yet another trend among *poskim* in discussions regarding the halakhic permissibility of sex change transitions. In these newer texts we find essentialist arguments used in new ways to ban men and women equally. This suggests that we are entering an even newer stage in halakhic discourse: whereas the

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prior literature largely grapples with the question of shifts in norms of gender roles, now the question concerns the very notion of gender identity itself. Accordingly, these new rulings concern men and women alike.

## II. 20th-Century Essentialism

Contemporary authors tend to view *lo yilbash* as establishing a principle of intrinsic sex role differences,<sup>717</sup> applying this line of thought in exegetical, hashkafic, and halakhic contexts. Thus R. Menahem Mendel Schneerson writes that

the principle of ‘equal rights’ stands in contradiction to the Torah’s command, ‘A man’s vessel shall not be upon a woman, and a man shall not wear a woman’s dress.’ This means that each one must act in accordance with his [or her] nature, and not that the woman should seek to mimic the man. To both men and women there are different roles which are important in their own right, and they need not and cannot be measured one against the other.<sup>718</sup>

R. Schneerson’s emphasis on women not seeking to mimic men flows directly from the larger context of his comments, in which he addresses questions of women’s role in society in the face of the rising tide of feminism.

The authors of the Artscroll Stone Humash commentary provide a similar perspective in their commentary to Deuteronomy 22:5, explaining that “the Torah forbids men and women to adopt garb or other practices that are associated with the other sex. This is to avoid excessive mingling that can lead to promiscuity, and to preserve the normal and constructive differences between males and females.”<sup>719</sup>

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<sup>717</sup> See Ronit Irshai’s recently-published essay “Cross-Dressing in Jewish Law,” from which a number of the texts cited in this section are drawn.

<sup>718</sup> <https://chabad.info/women/123875/>.

<sup>719</sup> Nosson Scherman, *The Chumash: The Torah, Haftaros and Five Megillos*. Stone Edition., Mesorah Publications, 1995, p. 1050.

Yet others provide similar explanations for *lo yilbash* in opposing women enlisting in the Israel Defense Forces. For instance, R. Shlomo Aviner, who has spoken out consistently against women's entry into the army,<sup>720</sup> is recorded by R. Mordekhai Zion as follows:

The Rabbis teach at the beginning of Tractate *Kiddushin*: It is not the way of a woman to conquer. A woman is not built by the Master of the Universe for military functions. And a man is also not built for the functions of women. God created man and God created woman, and they are different. Each man at his station, and each man at his tent.<sup>721</sup> A man shall not wear the dress of a woman, and a woman shall not wear the dress of a man.<sup>722</sup> A man may not fulfill the role of a woman, and a man shall not fulfill the role of a man. Each one is happy in his role, and both complete one another.<sup>723</sup>

Another example demonstrates the far-reaching implications of this discourse.

After providing an essentialist explanation for *lo yilbash*, R. Yaakov Ariel<sup>724</sup> maintains that *lo yilbash* carries implications for women's Torah study, which he envisions as more practically-oriented than that of men. He therefore suggests that *lo yilbash* may teach that

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<sup>720</sup> Shlomo Aviner, *Shiurei Rav Shlomo Aviner*, available at <http://shlomo-aviner.net/>.

<sup>721</sup> Adapted from Numbers 1:51. This verse is often cited in Hasidic and contemporary literature to emphasize the notion that each individual member of the Jewish community has a unique role to play. This language has also penetrated Israeli discourse; see, for example, the 2012 *devar Torah* in an official government publication by then-Knesset member Reuven Rivlin, (2012, May 25). *Ish al Mahanehu ve'Ish al Diglo, Hakhima: Havrei Knesset Kotvim al Parshat ha-Shavua*. Retrieved January 2, 2022, from [https://www.knesset.gov.il/torahportion/heb/matot2\\_p.pdf](https://www.knesset.gov.il/torahportion/heb/matot2_p.pdf). These precedents notwithstanding, R. Aviner is unique in extending this motif specifically to gender differences.

<sup>722</sup> R. Aviner provides an imprecise quotation of the verse, in which the prohibitions on men and women are formulated in parallel fashion to one another, to emphasize the uniqueness of each sex's role in society. This is highly reminiscent of R. Zvi Horowitz and R. Samson Raphael Hirsch, who similarly misquote the biblical verse while underscoring their reciprocal views of the prohibitions. R. Hirsch is most similar to R. Aviner in that both set forward essentialist explanations of *lo yilbash*. For R. Horowitz and R. Hirsch, see our discussion in chapters 9 and 10 respectively.

<sup>723</sup> Shlomo Aviner, "Sheirut Tzeva'i le-Nashim," *She'eilot u-Teshuvot - Sheirut Tzeva'i le-Vanot ve-Sheirut Leumi*, <http://www.emunahisrael.com/2015/12/blog-post.html>.

<sup>724</sup> Yaakov Ariel, *Halakhah be-Yameinu: Morashtah, Limmudah, Hora'atah, ve-Yisumah*, 2nd ed., *Makhon ha-Torah ve-Ha'aretz*, Ashkelon, 2012, p. 238.

“the women’s house of study need not—and cannot—imitate the men’s model.” This suggestion, while tentative and not necessarily intended in a strictly legal sense, is remarkable. Historically, *lo yilbash* was almost universally<sup>725</sup> associated with physical appearance, however broadly or narrowly defined. Yet, as an outgrowth of the popularity of the essentialist explanation, *lo yilbash* is now read as establishing overarching guidelines for reifying sex roles in society. Ironically, this may come closest to contemporary understandings of the meaning of the original biblical prohibition. Yet, at least until the twentieth century, it does not appear to represent the thrust of the rabbinic literature. The application of *lo yilbash* to areas unrelated to clothing or appearance is intimately connected to R. Ariel’s essentialist understanding of *lo yilbash*.

A particularly surprising halakhic ruling requiring gender-specific clothing can best be understood against this backdrop. R. Shmuel Vosner<sup>726</sup> infers from Sefer ha-Hinnukh that one might violate *lo yilbash* even by donning a garment commonly worn by both men and women. In seeking to account for this seemingly inexplicable ruling, R. Vosner references a remark of R. Yaakov Emden,<sup>727</sup> who requires parents to dress young

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<sup>725</sup> One striking exception is R. Jacob ben ha-Rosh’s comment (Yaakov ben Asher, *Peirush Ba’al ha-Turim al ha-Torah*, vol. 2, 7th ed., Feldheim, Jerusalem, 1996, Deuteronomy 22:5 s.v. *keli*, p. 498) concerning the prohibition against a woman donning a “*keli gever*.” R. Jacob explains that this hints to the prohibition against teaching Torah, which is called a vessel, to one’s daughter. This interpretation is particularly noteworthy in light of the numerous commentators who read the verse as referring especially to a woman wearing armor: R. Jacob may be alluding to this same comparison between objects of war and Torah, both of which are called “*keilim*.” For the latter, see *Avot* 3:14, which teaches: “Beloved are Israel, for a beloved vessel was given to them.”

However, R. Jacob’s suggestion is unique among the medieval commentators. It is also telling that he only offers this interpretation in an exegetical, not halakhic, context. He makes no mention of such a possibility in *Arba’ah Turim*, and it seems exceedingly unlikely that he intends to apply this ruling on a literal halakhic level.

<sup>726</sup> Shmuel ha-Levi Vosner, *Shevet Ha-Levi*, vol. 9, no. 175. Jerusalem, 2002, p. 159.

<sup>727</sup> Yaakov Emden, Commentary to *Shabbat* 12a, s.v. *be-Tosafot*. Printed in Vilna Shas, Tractate *Shabbat*, Tal-Man, Jerusalem, 1981, *Hagahot ve-Hiddushim*, p. 95.

children in a manner recognizable as male or female so as to avoid gender-neutral clothing. R. Wosner is unsure whether R. Emden holds that one who wears gender-neutral clothing violates a biblical or rabbinic prohibition. If the former position is correct, R. Wosner suggests that R. Emden - and, by implication, Sefer ha-Hinnukh as well - see *lo yilbash* as “a general prohibition outlawing this practice of equating the arrangement of clothing.” This suggestion carries far-reaching practical repercussions and can be most easily understood in context of the contemporary essentialist discourse surrounding *lo yilbash*. If our concern is only for promiscuity due to the mingling of sexes, a requirement to dress babies in gender-specific clothing seems far-fetched. However, if *lo yilbash* reflects an ideological position legislating differentiated sex roles, it is reasonable to consider applying the biblical prohibition to infants and to require gender-specific clothing.

These new developments are also manifest in a series of stringent contemporary rulings in areas such as the aforementioned topic of women waging war and bearing arms, wearing pants, shaving heads (for Hasidic women), and even ultra-Orthodox rulings barring women from smoking cigarettes, driving cars, and riding bicycles. Many of these rulings break new ground in *lo yilbash*, and tend to conflate sex roles, concerns for promiscuity, and the influence of feminism. Taken together, they shed light on the intersection of contemporary polemics with halakhic discourse, as well as contemporary anxieties that generate a strong instinct to protect traditional views of masculinity and femininity.



### III. Women at War

Dramatic changes to the role of women and the ongoing security situation in Israel have resurrected practical questions of women bearing arms and serving as soldiers, which lay dormant for over 2,000 years. While *poskim* generally rule that women may bear arms for self-defense outside of military contexts, historically scholars widely understood ultra-Orthodox authorities and the vast majority of *dati leumi* decisors to oppose women enlisting as soldiers in the Israel Defense Forces, even on a voluntary basis. Recent years have seen a dramatic rise in the number of *dati leumi* Israeli women serving in the army. This has led some rabbis to adopt a more sympathetic standpoint of these well-intentioned women. Many others, seeking to stem the tide of rising enlistment, have opposed women's enlistment with increasing zeal in the wake of this controversial new trend. Chief among those opponents' arguments is the prohibition of *lo yilbash*.

Before analyzing the contours of that debate, it is important to first clarify a point that is not subject to significant contemporary debate: it is widely accepted that in modern-day Israel, women may carry weapons for protective purposes. Thus, R. Ovadia Yosef<sup>728</sup> rules that a woman may carry a gun on an outing in order to protect her students. In support of this position, R. Yosef adduces the concern of risk to life, as well as R. Yoel Sirkes's contention that intention is integral to *lo yilbash*.

R. Moses Feinstein<sup>729</sup> rules similarly in a responsum addressed to his grandson R. Shabtai Rapaport regarding the permissibility of women carrying guns in the Gush Etzion area of Israel, even where no danger is imminent. After summarizing R. Rapaport's

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<sup>728</sup> Ovadia Yosef, *She'eilot u-Teshuvot Yehaveh Da'at* 5:55, pp. 248-251.

<sup>729</sup> Feinstein, *Iggerot Moshe*, vol. 5, Noble Press, 1973, *Orah Hayyim* 4:75:3, pp. 89-91.

arguments in favor of leniency, R. Feinstein agrees with his grandson that a pistol is too small to resemble the sort of weapon typically carried by men in battle, and therefore does not fall under the rubric of R. Eliezer ben Yaakov's category of "*kelei zayyin*." In any case, R. Feinstein adds, women in Gush Etzion may carry guns even if no enemies immediately present themselves: it is still considered a life-threatening situation.

Beyond issuing this lenient practical ruling, however, R. Feinstein also develops an important insight that bears on our larger topic. R. Feinstein contends that R. Eliezer ben Yaakov's ruling regarding women donning armor is qualitatively different from the prohibition against men wearing women's beauty products. Women, he explains, are not barred from armor due to its beauty. After all, he points out, the beauty of armor is typically not its inherent attractiveness, but that it makes a man appear like a warrior. This association is not typically drawn when a woman dons armor, so there is no concern of beautification. Nor are they prohibited from engaging in the act of warfare. Instead, they may not wear armor or carry weapons simply because these are masculine behaviors.<sup>730</sup> Accordingly, R. Moshe rules in a characteristically novel insight<sup>731</sup> that the leniency of R. Sirkes, namely that one may cross-dress for non-illicit purposes, does not

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<sup>730</sup> In his essay "*Nesiat Neshek*," David Strauss claims that R. Ovadia Yosef interprets R. Eliezer ben Yaakov as seeing armor as a mere example of men's clothing rather than a novel halakhic category in its own right. Strauss uses this to explain why R. Yosef, while arriving at the same lenient ruling as R. Feinstein, implicitly disputes R. Feinstein's claim that the leniency of the Bakh and Taz does not apply to a woman who wears armor: since R. Yosef sees armor as a mere example of the general set of items prohibited to women, there is no room to make this distinction. This analysis is plausible but not compelling. While it is correct to infer that R. Yosef does not adopt R. Feinstein's distinction between men's clothing and armor in regard to intent for sin, R. Yosef may still see men's clothing and armor as representing two independent categories of prohibition, as R. Moshe of Coucy and others appear to do. However, like those other authorities, he may still hold that neither one applies where one's intention is for mere protection.

<sup>731</sup> For R. Feinstein's novelty as a halakhic decisor, see Aharon Lichtenstein, "Responsibility and Compassion: A Eulogy for Rav Moshe Feinstein ZT'L." *Responsibility and Compassion: A Eulogy for Rav Moshe Feinstein Zt'l*, *Yeshivat Har Etzion*, 22 Mar. 2016, <https://www.etzion.org.il/en/publications/hespedim/responsibility-and-compassion-eulogy-rav-moshe-feinstein-zt%E2%80%9Dl>.

apply to the case of a woman who dons armor; this prohibition is not a function of beauty or appearance, but an objective prohibition against women dressing as warriors.<sup>732</sup> Thus, even according to R. Sirkes, the fact that a woman's intention to carry a gun is for merely protective purposes is, in itself, not sufficient cause to exempt her from *lo yilbash*.<sup>733</sup>

Far more controversial than the subject of women bearing arms for protection is the bitter debate surrounding religious women serving in the army. Israel is one of the few countries in the world with mandatory military service for both men and women. From the outset, there was fierce opposition from the rabbinic establishment, including R. Karelitz's famed declaration that it is better for a woman to give up her life than serve in the army, and a fiercely stringent statement issued by then-Chief Rabbis Herzog and Uziel. This led to a compromise that permitted an exemption to religious women from

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<sup>732</sup> There is yet another way in which we might distinguish qualitatively between the Tana Kama and R. Eliezer ben Yaakov, to which R. Feinstein alludes in his responsum: while the Tana Kama sees the man and woman's prohibition as essentially mirroring one another, R. Eliezer ben Yaakov sees the man's prohibition as focused upon his appearance, while that of the woman is centered on action, or a combination of appearance and action together. More specifically, this would mean that women are prohibited from engaging in warfare. This fits especially well with the Bavli, where R. Eliezer ben Yaakov is cited as prohibiting a woman from "going out to war with vessels of war."

Indeed, R. Rapaport, a scholar in his own right, apparently had suggested in his question to R. Feinstein that the mere act of a woman going out to war is objectionable, and that it should therefore be permissible for women to carry weapons outside of a martial context. While R. Feinstein rejects R. Rapaport's proposal, he appears to acknowledge that this is a plausible reading of R. Eliezer ben Yaakov; it is just that the medieval authorities did not accept this view as authoritative. Indeed, R. Eliezer Waldenberg (*She'eilot u-Teshuvot Tzitz Eliezer*, vol. 20, Refael Hayyim Kohen, 1994, no. 31, p. 84) similarly contends that in fact there is a dual prohibition, one for a woman to carry weaponry, and another for "a woman to go out to war with men."

This parallels Michael Satlow's thesis, discussed in chapter 2, that the Rabbis accepted the Roman distinction between men as active and women as passive, except that the rabbis here are addressing a military context, not sexual activity or the life of the scholar.

<sup>733</sup> This is contrary to the understanding of R. Avraham Stav, who sees R. Feinstein as focusing on "going out to war." While it is true that the definition of *begged isha* is determined by what a man would typically wear while going out to war, as a halakhic matter, R. Feinstein makes it clear that it is not the actual going to war that is essential, but rather that she dress as if she is a warrior fit to go to war. See Stav, "Nazir Daf 59 - Nesiat Neshet Al Yedei Nashim." *Torat Har Etzion*, 20 Oct. 2015, at <https://www.etzion.org.il/he/talmud/seder-nashim/massekhet-nazir>.

army service. Official statements from the Chief Rabbinate have consistently echoed the initial prohibitive ruling.

In truth, though, at least insofar as combat service was concerned, the issue was not immediately practical. Despite David Ben-Gurion's insistence that gender equality meant that women, like men, must be conscripted into the Israeli army, which was enshrined into law in 1949, in practice almost no women were permitted to enter combat units, and none served on the front lines due to concerns of increased risk for rape or sexual molestation if women were to fall into enemy hands. The 1982 First Lebanon War, in which the IDF was understaffed, demonstrated the need for more soldiers. Later, in a breakthrough case, in 1994 Alice Miller successfully sued for the right to complete the pilot training course, though in practice she was rejected from taking the course on medical grounds. This opened the floodgates for women to join the IDF, with a 2000 Amendment asserting that women were permitted to serve in any army role as men. There are reports that in the last decade, the number of women serving in combat units has grown approximately fourfold, though even today there is not full equality between male and female conscription or entry into combat units.

This has opened the floodgates not only to secular Israeli women, but to their religious counterparts as well. Since 1950, beginning with a ruling issued by then-Chief Rabbis Herzog and Uziel, the Chief Rabbinate has been strongly and consistently opposed to religious women serving in the army. Further, since 1971, religious women have the alternative of engaging in *Sherut Leumi*, national service, in lieu of army service, though that option too was eschewed by many *Haredi* authorities. Yet since 2010, following broader trends in Israeli society, the number of religious women in the

army, and in combat units in particular, has grown exponentially, leading the army to provide support for such women through various media such as information on websites and individuals available to advise religious women through the process of enlisting. This led to an explosive series of widely-publicized comments from leading right-wing religious rabbis and educators including R. Eli Sadan, R. Aviner, R. Yigal Levenstein, R. Avraham Melamed in 2018, as well as the establishment of organizations actively opposing women's right, on both religious and secular-military grounds, to enlist.<sup>734</sup>

Owing to the consistent public rabbinic opposition since the early years of the State, scholars generally assume<sup>735</sup> that the consensus among Religious Zionist authorities is like that of Ultra-Orthodox authorities,<sup>736</sup> namely that women may not enlist in the Israel Defense Forces.<sup>737</sup> Still, some scholars have questioned whether, particularly for Chief Rabbis Unterman and Goren, whose respective assistants wrote letters on their behalf supporting individual women who desired to enlist,<sup>738</sup> that ruling was truly universal or one only intended for the majority of women.<sup>739</sup> Others have pointed to

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<sup>734</sup> For many of these references, see Elisheva Rosman, "The Pink Tank in the Room: The Role of Religious Considerations in the Discussion of Women's Combat Service—the Case of the Israel Defense Forces," *Religions*, vol. 11, no. 11, 27 Oct. 2020, pp. 557–575.

<sup>735</sup> For a good example of a one-sided presentation of the *dati* view, see Eran-Jona, Meytal, and Carmit Padan. "Women's Combat Service in the IDF: The Stalled Revolution (Heb.)," *Strategic Assessment*, vol. 20, no. 4, Jan. 2018, pp. 83-85.

<sup>736</sup> For a discussion of Hazon Ish's famous opposition, see Brown, Benjamin. *Hazon Ish: Ha-Posek, ha-Ma'amin ve-Manhig ha-Mahapekha ha-Haredit*, Magnes, Hebrew University, 2011, pp. 90–1, 265-272.

<sup>737</sup> See Zviki Noyman, "*Shinuyim be-Yahas shel ha-Tziyyonut ha-Datit le-Giyyus Nashim le-Tzahal*," *Hebrew University*, 2016, <https://public-policy.huji.ac.il/sites/default/files/public-policy/files/zvikinoymanthesis.pdf>, pp. 8-16.

<sup>738</sup> The letters are reproduced on pps. 6-8 in a collection compiled by *Beit Hillel*, available at <https://eng.beithillel.org.il/docs/meaningful-service-women-sources.pdf>.

<sup>739</sup> For example, from 1951 and onward the Kibbutz ha-Dati promoted women's enlistment, and even created practical frameworks for their young women to enlist. For a halakhic elaboration of the basis for the Kibbutz's

major shifts in the positions of major Religious Zionist authorities in the last fifteen years<sup>740</sup> alongside the dramatic growth in female enlistment among *dati leumi* women.<sup>741</sup>

Among a variety of considerations,<sup>742</sup> many halakhic authorities cite the prohibition of *lo yilbash* as posing a halakhic barrier to women who wish to enlist. While some of these authorities simply cite *lo yilbash* as a halakhic argument against the permissibility of women's army service,<sup>743</sup> others such as R. Ariel go further, contending that women may not serve because *lo yilbash* codifies the notion that men and women have distinctive roles.

The argument, of which there are several variations, runs essentially as follows. The Talmud declares that "it is the way of men to wage war, and it is not the way of women to wage war,"<sup>744</sup> and that only men typically conquer, not women.<sup>745</sup> These texts suggest that only men may engage in battle. It is overwhelmingly men who fight on the battlefield in the Bible, and Devorah appears to serve in a role more resembling an

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position, see Yehezkel Cohen, *Giyus Banot ve-Sheirut Leumi: Iyun ba-Halakhah, Hakibbutz ha-Dati: Ne'emanet Torah va'Avodah*, 1979, p. 7.

<sup>740</sup> See Noyman, pp. 57-68.

<sup>741</sup> For a summary of the evidence, see Noyman, pp. 30-3.

<sup>742</sup> The halakhic on the subject is voluminous. For a brief but comprehensive treatment of the halakhic issues, see Yehuda Shaviv, "*Nashim be-Milhemet Mitzvah*," *Tehumin*, vol. 5, 1985, pp. 78-89.

<sup>743</sup> From the initial debates surrounding women's service, see R. Shlomo Yosef Zevin, *Le'Or ha-Halakhah, Mossad ha-Rav Kook*, 2004, pp. 24-7; and R. Aryeh Bina, "*Mishpat ha-Milhamah ve-Shituf ha'Isha ba-Milhamah*," *Ha-Torah ve-Hamedinah*, vol. 5-6, 1953-54, pp. 69-70. For an early theoretical case against the application of *lo yilbash* to an obligatory war, see the article immediately preceding that of R. Bina, R. Yisachar Klein, "*Giyus Nashim*," *Ha-Torah ve-Hamedinah*, vol. 5-6, 1953-54, pp. 55-61. For more recent opposition that invokes *lo yilbash* see, for example, Rav Yaakov Ariel, Ariel, Yaakov. "*Ha'Isha be'Idan ha-Moderni le'Or ha-Halakhah*," *Talelei Orot*, vol. 13, 2007, p. 140.

<sup>744</sup> *Kiddushin* 4b.

<sup>745</sup> *Yevamot* 65b.

overseer than as an active soldier.<sup>746</sup> Even those women who actively fight do so without wielding typical weapons, such as Yael (per the rabbinic texts we cited in chapter 5) and the woman from Tevetz who dropped a millstone on Avimelekh's skull.<sup>747</sup> It is for this reason that R. Eliezer ben Yaakov names armor as the only additional men's garb prohibited to women: he holds that women are inherently disqualified from waging war.

Numerous prominent *poskim* make this argument,<sup>748</sup> including R. Eliezer Waldenberg, whom we may cite as representative of this group.<sup>749</sup> R. Waldenberg draws on Sefer ha-Hinnukh's<sup>750</sup> assertion that "it is not the way of women in the world to go out with weapons" in ruling that women may not serve in an army because warfare is inherently reserved for men. This is consistent with the new essentialist trend we have identified.<sup>751</sup>

R. Waldenberg then adds a further argument that is consistent with the new trend toward stringency regarding women and *lo yilbash*. After noting the ambiguity as to

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<sup>746</sup> Judges 4:6-24.

<sup>747</sup> Judges 9:52.

<sup>748</sup> R. Eliezer Melamed (*Peninei Halakhah: Ha'Am ve-Ha'aretz*, 4:12, n. 10, Yeshivat Har Bereikhah, 2005), for example, rules that as a general principle, women may not fight in battle due to *lo yilbash*. However, he acknowledges that the present situation in Israel constitutes a *milhemet mitzvah*, and therefore in principle women would be obligated to fight. Nonetheless, they do not, both because their prior responsibility is to sustain the continuity of everyday life even during times of war, and because intermingling of the sexes during battle undermines the sanctity of the battlefield and the focus of soldiers in wartime. In support of both positions, he cites Ibn Ezra, *Torat Hayyim Devarim*, p. 188, who, in explaining the reasoning for *lo yilbash*, links sex differentiation to separate sex roles and avoiding promiscuous behavior during times of war.

<sup>749</sup> Eliezer Waldenberg, *She'eilot u-Teshuvot Tzitz Eliezer*, vol. 20, no. 31, Refael Hayyim Kohen, Jerusalem, 1994, pp. 83-7.

<sup>750</sup> Sefer ha-Hinnukh, no. 542.

<sup>751</sup> While one could plausibly posit the essentialist position that women are inherently excluded from warfare without extending the same logic to all cases of *lo yilbash*, this view certainly does fit neatly with the larger trend toward essentialism.

whether R. Eliezer ben Yaakov outlaws women from engaging in battle or wearing armor, R. Waldenberg contends that both are prohibited, the former based on the Sifre, and the latter owing to the Bavli. He uses this to emphasize the broad scope of the prohibition. R. Waldenberg concludes by emphasizing that the stringency assigned to this sin is manifest in the concluding phrase of the verse, which designates cross-dressing an abomination. The reason, R. Waldenberg explains, is that “the Torah descended to the end of a person’s mind, that when he breaches the boundary of this prohibition, he will become lowered and ultimately come to actions that are most disgraceful and abominable.”

R. Waldenberg’s presentation thus intertwines the themes of gender-appropriate behavior and promiscuity, all to the effect of ruling that women are barred from enlisting in the army, underscoring the distinct new trend in which *poskim* accentuate the practical ways in which *lo yilbash* applies specifically to women, particularly around questions of modesty and gender roles.

Yet this argument is far from self-evident. Precisely given the influence of Maimonides's reciprocal reading of *lo yilbash* on Shulkhan Arukh and subsequent authorities such as R. Danzig, it is logical to argue that that far from being depicted as the quintessential male garment, armor may simply be viewed as just one example of men’s clothing. If this is the case, it is reasonable to assume that its norms should be contingent on changes in time and place. Indeed, Maimonides,<sup>752</sup> Tur,<sup>753</sup> and Shulhan Arukh<sup>754</sup> quite

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<sup>752</sup> *Hilkhoh Avodah Zarah* 12:10.

<sup>753</sup> *Yoreh De'ah* 182.

<sup>754</sup> *Yoreh De'ah* 182:5.



clearly indicate that cultural changes impact the permissibility of men wearing women's clothes and, presumably by extension, women wearing men's clothing as well. (Tur and Rama in his gloss to Shulhan Arukh make the latter point explicitly.) Their presentation also quite clearly indicates that they see armor exclusively as a prohibited ornament for women. This leads to the straightforward halakhic argument that *lo yilbash* does not apply to contemporary women who enlist in the army, as women in Israel and throughout much of the West commonly serve in the military. Further, the halakhic consensus is that society-at-large, not just the religious community, establishes gender norms in regard to *lo yilbash*.

Others<sup>755</sup> make the point that there are numerous additional difficulties with the application of *lo yilbash* to women's military service. It is highly unusual for contemporary *poskim* to rely on texts such as the Targumim and Sifre where these sources are not accepted as practical *halakhah* by Shulhan Arukh and subsequent authorities. Further, Maimonides and Shulhan Arukh quite clearly prohibit women from wearing armor, but not from carrying weapons. This indicates that they do not accept the *midrashim* regarding Yael for practical halakhic purposes, and understood R. Eliezer ben Yaakov to prohibit armor and not weaponry.<sup>756</sup> Further, it is not at all clear that contemporary uniforms are comparable to the heavy protective armor of prior eras. Finally, even if it were otherwise prohibited for women to carry weapons, many decisors

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<sup>755</sup> R. Daniel Wolf, who authored the relevant section of Beit Hillel's responsum supporting women who wish to enlist. The responsum is available at Daniel Wolf, "Sheirut Mashmanti le-Nashim be-Sheirut Leumi u-VeTzahal, Chap. 3 - Issur Nesi'at Neshek," *Beit Hillel: Hanhagah Toranit Keshuvah*, vol. 7, 2014, pp. 12–4.

<sup>756</sup> See similarly R. Avraham Danzig, *Binat Adam* 74, *ibid.*, s.v. *ve'omnam*. However, R. Moshe Feinstein (*Orah Hayyim* 4:75) and R. Ovadia Yosef (*Yehaveh Da'at* 5:55) apparently understood Maimonides's ruling to encompass weapons as well.

accept the position of R. Sirkes that one must have intent for promiscuity in order to violate *lo yilbash*. If a woman signs up for a women-only army unit, or to serve in Intelligence, it is hardly convincing to assert that she seeks to engage in illicit heterosexual activity.<sup>757</sup>

Accordingly, an increasing number of rabbinic voices have argued that a cogent reading of the sources leads to the straightforward conclusion that *lo yilbash* does not serve to prohibit women from serving in battle. For example, R. Yehuda Herzl Henkin<sup>758</sup> makes precisely this argument, albeit only as a *limmud zekhut*, in defense of religious women who opt to enlist. While he is personally inclined to discourage women from enlisting in the army, R. Yuval Cherlow<sup>759</sup> observes that in general the textual sources on each side of the argument are scant. While he acknowledges that *lo yilbash* provides for a more focused and substantial argument than some of the other claims set forward in opposition to women's army service, he argues that it is not nearly weighty enough on its own to serve as a foundation for the impassioned, ideologically-charged debates swirling in Israel today.<sup>760</sup>

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<sup>757</sup> See too R. Isaac ha-Levi Herzog, *Pesakim u-Ketavim*, vol. 1, *Orah Hayyim*, Mossad ha-Rav Kook, Jerusalem, 1989, no. 52, p. 241, who suggests that even R. Eliezer ben Yaakov may permit a woman to join the army in non-combat roles.

<sup>758</sup> Yehuda Henkin, “*Nesiat Neshek al Yedei Nashim ve-Sheirutan ba-Tzava*,” *Tehumin*, vol. 28, 2008, pp. 271–3.

<sup>759</sup> R. Cherlow, “*Giyus Banot le-Tzahal? Zo Lo She'eilah Hilkhaitit*,” *Kipa*, 26 Dec. 2013, <https://g.kipa.co.il/843483/e/>.

<sup>760</sup> For additional rabbinic voices that have lent their support to women serving in the army over the last decade, see Noyman, pps. 61–6.

Among those strongly opposed to women's army service, some set forward forced arguments in defending the applicability of *lo yilbash* to our topic,<sup>761</sup> but others have increasingly acknowledged that this controversy is not subject to a halakhic ruling in the narrow sense of the term. As one author who strongly opposes women's military service puts it, it is precisely because this prohibition does not appear in Shulhan Arukh that we must heed the advice of leading Torah sages. After all, he says, "Not everything is *halakhah*."<sup>762</sup>

Despite these arguments to the contrary, *lo yilbash* still figures prominently in discussions surrounding our issue. This points not only to the urgency surrounding the question of female enlistment, but also the new essentialist reading of *lo yilbash* that has taken root in the contemporary period, particularly as women enter domains traditionally reserved for men.

#### IV. Women in Pants

Polemics surrounding the propriety of women wearing pants have been ongoing for at least half a century. While one would be hard-pressed to contend that pants are inherently masculine in the way that some contend in regard to armor, we nonetheless

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<sup>761</sup> R. Yoezer Ariel ("Lish'eilat Giyyus Banot le-Tzahal," *Emunat Itakha*, vol. 105, 2015, pp. 88–96) cites Tosafot in *Bava Batra* (2a) in regard to the monetary norms for constructing walls between neighbors' yards as a basis for the argument that not all customs are accepted as legitimate in the eyes of Jewish law. This is true, but these uses of the term "custom" are completely different, and one should have no bearing on the other.

To reconcile Maimonides with the simple reading of R. Eliezer ben Yaakov, R. Moshe Dov Wilner Willner ("Giyyus Nashim la-Tzava," *Tzomet*, [https://www.zomet.org.il/?CategoryID=282&ArticleID=376#\\_ftnref1](https://www.zomet.org.il/?CategoryID=282&ArticleID=376#_ftnref1)) suggests the innovative reading that Maimonides prohibits women from wearing armor whether or not they are fighting a war, and carrying weapons only during wartime. He then struggles to explain why this distinction holds given that Maimonides's concern for promiscuity (we can add idolatry as well) does not permit this distinction between wartime and peacetime.

<sup>762</sup> Daniel Sagron, "Giyyus Banot la-Tzava - Lo ha-Kol Halakhah," *Kipa*, 10 Nov. 2016, <https://g.kipa.co.il/883655/>.

find some unusual stringencies among decisors, including new halakhic stringencies regarding the question of who determines the societal norms of female attire. Above all, we find the novel category of a “*shem mihnasayim*,” “the name of pants,” invoked as an argument for stringency, notwithstanding the fact that this category has almost no precedent in the halakhic literature on *lo yilbash*.

The earliest responsum regarding the permissibility of women wearing pants was penned by R. Yekutiel Yehuda Teitelbaum (1808-1883),<sup>763</sup> who ruled that women may wear pants beneath their skirts during the cold winter months. Adopting the view of R. Sirkes that one may wear any clothing of the opposite sex for purely functional purposes, he argues that R. Sirkes’s logic would certainly permit a woman to wear pants beneath a skirt to stay warm. He further notes that women's pants are clearly different from those of men; accordingly, he adds, in any case *lo yilbash* is inapplicable. R. Teitelbaum does, however, oppose those women who wear hats for the purpose of appearing like men, even though there are subtle differences between those worn by men and women. He argues that since, in the end, they are both called hats, the onlooker knows that the woman’s intention is to dress in a fashion resembling men. For this reason, he concludes, women who wear these hats are not considered to be doing so for purely functional purposes, and so R. Sirkes’ leniency is inapplicable.

In a widely-publicized responsum,<sup>764</sup> R. Ovadia Yosef, while strongly opposed to women wearing pants for reasons of modesty, follows R. Teitelbaum in ruling that a

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<sup>763</sup> Yekutiel Yehuda Teitelbaum, *She'eilot u-Teshuvot Avnei Tzedek, Yoreh De'ah Mahadura Tinyana, Mehuder*, NY, 2020, no. 72, pp. 292-4.

<sup>764</sup> *Yabia Omer, Yoreh De'ah* 6:14, *ibid*.

woman who wears pants does not violate *lo yilbash*. He reasons that one who wears pants for reasons of physical comfort may rely on R. Sirkes; that women's pants are generally a different color and shape than men's clothing; and that even if they were the same as men's clothing, the prohibition does not apply to gender-neutral clothing.<sup>765</sup> R. Yosef therefore rules that if forced to choose between a school policy in which girls wear skirts above their knees or pants, administrators should opt for the latter.

Yet a number of other decisors insist that women who wear pants do violate *lo yilbash*, even where those pants are different from those of men. Perhaps the best-known advocate for this position is R. Yitzhak Weiss,<sup>766</sup> who insists that even if women's pants differ visibly from those of men, "they still have the name of pants upon them" and are therefore prohibited. In support of this position, he quotes R. Teitelbaum's ruling prohibiting women from wearing women's hats because they are still called hats. R. Weiss even draws the logical conclusion that women may not even wear pants in private settings - a radical but seemingly inevitable consequence of the application of *lo yilbash*.

R. Weiss then considers whether women may wear pants beneath a skirt while skiing, and again responds in the negative. He contends that even R. Sirkes would agree to this stringent ruling: R. Sirkes does not permit cross-dressing for any purpose whatsoever, only for necessities such as warmth. Functioning in the heat and cold is a basic necessity, such that R. Sirkes permits women to wear men's clothing under such

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<sup>765</sup> This follows the overwhelming consensus among authorities, despite R. Wosner's aforementioned reference to Sefer ha-Hinnukh and R. Emden. As R. Yosef and others point out and as noted by R. Shlomo Eidels (*Maharsha, Hiddushei Aggadot, Nedarim* ad loc.), this also appears to be the implication of *Nedarim* 49b, which records that R. Yehuda ha-Nasi and his wife shared a cloak.

<sup>766</sup> Yitzhak Weiss, *Minhat Yitzhak*, vol. 2, *Hotza'at Sefarim Minhat Yitzhak*, 1993, no. 108, pp. 113-4.

circumstances. One's skiing outfit, however, is not at all essential. After all, R. Weiss concludes, "Who permitted her to go to ski, and to put on men's clothing? Let her not ski and not wear..."

R. Weiss's strong desire to rule stringently is self-evident, including his presentation of *lo yibash* as integrally connected to the larger topic of modesty. His position regarding women wearing pants in private carries dramatic implications for those who accept his rulings. But perhaps of greatest halakhic significance is R. Weiss' formalization of the category of male attire. Other than the remark of R. Teitelbaum regarding hats, there is no halakhic precedent for this category of "*shem mihnasyim*." Certainly, if the concern is for immodesty or an unstated desire to breach boundaries, we would expect that the eye of the beholder, not a formal-legal category, should be decisive.<sup>767</sup> Apparently, however, the notion of masculine and feminine garments have been reified to the point that pants objectively constitute men's clothing, irrespective of whether or not that particular fashion is in fact worn by men.<sup>768</sup>

R. Wosner's treatment<sup>769</sup> is similarly telling. He is transparent in indicating that owing to concerns of immodesty, his desire is to rule strictly in regard to women wearing

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<sup>767</sup> Indeed, a close reading of R. Teitelbaum indicates that he does not mean to set forward a formal-legal category of "male hats," but simply that in his particular cultural environment, women who wore hats were widely understood to be mimicking male attire.

<sup>768</sup> For a lenient ruling regarding pants that do not adhere tightly to the skin, see R. Yehuda Herzl Henkin, vol. 2, *Ma'amar Benei Banim*, 1:38, p. 211, who cites his grandfather as having ruled leniently in regard to loose-fitting pants; as well as vol. 4, 28:6, p. 141. R. Melamed holds that *lo yibash* does not apply (*Peninei Halakhah: Sefer Mishpahah*, 7:8, Yeshivat Har Bereikhah, 2018). See also *Siah Nahum* no. 119, who rules that in principle, modest pants are permissible, but one should be mindful not to contravene the accepted customs of halakhically-committed members of one's community.

<sup>769</sup> Shmuel Hha-Levi Wosner, *Shevet ha-Levi*, vol. 2, 2002, no. 63, pp. 83-4. See too his discussion in Wosner, *Shevet ha-Levi*, vol. 6, 2002, 118:2, p. 119.

pants. He therefore applies *lo yilbash* even while acknowledging that given the influential position of R. Sirkes, this conclusion is far from ironclad. He adds that in any case, wearing pants for women is prohibited due to their being the clothing of “immodest women.” He goes on to argue that the daughters of Israel preferred to give up their lives rather than be coerced to wear immodest clothing, and all the more so that the same would apply to pants. His explicit bias is revealing: *lo yilbash* is not only a prohibition in its own right, but part and parcel of the larger rabbinic attempt to combat the rise of *peritzut* (promiscuity) in the modern world.

R. Eliezer Waldenberg<sup>770</sup> is also in strong agreement with the stringent view, furiously pushing back against those who seek to rule that women may wear pants on the basis of R. Teitelbaum’s lenient ruling. R. Waldenberg insists that we cannot possibly compare one who wants to be warm with one who desires to wear pants throughout the year. The latter, he insists, is self-evidently motivated by the promiscuous desire to dress like men. In a manner highly reminiscent of R. Wosner, he also sees *lo yilbash* as a halakhic guardrail against immodesty. R. Waldenberg’s position is particularly interesting in light of his aforementioned position seeing *lo yilbash* as establishing different roles for men and women in society: apparently, it simultaneously seeks to maintain modesty standards as well.

R. Menashe Klein’s<sup>771</sup> treatment of this question is revealing in a slightly different way. While strongly opposed to women wearing pants on grounds of modesty, he is inclined toward the position that *lo yilbash* is not applicable to women who wear pants,

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<sup>770</sup> Waldenberg, *She'eilot u-Teshuvot Tzitz Eliezer*. vol. 11, Refael Hayyim Kohen, 1973, no. 62, pp. 159-163.

<sup>771</sup> Klein, *Mishneh Halakhot* *ibid.*, 12:353, p. 201.

though he is less certain than R. Ovadia Yosef on this point. Tellingly, however, he concludes that even if *lo yilbash* technically does not apply, we must oppose women wearing pants because it is motivated by a similar spirit, namely the desire for women to be similar to men.<sup>772</sup> This perspective appears to accentuate the notion that there is a “spirit of the law” regarding *lo yilbash* that extends beyond the strict letter of the law. This is yet another way in which the *poskim* link *lo yilbash* with contemporary modesty concerns.

## V. Other Applications

The new move to see *lo yilbash* as part of the larger effort to maintain communal gender roles is evident in a number of additional rulings, particularly issued by Ultra-Orthodox decisors, that extend *lo yilbash* far beyond the bounds ever previously considered. Even a small sampling is more than ample to demonstrate just how far-reaching these rulings are.

Some<sup>773</sup> contend that even Hasidic women who have the custom to shave their heads may not do so fully, because that is the way of men.<sup>774</sup> This emphasis on hair cutting - now ironically applied to women - is highly reminiscent of many of the earlier

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<sup>772</sup> R. Ovadia Hadaya, *She'eilot u-Teshuvot Yaskil Avdi*, vol. 5, 2nd ed., *Midrash Hadaya*, 1980. no. 20, pp. 93-4) compellingly rebuts the claim that pants are necessarily men's clothing, arguing that in previous generations men and women wore essentially the same clothing, and no one protested. What is more, the only legitimate question is whether the prohibition depends on the purpose with which the clothing item was made, or the intention the wearer had when donning the clothing. In this case, however, judged by either consideration, it is clear that there is no attempt on the part of the woman to mimic men. Thus, *lo yilbash* does not apply. R. Hadaya does go on to prohibit women from wearing pants on grounds of immodesty but not for reasons of *lo yilbash*.

<sup>773</sup> Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 9, *Makhon Mishneh Halakhot*, NY, 2008, no. 419, pp. 227-9. For further sources, see *Encyclopedia Talmudit*, vol. 34, *lo yilbash*, n. 410-413.

<sup>774</sup> Following this trend, it is not surprising that we regularly find the term “*hippukh*,” the opposite, in this context. Thus, in relation to pants, R. Klein writes that just as men may not perform even one small act that resembles femininity, such looking in a mirror or dyeing his beard, so too “the opposite” holds for women (*Mishneh Halakhot* 12:353). Similar formulations appear in numerous contemporary responsa.



halakhic discussions regarding men and hair depilation. While this suggestion may have some basis in R. Danzig's ruling that women may not beautify themselves like men, the very application of severe hair restrictions to women was unheard of in earlier eras.

Similarly, as smoking is known to be widely viewed as an activity associated with Ultra-Orthodox men, R. Moshe Shternbuch<sup>775</sup> rules that a woman who smokes, even in private, must be concerned for the biblical violation of *lo yilbash*. He also defines the scope of *lo yilbash* based on the practices of the "modest women" - a position that has some basis, but, as we have seen, is not the straightforward ruling.<sup>776</sup> In general, R. Shternbuch's presentation almost entirely conflates modesty and the sanctity of the daughters of Israel with *lo yilbash*. The application of *lo yilbash* to smoking also dramatically expands the scope of *lo yilbash* to encompass any behavior by women that is recognizably associated with men. By casting *lo yilbash* in terms that are unique to the sanctity of the Jewish woman, R. Shternbuch intertwines *lo yilbash* with the struggle to urge women to retain their modesty and sanctity.

While these rulings may seem extreme, they are part of a larger pattern. Another *Haredi* decisor<sup>777</sup> raises the possibility that a woman may not drive a car due to *lo yilbash*. And a full-length book on the rules of *lo yilbash*<sup>778</sup> dedicates numerous chapters to in-depth analyses of analogous questions that the author posed to R. Shalom Sinai,

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<sup>775</sup> Moshe Shternbuch, *She'eilot u-Teshuvot Teshuvot ve-Hanhagot*, vol. 1, 1992, *Yoreh De'ah* no. 456, p. 314.

<sup>776</sup> This is against the simple thrust of the larger halakhic literature. See *Otzar ha-Geonim to Nazir* 58b and *Perisha to Yoreh De'ah* 182:5. For additional sources, see *Encyclopedia Talmudit*, vol. 34, *lo yilbash*, n. 213.

<sup>777</sup> R. Hayyim Kanievsky, cited by Zev Stieglitz, *Sefer Asiha: Teshuvot u-Veiurim mi-Maran Sar ha-Torah ha-Gaon Rav Hayyim Kanievsky*, vol. 2, 2002, p. 328.

<sup>778</sup> Gamliel Rabinowitz, *Gam Ani Odekha: Teshuvot mei-HaGaon Rav Shalom Meir Sinai be-Hilkhot ve-Dinei Lo Yilbash*, *Makhon Gam Ani Odekha*, 2016.

including whether *lo yilbash* prohibits women from riding bicycles, using a *shtender*, and wearing white shoes on Yom Kippur.<sup>779</sup> *Lo yilbash*, which in Talmudic times was overwhelmingly deployed in relation to men's beautification, is now overwhelmingly applied to women's dress and even activities.

## VI. Contemporary Leniencies for Men

By comparison, contemporary discussions of men and *lo yilbash* are more mixed. On the whole, certainly in comparison to questions regarding women's behavior and in comparison with much of the prior literature regarding men, contemporary *poskim* tend toward leniency. For example, granting that the idea that in places where it is the norm for men to look in the mirror it is permissible for them to do so already appears in Beit Yosef<sup>780</sup> and is codified by R. Moshe Isserles,<sup>781</sup> today's near-universal consensus is to rule leniently regarding mirrors as well.<sup>782</sup> This includes R. Moshe Feinstein<sup>783</sup> and R. Ovadia Yosef.<sup>784</sup>

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<sup>779</sup> To appreciate the extreme nature of this position, which extends *lo yilbash* to include non-beauty actions, simply compare these rulings with the following comment of R. Feinstein: "And mere actions that women perform were not prohibited" (*Iggerot Moshe, Yoreh De'ah* 2:61, *ibid.*).

<sup>780</sup> Karo, *Yoreh De'ah* 156.

<sup>781</sup> Karo, *Yoreh De'ah* 156:2.

<sup>782</sup> As R. Hayyim Halberstam, *She'eilot u-Teshuvot Divrei Hayyim*, vol. 2, Bobov, 2002, *Yoreh De'ah* no. 62, pp. 303-4, puts it: "All authorities have agreed regarding a mirror [that it is permissible to men]; and in any scenario in which women and men perform the same thing, the prohibition of *lo yilbash* is inapplicable."

See, however, Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 11, *Makhon Mishneh Halakhot Gedolot*, 2008, no. 29, pp. 35-6; and Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 5, *Makhon Mishneh Halakhot Gedolot*, 2008, no. 8, pp. 29-30, who argues that one may not use a mirror to position *tefillin* properly, and even invokes the principle of *ein kateigor na'aseh saneigor* in noting the irony of using a prohibited item to facilitate the fulfillment of a *mitzvah*. Yet this insightful but practically extreme position is the exception that proves the rule: *poskim* overwhelmingly rule that men today may use mirrors, for *tefillin* and otherwise.

<sup>783</sup> Feinstein, *Iggerot Moshe Yoreh De'ah* 2:61.

<sup>784</sup> Yosef, *Yehaveh Da'at* 6:49.

More significant, while the third Rebbe of Habad, R. Menahem Mendel Schneerson, had claimed<sup>785</sup> that men who shave violate *lo yilbash*, this too is roundly rejected by contemporary authorities including R. Feinstein,<sup>786</sup> R. Yosef,<sup>787</sup> and R. Auerbach.<sup>788</sup> More telling, it is even rejected by Hasidic authorities (who are generally more stringent regarding shaving than Lithuanian rabbis) such as R. Klein.<sup>789</sup>

Another area of widespread leniency concerns men who use scented soap. R. Klein,<sup>790</sup> for instance, draws on *Shabbat* 50a in ruling that a man may use scented soap so long as his intention is for the service of God and not to attract women. R. Hayyim Dovid ha-Levi<sup>791</sup> rules leniently along similar lines, adding that it is common practice to sprinkle scented mists in synagogues and other public spaces upon celebratory occasions. He adds that one's motivation, usually to remove a foul odor during the summer months, is quite innocent.

Yet another area of relative contemporary leniency concerns a man who dyes hair for professional purposes. In the 19th century, for purposes of comparison, the question

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<sup>785</sup> Menahem Mendel Schneerson, *She'eilot u-Teshuvot Tzemah Tzedek le-Yoreh De'ah*, vol. 1, Kehot Publishing, 1994, no. 93, pp. 158-172.

<sup>786</sup> Feinstein, *Iggerot Moshe Yoreh De'ah* 2:61 s.v. *u-mah*.

<sup>787</sup> Yosef, *She'eilot u-Teshuvot Yabia Omer*, vol. 9, Jerusalem, 1986, *Yoreh De'ah* no. 10, pp. 282-290.

<sup>788</sup> R. Shlomo Zalman Auerbach, *Halikhot Shlomo al Hilkhoteh Tefilla*, vol. 1, *Tefillah* chap. 2, n. 34, p. 12. It should be acknowledged that while R. Auerbach does not appear to accept the ruling of *Tzemah Tzedek* as a matter of strict *halakhah*, he does encourage those who are stringent in many other matters to be stringent here as well.

<sup>789</sup> Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 19, no. 132, pp. 241-3.

<sup>790</sup> Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 12, no. 73, p. 41.

<sup>791</sup> Hayyim Dovid ha-Levi, *Aseh Lekha Rav*, vol. 8, *Va'adah le-Hotza'at Kitvei ha-Gaon Rabbi Hayyim ha-Levi*, Tel Aviv, 1988, no. 50, pp. 144-5.

had arisen concerning a rabbi who had a condition causing one side of his head and facial hair to be black and the other side white. This caused him significant embarrassment, particularly given his public role in the community. When he posed the question as to whether or not he may dye his head black, the majority of authorities ruled strictly.<sup>792</sup>

More recently, however, a greater number of halakhic decisors have inclined toward leniency. To be sure, this trend is far from universal. For example, after defending the ongoing relevance of the prohibition of plucking white hairs, R. Vosner<sup>793</sup> addresses the question of a man dyeing his hair to avoid embarrassment. Rather than rule permissively outright, he prefers a creative halakhic solution of cutting off both black and white hairs in such a way that there is no longer any embarrassment, rather than rule permissively outright. Similarly, R. Weiss<sup>794</sup> is initially inclined to rule stringently on the basis of the majority of 19th-century authorities, though ultimately he sees room for leniency in the case of one with a diagnosable medical condition causing the discoloration. R. Elyashiv<sup>795</sup> is also inclined toward stringency unless the dye is a shade of black that women do not generally use, and R. Moshe Shternbach<sup>796</sup> is stringent about dyeing one's hair for financial reasons. And R. Klein<sup>797</sup> addresses the case of a fifty-year

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<sup>792</sup> For a summary of these views, see *Minhat Yitzhak*, vol. 6, *Hotza'at Sefarim Minhat Yitzhak*, 1993, no. 81, pp. 161-3.

<sup>793</sup> Shmuel ha-Levi Vosner, *Shevet ha-Levi*, vol. 3, 2002, no. 111, pp. 138-9.

<sup>794</sup> Weiss, *Minhat Yitzhak*, vol. 6, no. 81.

<sup>795</sup> Yosef Shalom Elyashiv, *Kovetz Teshuvot*, vol. 1, 2000, no. 81, pp. 119-120; see also *Kovetz Teshuvot*, vol. 3, 2003, no. 128, pp. 167-174.

<sup>796</sup> Shternbuch, *She'eilot u-Teshuvot Teshuvot ve-Hanhagot*, vol. 1, no. 461, pp. 315-6.

<sup>797</sup> Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 16, *Makhon Mishneh Halakhot Gedolot*, 2008, pp. 75-6.

old penitent who had expressed the desire to dye his hair in order to marry a woman young enough to bear children. R. Klein maintains that such behavior certainly violates the law of *ona'ah*, and is ambivalent as to whether or not *lo yilbash* applies.

These more stringent rulings notwithstanding, some of the most prominent decisors have ruled leniently regarding this question. R. Moshe Mordekhai Epstein received an inquiry from R. Eliezer Preil of Elizabeth, New Jersey, who had ruled that one may use dye to darken one's hair in order to be taken more seriously as a candidate for a professional position. A veritable who's who of top-tier *poskim* rule leniently in numerous similar circumstances, including R. Yehiel Yaakov Weinberg,<sup>798</sup> R. Yosef Meshash,<sup>799</sup> R. Auerbach,<sup>800</sup> R. Feinstein,<sup>801</sup> and R. Waldenberg.<sup>802</sup> R. Klein<sup>803</sup> permits a man to undergo plastic surgery to fix a blemish that causes him embarrassment. This impressive collection of *poskim*, taken together, offers a more balanced impression than the stringent consensus among 19th-century *poskim*.

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<sup>798</sup> Yehiel Yaakov Weinberg, *She'eilot u-Teshuvot Seridei Eish*, vol. 2, *Mossad ha-Rav Kook*, 2003, no. 81, pp. 204-215.

<sup>799</sup> Shalom Meshash, *Shemesh u-Magen*, vol. 1, *Defus Aleph Bet*, 1985, *Yoreh De'ah* no. 19, pp. 179-181.

<sup>800</sup> Cited by Avraham Avraham, *Nishmat Avraham*, vol. 2, 1985, *Yoreh De'ah* 182, p. 75. While the actual language he cites in the name of R. Auerbach does not clearly point to a lenient ruling, the presentation in *Nishmat Avraham* makes it clear that he understood R. Auerbach to have ruled leniently.

<sup>801</sup> Feinstein, *Iggerot Moshe Yoreh De'ah* 2:61, in regard to dyeing one's hair in order to procure a job.

<sup>802</sup> Waldenberg, *She'eilot u-Teshuvot Tzitz Eliezer*. vol. 22, *Refael Hayyim Kohen*, 1996, no. 14, p. 21, cites R. Preil and R. Epstein approvingly.

<sup>803</sup> Klein, *She'eilot u-Teshuvot Mishneh Halakhot*, vol. 4, *Makhon Mishneh Halakhot Gedolot*, 2008, no. 247, pp. 438-9.

Even in regard to men, there are some areas in which contemporary authorities are not so quick to rule leniently, such as men wearing earrings,<sup>804</sup> growing long hair,<sup>805</sup> and depilating pubic hair.<sup>806</sup> Still, the thrust of these prohibitions is consistent with the larger picture we have portrayed: authorities tend to rule stringently in these cases due to concerns for blurring the fundamental distinction between men and women. One gets the overall impression that contemporary decisors, who are sensitive to the cultural winds of feminism, are also sensitive to men's actions that appear to blur the line between the sexes. This counter-trend notwithstanding, the larger trend toward stringency on females stands.

## VII. Halakhic Responses to Gender Transition

Most recently, *poskim* have begun writing a new chapter in the unfolding narrative of *lo yilbash*: rulings regarding the question of transgender transitions. The evolution from prior discussions to these newer questions is closely correlated with the movement from second- to third-wave feminism: instead of analyzing the place of women in society, now the question revolves around the very notion of gender identity. The literature regarding the permissibility and halakhic ramifications of gender transition

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<sup>804</sup> R. Yaakov Ariel, "Agil la-Gever - Hesber Teshuvah," *Le-Ma'aseh: Actualiah Hilkhaitit*, <https://www.toroland.org.il/15654>. Others distinguish between a man who wears one earring, which does not fall under the rubric of *lo yilbash*, and one who wears two earrings. R. Cherlow rules permissively so long as the child is being encouraged to grow in a religious path ("Agil la-Yeled," *Moresheet*, 2002, <http://shut.moresheet.co.il/shut2.asp?id=11941>). Yet others acknowledge that it is difficult to rule stringently, but nonetheless strongly discourage such behavior in any case.

<sup>805</sup> R. Aharon Lichtenstein, for example, expresses concern that this may constitute a biblical violation. See "Be'Inyan Giddul Sei'ar Arokh." *Torat Har Etzion*, 24 Jan. 2017, <https://etzion.org.il/he/halakha/yoreh-deah/topics-yoreh-deah/letting-ones-hair-grow-long>.

<sup>806</sup> R. Lior rules stringently ("Hasarat Sei'ar be-Laser ve-Sakin," *Atar Yeshiva*, <https://www.yeshiva.org.il/ask/22106>), though others are open to the possibility of leniency (Gideon Weitzman, "Gilu'ah la-Gever," *Atar Yeshiva*, <https://www.yeshiva.org.il/ask/44545>).

treatments, hormonal and operative, is still emerging,<sup>807</sup> and authorities marshal a wide range of arguments in prohibiting one from transitioning. Still, broadly speaking, we can outline four major arguments proffered by those who cite *lo yilbash* in opposition to sex change. A number of these rulings exemplify the same trends we observed among contemporary *poskim* regarding women and *lo yilbash*.

One school argues that one who transitions violates cross-dressing in the narrow sense of the term. One author,<sup>808</sup> who was asked about the halakhic status of an individual who had previously transitioned from male to female, asserts that since, in his opinion, *halakhah* sees the birth sex as determinative, the individual violates *lo yilbash* simply by dressing like a woman each day. R. Idan Ben-Ephraim in *Dor Tahapukhot*<sup>809</sup> presents a similar approach<sup>810</sup> with an important nuance.<sup>811</sup> On this view, one who undergoes plastic surgery that reconstructs new sexual organs does *not* violate *lo yilbash*. This follows from the logic explicated the Tana Kama that *lo yilbash* guards against

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<sup>807</sup> For a review of the early literature, see J. David, Bleich, “Transsexual Surgery and Ambiguous Genitalia,” *Judaism and Healing: Halakhic Perspectives*, Ktav, Hoboken, 1981, pp. 74–9.

<sup>808</sup> Yigal Shafran, “*Nituah le-Hahalafat Min*,” *Tehumin*, vol. 21, pp. 17–20.

<sup>809</sup> This work has merited significant scholarly attention. See, for example, Ronit Irshai, Conference on Transgenders and Religion, Harvard Law School March 29–30, 2017. *The Contemporary Discourse on Sex-Reassignment Surgery in Orthodox Jewish Religious Law, as Reflected in Dor Tahapuchot (A Generation of Perversions)*; see also Irshai, “The Construction of Gender in Halakhic Responsa by the Reform Movement: Transgender People as a Case Study.” *Journal of Modern Jewish Studies*, vol. 18, no. 2, 2019, p. 173, n. 9; Hillel Gray, “The Transitioning of Jewish Biomedical Law: Rhetorical and Practical Shifts in Halakhic Discourse on Sex-Change Surgery.” *Nashim: A Journal of Jewish Women’s Studies & Gender Issues*, no. 29, Indiana University Press, 2015, pp. 81–107; and Gray, “Rabbinic and Halakhic Discourse on Sex-Change Surgery and Gender Definition,” in *Homosexuality, Transsexuality, Psychoanalysis and Traditional Judaism*, Routledge, 2019, pp. 263–299.

<sup>810</sup> Ben-Ephraim, *Dor Tahapukhot*, p. 55.

<sup>811</sup> Discussions of the relevance of *lo yilbash* to gender transitioning appear in *Dor Tahapukhot* on pp. 43, 52–5, and 127–138.

incest: because there is no halakhic possibility of engaging in haakhic intercourse with artificial sexual organs, such an individual who cross-dresses does not violate the biblical prohibition of *lo yilbash*.

A second view proposes that gender transition falls under a wider conception of what it means to “dress” like a woman: given that R. Eliezer ben Yaakov prohibits one from adorning oneself like the opposite sex, this certainly falls under that broader scope of the prohibition. One author<sup>812</sup> simply calls this “*dimuy nashim*,” resemblance of women.<sup>813</sup> Ben-Ephraim, who initially embraces this argument before rejecting it on grounds the impossibility of full-fledged incest, describes this at one point as “*shinuy hitzoni*,” an visible outward change,<sup>814</sup> and even goes so far as to refer to it as “*lovesh guf isha*,” wearing a woman’s body.<sup>815</sup>

It is also telling that in formulating his argument, after citing R. Eliezer ben Yaakov’s view that men are prohibited from beautifying themselves like women in any fashion, he is quick to add the prohibition applies equally to women (“*ve-khen le-heifekh*”) without providing halakhic support for this contention. This conforms with the larger trends we have observed: the new extensions of *lo yilbash* to women, which

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<sup>812</sup> Meir Amsel, “*Eikh le-Hayyev et ha-Nehefakh be-Mitzvot*.” *Ha-Maor*, vol. 23, no. 7, Dec. 1972, pp. 13–21.

<sup>813</sup> Amsel, p. 21.

Amsel’s discussion is noteworthy in an additional respect. Earlier discussions of gender transitioning tend emphasize the question of intent in the prohibition. R. Meir Amsel uses exceedingly harsh rhetoric, declaring that “any similarity to women, even regarding hair that no one sees, is only due to his desire for adultery. For since until now he slept with others, his desire now is to be slept with, and both are abominations to God, and fill the earth with promiscuity” (p. 21). While the assumption that every man who transitions does so for purposes of promiscuity is patently incorrect, the application of *lo yilbash* on the basis of concern for promiscuity, along similar lines to Ben-Ephraim, is noteworthy.

<sup>814</sup> Ben-Ephraim, p. 53.

<sup>815</sup> Ben-Ephraim, p. 52.



follows Maimonides, Shulhan Arukh, and Hayyei Adam, if not the face reading of R. Eliezer ben Yaakov or the interpretation of the majority of medieval commentators.

A third position<sup>816</sup> argues that gender transitioning violates an essentialist understanding of *lo yilbash*: it is opposed to the nature that God planted within human beings.<sup>817</sup> This framework is consistent with our prior observation regarding the rise of essentialist explanations for *lo yilbash*.

Finally, Dr. Avraham Steinberg<sup>818</sup> goes yet further, prohibiting transitioning on the basis of the assertion that “this prohibition applies not only to the prohibition of the clothing of another gender, but to any behavior and action that is unique to one gender, when it is performed by the other gender.”<sup>819</sup> This formulation echoes the extraordinarily expansive view of *lo yilbash* we noted in our earlier discussion of twentieth-century halakhic discourse.

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<sup>816</sup> R. Shalom Meir Sinai, *Gam Ani Odekha*, chap. 11, p. 144. This perspective is taken for granted in a number of internet responsa addressing this question. See, for example, Effi Kitzis, “*Yahas le-Shimuy Min al Pi Halakhah*,” *Kipa*, 19 Apr. 2007, <https://g.kipa.co.il/531243/v/>.

<sup>817</sup> Numerous other authorities cite this reasoning, but distinguish it from *lo yilbash*. See, for example, Hananya Teitelbaum, “*She’eilah bidvar ha-Shahtzanut shel Yameinu le-Hapekh Zakhar Linkeiva U-vehiluf*,” *Ha-Maor*, vol. 23, no. 7, Dec. 1972, pp. 10-2, esp. p. 10; Shalom Krauss, “*Bidvar ha-Shikutz shel ha-Hiluf*,” *Ha-Maor*, vol. 23, no. 7, Dec. 1972, pp. 12-3; and Ben-Ephraim, pp. 33, 59-62.

Although one might challenge the assertion that an individual struggling with gender dysphoria is denying one’s true sex, this line of thinking remains commonplace among *poskim*, who overwhelmingly consider one’s birth sex to be determinative of one’s gender identity. At the same time, it is intriguing that in *Dor Tahapukhot* (pps. 69-98), R. Ben-Ephraim grapples at length with the possibility, particularly based on kabbalistic texts, that one’s true sexual identity may be inconsistent with one’s physiology.

<sup>818</sup> Avraham Steinberg, *Encyclopedia Hilkhaitit Refuit*, vol. 5, Makhon Schlesinger, 2006, p. 685.

<sup>819</sup> Steinberg, *ibid*.

## Chapter 12 - Conclusion

### I. Conclusions

Contemporary scholars grapple with hard and pressing questions regarding the nature of masculinity. The question of what it means to be a man is perennially important and also highly relevant to contemporary moral and political concerns. It is both timeless and timely. By contrast, Jewish Studies, and Jewish law in particular, have barely scraped the surface of this area. Yet this study demonstrates that the existing body of literature in general and Jewish Studies scholarship in masculinities, general literature on cross-dressing, and previous work on gender and Jewish law provide a solid methodological framework for thinking productively about halakhic texts. As a result, our analysis simultaneously sheds new light on Jewish masculinities while pointing to numerous promising directions for further research.

An application of the central questions in masculinity studies point us in the direction of a series of foci: Do halakhic texts advocate any of the ideal characteristics of the “rabbinic male” as discussed by Boyarin, his supporters, and his critics? Do the rabbis follow Gilmore in seeing masculinity as anxious? If so, what causes account for this insecurity, and did the rabbis have a positive, negative, or mixed reaction toward this anxiety? Do halakhic texts seek to “craft” or guide men in a particular direction as regards their masculinity? Do they accept, reject, or rework the Roman image of the warrior, whether one who wages war against physical foes and rivals, or who battles his inner demons and desires? What rabbinic attitudes do we find toward a man’s body and virility? What light do those attitudes shed on rabbinic views of women specifically and gender as a whole?

The general literature also helps us to formulate a number of productive questions regarding cross-dressing in particular. Do rabbinic texts reflect the recurring tendency in the West to censure male cross-dressers far more harshly than females? Do halakhic authorities prefer to turn a blind eye toward liminal festivals on which antinomian behaviors such as cross-dressing abound, viewing them as healthy outlets that enable the normative halakhic community to function more effectively throughout the remainder of the year? Or do rabbis publicly oppose these activities because they are simply too objectionable to sanction; because they are liable to increase, not decrease, the likelihood of antinomian behaviors becoming more mainstream in the halakhic community; or because they expose an underlying male anxiety about living in a general and rabbinic culture in which men are unfairly treated as superior to women?

Of course, we ought not expect there to be a single answer to these questions. As in many areas of *halakhah*, we should anticipate finding vigorous debate and ambiguity. Yet we may nonetheless productively seek to identify certain trends that develop over the course of the unfolding halakhic discourse.

Having formulated these questions, our study arrives at a series of conclusions, some firm and others tentative, and enables us to excavate many areas likely to reward further exploration. Most clear-cut are the basic trends in the halakhic literature on *lo yilbash*. First, a series of foundational halakhic texts depart from the face reading of the Bible by increasingly expanding the scope of the prohibition on men while limiting that upon women. This trend is embraced by numerous *Targumim* and by R. Eliezer ben Yaakov as presented in Tannaitic sources, and is most fully developed in the Bavli. At the same time, there are alternative voices in rabbinic literature that adopt a more

reciprocal view of the prohibition. This includes Pseudo-Jonathan, who interprets the verse to prohibit women from wearing *tzitzit* and *tefillin*, and men from shaving certain bodily hairs; and the Tana Kama, who appears to reject R. Eliezer ben Yaakov's ruling that men may not beautify themselves like women.

Second, a number of texts, including Pseudo-Jonathan and the Bavli, as well as numerous commentators place special emphasis on the prohibition of depilating men's pubic and armpit hairs. The substantial literature surrounding the Geonic defense of hair depilation for Jews of Muslim lands, juxtaposed with the acerbic responses the Geonic leniency elicited among the counterparts in Christendom, further highlights this topic and its significance. Third, R. Eliezer ben Yaakov's ruling that women may not wear armor suggests that even as rabbinic men largely were no longer wearing military garb, the rabbis continued to project a martial image of the Jewish male, at least until these images became associated with "the enemy" during the Middle Ages.

The earliest signs of a shift in halakhic emphasis appear among medieval commentators. These authorities, which include the Tosafists and R. Shlomo ben Aderet, are inclined to rule in accordance with R. Eliezer ben Yaakov, and certainly accept the Bavli's strictures. Yet they observe that these stringencies, left unchecked, inevitably lead to what they view as absurd conclusions, such as prohibiting men from looking in the mirror for medical purposes and other necessities. Additionally, consistent with his overarching emphasis on promiscuity and especially idolatry as primary motivations for many *mitzvot*, Maimonides radically reworks the position of R. Eliezer ben Yaakov into a much more even-handed, non-martial perspective prohibiting men and women from wearing one another's clothing in an outwardly visible fashion. While even Maimonides

is compelled to introduce a distinction between men and women, outlawing men from plucking white hairs or dyeing their hair black, the larger thrust of his position, particularly given his subsequent influence on major codifiers including Tur and Shulhan Arukh, proves decisive in the overall development of our subject.

The early modern period is characterized by increasing rabbinic concern with the popular practice of cross-dressing on celebratory occasions. While new research demonstrates that more 15th- and 17th-century authorities rule permissively than previously recognized, by the 17th-century the overwhelming consensus among authorities is to rule prohibitively. At the same time, increasing rabbinic opposition to these activities suggests that rabbinic efforts to ban holiday cross-dressing had been largely unsuccessful. These developments, while motivated by changing “facts on the ground,” nonetheless reflect a significant shift in authorities’ emphasis in discourse on *lo yilbash*: a move from discussions centering on men’s and women’s adornments to full-fledged cross-dressing. The latter area does not naturally lend itself to distinctions between men and women.

Even as they protest these instances of cross-dressing, a number of authorities censure only men, not women. In each case, it is unclear whether this is simply because only men had been cross-dressing, or that the rabbis censure only men *despite* the participation of both men and women. Even if only men had been cross-dressing, the rabbinic protesters make it patently clear that men and women alike had been engaged in promiscuity. Yet the rabbis only censured the men. This suggests that despite the Bible’s equation between men and women, at least some prominent rabbis echo their gentile counterparts in censuring male cross-dressing more heavily than that of women. It is also

telling that at least one outspoken opponent of cross-dressing, R. Zvi Horowitz of Frankfurt, seems to demonstrate profound insight into the psychological motivation for men's antinomian nighttime escapades. Worn down by the heavy yoke of exile, the downtrodden people escape their misery by making merry by night. Ethically uncomfortable with the everyday reality of patriarchy that they saw reflected in the morning blessing of "*she-lo asani isha*," they dress as women at night, as if to relieve some of the burden of their psychological guilt.

These developments are also accompanied by new interest in the role of intention for promiscuity in the prohibition against cross-dressing. This literature, which is partly rooted in the concern for men and women intermingling, gives the Tana Kama's reasoning, if not his practical halakhic ruling, increased prominence. This further sidelines R. Eliezer ben Yaakov, whose stringencies on men had once dominated halakhic discourse on *lo yilbash*.

Building on this new emphasis on reciprocity, and likely also influenced by wider trends in European society, a number of 19th-century rabbinic writers increasingly weave essentialist gender-difference theories into their exegetical and halakhic analyses of *lo yilbash*. While thinkers such as R. Hirsch attribute this position to R. Eliezer ben Yaakov, in fact it may most accurately be understood as a return to what scholars increasingly see as the reasoning animating the original biblical prohibition, a sort of extension of the underlying principle of *kilayim* to the admixing of genders.

The contemporary period sees yet another major development, with numerous scholars enlisting *lo yilbash* to help counter what they see as the encroachments of the feminist movement in Orthodoxy. In a remarkable reversal of earlier trends, numerous

scholars now emphasize the multitude of ways in which *lo yilbash* applies to women. Some authorities even take the apparently unprecedented halakhic step of applying *lo yilbash* not only to matters of physical adornment, but even to *actions* women perform that are uniquely encoded as masculine, including fighting in combat and studying Torah with an emphasis on abstraction, not practical knowledge. (Note that there are no analogues of inherently female activities that are prohibited to men.) Most recently, responding to questions regarding gender transitioning, some scholars have also begun to appeal to *lo yilbash* in arguing that *halakhah* accepts a strict gender binary, at least where not explicitly contraindicated by primary sexual characteristics, or that gendered behavior is defined in unexpectedly broad fashion.

Regarding the contemporary applications of *lo yilbash*, some recent authorities accuse their colleagues of overreach, arguing that *lo yilbash* simply does not provide sufficient grounding for such far-reaching essentialist gender theories.

Beyond weaving a compelling narrative, the halakhic discussions of *lo yilbash* support a number of important conclusions. The association of men with armor suggests that the rabbis seek to retain the image of men as warriors. Possibly, this move stemmed initially from a desire to reinforce men's self-concept in the wake of the catastrophic series of failed revolts that culminated in the Bar Kochba rebellion. It is also likely closely associated with the new rabbinic model of the male scholar-warrior. The halakhic literature surrounding *lo yilbash* thus lends support to the view that the rabbis do not outright reject men's tendency toward aggression, but seek to redirect it in a productive manner that gives men a renewed sense of purpose, and perhaps primacy too, simultaneously ensuring the ongoing vitality of the displaced, exilic Jewish community.

Further, the emphasis on men not adorning themselves with women's accouterments suggests that men are attracted to beautification, and that the rabbis seek to tamp down such desires for beauty. This might be because such pursuits are wont to distract from a scholarly lifestyle, or, much as the Yerushalmi suggests in regard to men who peer in mirrors, because they are considered to be beneath the dignity of men.

The emphasis on the prohibition against depilating pubic hair and the overwhelming emphasis on male hair in the halakhic literature, alongside the extensive evidence that hair is overwhelmingly associated with virility, suggests a high degree of anxiety surrounding the dangers of shorning oneself of one's virility, and possibly in performing a symbolic act of castration. Indeed, notwithstanding the variations in halakhic emphasis over two millennia, the wider theme of masculine anxiety is a constant. This is suggested by the symbolic value of R. Eliezer ben Yaakov upholding the image of men in armor, the Bavli's far-reaching stringency in prohibiting men to even pluck a single white hair, R. Hai's interpretation of the debate over hair depilation as a question of which action is considered "unmanly," the rabbis who call out only the men for cross-dressing and promiscuity, R. Zvi Horowitz's probing comments regarding "*she-lo asani isha*," and the remarkable reversal and even invention of new halakhic principles among multiple eminent contemporary authorities.

How do we make sense of the contemporary transformation of *lo yilbash* to a prohibition centering on women rather than men? Here, at most, we can only offer an educated guess. Given the strong indications that halakhic texts concerning *lo yilbash* reveal a significant degree of anxiety regarding men's self-concept, it is reasonable to interpret contemporary halakhic discourse in light of those earlier developments. We may



conjecture that during the periods in which the *Targumim*, Tannaitic material, and Babylonian Talmud were composed, many Rabbis recognized that their rejection of the martial model of manhood destabilized men's sense of self. Accordingly, they used *lo yilbash* as a means through which to resurrect and refashion men's status. The new warrior was to fight his battles in the study hall, brandish prooftexts as his weapons, and gird himself with counter arguments as protective armor. And because it was first and foremost men themselves who needed to recover their identities, lawmakers initially focused their rulings overwhelmingly on crafting *male* actions and attitudes. For this reason, early rabbinic discussions of *lo yilbash* were overwhelmingly concerned with men, placing little emphasis on the prohibition upon women.

While we might have seen this anxiety as a product of a particular historical circumstance, the recurring later evidence suggests otherwise: the anxiety was not only situational but a constant. If so, it is fair to assume that the contemporary warrior-male similarly feared that his status might be submerged beneath the rising tide of feminism. This signifies a change: the challenge to men's roles is now perceived as emanating not from within but from without. *Lo yilbash* therefore becomes a tool to combat the *external* phenomenon of women adopting men's roles in the community. As a result, *lo yilbash* is now directed primarily at women rather than men. Ironically, the opposite means now serve to achieve the same end, only now by redirecting the preponderance of restrictions toward women.

This study demonstrates a number of the advantages that this approach permits. First, *halakhah* affords a greater degree of clarity than *agadah*. The facts are concrete, and therefore provide a sharper point of departure for analysis. Because it is rooted in

texts and must respond to new internal and external developments, halakhic discourse often lends itself to long-term analysis that evolves over time. Seeing a topic develop over the course of an extended period also enables us to appreciate the uniqueness of each individual era. For instance, the early rabbinic trend to expand the prohibition upon men is all-the-more remarkable in light of the sharp contrast to the biblical verse. Maimonides's attempt to restore reciprocity is all the more impressive for the way in which he seeks to assimilate the view of R. Eliezer ben Yaakov into a Maimonidean framework. And the newfound stringency of *lo yilbash* for women can only be fully appreciated against the backdrop of its departure from the larger thrust of major early halakhic texts.

Finally, an examination of post-Tannaitic and Amoraic texts enables us to better appreciate not only the trends during general time periods. We can to speak with much more conviction about Maimonides's views on *lo yilbash* and masculinity than on R. Eliezer ben Yaakov or the unnamed Tana Kama. Studying R. Hirsch and R. Berlin's respective interpretations of *lo yilbash* can provide important new avenues into considering their thinking on matters of gender, corporeality, and masculinity. An analysis of contemporary halakhists such as Rabbis Feinstein, Yosef, and Waldenberg authorities allows us to cull their respective rulings and develop a larger picture of their thought.

## **II. Future Directions**

Equally exciting but daunting is the dizzying avenues of research that this study opens. We will suffice with noting a few choice examples. On the topic of *lo yilbash* alone, there is much more work to be done in comparative studies, such as between

Roman and rabbinic attitudes; possible parallels between medieval rulings such as those of R. Yehuda he-Hasid and wider medieval attitudes toward cross-dressing; more comprehensive analysis of the contemporary rulings regarding army service, modesty, contemporary rulings *lo yilbash* for men including pubic hair depilation, and developments in the halakhic discourse related to transgenders.

On the larger gender front there are also many more avenues for analysis. How does our topic relate to findings on the attitude of the rabbis toward male beauty in general? Does the Bavli's expansion of *lo yilbash* reflect a larger attitude toward the topic of gender? Is there an ironic connection between Maimonides's insistence on the superiority of men, and his view that *lo yilbash* is not needed to address any thought to the contrary? (Put differently, might he implicitly deny the ubiquity of male anxiety?) What else can be said about the rabbinic association between men and armor, masculine anxiety, and especially the fear of castration, literal or symbolic? Can we pinpoint more specific findings regarding masculine anxiety in each era we studied? In what other ways might we see the development of *halakhah* in the early centuries of the common era as a response to the perceived emasculation of the male warrior? What additional halakhic topics might shed additional light on the questions our study has stimulated?

Yet other intriguing questions, unrelated to masculinity, also beckon. Can we identify any trends among individual *poskim* in regard to their tendency to use or not use novel halakhic arguments as favored tools in seeking to address contentious contemporary issues? (For example, we might hypothesize that R. Yosef's unwillingness to cite *lo yilbash* in outlawing women from wearing pants might reflect a different approach to the role of *halakhah* in polemics than R. Weiss, who both insists that *lo*

*yilbash* is applicable to women who wear pants and champions the concept of *shem mihnasayim*.) Do the exegetical choices of the *Targumim* to our topic reflect larger patterns in their respective approaches? Even as he draws heavily on Maimonides, does Sefer ha-Hinnukh downplay the role of idolatry in his approach to *ta'amei ha-mitzvoit*?

The work on *halakhah* and masculinity is verdant, largely uncharted terrain that will amply reward scholars who venture inside and begin to map its territory. Perhaps it is not to overstate the point to suggest that while recent years may have seen the rise and fall of rabbinic masculinity studies, the study of *halakhah* and masculinity may help the field to rise yet again.

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