

The Structure of Tradition

Rabbi Lippy Heller

The belief that Torah is divine and that the mizvot therein commanded are therefore divinely binding constitutes a key dogma of contemporary orthodox Judaism, or “rabbinic” Judaism. To demote any one mizvah of the 613 to anything less than a Godly legislature would, as Rambam famously asserted³¹⁵, constitute heresy. This includes the definitions and details of the mizvot as propounded by the Mishnah and the Talmud³¹⁶. In other words Rabbinic Judaism would consider an heretic any man who does not believe that the Torah she-biktav (written Torah) must be understood, at least in its halakhic sense, through the Torah she-baal peh (oral Torah).

However, the substructure upon which this basic dogma stands is less clear and is the subject of contention in rabbinic literature. The most orthodox and most popular scheme is to cite a historic concatenation of bearers of the oral tradition that directly traces back to Moshe at Sinai without lacuna. This is the strategy forwarded by the Kuzri, Rav Saadiah, Rav Sherirah, and Raavad's Sefer Hakabalah. Rambam, in his introduction to the Mishnah, however, rather

315 *Mishneh Torah, Hilkhhot Teshuvah* 3: 8

316 Ibid.

The Structure of Tradition

derisively dismisses this doctrine as both foolish and pernicious. Those who maintain that the Halakhot that were subsequently the subjects of mahloket were given to Moshe at Sinai are “without intelligence and have not fundamentals in their hands,” Rambam says. “They disparage those who bequeathed to us the tradition and all (of their perspective) is hollow and worthless.”

In its place Rambam recommends a complex amalgam of divine and Rabbinic bases for the commandments. Moshe certainly received at Sinai the basic tenets of the written laws such as the species of the etrog and the properties and dimensions of the sukka; they describe dicta that are universally accepted as comprising the essences of the mizvot.. Beyond these a distinction arises between “the basics we received through tradition and between their offshoots which (the sages) brought forth through hermeneutics.”³¹⁷

Rambam appreciates that this system devolves those mizvot that are distinguished from the first category by dint of the mahloket they are embroiled in into something other than divine tradition. In fact he dedicated one of the sharashim in his introduction to the sefer hamizvot to the concise delineation of this dichotomy. His second shoresh begins:

It is improper to count (in the list of 613 mizvot) all that is learned from one of the thirteen principles of biblical exegesis or from a ribui. We have already explained that the majority of of the laws in the Torah are derived through the thirteen principles of biblical exegesis... Thus not of everything that we find the sages deriving through the thirteen principles of biblical exegesis will we say that it is from Moshe at Sinai... (unless the sages) specifically averred that this is of the essence of Torah or this is de-oraitah... Whereas if no such qualification is mentioned behold this law

317 Introduction to *sefer Hamizvot*, shoresh 2.

is de-rabanan as there is no (biblical) passage that corroborates it.

Rambam will not accept that any detail of halakha that the Talmud does not specifically label as de-oraitah was heard by Moshe at Sinai. What remains then is a historical reckoning with the Sinaiic experience that effectively leaves much of the actual legal corpus outside of the context of revelation. The upshot is a compromised tradition replete with human input.

This construct immediately contravenes several basic postulates of the contemporary orthodox belief system.³¹⁸ First off, the fact that it departs so completely from the conventional manner of tracing tradition in itself demands scrutiny. Secondly, those who presented tradition as an unbroken chain with God acting as its first link did so with easily perspicuous intentions. They were a) corroborating the tradition's authenticity, b) putting it forth as a gambit to wave at Jews who were either actually or potentially sitting on the fence between the karaite interpretation of Judaism and the rabbinic one, and c) proffering a strategy to address the basic karaite claim over rabbinic Judaism.

In Rambam's day, the karaites were a group of Jews who challenged that halakha as it was accepted by mainstream rabbinic Jews was the outgrowth of a human religion as opposed to a divine one. They believed that divine Judaism in its purest, most accurate sense can be garnered by simply reading the written Torah. Any law found in the

³¹⁸ There are several questions that this position gives rise to. One that has been dealt with extensively in later commentators is whether and to what extent this categorization bears on the legal status of these *mizvot*. Another is the manner in which Rambam would deal with the various Talmudic texts that imply otherwise. But for the purpose of this paper I need take for granted only that Rambam's tradition originates partially in the mind of man in contradistinction with other traditionalists. See Ramban's exposition on this piece; *Responsa Harvot Ya-ir*, 192.

The Structure of Tradition

Talmud that cannot be directly and readily read back into the written Torah was a feather in the hat of the karaites movement. To this end, the claim that the entire corpus of halakha was indeed revealed to Moshe at Sinai is intended to imbue it with divinity.³¹⁹ One need look no further than Rambam's own writings³²⁰ to know that he was aware of this movement as a potent threat to the stream of Judaism he was championing. What Rambam did not tell us, or so it seems, is what substitute he would recommend to verify the authority of the oral tradition.

A third and, I believe, most sensitive orthodox perception is agitated by the Maimonidean structure. The popular passage from the midrash, and with some variation the Zohar, of “histakel b'oraitah ubarah almah” (He consulted the Torah in creating the universe), for instance, is internalized in the consciousness of today's orthodox Jew to mean that there is an a priori reality to the Torah that is eternally

319 Perfectly speaking, Rambam was aware that this was not a strategy without value. In *The Guide i*, chapter 71 he writes: “Know that the many sciences devoted to establishing the truth regarding these matters that have existed in our religious community have perished because of the length of the time that has passed, because of our being dominated by the pagan nations, and because, as we have made clear, it is not permitted to divulge these matters to all people... they were transmitted by a few men belonging to the elite to a few of the same kind, just as I made clear to you from their saying: The mysteries of the Torah may only be transmitted to a counsellor, wise in crafts, and so on. This was the cause that necessitated the disappearance of these great roots of knowledge from the nation.” In this instance Rambam is demonstrating an appreciation for the fact that if certain fields of knowledge were known to the nation and later forgotten, we then have an impetus, even a responsibility, to attempt to restore that knowledge to the community. However, whereas the sciences and philosophy can be reconstructed through demonstrative proofs to their original verities, Rambam apparently felt that this was not the case for the halakhic tradition. For this reason he considered it a folly to rely exclusively on this claim to justify the observance of *halakha*.

320 Commentary to the *Mishnah*, *Avot* 1:3, *Kulin* 1:4, *Mishneh Torah*, *Hilkebot Teshuvah* 3:8, etc.

true and eternally relevant independent of man's natural and social historical movement. The Sinai experience is understood to have been a monumental instance when man was given a privileged glimpse of the eternal reality as distinguished from the ephemeral reality of the corporeal world. And the bridge between the two worlds, the possibility for transient carnal man to mimic the fixed in thought and action and to thereby forge a connection with that world is the Torah.³²¹ Likely, this perspective is chiefly responsible for forestalling its bearer from embracing the Maimonidean model, which allows for human participation in shaping the commandments.

In order to properly appreciate Rambam's position it is necessary to analyse other areas of his writings where similar motifs appear. The Laws of Idolatry of his Mishne Torah are appended with an introductory first chapter. Rambam writes:

In the days of Enosh (235-1140) mankind committed a grave error and the opinions of the sages of that generation deviated, and Enosh too was among the mistaken. And the following was their error. They said, being that God created these stars and spheres to direct the world and He placed them in the heavens and granted them distinction and they are the butlers who serve before Him, it follows that they are worthy of exaltation and praise and we might honour them, as this is the will of God that we ennoble and honour those whom He has ennobled and honoured, just as a king would will the honour of those who stand before him as this suggests honour of the king himself. Once this became accepted they began building temples for the stars and offering to them sacrifices and verbally praising and sanctifying them and genuflecting before them to fulfil their mistaken perception of God's will. And this was the root of

321 See *Nefesh haHaim*, Rabbi Haim Vilozhiner, 1: 16, 4: 10-11.

The Structure of Tradition

paganism... As time elapsed false prophets arose and declared that the stars themselves or the spheres themselves spoke to him and instructed them to serve it with such and such and notified him of the manner in which they were to be worshipped and such shall you do and such shall you not do... More time passed and the Glorious Almighty God was forgotten from the mouths of men and they no longer knew Him. As a result of this, all of the world, including the women and children, knew nothing other than the idol of wood or of stone and the stone sanctuary that had been erected since their infancy, and they would serve it and swear in its name...

At this stage Avraham enters the story and through his intellect manages to penetrate the universal folly that had taken hold, and he established anew the existence of one God Who created all and Who conducts the spheres. He goes on to popularize these notions as well as “that there isn't in all of existence any godliness other than He”. Avraham succeeds in bequeathing these verities to his child Yizhak and Yizhak to Yaacov, and onward into the exile of Israel in Egypt until

Time weighed upon Israel in Egypt and they reverted to learning from their (the Egyptians') ways and to worship the stars in their manner... and the rudiments that Avraham inculcated were uprooted and the descendants of Yaacov recoiled to the erroneous path of the (rest of the) world. Then God, out of His love for us and His fealty to the covenant with Avraham our forefather, made Moshe to be the master of all prophets and He (God) sent him (Moshe) forth. Since Moshe our master prophesied and God chose Israel as His primogeniture, He crowned them with the mizvot and notified them of the manner of His worship and what shall be the judgement of idol worship and its followers.

Three salient points in this peculiar text draw out attention: 1) The purpose and the tendency of the Mishne Torah is strictly and meticulously to tabulate and classify Talmudic law. The sudden appearance of a verbose account of historical idolatry is singular indeed. 2) The trail of idolatry and paganism that Rambam traces through this long stretch of history constitutes a historical emphasis that is unprecedented. 3) We can appreciate the meaning of Rambam's placement of this transcription. He is presenting as a prelude to the laws of idolatry the historical background and arguably the fundamental groundwork for both past and present deviation from true divine precepts. Having said that, the story seems to run on longer than its task calls for. The minute details of Avraham's defiant and danger-wrought journey back to God, his ambitious proselytising, and his establishment of subsequent generations of believers; the Levites' fastidious adherence to the concepts of their fathers; Israel's descent to Egypt along with their ideological atrophy and their ultimate emancipation there from; and finally their didactic encounter with the Torah at Sinai, all seem to be irrelevant to the laws that follow and are therefore supererogatory. In other words, halakha 3 introduces a new element to the story that demands explanation.

The key to this chapter of the Mishne Torah lies in a concept that Rambam develops in the third book of his Guide for the Perplexed.³²² Chapter 27 begins:

The Law as a whole aims at two things: the welfare of the soul and the welfare of the body. As for the welfare of the

322 In paraphrasing *The Guide of the Perplexed* (henceforth "*The Guide*") I have relied upon *The guide of the perplexed*, translated with an introduction and notes by Shlomo Pines, with an introductory essay by Leo Strauss, University of Chicago Press, 1963.

The Structure of Tradition

soul, it consists in the multitude's acquiring of correct opinions corresponding to their respective capacity.³²³

In chapter 28 we learn what is meant by “correct opinions.”

Among the things to which your attention ought to be directed is that you should know that in regard to the correct opinions through which the ultimate perfection may be obtained, the Law has communicated only their end and made a call to believe in them in a summary way – that is, to believe in the existence of the deity, may He be exalted, His unity, His knowledge, His power, His will, and His eternity.³²⁴

As a continuation of this doctrine Rambam launches into a similar, if more detailed, account to the one in *hilkhot avoda zarah*. He retells the decadent story of mankind and shows how it brought all kinds of future forms of idolatry, sorcery, paganism, witchcraft, and superstition. Then he continues:

Consequently all the commandments that are concerned with the prohibition against idolatry and everything that is connected with it or leads toward it or may be ascribed to it, are of manifest utility, for all of them are meant to bring about deliverance from these unhealthy opinions that turn one's attention away from all that is useful with regard to the two perfections toward the crazy notions in which our fathers and forefathers were brought up: Your fathers dwelt of old time on the other side of the river, even Terah the father of Abraham and the father of Nachor; and they served other gods. It is about these notions that the truthful prophets have said: For they walked after vain things that do not profit. How great then is the utility of every

323 p. 510

324 p. 512

commandment that delivers us from this great error and brings us back to the correct belief: namely, that there is a deity who is the Creator of all this; that it is He who ought to be worshipped and loved and feared and not the things that are deemed to be gods.

We garner here a clearer picture of the relationship between the idolatry that was rampant during pre-Sinaitic times and the reception of the mizvot. Man's debauchery of both thought and practice drove a wedge between them and the "opinions through which the ultimate perfection may be obtained." Mankind was collectively debilitating in its perceptions of divinity and its course was doomed to permanent departure from truth. Israel was not spared from the influences of this pernicious vortex. In response to this condition God, "out of His love for us and His fealty to the covenant with Avraham our forefather" intervened through Moshe and bequeathed to the fledgling Jewish nation a law that would serve to rectify the errors in which they were ensconced. As such, the law was tailored to counterbalance the particular deeds, practices, and schemas that carried or enforced erroneous notions down to their minute details.

This provides Rambam with a basic framework to explain many of the mizvot. "I shall now return to my purpose and say that the meaning of many of the laws became clear to me and their causes became known to me through my study of the doctrines, opinions, practices, and cult of the Sabians³²⁵, as you will hear when I explain the reasons for the commandments that are considered to be without cause." The prohibition of "And ye shall not walk in the customs of the nations" is thus applied specifically to those customs that resemble the magical practices and superstitions of pagan societies. Shaving the corner of the head and the corner of the beard has been forbidden because it was practised by idolatrous priests. Similarly,

325 Rambam uses this term to designate pagans. Page 514, note 1.

The Structure of Tradition

sha'atnez (mingled stuff) is prohibited because “this too was an usage of these priests as they put together in their garments vegetal and animal substances bearing at the same time a seal made out of some mineral”. Rambam also understood that the commandment that “a woman shall not wear man's armour neither shall a man put on a woman's garment” bears a semblance to an ancient pagan custom which required these modes of dress³²⁶. Likewise, the laws of arlah, ma'aser sheini, kelayim, and kelay hakerem “have been forbidden because of their leading to idolatry”³²⁷.

One section of mizvot that follows this logic and, as Rambam himself anticipated, evoked harsh criticism is that of korbanot. Section iii, chapter 32 of *The Guide* introduces a parallel between physiological and intellectual-spiritual nurturing. Just as nature accords a means of nourishment to the nursling, who can only feed on liquids and would be harmed by foods that are otherwise healthy for an adult, so too did the Torah fashion the mizvot to accommodate its intellectually callow audience:

For a sudden transition from one opposite to another is impossible. And therefore man, according to his nature, is not capable of abandoning suddenly all to which he was accustomed. As therefore God sent Moses our master to make out of us a kingdom of priests and a holy nation – through the knowledge of Him, may He be exalted, according to what he said: And to serve Him with all your heart... And as at that time the way of life generally accepted and customary in the whole world and the universal service upon which we were brought up consisted in offering various species of living beings in the temples in which images were set up, in worshipping the latter, and in burning incense

326 pp. 543-544

327 p. 549

before them... His wisdom, may He be exalted, and His gracious ruse, which is manifest in regard to all His creatures, did not require that He give us a Law prescribing the rejection, abolition, and abandonment of all these kinds of worship. For one could not then conceive the acceptance of [such a law], considering the nature of man, which always likes that to which it is accustomed.

Rambam then divides the many halakhic injunctions relating to the temple, the priests, and the various sacrifices into two categories. The first embraces the specific forms of worship that were extant at the time and instructs man to consecrate them to God instead of their original pagan function, such as the altitudinous location of the holy temple. The other does quite the opposite; it establishes precepts that contravene those fixed by the pagan modes of worship, such as the injunction to face westward while serving in the sanctuary³²⁸.

It is in regard to this set of mizvot that Rambam incurred the harshest criticism. Ramban³²⁹ protests that “the reason stated here for the korbanot is “*isheh reiah nihoah*”, not, as the *The Guide* writes, because all sickness and ailment will only be cured by its opposite.”

Behold these are empty words... [they suggest that] the table of God be repugnant as it serves no function other than to disaffirm the hearts of sinners and fools, and doesn't the passage say that they are bread of *isheh le-reiah nihoah*?

Ramban is standing up for a perception of korbanot that imbues them with fixed inherent value. He is repulsed by the suggestion that worship performed in the mishkan by the kohanim was a reproduction of pagan rites to which the world inured. Is interesting

328 p. 575

329 Lev. 1, 9

The Structure of Tradition

to note the kind of explanation that Ramban is satisfied to accept in its place. He traces each deed in the sacrificial process to the particular anatomical limb that enables it. So the *smikhat yad* (leaning of hands) that is done with the hand – the bodily representative of action - atones for the sinful deed itself, the *vidui* (confessional), for speech, etc. Ramban is apparently not bothered by a ratiocination that sets the human being as the model for the relevant commandments. What he repudiates is a doctrine that, in so doing, accounts also for the transient elements of the human condition. That is to say that we will not take issue with a system that allows us to maintain a fixedness for the details of the commandments, even if they ultimately become explicable through human action.

As mentioned, Rambam anticipated this reaction.

I know that on thinking about this at first your soul will necessarily have a feeling of repugnance toward this notion and will feel aggrieved because of it; and you will ask me in your heart and say to me: How is it possible that none of the commandments, prohibitions, and great actions – which are very precisely set forth and prescribed for fixed seasons – should be intended for its own sake, but for the sake of something else..³³⁰

Rambam responds to his aggrieved reader by referring him to the biblical passage that explains why upon leaving Egypt Israel did not initially set out on the most direct route, through Palestine. “*Pen yinahem ha-am bir-otam milhama ve-shavu mizraymah.*” Rambam continues:

For just as it is not in the nature of man that, after having been brought up in slavish service occupied with clay, bricks, and similar things, he should all of a sudden wash off from

330 *The Guide* iii, 32 p. 527

his hands the dirt deriving from them and proceed immediately to fight against the children of Anak, so is it also not in his nature that, after having been brought up upon very many modes of worship and of customary practices, which the souls find so agreeable that they become as it were a primary notion (my emphasis), he should abandon them all of a sudden.

Basically, the experiences, customs, and practices that contribute to the ethos of an individual or society are not below being accounted for as a part of the human condition. Just as Ramban appreciates the legitimacy of formative mizvot whose details are commensurate with the human body, so too is it canonical for mizvot to address the socio-theological and teleological aspects of man.^{331 332} Whereas

331 In his *Sefer Hazikaron*, Ritva addresses a more simplistic reading of Ramban. He adumbrates that Ramban only took issue with *The Guide* because he understood it to be explaining the sacrifices as didactic to the other idolatrous nations of the world, such as the Egyptians, themselves. Had Ramban realized that Rambam was actually correlating these commandments with Israel in particular he would not have been as perturbed. However, even if this distinction can be imposed on Ramban's diction, it seems that his main thrust is a fine reflection of the way Rambam anticipated his detractors.

332 Understanding Rambam's explanation of *korbanot* as portraying them strictly as an imitation, and to bereave it of its experientially instructive, formative intent is a common misnomer. Even a cursory reading of *The Guide iii*, chapter 32 evinces that Rambam's ascription of a "second intention" to the services in the *mishkan* and the *beit hamikdash* is in addition to, not in exclusion of, a "first intention" that moves the individual who performs these *mizvot*.

One excerpt that is particularly telling is where Rambam compares the theoretical abrogation of sacrificial service from the practice of a primitive paganist Jewish nation to the equally theoretical abrogation of prayer from the ritual of the Jew in his own era (p. 526). Yet an analysis of prayer throughout Rambam's writing yields an attitude that attributes to the prayer gesture an experience that is both noetic and expressive. See for instance Rambam's *sefer haMizvot*, positive commandment 5, where he tabulates what he believed was a biblical injunction to pray as a subset to the general commandment to worship God.

The Structure of Tradition

Ramban insists on limiting the correlation between man and law to those traits of man that are static, Rambam considers this a scruple that flows from “the sickness of your heart.”³³³ This, then, stands as another instance where Rambam encourages the notion that the Torah is shaped by, and therefore reflects, the protean nature of man.

Properly understanding the justification of Rambam's above mentioned position calls for a brief discussion of Maimonidean reason in general. In *The Guide* iii, chapter 25 Rambam divides all actions into four categories: Futile actions are actions enacted without any aim. Frivolous actions have an aim but the aim is unnecessary and not very useful. The third sort is called vain actions, those that are intended to be adequately constructive but do not reach fruition because the agent encounters obstacles. And the last sort of action is labelled the “good and excellent action”. This is the kind that “is accomplished by an agent aiming at a noble end, I mean one that is necessary or useful, and achieves that end.”³³⁴ This categorization implies that a fecund deed assumes the value of its

If we take this into account we can allow the *korbanot*-prayer analogy to shed light on his meaning regarding the former. Rambam believed that taking the human consciousness and modes of thought and conduct into consideration in designating the laws of service and worship allows man to consecrate the entirety of his being in every way he experiences himself, along with his present-day ethos and self-awareness, toward his self-fulfilment and his achievement of closeness with divinity. And after all, these are the aspirations that basically comprise Rambam's “first intention”. This position is also made clear at the very beginning of the chapter where Rambam introduces his scheme. He begins by quoting a series of biblical passages which call for the inclusion of “that thou mightest know” and “all of thy heart” in God's service.

See also Abarbanel's introduction to Leviticus p. 5; Faur, J; *Homo Mysticus*, 1999, Syracuse University Press. p. 155. For a full discussion on prayer in Maimonidean thought see Rabbi Joseph B. Soloveitchik, *Worship of the Heart*, 2003, Toras HoRav Foundation, esp. chap. 10.

333 p. 527

334 pp. 502-3

result and does not require justification beyond the efficacy of its product. In this manner he manifests the purpose of the divine creative act. The result of creation is a creature that is completely harmonious both within itself as well as within creation as a whole, so the act that caused it to be was “good and excellent.”

No attention should be paid to the ravings of those who deem that the ape was created in order that man should laugh at it. What led to all this was ignorance of the nature of coming-to-be and passing-away and neglect of the fundamental principle: namely, that the entire purpose consists in bringing into existence the way you see it everything whose existence is possible; for His wisdom did not require in any way that it should be otherwise; for this is impossible since matters take their course in accordance with what His wisdom requires.³³⁵

In a similar manner Rambam frustrates the error of the multitudes that maintains that there are more evils in the world than there are good things.

The first species of evil is that which befalls man because of the nature of coming-to-be and passing-away, I mean to say because of his being endowed with matter... We have already explained that divine wisdom has made it obligatory that there should be no coming-to-be except through passing away. Were it not for the passing-away of the individuals, the coming-to-be relating to the species would not continue. Thus that pure beneficence, that munificence, that activity causing good to overflow, are made clear.³³⁶

335 p. 504

336 *The Guide* iii:12, p. 443

The Structure of Tradition

Here we have the other half of the equation. Whereas in chapter 25 Rambam was demonstrating the inherent good in the act of creating through its creature, here in chapter 12 he is proving the inherent good in the created by the fact that it was born of an act that was beneficent.³³⁷ Consequently, “A man endowed with intellect is incapable of saying that any action of God is vain, futile, or frivolous... everything that He, may He be exalted, has done for the sake of a thing is necessary for the existence of the thing aimed at or is very useful.”³³⁸

After postulating that the defining criterion for whether a deed is to be considered good is by its degree of constructiveness, Rambam moves to the question of the purpose of the *mizvot*. “It is, however, the doctrine of all of us – both of the multitude and of the elite – that all the laws have a cause, though we ignore the causes for some of them and we do not know the manner in which they conform to wisdom³³⁹.” The “wisdom” that is inherent in the *mizvot* of which we are or are not aware is actualized by the appreciation that they are serving a cause. This is necessarily so if we are to consider God's act

337 To break free of the ostensible circular logic herein one must bare in mind that God's justice and divine providence can strictly be considered from the perspective of the created world. To alter the character of the created world would be to shatter God's justice system as it manifests itself therein, and *vice versa*. Human intellect is steeped in a world governed by that which God has already decreed. Musings that contemplate what aspects of nature may have been omitted or added are by definition beyond the realm of human inquiry and thus they fall into the subject of “the beginning state of creation.” As such, we become aware of the boundaries of *potential* creation by observing *actual* creation. See Hoffmann, D, *In Between Creating and Created Things*, La Storia della Filosofia Ebraica (1993).

338 p. 503

339 *The Guide iii*, chapter 26

of legislating them a good act.³⁴⁰ The particular cause the Rambam ascribes to the mizvot is:

To bring us both perfections, I mean the welfare of the states of people in their relation with one another through the abolition of reciprocal wrongdoing and through the acquisition of a noble character. In this way the preservation of the population of the country and their permanent existence in the same order become possible, so that everyone of them achieves his first perfection; I mean also the soundness of the beliefs and the giving of correct opinions through which ultimate perfection is achieved... You know already what [the sages], may their memory be blessed, have said interpreting His dictum, may He be exalted: That it may be well with thee, and thou mayest prolong thy days. They said: That it may be well with thee in a world in which everything is well and what thou mayest prolong thy days in a world the whole of which is long.³⁴¹

The function of the mizvot is to beget an ideal human being in an ideal human society. The various human faculties and opinions are attended to by the heterogeneous collection of laws. Some mizvot inculcate correct opinions, others assure harmonious political life, and others stand to refine the epistemological, phenomenal, and sensory capacities of man. So for instance, we are admonished on the one hand not to “deviate from the word (the sages) shall instruct you right or left” which progenerates submissiveness, while on the other hand we are called upon to “surely rebuke your nation,” an assertive act, because the behavioural point between these two

340 The conundrum of viewing revelation, or creation for that matter, as an “act” of God in Maimonidean philosophy is beyond the scope of our discussion. For our purpose it is sufficient to follow the lead of Biblical texts which allow for the reference of any occurrence as an act of God. See *The Guide ii*, chapter 48.

341 *The Guide iii*, chapter 27, pp. 511-12

The Structure of Tradition

extremes is the ideal equipoise of self-assuredness as prescribed by the Torah.³⁴² If we acknowledge this as the divinely desired result of the mizvot, we must accept that they possess a noetic wholeness in this administration. In this vein Rambam expounds upon the prohibitions of *Lo tosifu al ha-davar... ve-lo tigri-u mimenu* (Thou shall not add to [the commandments] nor shall thee detract from them). Being as it is that God's intended perfection of man is attained by, and made known through, the existing mizvot, to either add or to detract would constitute a deviation from the perfect state. A nazirite must offer a hattat (offering of atonement) for having assumed a more stringent lifestyle than the masterful equilibrium delineated by the Torah.³⁴³ Rambam reads this into the passage *Torat ha-Shem temimah mishevat nafesh eidut ha-Shem ne-emanah mahkimat pessi* (God's Torah is consummate in settling the soul; God's Laws are credible, they enlighten the profligate). It follows that the mizvot must be legislated in the particular manner that will cause them to have the most constructive effect. For instance, in regard to the manner in which the Torah expresses correct opinions, Rambam writes: "Therefore some of them are set forth explicitly and some of them in parables. For it is not within the nature of the common multitude that its capacity should suffice for apprehending that subject matter as it is."³⁴⁴ The medium used in communicating proper beliefs must suit the intended audience if it is most efficaciously to accomplish its design.

To summarize, the extent to which an act is to be considered good is commensurate with its ability and its likelihood to attain a stated goal. Rambam proffers a detailed account of what those goals are that

342 See Rambam's introduction to *Avot* in his Commentary on the *Mishnah* (*The Eight Chapters*), chapter 4.

343 *Talmud Bavli, Taanit 11a, Nedarim 10a, Nazir 19a, 22a; The Eight Chapters*, ibid.

344 *The Guide iii*, chapter 27 p. 510

ratify the act and content of revelation. Whereas others might say that for man to be just he must conform to the Torah's legislation and its implicit direction, Rambam would say that the Torah is good because it reflects, and moves man in, his teleological purpose, and it does so in a most complete manner. Man, in turn, is summoned to attain perfection of his various faculties and to strive for a higher existence via the agent of halakha. Rambam would agree that the human being cannot be aware either of the fabric of the intended higher existence or of a means of achieving it other than through the mizvot. But strictly speaking, their excellence lies in their being utilitarian. It is from this angle that Rambam takes issue with his detractors on the question of rationalising the mizvot:

There is a group of human beings who consider it a grievous thing that causes should be given for any law; what would please them most is that the intellect would not find a meaning for the commandments and prohibitions. What compels them to feel thus is a sickness that they find in their souls, a sickness to which they are unable to give utterance and of which they cannot furnish a satisfactory account. For they think that if those laws were useful in this existence and had been given to us for this or that reason, it would be as if they derived from the reflection and the understanding of some intelligent being. If, however, there is a thing for which the intellect could not find any meaning at all and that does not lead to something useful, it is indubitably derived from God; for the reflection of man would not lead to such a thing. It is as if, according to these people of weak intellects, man were more perfect than his Maker; for man speaks and acts in a manner that leads to some intended act, whereas the deity does not act thus, but commands us to do things that

The Structure of Tradition

are not useful to us and forbids us to do things that are not harmful to us.³⁴⁵

Since the virtue of the mizvot lies in their utility, it follows that the degree to which we can appreciate their excellence will hinge upon the degree to which they are indeed useful. Instead of considering the conformation of the law to an intricate anthropological reality a demeaning prospect, our value of the mizvot is heightened for it. And this equation would hold true whether the reality we're dealing with is static or fleeting. For Rambam the fact that mizvot also address the sociological aspects of man attests to their infinite rationality and excellence. We can also understand why the pre-Sinaitic pagan atrophy of man is so central in Rambam's development of a scheme for the rational of the Torah. Man had sunk to an iniquitous nadir that had completely marginalized Avraham's influences in every reach other than the tribe of Levy. For historical purposes all that remained of Avraham's efforts was the covenant he had forged with God and passed on to posterity.

The revelation at Sinai was an instance where God intervened in the natural flow of human development to rectify its course. That being the case, it would be unthinkable for the specific plateau in man's teleological movement not to be an integral element in shaping the doctrine which was, in a large sense, reacting to it.³⁴⁶ Rambam takes

345 *The Guide iii*, chapter 31 pp. 523-24

346 This does not necessarily mean that Rambam was not aware of an objective, if untenable, ideal mode of worship. In discussing the above mentioned comparison between the offering of sacrifices and prayer Rambam writes: "His wisdom... did not require that He give us a law prescribing the rejection, abandonment, and abolition of all these kinds of worship. For one could not then conceive the acceptance of [such a law] considering the nature of man etc." And later: "At that time this would have been similar to the appearance of a prophet... who would say "God has given you a law forbidding you to pray to Him... your worship should consist solely in meditation without any works at all.'" The language is arguably

this so far as to point out that the initial Decalogue contained no mention of sacrificial services. It wasn't until after the golden heifer incident, which had a particularly noxious effect on the epistemology and character of Israel, that these mizvot became necessary.³⁴⁷

A design as such, which places halakha's import in its ability and likelihood to reflect and instruct man's reality and not in a subjective a priori verity toward which man must strive, mollifies the brunt, so to speak, of Rambam's claim regarding human participation in forming halakha. From this perspective it is no longer offensive to suggest that the quiddities of halakha were left for man to calcify. In fact, perhaps quite the contrary is true. Given man's protean nature there must be allowance, albeit tempered as shall be shown, for the mizvot to be fluent in form. If it were not so our esteem for the intervention of the Torah in the teleology of man would be assuaged, as it would necessarily be limited in its perfect goodness.

In theory then, the more adaptable halakha is the better it serves its end. Plainly, however, there are some serious flaws with this idea in terms of implication. What good is a legislative or didactic imperative if its concepts and precepts are open to the interpretation of the people whom it intends to instruct and educate? Guidelines clearly have to be implemented to safeguard the limits of halakha's actual and potential malleability lest it be transmogrified beyond recognition. Rambam sees such limits in two capacities; in the scope of what kinds of precepts were left susceptible to adaptation, and in the mechanism in which the halakhic process takes place.

In the introduction to his commentary on the Mishnah Rambam paraphrases a Talmudic passage found in *Torat Kohanim*:³⁴⁸ “Just as

adumbrating that the omission of all works from the act of worship other than the meditative would theoretically render a purer more suitable worship gesture.

347 For this interpretation of *The Guide* see Faur, *ibid.* p. 152s

348 25: 1

The Structure of Tradition

shemita was related in both its general and specific at Sinai, so too all the mizvot's general laws and specific laws are from Sinai.” Rambam follows this up by giving examples of mizvot where the fundamental essences are not up for discussion. As mentioned above, the insignia that places a halakha in this category is its acceptance by all without any mahloket. These halakhot will be considered de-oraitah and they are legally etched in stone.

One thing is clear and explicit in the Torah that is a standing legislature for eternity and is not subject to change, neither by augmentation nor by minimization, as it is written: The entire mizvah that I command thee shall thee ensure to do, thou shall not expand upon it nor shall thee detract from it... And it is written: Lo bashamayim hi ([the Torah] is not in the heavens). Behold you have learned that a prophet is henceforth prohibited to introduce something new. Therefore if a man arises... and claims God has sent him to add a mizvah or to abrogate a mizvah or to present an explanation for an existing mizvah that we have not heard from Moshe, or he says that those mizvot that were commanded to Israel are not eternal for all generations but are temporal, know that he is a false prophet for he comes to contravene Moshe's prophesy.³⁴⁹

Three (kinds of people) are branded “koffer ba-Torah” (abnegators of Torah); he who says that Torah is not from God, even one passage or one word, if he says Moshe said it on his own, he is a koffer ba-Torah... and he who declares that God exchanged one mizvah for another and that this Torah is already expired although (he admits that) its origin is divine.³⁵⁰

349 *Mishne Torah, Hilkehot. Yesodei ha-Torah*, 9: 1

350 *Ibid. Hilkehot Teshuva*, 3: 8

Any future halakhic movement cannot exceed the parameters of those *mizvot* that assume the status of *de-oraitah*.³⁵¹ The rabbinical court is encouraged to understand itself responsible for the societal and spiritual welfare of the community and to mould the law, either by enacting *gezerot* or even by abrogating temporarily a *mizvah*, to suit these needs. However, if these rabbis neglect to make it clear that these newly appended or abrogated laws are rabbinic in origin, and that the *de-oraitah* law remained untouched, they then have transgressed the prohibition of *baal tosef*.³⁵²

Thus the contingency that is expressed in the biblical prohibition to tamper with the *mizvot* effectively creates a permanent rudimentary groundwork of law that serves as the springboard for consequent halakhic development. Within the *mizvot* themselves, any precept that never has been known to be the subject of dispute must forever remain stagnant.

But I believe that for Rambam there is a more apt, if more subtle, fortification for halakha. We are biblically required to adhere to the rulings of the *sanhedrin* (high court). The biblical passage “*Al pi ha-Torah asher yorukha*” effectively devolves the power of authority to

351 Whether or not Rambam considered these *mizvot* to be eternally static to the extent that they must necessarily cross the line into the messianic era is the subject of discussion. In *Hil. Melakhim* 11: 3 Rambam reiterates the eternity of the Torah in specifically this context. See also his commentary on the Mishnah, *Sanhedrin*, 10: 1. If this is truly Rambam's opinion then he was more stringent than many of his fellow Talmudists in understanding this idea. One can speculate that given his unique manner for keeping *halakha* intact, he required a more sustaining groundwork than others might. However in the original formulation of the principle quoted above he only mentions that someone who says the *mizvot* have already been abrogated is committing heresy. Also, to say that in the messianic era the Law will be identical to what it is now disregards numerous rabbinic sources which indicate otherwise. See Shapiro, M. 2004 Oxford: Littman Library of Jewish Civilization, *The Limits of Orthodox Theology*, chap. 8.

352 *Mishne Torah, Hilkehot Mamerim*, 2: 4-9.

The Structure of Tradition

the sanhedrin and establishes it as the nucleus of halakhic ruling. This commandment comes along with a carefully designed structure that orchestrates the manner in which laws can be established or revisited. In Mishne Torah Rambam doggedly charted this structure in all its criteria, applications, and implications.

When a great court that, through one of the hermeneutical principles as they saw fit, deduced that the law is such and such, and another court arises and contradicts it, it may do so, and it may rule according to its own understanding... (But) a court that implemented a *gezeira* or a *takkana*, or it instituted a custom which spread through all of Israel, and later a different court came along and desired to annul the words of the first court... it is not authorized to do so unless it is greater than the first court in wisdom and quantity... but precepts that a court saw fit to decree and prohibit for the sake of setting bounds (for the Torah), if the prohibition became widespread in Israel, no other court is able to nullify and permit it even where it is greater than the first.³⁵³

The law is only vulnerable to alteration where it has been generated based on reason, to the inclusion of such reasoning based on the thirteen rules of hermeneutics. In such an instance, the court that legislated the law, by trumpeting its logic, has left itself open to evaluation. Hence a later court is entitled to utilize these selfsame means of derivation or logic to disprove the conclusions of the first, and thereby issue a ruling that reflects its own conclusions.³⁵⁴ Another clause in the edifice of rabbinic legislation states that once custom has become ubiquitous it is no longer up for discussion, which, incidentally, is more or less how Rambam accounts for the

353 *Hilkhot Mamerim*, 2: 1-3.

354 See *Kessef Mishna*, *ibid*.

irreversibility of the Talmud's authority.³⁵⁵ These self-governing laws of rabbinic court procedure coalesce to form a structure that, even while leaving breathing room for human creativity, is still capable of providing a stable and enduring fortress of ancient tradition. It is this structure itself that fills the void that opened up when Rambam admitted that the tradition itself is in fact not entirely from Sinai.

The defence offered by the geonim and other Talmudists for the Siniatic tradition left much to be desired. To explain why so much of the Talmud relied itself upon derivation through exegesis it had to concede that those historic figures who are held responsible for transmitting the tradition were in fact quite forgetful, thus shooting itself in the foot. In its place Rambam is suggesting that it is not necessary for the tradition to have been completely revealed divinely at Sinai so long as the institution charged with developing and carrying it is a divine initiative. Revelation set in motion a cleverly self-preserving structure, the perimeters of which are biblically depicted, that would henceforth be relied upon to cultivate halakha and preserve its verity and integrity.³⁵⁶

This is perhaps why the sanhedrin was such a central figure in Maimonidean thought. *Hilkhot Mamerim* opens;

The great court in Jerusalem is the nucleus of the oral Torah and (its judges) are the pillars of legislature and from them goes forth law and justice to all of Israel. And the Torah depended on them, as it is written: *Al pi ha-Torah asher Yorukha* (On the basis of the Torah that they will instruct you); this is a positive commandment. And all who believe in

355 Ibid; Introduction *Mishne Torah*, p. 5.

356 For a similar exposition see Blidstein, Gerald Jacob, *Oral Law as Institution in Maimonides*, The Thought of Moses Maimonides (1990) pp. 167-182.

The Structure of Tradition

Moshe and in his Torah are obligated to approximate the performance of the religion to them and to rely upon them.³⁵⁷

There is also a manifest utility in honouring the bearers of the Law; for if a great veneration is not accorded to them in the souls, their voice will not be listened to when they give guidance regarding opinions and actions.³⁵⁸

The doctrine of the rabbinic court constituting a hermetic system may also be responsible for Rambam's famously incessant exclusion of the prophet from halakhic discourse.³⁵⁹ It stems from the very nature of a closed system that once it is set in motion it cannot be tampered with by any force that is not inherent within it.³⁶⁰ The prophet is not relying on reason to evince his argument, thus he is not acting in concurrence with the rules that govern halakhic exposition. In addition, the prophet's argument is not flowing from the ongoing halakhic debate as his source is divine in nature. His participation in the the halakhic discourse would puncture a hole in the airtight edifice that bears the Law. For this reason his exclusion is paramount in Maimonidean thought. In the introduction to his commentary on Mishnah Rambam writes that the exclusion of prophets from the halakhic process is “of the mighty principles upon which the law and its foundation stand.” Along the same lines, it is ridiculous to ascribe halakhic flexibility for the sake of changing social realities and sensitivities in modern times to Rambam, as some

357 *Mishne Torah*, *ibid.* 1: 1

358 *The Guide*, *iii*: 36, p. 539.

359 For instance, *Mishne Torah, Hilkebot Yesodei ha-Torah*, chapter 8; Introduction to *Commentary on Mishna*. See also Bleich, J. David, “*Lo ba-bashamayim hi*” (*a philosophical pilpul*), Reason and Revelation as Authority in Judaism.

360 David Hartman astutely points out that the biblical text Rambam uses to impel rabbinic authority: You shall appear before the Levitical priests or the magistrate in charge at the time etc., is the same verse he uses to eschew the prophet from this functionality. See Hartman, David, *Maimonides: Torah and Philosophic Quest*, 1976, Jewish Publication Society of America, chapter 3.

have attempted to do. More clearly than he admitted human participation in the formation of halakha, and more clearly than he acknowledged, even invited, unavoidable progressive development within the Law, Rambam etched in stone the rigid criteria for the kind of considerations that are admissible in its formation. One would be hard-pressed to pass off modern-day sensitivities and political schizophrenia as such criteria in Rambam's writings. Besides, it is dishonest to overlook a point that forms the crux of a particular argument in *The Guide* where Rambam unequivocally precludes such considerations:

The contrary of this is impossible, and we have already explained that the impossible has a stable nature that never changes. In view of this consideration, it also will not be possible that the laws be dependant on changes in the circumstances of the individuals and of the times... On the contrary, governance of the Law ought to be absolute and universal, including everyone, even if it is suitable only for certain individuals and not suitable for others; for if it were made to fit individuals, the whole would be corrupted and you would make out of it something that varies. For this reason, matters that are primarily intended in the law ought not to be dependant on time or place; but the decrees ought to be absolute and universal.³⁶¹

The oral law as a tradition is inseparable from, and is maintained through, its institutional structure. In implementing halakha with a Maimonidean viewpoint in mind, Rambam's emphasis on the primacy of this structure cannot be ignored.

361 *The Guide* iii: 34, pp. 534-35. See also *Igrot ha-Rambam*, Sheilat, Y, 5755 Maaleh Adumim, p. 429.