

## ***Pious and Rebellious: Jewish Women in Medieval Europe***

by Avraham Grossman

Reviewed by Alan J. Yuter

**Abstract:** This essay argues that Avraham Grossman's analysis in *Pious and Rebellious* is a model of Modern Orthodox thinking, mood, and method. It explains how Grossman examines Jewish law regarding its attitudes toward women and how the values of that canon were applied. Grossman provides a modern sensibility bound to the canon yet appropriate to post-canon precedents and the modern temper.

**Biography:** Alan Yuder is Rabbi of B'nai Israel of Baltimore, Inner Harbor and on the Faculties of Fairleigh Dickenson University and The Institute for Traditional Judaism.



# ***Pious and Rebellious: Jewish Women in Medieval Europe*** by Avraham Grossman (Brandeis University Press, 2004)

Alan J. Yuter

Professor Avraham Grossman's *Pious and Rebellious* is a multi-faceted monograph. Grossman is first and foremost a meticulous Jewish historian rather than a halakhist who studies *halakhab* as a normative order. He reconstructs the reality of the *Ashkenazi* High Middle Ages by referencing rabbinic works, non-Jewish documents, and material culture. Perhaps more importantly, Grossman also probes the record of the usable past in order to respond to challenges confronting Orthodox Judaism in the present.

The author begins each discussion with a review of the talmudic canon, which all post-talmudic interpretations of Judaism until modernity accepted as normative. This description is no mere academic introduction to the subject at hand. Grossman is both a critical scholar with a methodological penchant for intellectual integrity, as well as a reflective Orthodox Jew for whom the historical record is measured against the benchmarks of rabbinic tradition. The rabbinic decisor's ruling may not be based or biased upon intuition, gut feelings, or political agendas. The canonical norms, applied to real rather than imagined reality, define the real content of the halakhic process. By first outlining the normative statements in the canons of the written Torah (*Torah she-bi-khetav*) and the oral Torah (*Torah she-be'al peh*) and then surveying what actually happened, Grossman is subtly but surely challenging Orthodox legal scholarship to apply the real canons of Orthodoxy—rather than the social conventions of a remembered yesteryear—to contemporary feminist issues. For Grossman, the actual forces that shaped the lives of medieval *Ashkenazi* Jewish women consisted of the talmudic

heritage, economic status, and the Christian environment. While he examines all three forces descriptively, the book's reiterating structure reflects an agenda that is unmistakable.

Grossman occasionally allows his editorial, narrative voice to intrude upon his historical narrative. Following feminist historiography, Grossman attempts to uncover a reading of the past that is usable in the present. Contemporary *Ashkenazi* "Orthodox" Judaism makes normative statements and prescriptions regarding how women should act and be treated. These prescriptions, or "ought" statements, are often based upon cultural memory that appeals to an imagined, not a demonstrated, historical reality. Committed to Jewish tradition, Grossman consistently shows that in the world predating feminism, rabbis responded to the needs and claims of women more humanely than their counterparts in modernity.

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Grossman observes that medieval Judaism occasionally deviated from talmudic and halakhic requirements. Specifically, the Tosafists stopped coercing Jewish divorce, tolerated childhood marriages, allowed married Jewish women to travel with gentile men, and permitted women to recite the blessing over commandments before performing ritual gestures that are not obligatory for, or addressed to, women. All of these practices

are inconsistent with the halakhic requirements of the written and oral *Torot*. Either (a) those changes were not legitimate and cannot be precedents for change in the present, or (b) those changes were in fact legitimate and can serve as precedents for change in the present.

Grossman also notes that women's prayer groups—something contemporary Orthodox rabbis love to hate—were not only never forbidden by talmudic law, but existed in the High Middle Ages, without rabbinic protest. Thus, when Orthodox rabbis claim the act was not authorized or that there is no precedent, and hence the practice is improper, these rabbis are issuing flawed and illegitimate rulings. Their history is wrong; an act is forbidden under canonical Judaism only by explicit statute, and not tacitly, by non-performance. Grossman's implicit polemic, couched in a disciplined and restrained academic description is that sometimes that which passes for authentic halakhic prescription is, at best, wrongly presented. At worst, it is an invalid reading of Judaism because both the facts and the norms applied to the facts are improperly understood<sup>1</sup>. Professor Jacob Neusner once explained to me that "one cannot do good theology with bad history." For Prof. Grossman, this observation is particularly apt to *halakhab* as well.

Grossman claims that medieval *Ashkenaz* grew increasingly restrictive in its treatment of women during the course of the High Middle Ages. He notes that attitudes regarding women were unflattering in both authoritative rabbinic literature and in medieval Jewish life. He also notes an anti-female bias among most "rationalist" medieval rabbis, but he finds Rashi an advocate of women and finds sympathetic comments in the *Zohar* and *Sefer ha-Hasidim*. Yet Grossman does not cite *Horayot* 13a, the talmudic *locus classicus* for what may be taken to be talmudic sexism: A man is saved from death before a woman, since the former is more holy since he is obligated in more commandments. There is, however, a difference

between women's disabilities, whose sources appear in the halakahic canon and that are not subject to review, and subsequent rulings that may conflict with the canon and, which, according to Maimonides, are subject to review.

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Maimonides maintained that rabbis should rule leniently or restrictively, as conditions require, as long as the parameters of the dual Torah canon are honored. In the Introduction to the *Mishne Torah*, he wrote that local rabbis may not rule against higher norms, but have discretion to rule on matters of local custom, as long as the talmudic canonical norms are not violated. The restriction of women's rights in the Middle Ages may have had merit at that time and in those locations, but these rulings constitute neither [binding] precedent nor canonical tradition today. By showing how rationalists and mystics rule differently regarding medieval rationalism, Grossman demonstrates that modern categories of normativity do not necessarily operate in a medieval context. It is unfortunate that Grossman leaves unexplored how the *Zohar's* concern for the female aspects of God related to the greater mystical appreciation of women's status in its normative directives.

Grossman's method and findings are best illustrated in his examination of the phenomenon of women reciting the blessing over commandments not obligatory for them. According to talmudic law, blessings are generally recited before the observance of the commandment. Rashi's teacher, R. Isaac of Mainz, did not object to women saying these blessings, but Rashi did. According to *Sefer ha-Qaneh*, if a woman recites a commandment blessing on an act that is not a commandment, she incorrectly adds in her own mind a law to the Torah. The negative

<sup>1</sup> See *Bet Yosef, Yoreh De'ah* 1:1. R. Yosef Karo contends that for women to be restricted from slaughtering, the rabbis of the canon would have had to clearly outlaw the practice. An act is therefore permitted unless it is explicitly forbidden.

voices in *Ashkenaz*—and it must be remembered that Rashi was an advocate of women’s prerogatives—have been suppressed in *Ashkenazi* culture from the time of the Tosafists to the modern age. Grossman’s analysis implies that precedents for change did indeed occur, and there is ample medieval precedent for many of Orthodox feminist claims.

While the twentieth-century sage, R. Moshe Feinstein, rails against feminism, he endorses the option for women to recite blessings on gestures that are not technically female commandments, contrary to Rashi, Maimonides, and *Sefer ha-Qaneh*, but consistent with the conditioned incumbency of publicly accepted usage. R. Feinstein disallows women from wearing a *tallit* because he found an opinion that the *tallit* is a male garment. He affirms (*Iggerot Mosheh, Orach Hayyim* 4:49) the Tosafist objection to women wearing *tefillin*, which does not have basis in the classical canon. The reforms of the Orthodox become “tradition,” while the license of the dual Torah tradition is suppressed. By presenting the canonical norm and historical precedent to the thinking and intellectually engaged reader, Grossman makes manifest his intellectual polemic and religious challenge. Even the great sage R. Moshe Feinstein was subject to review against the benchmarks of the dual Torah canon, and conceded as much<sup>2</sup>.

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Grossman shows that the Christian cult of Mary and the example of Hildegard of Bingen provided models of Christian female piety that did not go unnoticed by Jewish women. These women were at once pious in their service of God, as well as rebellious against men who, in the service of conventional culture, invoked Judaism to limit the religious expression of women. In an age where Orthodox Jewish women want legitimate, halakhic access to the richness of Jewish tradition, one should not invoke the “tradition” of mimetic

culture alone. There are both historical and halakhic resources from the past that indicate that when there is no explicit halakhic ban on a specific behavior and there is a real need in the present, a Jewish decisor is authorized to be innovative. Different rabbis can rule differently with equal legitimacy.

Grossman pays particular attention to the barring of women from access to Torah study, which in the rabbinic society of both the past and present is a source of authority and control. The *halakhab* officially follows R. Eliezer, who contends that women’s Torah study is *tiflut* [sexual license], because the merit of that study will protect a woman who has sinned. He notes that the *midrash* regarding the seduction of Beruriah, the learned wife of R. Meir who was expert in Torah, was in fact an invented fiction of the Middle Ages. This legend reflects a medieval attitude which has been passed down to our time as a legitimate statement of Jewish religious normativity. Medieval *midrashim* reflect well upon the religious sensibilities of their authors, but must not be misunderstood to be part of the tradition, which according to Maimonides (*Mishneh Torah, Hilkhot Mamrim* 1:4) requires discussion, reflection, and a vote of the *Beit din ha-Gadol*. Grossman calls attention to the fact that Maimonides allowed women to study Scripture, but not oral Torah.

When *Sifre* 46 teaches that the command “you shall teach your sons’ [implies] not your daughters,” it could be read to mean (a) teaching one’s daughters is not obligatory, or (b) teaching one’s daughters is prohibited. The fact is that Beruriah and Yaltah—the wife of R. Nahman, the rabbinical judge and Persian patrician in Babylon—were learned in Torah and that *Tosefta Berakhot* 2:12 explicitly authorizes women to study “*mishnah, midrash, halakhab and aggadah*.” (Talmud is not mentioned there only because its composition post-dates the *Tosefta*.) Grossman demonstrates that in medieval culture, learning was available to aristocratic women and that women’s rights were directly proportional to their economic power. Apparently, money talks more loudly than

<sup>2</sup> *Iggerot Mosheh, Yoreh De`ah* 1:101.

canonical texts in medieval as well as modern times. As noted, financial power is easily translated into religious power.

Contemporary Orthodox Judaism has engaged in a contentious debate regarding women's prayer groups. On one hand, *Haredi* Orthodox Jewish culture is greatly distressed by women engaging in either leadership or innovative ritual. But Grossman's citation of sources implies that the range of valid halakhic norms resides in the literary canon and historical precedent, and not only in the policies of *poseqim* whose rulings reflect current expectations. Legal arguments are marshaled to oppose women's prayer because such groups violate current culturally conditioned attitudes against women leading prayers or holding positions of power, even over women.<sup>3</sup> But there is no explicit talmudic norm that forbids women's prayer groups and Grossman provides documented evidence that such prayer groups did exist in medieval *Ashkenaz*. Therefore, the reader realizes that what is presented as a halakhic restriction regarding women's prayer groups is in point of fact a misstatement of the historical record as well as the norms of the written and oral *Torot*.

Grossman presents an Italian woodcut portraying a fourteenth century wedding in which husbands and wives are engaging in social dancing, with men's head uncovered and women's head covered. According to Jewish law, the male's head covering is the accepted etiquette that obliged the sages of

late antiquity (*Qiddushin* 8a). The blessing recited before one observes the convention [not the commandment] of wearing the hat, like the belt and shoes, praises God Who "crowns Israel with glory."

*Berakhot* 80b requires that the Jew praise his/her Maker as one awakes. Since this discipline had fallen into disuse, these blessings were placed into the liturgy in the list called, '*Birkhot ha-Shabar*.' '*Amen*' is not recited at the end of this liturgical list, as it is for the first original three blessings of the grace after meals, and to this day in the *Sefardi* rite at the end of the *Amida*. This blessing is an expression of praise, and not a commandment blessing. (The only commandment for which a blessing is recited after the act is the immersion of a convert, for whom the commandments do not apply until the immersion has taken place.) In contemporary Orthodox usage, the head covering of the man is more a sign of group membership than the women's head covering, and women's head covering is better accomplished by a hat that covers most of the head than by a wig, popular today in some circles but outlawed by the Torah.<sup>4</sup>

The women's head covering might be a Torah obligation. Those authorities who have a "tradition" that the woman's head covering is only an old practice<sup>5</sup> and not Torah law probably recognized what modern scholars have noted, namely, that anonymous Aramaic interpretative interpolations to a Hebrew text are most likely the

<sup>3</sup> In a public lecture entitled "The Pesak Process," R. Herschel Schachter argued that only great rabbis may apply intuition, and most rabbis are policemen, not *poseqim*. Thus, precedents and statutes are necessary, but not sufficient, in determining acceptable process. The Gnostic motif, that an elite is in possession of the intuition to parse the covenant because of their superior knowledge and inspiration, to which others, no matter how learned, have no access, has yet to be examined.

<sup>4</sup> While I have not found any textual source regarding R. Soloveitchik, I infer this from the following four facts. The late Dr. Tonya Lewitt Soloveitchik appears in photographs with hats, never wigs, and my brother-in-law, R. Stuart Grant, a student of R. Soloveitchik, reported to me that the unacceptability of the wig, was indeed R. Soloveitchik's view. Mrs. Vicky Riskin taught my wife before our marriage that R. Soloveitchik disapproved of wigs, and R. Saul Berman, when teaching my daughter at Stern College for Women, presented an identical rendering of R. Soloveitchik's position on wigs. R. Ovadya Yosef, in his seminal and magisterial *Yabi'a Omer* 5, *Even ha-Ezer*, 8, outlaws the wig based on talmudic statute for *Ashkenazi* as well as *Sefardi* Jews. See however the culturally lenient view of R. Moses Feinstein, *Even ha-Ezer* 2:12, who ignores the talmudic materials and argues instead that "most contemporary rabbis are lenient."

<sup>5</sup> Maimonides, *Issurei Biab*, 21:17 and the very insightful reading of R. Moses Isserlein, *Terumat ha-Deshen* 242, who argues that Maimonides' indicates that the obligation is *not* biblical. On one hand, *Ketubbot* 72a argues that the women's head covering obligation is *De-oraita*, not biblical *per se*, but derived from [oral] Torah. For R. Isserlein, the claim that the hair/head covering obligation is biblical is a *remez*, an instance of hyperbole

work of a post-talmudic editor. Since it is a post-talmudic opinion that a women's head covering obligation is biblical, it is not as binding as the Talmud itself. That social dancing was "accepted" by the Judaism of late medieval Italy indicates that the norms of acceptability do indeed change with the times. There was a time when social dancing was accepted in Modern Orthodox culture, and we know that Orthodox Jews in Italy did indeed engage in the practice. However, Jewish law is not what Jews do, but what *halakhab* commands. This is the essential difference between Orthodoxy and the Reconstructionism that pervades all non-Orthodox movements. Jewish law would in principle permit mixed social dancing only when the female is not experiencing menstruation, as the contact of social dancing is by definition "social." Maimonides (*Hilkebot Issurei Bi'ab* 21:1-7) distinguishes between erotic and non-erotic contact and gestures. Yet one should not announce, by dint of refraining from dancing, that a woman is experiencing menstruation. In other words, Orthodoxy may have been compromised by popular usage before the challenge of secularity.

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Some regard Maimonides as sexist. Grossman's reconstruction of Maimonides' Judaism, based on a careful "connecting the dots" of Maimonidean attitudes in his responsa, reveal that though a man of his times and world, Maimonides often ruled against regnant culture and favored the actual norms of the canonical halakhic tradition which protected women's status. For example, Maimonides concedes that women's attire and right to leave the house are defined by local, socially acceptable etiquette. Grossman shows with intellectual alacrity that Maimonides, without a feminist agenda, applied the normative canon

literally as he could, to assure women's statutory rights.

Maimonides rules in a responsum (2:247) that a deceased woman's property should be inherited by her widower, not her brother. As nuclear families were replacing clans, inheritance usages reflected emerging social and economic realities. A woman is closer to a spouse than to her extended family. Although the sages ruled that childhood marriages should not take place, the letter of the law is that such marriages are valid, and a woman's ties are closer to her husband than to an avaricious sibling. Maimonides focuses first on the letter of the positive law and second, on the living reality to which that law is to be applied. In this case, to protect the woman, Maimonides applies the talmudic principle of *Mishnah Pe'ab* 7:20 that permits waiving financial laws when social and economic conditions dictate adjustments in usage.

Maimonides restricts women's movement, but he notes that in Christian Europe, women enjoyed more mobility. In the Islamic orbit, women were by convention confined. Maimonides only prohibits provocative behavior, which is defined by culture and not by canonical statute. He explicitly rules that women's clothing is not determined by an absolute rule of fashion, but by local usage, a position not popular among the Orthodox right today. On one hand, women wearing pants cut for women would be acceptable to Maimonides, while R. Isaac Weiss of the *Eida haHareidis* refers to women's pants as *bigdei shahats*,<sup>6</sup> or arrogant attire and therefore immodest clothing. R. Weiss would, for Grossman, be viewed as a religious innovator by affirming an alternative standard of value to that recorded in the oral Torah canon. R. Weiss uses the language of the canon to justify the parochialism of his community which, in turn supersedes the values and religion of the canon itself. This demonstrates Jacob Katz's critical

<sup>6</sup> R. Isaac Weiss, *Minbat Yitshaq*, 2:1098. How R. Weiss "knows" that women's slacks are arrogant attire is not explained. I suspect that the wearing of women's slacks violates a culture taboo, which is reified to be an implicit Torah taboo, which is mediated by great rabbis. See also R. Eliezer Waldenberg, *Tsits Eliezer*, 11:82, who echoes R. Weiss, See however Ovadiah Yosef, *Yabi'a Omer* 6 *Yoreh De'ab* 14:7, who argues that if women do not look like men in their attire, there is no statutory restriction.

insight, that Orthodox Judaism is not identical to the Judaism of tradition. In today's ultra-Orthodoxy that is responding to modernity, the counter-cultural affirmation of programmatic distance from secularity is a survival strategy. Yet this survival strategy binds only those who adopt it, and not those who believe that Torah culture flourished also when rising to the challenge of cognate cultures.

Avraham Grossman's enduring contribution is his unique blend of moral passion and keen critical thinking. He is committed to the principle that Orthodoxy affirms God's recorded will. In an act of sacred subversion, his findings challenge Orthodox rabbis to rule on the basis of statute and precedent and not on the basis of culture-

conditioned anti-feminist attitudes that are socially correct in Orthodox sociology. His scholarship is timely and timeless: It is cutting edge historiography that addresses current issues. With this statement of Orthodox critical learning, he blazes a path of learning with integrity, probity, and passion that empowers Orthodox scholars to ask the probing questions with honesty, realism, and religious seriousness.

For Grossman, the canons of Judaism provide the outer limits of legitimate religious exploration, while the historical record preserves the actual paths taken. This academic historian thus challenges the Orthodox Jew to be honest to the *halakhab*, to women, to truth and to God.