

Chapter 5



HALAKHAH, MINHAG AND GENDER

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The subject is "gender," a word that comes to scholarship from the grammarians by way of the lawyers. A weapon in the political and legal struggles of our day for women's rights, the term was invented to avoid using the word "sex." Sex was a difficult word to use; its varied meanings damage it. It is a dangerous word threatening discourse, whereas gender is mild, lessening the danger. Who can be afraid of masculine and feminine nouns and verbs? "In grammar, gender is understood to be a way of classifying phenomena, a socially agreed upon system of distinctions rather than an objective description of inherent traits."¹ But the word has not stood still. Gender has left its innocent origins and become political. This should not disqualify it in our discussion, for a word that is political is alive. It reflects issues that are at the heart of our age. "Gender" positions are a real issue. This allows us to use our contemporary experience to look at the past.

A contemporary category becomes a new window to look at the past. Through this window we are allowed to see what was missed by those who came before us. This is not said in criticism. They had their world view that gave them their windows. Our

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perspective gives us a view and language that allows to do what others have done in every generation, to interpret by restatement.

I have chosen to treat the fate of a mitzvah. It is not at the vital center of *halakhic* debate. Precisely for this reason it is easier to study as successive generations reshape its meaning, guided not only by *halakhah*, but also by *minhag*, the customs of communities shaped by local practices that in turn were influenced by time and place.

The mitzvah is stated Deuteronomy 22:5: *lo yiyeh khli ge'ver al ishah velo yilbash ge'ver simlat ishah ki to-avat adonai eloheikha kol oseh eleh* ("A woman must not put on man's apparel, nor shall a man wear woman's clothing; for whoever does these things is abhorrent to the Lord your God."). It is an interesting statement in its form: two parallel clauses are completed by a third clause explaining the consequence of disobedience. The word translated as "apparel" in the first clause, *kli*, is more commonly translated in the *Tanakh* as "object," "vessel," or "implement." The Targum translates it as "weapon." In rabbinic Hebrew it means "apparel," although "weapon" and "armed" also occur in rabbinic Hebrew.

What is the meaning of the biblical rule? A negative command, it limits. Clearly, men and women are to avoid certain things belonging to the opposite gender. In the case of women we are not sure what "apparel" is. Commentators and translators have speculated. Professor Tigay in the Jewish Publication Society Torah commentary sums up the opinion of both traditional and modern commentators on the verse in three categories: (1) one should not disguise oneself as a member of the opposite sex because this would permit indiscriminate mingling and lead to fornication; (2) transvestism is inherently abhorrent because it obscures the sexual differences God created, "male and female created He them." (3) Transvestism is abhorrent because it was part of pagan rites or magical practices.⁴

Among traditional commentators Rashi explains that men and women exchange garments in order to blend in with members of the opposite sex. Their only purpose must be fornication. Ibn Ezra translating *k'li* as in the Targum, military apparel, remarks that women were not created to fight in war but to perpetuate the seed, clearly defining the social role of men and women. He, too, sees this confusion leading to fornication. A

beardless man mixes easily with women to commit adultery. Ibn Ezra adds an interesting observation that this rule is not only the custom of Israel but of most people.⁵ All these interpretations are based in the rabbinic extension of the verse.

A key to understanding our verse is the concluding phrase that tells us that such behavior is "abhorrent to the Lord your God." "Abhorrent" (earlier translations say "an abomination"), is used to describe a number of forbidden practices. Louis Epstein speaks for many modern scholars of an earlier generation when he informs us with certitude: "The obvious meaning [of "abomination"] is a prohibition against the practice of homosexuality in any form, with which is generally associated wearing the garment of the opposite sex."⁶ Von Rad tells us that the expression "denotes cultic taboos which endanger the religion of Yahweh" and goes on to say that "we learn from a later source (Lucian of Samosata) that in the worship of Astarte such masquerading took place."⁷ Eissfeldt comments that the editors of Deuteronomy took an expression that had been in local use and adopted it to emphasize the purity of the Yahweh cult.⁸

Moshe Weinstein makes a thorough investigation of the expression. He tells us that in the task of investigating all the occurrences of the phrase by examining its subject matter, its

"connection with miscellaneous moral, religious, and cultic interdictions ... can be of little help ascertaining its original cultic significance. We shall learn more by investigating the general nature of the individual malefactions than from their specific subject-matter. Now the general feature common to them all is the two-facedness or hypocritical attitude of the malefactor. ... It is this two facedness or false pretensions assumed when dealing with one's fellow man or in the execution of one's sacrificial dues that is an abomination to God."⁹

To Weinfeld, Deuteronomy is influenced by the Wisdom tradition of the *Tanakh*. He identifies a spirit in the book that he calls "humanism." Part of the humanistic broadening of the law is its inclusion of women in laws concerning both interpersonal and cultic matters. Weinfeld is only partially helpful by changing the direction in our search for the meaning of "abomination unto the Lord." Cross dressing is certainly a form of two-facedness, pretending to be what one is not. But it must mean more,

especially when we remember that it is part of a tradition that is characterized by equalizing many of the distinctions between men and women.

If we bring all these interpretations together we can say that we have a commandment that may have a cultic origin but seeks, by focusing on clothing, to regulate the behavior of men and women. It is a demand for morality. Weinfeld, by placing Deuteronomy in the Wisdom tradition, makes it part of a tradition that is distinguished by moralizing about human behavior. It is important for our purposes to add to our investigation information from another direction.

It is useful to listen to feminists critics. Alice Latey writes: "Distinction between the sexes—not only biological distinction but social distinction—is to be express by a strict regulation of what clothing is appropriate for whom."¹⁰ There is always a social dimension to rules. The social meaning is implicit not only in the public spoken law but more importantly in the unspoken assumptions that are hidden from sight and that govern all relationship in a given society.

Some conclusions about our verse. Its *Sitz im Leben* can be guessed at but never clearly determined. The rule stands alone, nowhere in the *Tanakh* are we told of someone cross dressing. What can we make of the rule makers mind? Clothing is social, civilizing. A human takes "the nakedness into which he is born, and which is 'given' to him" and is no longer satisfied. He "makes for himself clothes," the apron serving both as a protection and an indication of genital potency."¹¹ Men and women are separated by apparel. This seems to be a universal human experience. Unisex is an invention of our time. The clothing we use can be described as modest or provocative, it is designed to hide or to reveal. That is, it plays a sexual role. "It is not sexuality which haunts society, but society which haunts sexuality. Sex-related differences between bodies are continually summoned as testimony to social relations and phenomena that have nothing to do with sexuality."¹²

No wonder that commentators mention aspects of sexuality in relation to the practices of Israel's neighbors. We must qualify that by noting human sexuality was the central metaphor of the fertility cult that so shocked the prophets. If this material is, as

Weinfeld tells us, of Wisdom origin, or as others say, of prophetic or Levitical origin, the conclusion remains the same. A look at all three of these traditions shows the use of sexual metaphors. The language of sage, prophet, and priest insists that basically there are two kinds of women. Mothers, wives, sisters, women of valor, and harlots and temptresses who seek to entice us on the way.

Consider the distinction in our verse between what men and women are forbidden to put on. The *kli* apparel of a man is forbidden for women, *simlah* clothing (perhaps a wrapper), of a woman is forbidden men. In sexual matters men's misbehavior is always different from women. For example, Ibn Ezra helps us see the difference: women's sin is "harlotry," men's "adultery." The harlot is the temptress who tries to lead men astray. Adultery is a legal term, limited by definition to a sexual act between certain parties. After adultery has occurred the female partner is called a harlot. There are no such nasty words used for the man. Harlotry is a word for public disgrace, adultery is a private act that is against the law. When it becomes public in the ritual of the *Sotah*, it is the woman who is tried.

Law is a distorted mirror of the world. But the world never stands directly in front of the mirror. Most often its back is turned, hinting at the unstated assumptions of the world it seeks to control. In scripture we must look at non-legal material to understand the assumptions behind the law. If we look at the creation stories that distinguish between men and women, we see tensions between them. We are first told that "male and female" He created them. Humans are equal in creation. The second story, which may have had equalitarian mythic predecessors, has woman emerging from man. The biblical editor reshapes and focuses the meaning of the first story through the prism of the second. An original unity gives way to sexual role distinction.

We are able to understand this focusing well because we are living through a time when gender roles are going through rapid transformation. As I said earlier, we know that gender roles are socially, that is politically, determined. The function and role of men and women is always being renegotiated and remains in flux. Think of it in our terms: many women adopt men's styles to enter the market place, while men do not wear women's clothing to do housework. We notice that women are defined by men.

Sexual undertones remain. There are also homosexual undercurrents in all of this and themes that are hidden; only they revealed in men's fears of their own and others tendencies. But let me repeat that this symbolism is male. Women who dress like men in our society are seen as seeking power and potency; men dressed as women are often called mentally ill. Looking back at the verse from our present situation we can see the male bias in the law. But we can also see that there are great tensions in the law. It is through the cracks in the law opened by these tensions that we can see women waiting to emerge.

Turning to rabbinic literature at this point we can see the development of our law. The rabbis as they restate the law, conclude that there was more to it than cross dressing. There has to be intention to do wrong. *Sifrei* says: "'A woman must not put on man's apparel.' What does Scripture come to teach us? That a woman shall not put on a white garment and a man shall not be clothed in a colored garment. It is taught (that it is) an abomination." A matter that is in the category of "abomination" is generalized by stating the matter that a woman shall not dress in the way a man dresses and walk among men, nor shall a man adorn himself with women's ornaments and walk among women. Rabbi Eliezer ben Jacob said: "From where do we know that a woman shall not wear armor and engage in warfare? We learn it from 'A woman must not put on man's apparel'¹³ and a man shall not adorn himself with women's ornaments as our text teaches 'nor shall a man wear woman's clothing.'¹⁴

David Hoffman's reconstruction of Midrash *Tannaim*¹⁵ says the same thing in a different order. The talmudic passage dealing with our verse makes the new meaning even clearer. "Rabbi Jochanan said: 'One who removes (the hair of) the armpits or the genital area is to be lashed because (he disobeyed the commandment) 'neither shall a man put on a woman's garment.'¹⁶ The text continues by telling us "that a man is not to use cosmetics as women do." In the same vein we learn in another place in the Talmud that a man is prohibited from picking "out white hairs from black ones."¹⁷ The Talmud concludes that we do not follow the plain meaning of the verse. But rather it must mean more.

What has happened is that we are no longer dealing with the wearing of clothing but the presentation of the self. Men and

women present themselves differently. Men are serious, somber, they dress in white. Women are frivolous at best, enticing at worst. The *Mishnah* list some of the things women do to present themselves: plait their hair, paint their eyelids, rouge their faces.¹⁸ Women are expected to concern themselves with their physical appearance, but men are above such behavior. Women may indulge themselves, behaving in such a way that in a man would be considered vanity. Women are prized for their beauty. Remember that Hillel in his kindness admonishes us always to praise a bride for her beauty.

In addition all women endanger the world defined by the rabbis by their effect on men. They are a potential source of disorder and pollution. Jacob Neusner¹⁹ tells us that in the thought world of the *Mishnah*, men are normal. They define and order this world and the next. Women are abnormal; they are a continual threat. This attitude became normative in the *halakhic* world view. An extreme example will help make the point. Rabbi Isaac Aboab wrote: "Our pious sages saw men according to their nature desiring women and busying themselves with them continually, for the evil inclination incites and tempts to transgress in forbidden things more than permitted ones. Therefore it is necessary to separate man from this temptation and to deliver him from this temptation ... as it is said in tractate *Shabbat*. ...²⁰: 'A woman is a skin bottle full of filth and her mouth is full of blood and all run after her. ...'"²¹

The Talmud in *Nazir* 58b and 59a, defines much of the future discussion. The issues future commentators will raise, which of the extensions of the biblical rule are Torah law, *midoraita*, and which are rabbinic enactments. That is not directly relevant to our issue. But the discussion does list all of the forbidden behaviors that are connected to our verse: shaving of the armpit and genital area by men, cross dressing, and mixing with members of the opposite sex; moreover women should not bear arms, and men should not use cosmetics as women do.

It is with this reshaped meaning that our verse emerges from *tannaitic* literature. Let us see what the codes do to its meaning. Maimonides lists the verse in the *Sefer Hamitzvot*²² as two mitzvot following the Talmud's explanation of their meaning. But a change occurs when he puts them in the *Mishneh Torah*. He clas-

sifies them among the laws of idolatry. They appear in the same chapter as the law forbidding the cutting of the corners of the beard. Maimonides explains this law with a historical note. The corner of the beard are not to be cut because it was the way of idolatrous priests to trim the corners of their beards.²³ By implication our mitzvot also are to avoid idolatry. In his eyes, the avoidance of idolatry is central to Judaism. It is equal to all of the commandments; turning to idols is a denial of the fundamental precepts of Judaism. Maimonides rationalizes the comment by using historical interpretation.

He also limits the rabbinic interpretation of the prohibitions. Men should not shave armpits and genital hair, but "this rule is limited to where women alone remove this hair; a man should not trim himself in a way peculiar to women."²⁴ A woman may not adorn herself with men's special ornaments ... and a man must not adorn himself in a mode peculiar to women ... in a place where such garments and jewels are only worn by women, it all according to the custom of the country."²⁵ Custom (*minhag*) is an important element in deciding what has been forbidden. Maimonides adds important limitations to the law. The way men and women actually dress and groom themselves in the society in which Jews live is the test that will shape the law.

By seeing the prohibitions largely connected with idolatry Maimonides seems to move away from the puritanical mindset of his predecessor. *Sefer Hahinukh*, which is normally faithful to Maimonides, attempts to correct this by combining Maimonides' point of view with the rabbis' reading. Explaining the women's prohibition, he says that it is rooted in the desire "to keep our holy faith far from licentiousness ... Our sages use the metaphor for our God hates libidinousness ... for it is an extremely ugly thing that captures the human heart and turns humans from the goodly way and fitting thoughts to the evil way and frivolous thoughts ... It is also the purpose of this *mitzvah* to keep one far from idolatry for it is the way of idolaters to behave thus."²⁶ He tells us that the source of his explanation is Maimonides. Despite this, it is clear that the main thrust of this argument is away from Maimonides and is turned toward what had become the main understanding of the prohibition. He is following the tradition of the codifiers in the period between Maimonides and himself.

We can see the development more directly if we look at *Sefer Yiraim*. Rabbi Eliezer of Metz was one of the disciples of Rabenu Tam, and he speaks out of the tradition that French and German Jewry will follow. He describes the talmudic sources and list all their prohibitions. But he has an additional note that we should pay attention to because we will hear more about it later. He says: "Dressing [that is, cross dressing] either accidentally or playfully is forbidden. Scripture does not distinguish between normal and accidental [wearing of clothing]. I have seen men dressed in women's clothing playfully and it was distasteful in my eyes."²⁷ He saw it himself. It must have been customary for Jews at wedding celebrations to have people cross dressing for the amusement of the guests. Who these people were, we can only guess at. It seems too early for the kinds of wedding celebrations that we will discuss later, but obviously Rabbi Eliezer was disturbed at people's behavior at weddings.

*Smag*²⁸ follows Rabbi Eliezer as does *Smak*,²⁹ but neither mentions his concern with his contemporaries who cross dress in fun. Apparently this did not a concern them. If it had been important, they would have mentioned it. Rabbi Moses wrote his code for Spanish Jews, whom he had found very lax in their keeping of mitzvot in his journeys as a traveling preacher. Rabbi Isaac, feeling that he was living in an age when Torah was forgotten, wrote his code to call the Jews of France and the Rhineland back to the mitzvot. At any rate we can see that the talmudic meaning of the mitzvot was transferred through the generations. *Smag* spends a great deal of time on the question of which part of the mitzvah is from the Torah and which is rabbinic.

When we turn to the *Tur*³⁰ and *Bet Yosef* we can see the longevity of the talmudic argument. The same discussion is continued especially by Joseph Caro. Both continue Maimonides stricture that all is governed by the customary usage of the place. The *Tur* adds an additional extension of the things forbidden to men: they may not look into a mirror unless it is necessary. The Talmud had forbidden holding a mirror on *Shabbat* but permits using a mirror fixed to a wall³¹ and it also tells us that we should look in a mirror when we go to a non-Jewish barber.³² So the prohibition against looking in a mirror is another way of distinguishing between men and women, emphasizing the non-seri-

ousness of women. They are permitted frivolous vanities because that is their nature.

The *Shulhan Arukh*³³ summarizes the law mentioning that men are forbidden from shaving the armpits and genital areas in a place where only women do this. Isserles is stricter and forbids shaving totally because it is a sign of idolatry. It is also forbidden to rub this hair with the hand in order to remove it, but it is permitted if his clothing rubs and removes it. One who has painful scabs in these areas is permitted to remove the hair. A woman may not wear male adornments such as a turban, or dress in armor, or shave her head like a man. A man may not adorn himself like a woman by wearing colored garments or a golden chain. Isserles again is stricter, remarking that even one of these garments is forbidden even though it is clear that the wearer is a man. He adds that hermaphrodites and others of uncertain sex³⁴ are forbidden to dress as women. A man may not pluck even one white hair out of the dark hair nor may he die his hair. He may not look in a mirror.

We can see clearly how the codes regularize and extend the talmudic texts, explaining them, adding occasional strictures, and in the case of Maimonides revitalizing them. But the language remains essentially the same because the rabbis maintain the continuity of the tradition. It is the explication of the talmudic texts upon which they base their authority and power. To maintain their authority they hold on to the exact language. In the medieval world the four ells of Torah define the place where they stand. But they are not alone. To know only the rabbinic text is not to know the fullness of the lives of Jews. Anthropologists speak of "the Great Tradition," in our case the religion of the rabbis, and the "Little Tradition," the popular religion of every day life.³⁵ It has been the genius of Jewish tradition that at certain stages *minhag*, the product largely of popular religion, breaks into the world of *halakhah* and sets it aside. As we have seen, Maimonides speaks of custom determining what must be done. Once the extra-halakhic usage of people becomes established it is law. "*Minhag* is Torah" is the rabbinic saying. In matters of everyday law the Talmud already enjoins us "everything is according to the custom of the country."³⁶ We can see an interesting example here. Shabtai Kohen, commenting on "a woman may not

wear male adornments ..." refers us to the laws of Purim. There³⁷ Isserles comments: "Concerning the wearing of masks on Purim when men wear women's clothing and women wear men's clothing there is no prohibition in the matter because there is no intent. It is joy in general." It is the opposite of the comment of Rabbi Eliezer of Metz quoted above. His authority comes from a responsum of Rabbi Juda Mintz of Padua:

"Concerning the matter of wearing masks which are customarily worn by young men and women; old and young on Purim ... (I bring) evidence from my observation in this matter of the great and pious of the world among whom I grew up. They saw their sons and daughters, their brides and grooms, dressing in masks and exchanging garments from man's garment to a woman's and the reverse. If, God forbid, there had been head shaking at sin, that they would have laughed and not reproved. How much more so if they had evidence of a prohibition in the matter. They agreed that there was complete permission and that there was not in the matter of this kind of dressing even the hint of sin..³⁸

Mintz goes on to show that this interpretation of the law grows out of the history of the interpretation of the various acts the rabbis have forbidden. All of them in one way or another have been limited by the customs of the place, and here he brings empirical evidence from his own experience. Would the pious scholars of his youth have stood idly by when the law was being transgressed? From this we know that at Purim and at weddings it was customary to dress up, and therefore it is permitted.

Padua was a dependency of Venice. Venice had tolerance for Jews. ..." during the long centuries of the history of the Jews in Venice no solitary instance of a popular attack upon them is on record."³⁹ The Jews of Venice were at home in their society and participated fully in its social and cultural life. Jews danced, attended feasts, gambled and played, banqueted with rich meals, wore the highest fashions. This was true for much of Italy. This situation had existed since the fourteenth century and came into its broadest expression in the time of the Renaissance.⁴⁰ They were at one with their environment. Women had greater freedom, which they expressed on the one hand by the luxury of their lives and on the other by their intellectual lives. It was in the Italian communities that the sumptuary laws came into their

own. These laws sought to regulate, among other things dress and life cycle celebrations. Jews wasted money and stirred the envy of non-Jews.⁴¹ This can also be seen in the Italian rabbis' attempt to control romantic elopements. Many communities established enactments to forbid them.⁴²

Purim has always had a sense of celebration, of turning the world on its head." Raba said: It is the duty of a man to mellow himself (with wine) on Purim until he cannot tell the difference between 'cursed be Haman' and 'blessed be Mordecai.'"⁴³ On Purim we reverse the normal order. Not only in drinking but we read the *Megillah* at night, encourage the making of noise to wipe out the sound of the name of Haman. A banquet, which serves as a reminder of the banquet Esther made for Ahasuerus, is one of the mitzvot of Purim. Purim bothered the pious. Joy was an essential part of the holiday. But it should be the joy of mitzvah, whose purpose it was to appreciate the miracle of the Purim story. Wrote the Shaloh: "I have seen many persons overtaken by wine go out in terrible sinfulness in these days of Purim increasing in playfulness and frivolity. They are not scrupulous in praying on these days on the contrary shout loudly at the time of prayer."⁴⁴ Or consider the comments of Joseph Yuspa Haan Neurlingen: "wise man should keep his eyes in his head and be careful not to get drunk completely nor fill his belly more than is fitting ..."⁴⁵ Protectors of the established order they felt threatened by the radical possibilities of Purim and wanted everyone to stay off its slippery slope.

Masquerade became part of the celebration. In Italy it all must have been influenced by Carnival, which was an important part of Italian life. Carnival had its origin in the Roman Saturnalia. This was a time when the order of the world was inverted, daily conventions were transgressed, and people indulged in all sorts of excesses. These characteristics were transferred to the Christian Carnival. "Inversion is at the root of Carnival symbolism and explains the presence of such customs as transvestite costumes, or clothes worn inside out, the poor playing the role of the rich, and the weak that of the powerful."⁴⁶ The reality of the carnival world was an alternate world that not only served as a kind of safety valve releasing pressure from the brutalities and oppression of every day life but also allowed people to dream of

how things might be different. There was even a Jewish King of Fools, cleaned up and made respectable. R. Yuspa Shamos tells us that in Worms the students of the Yeshivah came to the synagogue on the Shabbat after Purim, dressed in all their dignity, led by one of their number who they called head of the students. He was dressed as a fool. They sat on the *bimah* taking the place of the community dignitaries. The rabbi blesses them and then they enter the women's section for the Rebitizin's blessing.⁴⁷

In Italy, the rise of the *commedia dell'arte* consolidated the use of masks and gave them an artistic character.⁴⁸ The various characters represented by the masks were universal types. These masked entertainments occurred not only on Purim but also at wedding celebrations. The stage, like the carnival, is an alternate reality. It presents life within three walls, welcoming the observer to become part of its reality; a product of the Renaissance, it spread across Europe. Glickel of Hameln tells of the celebration of the greatest moment in the life of her family, the marriage of her daughter, Zipporah to Kossman Gomperz, the son of Prussia's most important Jew, Elia Gomperz. Part of the glorious celebration, attended by the heir to the Prussian throne and other aristocrats, was a group of "masked performers who bowed prettily and played all manners of entertaining pranks. They concluded their performance with a truly splendid Dance of Death."⁴⁹ This was not what it sounds like, but was a stylized dance of familiar types of humans who did a kind of burlesque. All this happened in the presence of Glickel's Rabbi Meir. He did not object but apparently was so engrossed in the proceedings that he forgot to write the *Ketuvah* and had to read one out of a book.

Wedding parties have some of the celebratory aspects of Purim. There is an abandonment of stability, a letting go. Marriages were financial arrangements between parents rather than the romantic joining of lovers. They were celebrations of wealth and power. But still there was drink and entertainment that challenges the normal order of life. The most important thing was not coming under the Huppah but partaking in the banquet. The *hupah* represented order and continuity. The couple stood in the presence of a representative of the community and the families and consented to become husband and wife. But at the banquet, chaos reigned; the new world of bride and groom emerged from

it. Dissolution and reconstitution occurs. The bride and groom reenact Adam and Eve, who define the basic human relationship. Amidst masked play that explored potential human relationships the newly married couple took their place in the community of Israel.

These Purim and wedding customs continue in some form or another until the present day. In a 1780 engraving by P. Wagenaar we see stylish, elegant men and women dancing at a Purim ball in Amsterdam. Masking is connected to the Purim *shpiel*, which brought the drama into Jewish life. Yiddish motion pictures continue the tradition. The secular Jews who created them gave their interpretation of Jewish life. In one of the classics, *Yidel Mitem Fidel*, Molly Picon disguises herself as a boy as she travels with her father working as a traveling klesmer.⁵⁰

As happened with Carnival, weddings were regularized and controlled so that in a tamer form they would not challenge the proper order. But since alcohol was involved with both, there was no way that the community could always control events. There is an astonishing comment in *Arukh Hashulhan* on the words of Isserles permitting masquerades in the *Shulhan Arukh*: "Concerning the custom of former days of wearing masks and of men and women exchanging clothes nowadays we do not behave in this way."⁵¹ Rabbi Epstein, writing in the late nineteenth century, must have lived a sheltered life for the riotous celebration of Purim had a rebirth with the rise of Hasidism. *Life is With the People* describes how it was celebrated in the shtetl.

The favorite historical holiday is Purim ... the gayest of all. ... the child sees his elders in an unfamiliar light ... frivolity is permitted and even prescribed ... Suddenly on Purim things "criticized as un-Jewish" are "becoming." Drinking, even to excess, practical jokes, masquerading in odd costumes, wearing of women's clothes by men ... The license of Purim is exercised more by the Hasidim than by the rabbinites and the very *sheineh layt* unbend only enough to do honor to the tradition, without violating the decorum that is their second nature.⁵²

The Hasidim prized Purim. They punned on the name of Yom Kippur, calling it *yom kipurim*, a day like Purim. Both were times when the worshiper came close to God by letting go of the self in repentance. On Yom Kippur we seek to undo the sin of the

golden calf, which Israel worshiped through eating and drinking, thus we fast. But on Purim the miracle happened because the Jews fasted. Therefore we make atonement by eating and drinking. Indeed Purim is on a higher rung than Yom Kippur.⁵³ They reinterpreted the carnival message of Purim as a way to greater holiness. Dov Baer, the Maggid of Meseritch wrote: "A man needs to drink on Purim until he can not distinguish between 'Cursed is Haman' and 'Blessed is Mordecai' because he needs to establish himself on the love of Purim. All will ascend to the Creator, may He be blessed. This is the meaning of 'can not distinguish' for all is equal in His eyes. We serve God even with 'cursed is Haman' because that is our physical self."⁵⁴ We must get drunk on Purim despite the fact that scripture often warns us of the evils of drink.⁵⁵

As to masquerades: we are told that Israel sinned in the days of Nebuchanezer by bowing down to idols facing (*lefanim*) the idol. God in return faced them (*lefanim*) with punishment. That is why we hide our faces behind masks at times of joy so that we will not be recognized. Another reason we dress up is that in the Garden of Eden we will be dressed in precious garments. If we dress in a similar garment in this world we will be as spiritual as in the Garden of Eden.⁵⁶ In all of these Hasidic teachings disorder is held to be more important than order. The world is blessed by people who take the risk and in ecstasy serve God. Sobriety and seriousness as ideal male behaviors are abandoned. Rabbi Nachman urges his followers to give way to joy by dancing and clapping on Purim, Hanukkah, and weddings for so is God served.⁵⁷ The Baal Shem Tov's comment is to the point: If you want a horse to neigh you must slacken the reins. Holiness emerges out of chaos.

If we turn now to some of the important Orthodox decisors of the twentieth century we find something new. Our rule is used as a way to isolate Jews and to help create separate communities distinguished by dress. Answers to questions that grow out of our verse are almost all concerned with women and most of them are answered stringently. They are all aimed at restricting the lives of women by prescribing permissible ways of dress to a very narrow, defined pattern and thus defining them socially.

For men the issue is different. Men are rarely addressed, and when they are, it is with consideration. Thus Rabbi Yechiel Jacob Weinberg in a long responsum answers several questioners who

want to dye their beards because they look older than their actual age. This is damaging them because they cannot make proper marriages or they are denied promotions in their professions or businesses. He discusses the long history of the questions. Dyeing of beards has been forbidden for a number of reasons, but the essential question is whether the prohibition is from the Torah or from the rabbis. Then we should also ask whether in the present question men are affecting the style of women by beautifying themselves or are attempting to mislead others about their true age for their personal profit. He permits dyeing, but he also cautions that one must tell one's true age.⁵⁸

Similarly, Rabbi Moshe Feinstein permits the dyeing of beards when it is not an attempt to defraud by deception.⁵⁹ Rabbi Eliezer Yehuda Waldenberg permits the plucking of white hairs out of a black beard when the purpose is not beautification but simply to shape the beard properly. He permits this, although plucking is one of the specific acts the Talmud forbids. But he shows that this prohibition is rabbinic, which inclines him to permit.⁶⁰

Both Rabbi Weinberg and Rabbi Feinstein in the above responsa also speak about men using mirrors. They see this as customary usage for men in our society. This is how men groom themselves. Indeed, both add that it is especially important for Torah scholars to appear in public well dressed. Otherwise they would bring dishonor on the Torah. Rabbi Ovadiah Yossef also gives permission for men to use mirrors quoting the Talmud: "Any scholar upon whose garment a [grease] stain is found is worthy of death."⁶¹ His conclusion: "In our time it is also the custom of men to look in the mirror, it has no aspect of 'a man shall not wear a woman's garment,' and it is permitted."⁶² Thus it is custom, the way of the world, of Jews and non-Jews, that determines the permitted practice for men.

In two cases regarding women the decisors are lenient. Rabbi Moshe Feinstein is asked whether women who live in Gush Ezion on the West Bank may carry pistols to protect themselves against Arabs. He permits it because "in places that are close to murderous Arabs who have no normal fear of the government, it is permitted for women to bear arms not only to save themselves from actual killing but also from the strikes in skirmishes that necessarily involve both women and men."⁶³ His lan-

guage assents to the program of settlements that has placed women in a vulnerable position in the first place. He also mentions that he permits the gun because of the mortal danger,⁶⁴ not mentioning that normally if one can avoid putting oneself in danger, one should do so. He also insists that this does not permit a woman to become a soldier. He concludes by saying that women should learn to use the pistol and to carry it in a place where it is easy to draw. Rabbi Ovadiah Yossef addresses a similar question: Are female teachers of kindergartens and schools to train in using arms and to carry them to protect themselves and their children? Emphasizing the danger of terrorists, he permits it to help avert the danger, provided that the women are careful to keep the rules of modesty when they are training.⁶⁵

Rabbi Yossef also concerns himself with a question that has only a tangential relationship to our verse but a direct connection to gender issues and the mood of our time: Are women obligated to come to the synagogue on Shabbat *Zakhor* to hear the reading of *Parshat Zakhor*? He has written two responsa on the subject.⁶⁶ He investigates the nature of the mitzvah; is hearing remembering mentally or actively speaking? What are the actual limitations of the fact that women are not obligated to perform positive commandments limited by time, and how does this affect their attendance at the Sabbath morning service and their listening to the Torah reading? What does it mean "to wipe out" the memory of Amalek or to "conquer the land"? If it calls for an obligatory war, what are women's roles in such a war? Rabbi Eliezer's reading of our verse prohibits women from bearing arms. This is seen as forbidding them to serve as soldiers. Rabbi Yossef as always writes very fully on the subject. Nowhere does he mention the Holocaust or Israel's continuing struggle for the land of Israel, but his conclusion must have been deeply influenced by them: "Even though many of the *Aharonim* explain that women are not obligated to go to the synagogue to hear *Parshat Zakhor*, nevertheless it is right and proper for women who are able to go to the women's section of the synagogue on Shabbat *Zakhor* to hear *Parshat Zakhor* to strive to do so to discharge their obligation according to all decisors and the Eternal will bless them."

But the more general attitude toward women can be seen in a responsum of Rabbi Feinstein.⁶⁷ He is asked by a Boston rabbi

about affluent and important women who are part of the movement for women's liberation. They are observant Jews but are fighting against some Torah laws; they also pray wearing a tallit and similar things. He answers by proclaiming the immutability of Torah and then attacks the women: "ordinary women who are not rich accept the obligation of raising boys and girls for it is a work most important to God and the Torah. God so created both sexes ... that women's nature is better adapted to the raising of children and therefore they are not obligated to study Torah." Women may accept mitzvot they have no obligation to perform and receive their reward. This includes hearing the shofar, *lulav*, and wearing *zizit*. Only the wearing of Tefilin is forbidden because they require "extra care to have a clean body." It is interesting how the ancient folk belief about the uncleanness of women never dies. He bases this on *Tosfot*,⁶⁸ which he notes does not mention the reading of our verse by Targum *Yonatan*, which reads it forbidding women from wearing tallit and tefilin because they are male ornaments.⁶⁹ The women are using the mitzvot to try to change the Torah which is unchangeable. He then defends the Torah: women's roles differ from those of men, but women are equally holy.

The responsa is strangely apologetic and angry. One can find the same tone in many responsa on the subject of women wearing trousers. A good introduction to our subject is a responsum of Rabbi Yossef written in 1973 to a principal of a religious high school.⁷⁰ The principal mentions that he is confronted with miniskirts, which break out of the limits of modesty. Wouldn't it be better, especially in winter, if the girls wear trousers?

Rabbi Yossef speaks first of miniskirts quoting Shabbat 62a: "Because the daughters of Zion are haughty?"⁷¹ That means that they walked with haughty bearing ... and on coming near to the young men of Israel, they kicked their feet and spurted it on them, thus instilling them with passionate desire like with serpent's poison." He uses his erudition to give many references to the effect that women's wanton behavior has on men: "they walk with leg and thigh revealed stimulating the evil inclination in the young men of Israel." He adds a note: "thousands of young men were killed in battle in the late Yom Kippur war. Who knows if it was not for this grave sin ... as it is said: 'For the Lord your God

walks in the midst of your camp, to save you, and to give your enemies before you; therefore shall your camp be holy; that he should see no unclean thing in you, and turn away from you."⁷² Thus miniskirts are forbidden.

Trousers are worse. This is not at first obvious from the sources, for many have permitted trousers. The reasons vary: (1) they are only forbidden when they look like men's trousers; (2) they are allowed when necessary because of heat or cold; (3) the custom of the place is the custom; (4) *Sefer Hassidim* permits women to disguise themselves as men and young men as women in order to save themselves at a time of persecution; (5) women's pants differ from men's in cut parallels; (6) the history of the acceptance of pants parallels that of the use of the mirror by men.

Opposed to this is the tendency of the *Aharonim* to be stringent and also the increasing transformation Maimonides' avoidance idolatry to avoidance of the way of non-Jews. Rabbi Jossef sees himself in this tradition. He forbids both miniskirts and trousers. Women should wear garments that fall below the knees. He closes by saying that trousers may be preferred over miniskirts but only until the daughters of Israel are convinced to wear modest garments.

There are a number of other responsa forbidding the wearing of trousers by women. Trousers are almost always characterized as "arrogant" and "filth." It is hard to miss the rabbis disdain. Rabbi Eliezer Waldenberg quotes a tradition going back to the *Hatam Sofer* that says that our time is different from all other ages because never before have we been challenged by the licentiousness of women. He reports that "one like me who has sat for more than thirty years in the seat of a judge and knows the result of the bitterness of the destruction of many families as a result of the breaking of the yoke and the stripping away of modest clothing."⁷³ This global statement, as well as the connection of trousers with both sexuality and feces connects the whole process with control. We seek to control others. It begins with toilet training and continues through sexual discipline. If we look back at such classic works as the *Rokeah*, it becomes clear that the control of the body and its fluids creates social control. It is also important to note how an article of clothing can be given an independent existence. It has a life of its own. Perhaps to put it

better, it becomes a symbol of modernity and of the non-Jewish world out there. It must be eliminated before we can make our way back to virtue. To quote Rabbi Waldenberg again: "As a matter of fact wearing trousers brings one to abominations, more so than wearing short dresses. As we know the licentious women stand in the middle of the street or on its corner with other licentious women like them and come close and rub themselves against others by way of the trousers, something that would be impossible in skirts." If I am reading this correctly he is referring to prostitutes seeing using trousers to ply their trade.

We have a similar responsum from Rabbi Isaac Jacob Weiss.⁷⁴ He adds some information we had not heard before. The prohibition begins at bat mitzvah and not only applies in public but also when a woman is alone at home with no men present or when she hides the offending garment by wearing it under her clothes. With this, trousers have become demonized. Perhaps we can tie this together with a comment of Rabbi Feinstein.⁷⁵ Asked how children might be taught to understand the commandment of not cross dressing, he answers that children are not obligated by the prohibition. Their mothers should use care in the way they dress them. When the feeling of shame develops in children, they will learn to dress properly. Wrong, inappropriate clothing is connected with shame. We blush in our shame knowing we have done wrong: toilet training, sexual education, and proper clothing have all become one.

Daniel Sperber has shown us the many faces of *minhag*. It can begin in the world outside the Jewish community or within it. It has its source in misreading of text, adoption of pagan custom, adjusting to the general society. It is alive, changing all the time. Sometimes it looks forward, at other times it tries to preserve the way of the past. It is a way of dealing with the multiple social pressures on Jews. *Halakhah* seems at first the opposite of *minhag*. We hear the repetition of the same text through the generations. But they do not lead to the same conclusions. The law is always shaped by the decisions of the judges. The writers of codes and the answerers of questions shape it. In our time, traditional decisors have tried to shape the world in their own image by the decisions they reach. In the traditional decisions, as in the liberal ones, the world view of the writer is decisive.

Those rabbis who wanted Jews to retreat from the modernity that reshaped women's roles have used dress codes to form their communities. Men and women's clothing symbolizes who they are. To don the proper clothing is the way in, to take them off is the way out. The world and its customary way of dressing had no claim on Jews. Jews were thus encouraged to separate themselves from the mainstream.

In our survey we have seen how a biblical prohibition has traveled through the centuries. Even though we cannot determine the exact cause of its origin, it has been used as a form of social control. The rabbis extended its meaning to include many forms of the presentation of the self. Through most of its history the application of the rule has been modified by *minhag*. In modern times Orthodox decisors have interpreted it in a very different way by using it to enforce separation.

Notes

1. Joan Wallach Scott, *Gender and the Politics of History*, New York, 1976, p. 19.
2. Commentators who use the words "transvestism" bring a modern psychological category to their work and already have interpreted the text radically by using this term.
3. Genesis 1:27.
4. Jeffery H. Tigay, *Deuteronomy, The JPS Torah Commentary*, Philadelphia and New York, 1996, p. 200.
5. This moral universalism is in interesting contrast to the views held by some modern Jewish scholars, as we shall see below, who insist on creating immoral non-Jewish straw men to knock down.
6. Louis M. Epstein, *Sex Laws and Customs in Judaism*, New York, 1976.
7. Gerhard von Rad, *Deuteronomy, A Commentary*, Philadelphia, 1966.
8. Otto Eisfeldt, *Einleitung in das Alte Testament*, Tuebingen 1964.
9. Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School*, Oxford, 1972, p. 19.
10. Alice L. Lattey, *An Introduction to the Old Testament*, Philadelphia, 1988, p. 19.
11. G. van der Leeuw, *Religion in Essence and Manifestation*, Princeton, p. 209.
12. Maurice Godelier quoted by Scott, *Ibid.*, p. 45.
13. This follows the Targum's translation of *kli* as military apparel, armor.
14. *Sifre Deuteronomy*, (ed. Finkelstein), chapter 226.

15. *Midrash Tannaim* to Deuteronomy 22:8; *Ibid.*
16. *Nazir* 59a.
17. *Shabbat* 94b.
18. *Shabbat* 94b.
19. Jacob Neusner, *The Way of Torah*, New York, 1987.
20. 152a.
21. Isaac Aboab, *Menorat Hamaor*, Jerusalem, 1961, p. 66.
22. Negative Commandments 40 and 41.
23. *Mishnah Torah, Avodah Zarah* 12:6.
24. *Ibid.* 12:9.
25. *Ibid.* 12:10.
26. *Sepher Hahinukh* (ed. Shevel) Jerusalem, p. 793.
27. Eliezer of Metz, *Sefer Yiraim*, (Israel Goldblum ed.) Vilna.
28. Rabbi Moses ben Jacob of Cousi, *Sefer Mitzvot Gadol Hashalem*, vol. 1, Jerusalem, 1993, p. 96.
29. Rabbi Isaac of Corbeil, *Sefer Amudai Hagolah*, Jerusalem, mitzvah 33.
30. *Yoreh Deah* 176.
31. *Shabbat* 149a.
32. *Avodah Zarah* 29a.
33. *Yoreh Deah* 172.
34. *Tumtum ve-androginot*.
35. See the discussion and notes in Steven M. Lowenstein, *Two Sources of Jewish Tradition: Official Religion and Popular Religion*, Los Angeles, 1984.
36. *Minhag* is fully discussed by Israel Schepansky, *Kuntros Haminhag Beyisrael*, appended to volume four of *The Takkanot of Israel*, New York and Jerusalem, 1974.
37. *Orah Hayim* 796.
38. Judah Mintz, *Responsa*, Salonica, 1666, # 15.
39. Cecil Roth, *Venice*, Philadelphia 1930.
40. See the description in M. Guedemann, *Geschichte des Erziehungswesens und der Kultur der Juden in Italien während des Mittelalters*, Wien 1884.
41. On sumptuary laws see Israel Schepansky, *The Takkanot of Israel* (Hebrew), volume IV, New York and Jerusalem, 1984, p. 480 ff.
42. Abraham Freimann, *Seder Kidushin V'nisuin*, Jerusalem, 1964, 322 ff.
43. *Megilah* 7b.
44. Isaiah Horowitz, *Shnei Luhot Habrit*, Jerusalem, 1975, Part one, p. 87.
45. Yosef Omez, Frankfurt am Main, 1928.
46. Maria Julia Goldwasser, "Carnival," *The Encyclopedia of Religion*, New York and London, 1963, p. 99.
47. *Minhagim deK.K. Wormeisa LeRabi Yuspa Shamos*, (Benjamin Shelomoh Hamburger (ed.), Jerusalem, 1988. This custom seems to have lasted through the centuries in Yeshivot. Rabbi Ovadiah Yossef is asked about them and forbids them. See *Yabia Omer*, Jerusalem, Part 8:50.
48. *Ibid.* 100.
49. The Memoirs of Glickel of Hameln, Marvin Lowenthal tr., New York, 1965; See also Solomon Schechter, *Studies in Judaism*, (Second Series), Philadelphia, 1908, p. 136f.

50. Eve Secular, "A Yingl mit a Yingl Hot Epes a Tam: The Celluloid Closet Of Yiddish Film," *Jewish Folklore and Ethnology Review*, vol. 6:1.
51. Yechiel Halevy Epstein, *Arukh Hashulhan, Orah Hayim*, Warsaw, 1911, 796.
52. Mark Zborowski and Elizabeth Herzog, *Life Is with People*, New York, 1952.
53. Aaron Wertheim, *Halakha v'Halikhot B'hasidut*, Jerusalem 1960, p. 191.
54. Israel Klapholz (ed.), *Torat HaMagid*, Tel Aviv, 1969, p. 27.
55. For a sense of the Hasidic understanding of the nature of Purim see *Inyanai Megilah* in *Sefer Ta-amai Haminhagim*.
56. Tzvi Elimelech of Dinov, *Sefer B'nai Yissahar*, Israel 1966.
57. Nathan of Nemerov, *Rabbi Nachman's Wisdom*, translated and annotated by Rabbi Aryeh Kaplan, Brooklyn, 1973.
58. Yechiel Jacob Weinberg, *Seridei Esh*, Jerusalem 1977, part 2:1.
59. Moshe Feinstein, *Igrot Mosheh, Yoreh Deah* Bnai Brak, 1981, 2:61.
60. Eliezer Yehuda Waldenberg, *Tzitz Eliezer*, Jerusalem, 1967, part 13:77.
61. Shabbat 114a.
62. Ovadia Yossef, *Yehaveh Daat*, part 6:49.
63. Moshe Feinstein, *Ibid.*, *Orah Hayim* 4:75.
64. *Pikuah nefesh*.
65. Ovadiah Yossef, *Yehaveh Daat*, part 8:58.
66. Ovadiah Yossef, *Yabia Omer*, part 8, *Orah Hayyim* 54 and *Yehaveh Daat*, Part 1:84.
67. Moshe Feinstein, *Op. Cit.*, *Orah Hayyim* 4:49
68. *Eruvin* 96a.
69. This is an interpretation of the reading of *k'li* as arms—tallit and *tefillin* are the arms a Jew wears.
70. Ovadiah Yossef, *Yabia Omer*, part 6 *Yoreh Deah*, 14.
71. Isaiah 3:16.
72. Isaiah 23:15.
73. Eliezer Yehuda Waldenberg, *Tzitz Eliezer*, part 11:62.
74. Weiss, *Op. Cit.*, part 2: 108.
75. Feinstein, *Op. Cit.*, *Hoshen Mishpat* 2:62.