

Reshimu

Studies in Jewish Thought and History

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The Journal of the Hashkafa Circle

Under the guidance of Rabbi Dr. Meir Triebitz

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Negative Theology and Divrei Soferim

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Preface

One of the least common ideas discussed in traditional Yeshivot is God. Little time is set aside to analyze and understand the ways in which He interacts with the world.

Another idea which is a mystery to the average Yeshiva student is how the Torah and laws developed into the rich body of texts that we have today. The relationship between Written and Oral Torah is rarely discussed.

One of the underlying causes of this lack is that the traditional books of Jewish philosophy are often overlooked. Occasionally modern texts are read, such as *Michtav Me'Eliyahu* or *Sifsei Chaim*, but the Jewish 'classics' such as *Moreh Nevuchim*, *Chovos HaLevavos* and *Emunos v'Deos* are usually overlooked.

To fill this gap, Rabbi Dr. Meir Triebitz has created a learning environment which is virtually unique in Jerusalem. He has gathered a group of young talmidei chachamim and together they examine critical issues in Jewish philosophy and hashkafa, using primarily the classics of Jewish medieval philosophy.

The *Hashkafa Circle* has developed and expanded over the past 2 years. During that time critical issues in contemporary and medieval

Jewish philosophy and hashkafa have been studied, leading to a deeper and more rounded understanding of Jewish thought.

This journal brings together some of the articles that have been produced by Rabbi Triebitz and the members of the *Hashkafa Circle*. It fills a perceived gap in traditional learning. We hope that this will make a contribution to the knowledge base and encourage others to examine the issues and ideas of traditional Judaism.

This journal primarily covers two topics. The first four articles examine various concepts of the relationship between God and His creation. This is surely one of the most fundamental issues with which any believing Jew must struggle.

The last three articles address the development of Rabbinic law, from Sinai to the Talmud. They primarily focus on the Rambam's concept of *divrei soferim* and offer a history and understanding of this term.

The members of the *Hashkafa Circle* wish to express their tremendous thanks to the individuals and organization who continue to support them. May the merit of the Torah learning and other worthy causes that they support give them much blessing and success always.

Thanks are also due to Matty Lichtenstein, Rachel Kalen and Shari Feld for burning the midnight oil to ensure that this journal was ready by publication time.

We hope that you enjoy this journal. Please send any comments or feedback, or any articles for publication in future editions to hashkafacircle@gmail.com.

David Sedley

Adar 5768, Yerushayalim.

Rambam's Theory of Negative Theology: Divine Creation and Human Interpretation

By Rabbi Dr. Meir Triebitz

Part I

Central to Rambam's *Guide for the Perplexed* is the idea he develops of 'negative theology.' This asserts that God is simply 'other' than anything man can speak about. God has nothing in common with anything in the world. Just as it is absurd to compare "intellect with a color", or to say that a "man is stronger than the color green", similarly, it would be that much more preposterous to describe God in any positive way (section 1; chapter 33). On the contrary, any attempt to ascribe any positive attributes to Him would be equivalent to assigning Him with a physical form, and would be therefore tantamount to paganism (ibid. chapter 50). The 'oneness' of God demanded by the Torah requires us to reject any anthropomorphic description of Him (ibid. chapter 55). God is simply 'other' than anything man can speak about.

This negative theology, uniquely radical in theological history, has been the source of much discussion and controversy. A central issue

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most often raised is, given Rambam's position, how is it at all possible for man to relate to God in any meaningful way. Indeed, the entire corpus of Jewish scripture and liturgy is replete with descriptions and praises of God. It would appear that the Rambam's philosophical position is at odds not only with scripture, but the whole nature of Jewish prayer and supplication which the Rambam himself elaborates on in his Mishnah Torah. Although Scripture can always be interpreted metaphorically, as Rambam does frequently in the *Guide*, prayer is not subject to such interpretation. The resolution of this issue is critical for anyone who intellectually subscribes to a rationalist conception of God, but on the other hand recognizes our existential need to connect with Him on a personal level¹.

While Rambam does not present us with an explicit resolution of this difficulty anywhere, it is possible to construct one through gleaning from several passages throughout the *Guide*. Indeed, in his famous introduction, he writes explicitly that, "contradictory or contrary statements" are integral in explicating obscure and difficult concepts. As a consequence, one cannot expect to locate the resolution of all theological difficulties in specific locations, but rather one must take into account different, possibly conflicting, statements, scattered in different sections and thereby construct, through dialectics and synthesis, the overarching concept.

There are two places in the *Guide* where Rambam allows us to describe God with positive attributes, thus allowing for a violation of his negative theology. In one passage, he states explicitly that there is an exception to his principle of negative theology, while in the other place another type of exception is mentioned tangentially, signaling to the alert reader a seeming contradiction between the two passages. For having allowed for a positive description of God in one and seemingly only one instance, how can Rambam allow for positive description in another instance? The first and explicit exception is Rambam's distinction between descriptions of God Himself, and descriptions of God's acts. While descriptions of 'God Himself

cannot be uttered, descriptions of God's acts are permitted, and do not violate negative theology. He writes,

The fifth category of attributes is one which describes acts. I do not mean a description of one's ability to perform an act, such as describing someone as a carpenter or a glazier, for these are evaluations of the subject himself. But rather, I mean "his actions" which he performs as in the statement "Reuven is the one who built this door" or "constructed this wall" or "wove this suit". This type of predication is distant from the subject of predication and therefore it is permitted in this sense to describe God as such¹.

Rambam, in this passage, explicitly allows one to describe God's acts. In the statement "This type of predication is distant from the subject of predication", Rambam provides the philosophical and theological grounds for permitting this violation. It is precisely God's 'otherness' from the world which allows us to describe Him by describing His acts. For the distance between the act or predicate and the subject, is sufficiently large that no description of any Divine act can ever be construed to be a description of God Himself. Rambam lists five categories of predicates, and this is the only one that permits any kind of positive description. The impression conveyed to the reader is that this is the only exception to be made.

However, in section 1; chapter 59 Rambam, seemingly tangentially, mentions a second category of exceptions - attributes which come from prophecy. He writes there:

Reflect what was said that if God left us (alone) to act in accordance with our intellects, we would never mention any positive attributes nor would we utter them (in prayer), only out of necessity to give people so that they should have some concepts, as the Sages say "The Torah speaks in the language

1 section 1 chapter 52

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of man”, to describe to them God in terms of their own notions of perfection. Our purpose is to draw a line with respect to using these expressions and not to refer to Him by them except when the Torah scroll is read. However, since also the Men of the Great Assembly came along, who themselves were prophets and established that certain attributes should be part of the liturgy of prayer – only those can be uttered.

The attributes of God which appear in Jewish liturgy are permissible according to Rambam for they are rooted in prophecy. The prophets here are the Men of the Great Assembly, who composed the central corpus of Jewish liturgy. In addition, it seems that the attributes which appear in the Torah are also permitted for the same reason. The Torah is no other than the prophecy of Moses. One might be tempted to interpret Rambam as allowing for the Torah reading exception to negative theology because of the statement of the Sages, “the Torah speaks the language of man”. However, it is difficult to understand why Rambam should justify such a violation. Rather it seems to me that the more plausible interpretation of Rambam's intention in this paragraph is that the Torah reading is permitted for it is also an act of prophecy. Otherwise the final sentence, beginning “however” with respect to the Men of the Great Assembly is redundant. Therefore Rambam is emphasizing his central point that attributes derived from prophecy, such as the attributes that appear in the liturgy of the Men of the Great Assembly do not violate negative theology.

It is clear that Rambam does not view prophetically derived attributes as violations of negative theology. The question which immediately arises is why? What difference should it make if we are describing God by prophetic utterances? Why are these not considered to be ascribing Him with bodily form and thereby violating the Torah prohibition of paganism? In other words, what is it about prophetic utterances which describe God that are truly not about Him?

This problem can be formulated in the following way: Rambam, as we have seen, makes an explicit exception in his negative theology for descriptions of God's acts. Rambam also, makes a parenthetical remark while discussing prayer, that attributes which appear in liturgy are permitted descriptions of God, for they are prophetic utterances. If descriptions of acts and prophetic utterances constitute two separate categories or permissible descriptions of God, why were they not both explicitly presented in section 1; chapter 52? It is probably more reasonable to assume that the parenthetical exception is to be included in the explicit exception. In other words, prophetic utterances are essentially descriptions of acts of God. How is this so? What is it about prophetic utterances that Rambam considers to be descriptions of God's acts and not descriptions of God Himself.

In order to answer this question we must turn now to two passages in the *Guide* which describe the act of prophecy. The two passages appear in two different parts of the *Guide*. Nonetheless when analyzed together they will help us understand Rambam's conception of the process which gives rise to prophetic revelation. Once again we are witnessing Rambam's methodology at work. The first passage is part of a general discussion of prophecy. There he writes:

Know that the true reality and essence of prophecy consists in its being an overflow from God, may He be cherished and honored, through the intermediation of the Active Intellect toward the rational faculty in the first place and thereafter toward the imaginative faculty².

The second passage is located in an earlier section of the *Guide* where Rambam discusses creation. In that chapter Rambam is trying to resolve the philosophical difficulty of how an incorporeal body, namely God, can be understood to causally affect a corporeal, physical world. Rambam's solution is that God's causal relationship with respect to the physical world is not direct. Rather it is achieved

2 Section 2 chapter 36

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through an 'overflow' which originates in His thoughts and which eventually develops into the 'active intellect' which, through the celestial spheres, imparts movement to the world. The central idea is that even though God is non-corporeal, the 'overflow' of His thoughts is considered a Divine act. In the course of his exposition, Rambam makes an important analogy to the prophetic process.

The action of the separate intellect is always designed as an overflow, being likened to a source of water that overflows in all directions and does not have one particular direction from which it draws while giving its beauty to others. For it springs forth from all directions and constantly irrigates all the directions, nearby and afar... Similarly with regard to the Creator, may His Name be sublime, inasmuch as it has been demonstrated that He is not a body and had been established that the universe is an act of His and that He is its efficient cause – as we have explained and shall explain – it has been said that the world derives from the overflow of God and that He has caused everything that is produced in time to overflow into it. Similarly, it is said that He caused His knowledge to overflow to the prophets. The meaning of this is, these actions are the actions of one who is not a body and it is His action that is called an overflow³.

The importance of this passage for us is that according to Rambam, just as God does not directly impart movement to the physical world, He also does not directly speak to prophets. Rather, God through His thoughts produces 'mental' acts whose overflow is discerned and apprehended by the prophet through their imaginative and/or rational intellect. Prophecy, then, consists of an interpretation or description of an act of God. Hence prophetic attributes of God are no other than the prophet's description of God's 'mental creations' and naturally fall into Rambam's fifth category of predication. As a

3 section 2 chapter 12

result prophetic attributes are admissible descriptions of God and do not violate negative theology.

With this observation we can now understand Rambam's statement above regarding the permissibility of Divine attributes which appear in the liturgy. The positive attributes which appear in a prophetically inspired liturgy are essentially prophetic descriptions of Divine acts. Therefore it is precisely the prophetic nature of the corpus of Jewish prayer which allows the worshipper to refer to God in a positive way and to praise Him.

If so, we can understand Rambam's comparison analogy between contemplating the words of the prophets, such as liturgy, and the physical world. Rambam states in his section on prophecy:

You should know that sometimes [in prophecy] the intellectual overflow flows only toward the rational faculty and does not overflow at all towards the imaginative faculty – ... this is characteristic of the class of men of science engaged in speculation⁴.

Having established a parallelism in Rambam between intellectual apprehension of prophetic texts and intellectual apprehension of the physical creation, we can now understand Rambam's conception of prayer and worship. In a passage in the *Guide* Rambam invokes a statement of the Sages that prayer is considered 'service of the heart'⁵. In the context of this verse which forms the basis of the Sages' statement, worship itself is a consequence of love of God. Rambam in this passage adds the crucial link, that love itself is a consequence of intellectual apprehension:

“The Torah has made clear that this worship which we have discussed in this chapter can come about only after intellectual apprehension. The verse says “To love Adonai

4 section 2 chapter 37

5 *Sifrei* Devarim 41

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your God and to worship Him with all you hearts and all your souls (Devarim 11: 13). We have already made clear several times that love of God is in accordance with intellectual apprehension. After love will follow worship which the Sages have also referred to as “worship of the heart” (Sifrei Devarim 41). This is, in my opinion, philosophical reflection on “the primary thought” and meditation on this as much as possible.

What is Rambam referring to when he says “We have already made clear several times that love of God is in accordance with intellectual apprehension”? It seems that he is referring to two places in the *Mishnah Torah* where he asserts that through contemplation and meditation on the wisdom of creation one will come to love Him.

In Hilchot Teshuva, Rambam writes (chapter 10 halachah 6):

It is well known and clear that the love of God is not imbedded in man's heart until he pursues persistently and abandons everything else in the world, as it is stated “with all your hearts and with all your souls” – for this can only come about through his knowledge of Him. For only by knowledge of Him can one love God, whether a little or a lot. Therefore one should devote himself to understand and contemplate the wisdoms and sciences which make him aware of his creator in accordance with his ability to understand and contemplate, as we explained in Yesodei HaTorah.

The reference to Yesodei HaTorah is to the scientific description to be found there of the natural universe as Rambam understood it. There too he says (chapter 2: halachah 2):

And what is the path to love and fear of God? When a person contemplates the great and wondrous acts and creations of God, and sees their great wisdom which has no bounds, immediately one is overcome with love...”

We see clearly that for Rambam, ‘service of the heart’ which constitutes the Torah dictate of prayer can only come about through a ‘love of God’ which is based upon intellectual apprehension. This however, raises a problem, for the love of God described by Rambam in the two passages above from the *Mishnah Torah* come as a result of intellectual apprehension of God’s creation. In the case of worship, what is the object of that intellectual apprehension which leads to it? Based upon what we have established, that prophetic texts are analogous to the physical creation, it follows that the intellectual apprehension involved in prayer is of the liturgy itself. Rambam makes this point explicitly in this following passage (chapter 51 of section III):

I will now commence to guide you in the proper methodology, in order that you will reach this great achievement. The first thing is to try to empty yourself of all (outside) thoughts when you recite the Shema and prayer (the eighteen benedictions)... when you accomplish this and it becomes rooted with in you after years, attempt after which every time you read from the Torah or hear it. When this has become rooted in you after a certain period, try every time you read from the Prophets that your thoughts are always pure. Even during all the blessings reflect upon what you say and pay attention to its meaning.

We have now come full circle. Man relates to God through prayer as the scientist relates to God through the physical creation. ‘Service of the heart’, which is prayer, is achieved by “reflecting” upon the words of the liturgy and “paying attention to its meaning”.

Rambam’s concept of prayer as an act of ‘worship of the heart’ which follows from intellectual reflection upon the prophetically derived words of the Jewish liturgy is a direct consequence of his ‘negative theology’. For by positing the absolute ‘otherness’ of God from creation, the sole means man has at his disposal is to intellectually apprehend the ‘acts’ of God. These acts can be physical, in which

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case perspicacity of them constitutes the scientific wisdom of His universe. Or they can be an 'overflow' of Divine thoughts, in which case its apprehension occurs during the act of prophecy. This leads to the establishment of sacred scripture and liturgy, through whose apprehension, in theory, constitutes mans' worship of God.

The connection between Divine actions and human worship then appears to take place in two steps. In the first one, the prophet apprehends God's overflow while in the second the worshipper reflects upon the scriptural or liturgical words of the prophet. This would seem to contrast with the love of God which comes directly from apprehending God's creation. The truth is, however, that the latter also takes place in two stages. For Rambam tells us that we come to love God only by apprehending 'the wisdoms and sciences'. Hence we have here a two step process. First man apprehends the physical universe around him and discovers its 'wisdom and science'. Then, through reflecting upon the 'wisdom and science' man comes to a love of God.

The 'hallmark' of Rambam's negative theology then is that man never relates to God directly, but always indirectly. The 'distance' between the subject of predication and act of predication demanded by Rambam when we speak of God therefore constitutes the medium through which we relate to God. By filling up this space and never allowing the gap to be bridged, man paradoxically comes close to God through love and worship.

Part II

In part I, we saw how Rambam's 'negative theology' allows for God's acts and thoughts to be intellectually explored and understood by man. God's 'otherness' from the world is the very thing which allows for its intelligibility. Through knowledge and understanding of God's physical and mental 'act' man can enter into a relationship of love and worship with Him. But what of man's acts? How does 'negative

theology' give significance to man's acts within the corpus of Judaism which places a central emphasis on man's knowledge and obedience to God's divine law therefore subjecting man to Divine reward and punishment?

There is an apparent paradox in the *Guide* regarding this. On one hand, Rambam reiterates the complete unintelligibility of God's essence. On the other hand, in three cases he identifies that essence with three positive attributes.

Rambam writes regarding the Divine Intellect (section I; chapter 68):

Since it has been rigorously proven that God is an active intellect, and not potentially, but rather continuously apprehends things intellectually... it then follows that He and the object ascertained intellectually are one, and it is His very essence. His essence is intellectual apprehension, the object of apprehension and the intellect itself.

Similarly in chapter 69 he writes concerning divine will:

Therefore all chains of events end up at His Will and Wisdom, which we have already explained, are His essence, for this Will and Wisdom are not things separate from His essence.

Finally In chapter 20 of section III he writes concerning Divine knowledge:

In summary, just as we cannot apprehend the truth of His essence (self) but nevertheless we know that His existence is the most perfect existence ... we cannot know the truth of His knowledge for it is His essence.

From these passages we see that Rambam identifies God's unknowable essence with His intellect, knowledge and will. It thereby follows that intellect, knowledge and will are attributes of God, which constitute a seeming contradiction to his "negative theology".

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If we carefully examine each of the above attributes, which Rambam has identified with God's essence, we see that each one accounts for a fundamental Divine-like attribute of man.

So, for example the first attribute, intellect, is what the Rambam understands at the very beginning of the Guide (Chapter 1 of Section I) to be man's Divine image. Intellect, writes the Rambam, is the most defining aspect of man in contrast to the rest of creation, and is also ostensibly the thing he has most in common with God.

In addition, in section 69, Rambam draws an explicit analogy between the processes of Divine and human intellect. According to Rambam in the act of thinking, the subject and object become one. This is true both of God's and of man's thought and is described by Rambam as follows:

“You should not then think that the intellect in actu is a certain thing existing by itself apart from apprehension is something else subsisting in that intellect. For the very being and true reality of the intellect is apprehension. Whenever, therefore you assume that an intellect exists in actu, that intellect is identical with the apprehension of what has been intellectually cognized. This is most clear to whoever has attempted this kind of speculation. Accordingly it is clear that the act of the intellect, which is its apprehension, is the true reality and the essence of the intellect. Consequently the thing by means of which the form of that piece of wood was abstracted and apprehended which thing is the intellect, is also the intellectually cognizing object. For it is the very intellect that abstracted the form and apprehended it, thus being its act because of which it is said to be an intellectually cognizing object. Now its act is identical with its essence. Accordingly that which has been assumed to be an intellect in actu has nothing belonging to it except the form of the piece of wood. Accordingly it is clear that whenever intellect exists in actu, it is identical with intellectually cognized thing. And it

has become clear that the act of every intellect which act consists in its being intellectually cognizing, is identical with the essence of that intellect. Consequently the intellect, the intellectually cognizing subject and the intellectually cognized object are always one and the same thing, in the case of everything that is cognized in actu.”

If this is true, is there any difference between the act of thinking in man and God? The answer, according to Rambam, is that in man, the intellect is not always active but also exists in a potential state. In this potential state, the subject, object and act of thinking are not unified. As Rambam says, “If, however, potential cognition is assumed they – that is the intellect in potential and the potentially cognizable object, are necessarily two things.” This is true for man. However as far as God is concerned, He is “an intellect in actu and there is absolutely no potentiality in Him – as is clear and shall be demonstrated – thus it is not possible to claim that God sometimes apprehends and sometimes does not, His intellect is a constant factor, it follows necessarily that He and the thing apprehended are one thing, which is His essence. Moreover, the act of apprehension is in itself the intellect, which is His essence. Thus in truth, the intellectually cognizing subject, the intellect, and the intellectually cognized object are one and the same thing wherever we have an intellect in actu. We, however, pass intellectually from potentiality to actuality only from time to time.”

We see clearly that when man is actively thinking, he is imitating God, *Imitatio Dei*. As we have shown this intellectual act occurs not only when man seeks to understand the world but also when he reflects upon the words of the prophets or on prophetically inspired liturgy. The claim that “God’s intellect is His essence” does not violate negative theology precisely because man also thinks in a Divine fashion, so that there is no distinction between the human attribute and the Divine attribute. For the danger of idolatry recognized by negative theology in the attribution of positive

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descriptions to God is precisely because there is a distinction between man and God. Hence what we say about man cannot be said about God, for God cannot be reduced to man. However, if with respect to a particular attribute, man and God are commensurable, as when they are actively thinking, and then assigning that attribute to God does not reduce God's status to that of man. When Rambam says that God's intellect is His essence, he is essentially saying that our description of the intellectual act is not more pronounced in God than it is in man. Each is of equal irreducibility. Hence, negative theology becomes the way in which man can be said to act in a Divine manner. This thereby grants vast significance to the human act. In the case of intellect, it allows man to apprehend Divine wisdom.

The next attribute associated by the Rambam with God's essence is His will. In chapter 69 Rambam writes that when one investigates the purpose of anything he follows a process of purposes which ultimately end up with the answer "it is God's will". He writes:

"This should be done with regard to every end occurring in time until one finally arrives at his mere will – may He be exalted – according to a certain opinion, as shall be made clear so that ultimately the answer will be: God willed it so; or – according to the opinion of others, as I shall make clear – one finally arrives at the decision of His wisdom so that ultimately the answer will be: His wisdom dictated it so. Thus according to these two opinions the order of all ends is ultimately does do His will and wisdom, as to which it has been made clear, according to our opinion that they are identical with His essence; His will and His volition or his wisdom not begin things extraneous to his essence. I mean to say that they are not something other than His essence. Consequently He, may He be exalted, is the ultimate end of everything; and the end of the universe is similarly a seeking to be like unto His perfection as far as is in its capacity. This,

as shall be made clear, is the meaning of His will, which is His essence. In virtue of this it is said of Him that He is the end of ends”

The key statements here are that the “end of the universe is similarly a seeking to be like unto His perfection as far as is in its capacity. This, as shall be made clear, is the meaning of His will, which is His essence.” Where is this “made clear”? It seems to me that it is at the very end of the *Guide* in chapter 53 of section III when Rambam writes that the highest perfection that man can reach is to imitate God’s ethics. There the Rambam says:

“He (the prophet) says that one should glory in the apprehension of Myself and in the knowledge of My attributes, by which he means His actions, as we have made clear with reference to its dictum “Show me now Thy ways”, and so on. In this verse (Yeremiyahu 9: 23) he makes clear to us that these actions that ought to be known and imitated are loving-kindness, judgment and righteousness. It is My purpose that there should come from you loving-kindness, righteousness and judgment in the earth in the way we have explained with regard to the thirteen attributes; namely that our purpose should be assimilation to them and that this should be our way of life. It is clear that the perfection of man that may truly be gloried in is the one acquired by him who has achieved, in a measure corresponding to his capacity, apprehension of Him, may He be exalted, and who knows His very providence extending over His creatures as manifested in the act of bringing them into being and in their governance as it is. The way of life of such an individual, after he has achieved this apprehension will always have in view loving-kindness, righteousness and judgment through assimilation to His actions, just as we have explained several times in this treatise.

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Here, as in the case of intellect, we may ascribe ethical acts to God precisely because man's ethical actions are commensurable with those of God. As such, the maxim of negative theology is not violated, for the human act is indistinguishable from the Divine one. Hence, we are not attributing anything human to God. In addition, this allows for the possibility of man's acts to be ethical from a Divine point of view, which is significant in that it allows for a system of Divinely based ethics.

The final attribute which Rambam identifies with God's essence is Divine knowledge. In contradistinction to the attributes of intellect and will, or ethics, man's knowledge is incommensurable with God's knowledge. Rambam's identity of Divine knowledge with God's essence comes not to draw a parallel but, on the contrary, to create an infinite gap between the two. In chapter 20 of section III Rambam writes:

“Just as we do not apprehend the true reality of his essence, but know without doubt that His existence is the most perfect of existences and not commingled in any way with any deficiency or change or being acted upon, so although we do not know the true reality of his knowledge because it is his essence, we do know that He does not apprehend at certain times while being ignorant at others. I mean to say that no new knowledge comes to him in any ways that His knowledge is neither multiple nor finite; that nothing among all the beings is hidden from Him; and that His knowledge of them does not abolish their natures, for the possible remains as it was with the nature of possibility. All the contradictions that may appear in the union of these assertions are due to their being considered in relation to our knowledge, which has only its name in common with His knowledge.”

In the next chapter, chapter 21 of volume III, Rambam writes further:

“He who studies true reality equitably ought accordingly to believe that nothing is hidden in any way from Him, may He be exalted, but that on the contrary, everything is revealed to His knowledge, which is His essence, and that it is impossible for us to know in any way this kind of apprehension. If we knew how it comes about, we would have an intellect in virtue of which an apprehension of this kind might be had. This, however, is a thing that in what exists belongs only to Him, may He be exalted, and it is His essence”.

The major consequence of this is that man may be said to possess absolute free will unencumbered by Divine knowledge. For since God’s knowledge, according to Rambam, is wholly other than man’s, we cannot speak about a contradiction between God’s knowledge and man’s free will. In addition we can safely be assured that God rewards and punishes man in perfect accordance with man’s actions. For any evidence to the contrary will be attributed to man’s inability to comprehend God’s knowledge. This idea is also expressed by Rambam in his *Mishnah Torah* (Hilchot Teshuva chapter 5; halacha 5) and in his *Shemonah Perakim* (chapter 8).

Thus, in identifying God’s knowledge with His essence, Rambam has essentially made God’s knowledge incorporeal. It is as separate from man as He is from the physical world. Just as God’s incorporeality allows for the reality of the scientific structure of the world, in a similar vein, God’s incorporeal knowledge allows for man’s absolute free will. Thus the concept of reward and punishment in accordance with man’s actions becomes a feasible reality. This therefore gives meaning to the system of Halachah which is the Divine law. For a Divine law, according to Rambam, is meaningful only if man is free to choose whether to obey or disobey it, and is rewarded or punished accordingly. Negative theology therefore can be said to provide the philosophical basis for the halachic system of Judaism.

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Part III

By positing the absolute otherness of God from His creation, God's acts become wholly separable from God and are therefore intelligible to man. This applies to God's physical creations, which allow man to understand the world scientifically. It also applies to God's thoughts which allow for prophecy and thereby allows man to reflect upon the prophetically inspired liturgical texts. This constitutes the essence of man's worship of God. On the other hand, those attributes with which we identify God's essence become ipso facto attributes of man. This allows man to significantly understand God's wisdom in creation, to choose freely to obey God's will, and to act ethically from a Divine viewpoint.

Reflection upon these two consequences of negative theology provides us with a philosophical basis for the Halachic system. Not only can man successfully comprehend God's law and submit himself to it, but he can creatively interpret it and evolve it in accordance with his intellect. In so doing man makes contact with the Divine ethos and will. Rambam's negative theology becomes, therefore, the theology of the Jewish Halachah. With this Rambam has forged a central and vital union between his *Guide* and the *Mishnah Torah*.

¹ In an article in the Harvard Theological Review entitled 'Meaning and Reference in Maimonides' Negative Theology', Ehud Z. Benor proposes a resolution which draws upon the modern philosophical distinctions between 'meaning' and 'reference' in language. This makes possible a 'reading' of Rambam which supports a "rationally disciplined constructionist theology" which 'includes a certain type of religious anthropomorphism in a theology that upholds the whole other nature of God.'

The first step in Benor's analysis is to establish the fact that a Divine attribute, while being meaningless according to Rambam, can nonetheless refer to God. Reference, unlike meaning, can be established by a series of negations (the Rambam's third cosmological argument for God's existence is an example), in complete agreement with Rambam's negative theology. Hence attributes of God can possess reference, even though they are meaningless. This builds upon modern

theories of language which posit the existence of words which have reference independent of their meaning.

It is Benor's thesis that Rambam is not prohibiting the use of positive attributes of God, but rather the uninformed usage of such terms. If a person uses positive attributes and is therefore led to believe that they can describe God, then he is violating the prescriptions of Rambam's negative theology. However, if one knows in advance that God cannot possibly be described in any positive way, but knowingly uses such terms for the purposes of self edification, this is entirely allowable within the scheme of the Guide. As Benor puts it (p. 413):

I carefully note here that Maimonides considers an inadequate idea of God to be an invention of the imagination only if it is constructed without prior knowledge. This leaves room for an inadequate idea of God to be constructed with knowledge not as a mere product of the imagination. Maimonides' anthropology identifies two cognitive faculties that are capable of positing conceptions of the world: an intellect that conforms to objective reality, and an imagination that projects a view of the world in the service of human desire. In the latter Maimonides finds the root cause of idolatry, because imaginative projection is uninterested in correspondence to reality. An inadequate idea of God constructed after knowledge has been achieved can no longer be considered imaginative in this sense because it already assumes an objective orientation of the mind.

Benor then uses this idea to develop a 'constructive theology' according to Rambam which allows us to depict God in terms which reflect the "most highly respected notions of human perfection available in his philosophical culture." In Benor's scheme of things, religion works from the bottom up. First we construct an ideal image of man, then we use this ideal to generate attributes which refer to God (pp. 359 - 60). According to this view, Judaism basically boils down to anthropology (p. 148).

However in chapter 59 of volume I, Rambam appears to reject such a concept. There he writes:

It has been made clear that the more you are proven that something cannot be said about Him (God), the more you are complete, and the more you ascribe to Him, then the more you are comparing Him to other things and are distancing yourself from His truth. On the basis of this it is fitting to come closer to conceiving him through investigation and study until you understand Him eventually can only negated of Him but not by ascribing to Him things which add to His essence or things which attribute to Him perfections since we see that they are perfections for us.

Rambam's final statement is an explicit rejection of Benor's thesis for it says that we should not adopt what we see as perfections in man and use them to describe

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God. In addition, Benor's 'constructive theology' denies any concept of a Divinely based Halachah and therefore cannot possibly represent Rambam's view.

Chovot Halevavot – or More? The Philosophy of R' Bachya

By Rabbi Moshe Becker

The 11th century heralded a new era in the realm of Jewish thought. Over the course of the 10th century the nexus of Jewish intellectual activity moved from Babylonia, where it had been for several centuries, to Europe; primarily Muslim Spain. The new reality provided new opportunities for Jewish scholarship; interaction with Islam and Christianity created a niche for literary works explaining, and often justifying, the Jewish religion. The corpus of literature available to us from the medieval “Rishonim” includes many such works and their significance is no smaller than those of the legal and exegetical genre.

The focus of this essay is the work of R' Bachya Ben Yosef Ibn Paquda, author of *Torat Chovot Halevavot*, in the original Arabic *Kitab al-Hidaya ila Faraid al-Qulub*, otherwise known as (*The Guide to*) *The Duties of the Heart*.

Very little biographical information is available about the book or its author. The date of the book's appearance has long been debated; however a consensus of sorts has put the year at approximately

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1080⁶. Nothing is known to us about the author, other than that he was a *Dayan* (Judge)⁷, and likely lived in Saragossa⁸. We are also aware of several *piyyutim* which are ascribed to R' Bachya, some published and others in remaining in manuscript.

Although *Chovot Halevavot* is an extremely popular book, its uniqueness is best appreciated in its historical context. Few books merited such wide readership or became a Torah “classic” alongside the *Mishna*, *Gemara* and works of *Halacha* as *Chovot Halevavot* did. Following its first translation to Hebrew shortly after its publication in Arabic, it was translated over the generations into virtually every language read by Jews throughout the world. Over nearly 1000 years *Chovot Halevavot* has remained a classic text for the student seeking the path to internal growth and development. It is easy to forget that *Chovot Halevavot* was the *first* such work, and marks a distinct development in Jewish thought, as the author initiated an entirely new type of literature – and to a certain degree, even practice – into the Jewish world.

6 The accepted date, which appears in one early manuscript, had always been 1040. However certain scholars based on similarities in the book to the works of the Arabic philosopher Al-Ghazali, put 1105 as the date, the earliest that an author could have been influenced by the main work of Al-Ghazali. In 1927 P. Kokowzoff published an article proving that the date could be no later than the last third of the 11th century, based on a statement by Moses Ibn Ezra in a manuscript he discovered. (The Date of Life of Bachya ibn Paqoda, Warsaw: 1927).

For a resolution regarding the similarities to Al-Ghazali see D.S. Baneth, “M’kor Meshutaf l’R’ Bachya bar Yosef v’Algazali” in Magnes Anniversary Book [Jerusalem: Hebrew University Press, 1938] pp. 23-30.

7 The first translation from Arabic to Hebrew was by R’ Yehuda Ibn Tibbon in the late 12th century. In the translator’s introduction, he refers to the author as “Dayyan”.

8 L. Zunz, “La Patria de Bachya ibn Paqoda” in Sefarad XI (1951) pp. 103-105. For a synopsis of much of the discussion regarding the fragments of information about R’ Bachya’s life see S.W. Baron, A Social and Religious History of the Jews, [New York: Columbia University Press, 1958] p. 303, note 11 and p. 312, note 23.

The author conveys his intent in the introduction: To fill a gap he perceived in Torah literature; a book dealing with the non-physical obligations of the Torah. As he points out, those preceding him had already authored works on the Torah and the Prophets, had created compendiums of the Mitzvot, and R' Saadia's philosophical-theological works set out to prove the validity of the Jewish religion. He looked to these books to see where they address the "concealed obligations":

"Perusing these books and finding not a single one of them dedicated to the science of the Mitzvot which involve the mind, I realized that the study of this science had somehow been abandoned, and not a single book had been written to set down its principles. It was a field left fallow and no one had compiled it in such a way as to include all the parts."⁹

Following this, R' Bachya goes to great lengths to establish the actual existence of such obligations, based on the dictates of reason, Scripture, and tradition. He sought to address the lack of a book delineating and explaining the internal obligation, and he indeed did so in a most systematic and organized fashion. Throughout the book, including the introduction justifying its need, R' Bachya demonstrates an extremely thorough methodology; he is the perfect teacher guiding the student through the steps necessary for growth in these areas.

The warm piety which the author expresses while addressing this gap in Torah literature caused his book to become immensely popular. However, the devotional nature of Chovot Halevavot is not its only unique aspect. Chovot Halevavot was not written as a theoretical presentation of the philosophy of Judaism, and would have been a highly significant work even if R' Bachya had not addressed the fundamental areas of Jewish philosophy. As a result it is easy to overlook the fact that R' Bachya was one of the first medieval Jewish

⁹ Chovot Halevavot, Introduction. All translations are adapted from the translation of Y. Feldman, *The Duties of the Heart* [Northvale, NJ]: Jason Aronson Inc., 1996]

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philosophers. In fact, Chovot Halevavot contains many of the foundations upon which the more theoretical works of other Rishonim were built.

In addition to being a Torah scholar of stature, fully versed in Talmudic literature, R' Bachya was educated in the philosophy and the sciences of his time, which he makes frequent references to. He was heavily influenced by Neo-Platonist mysticism¹⁰ and Sufi¹¹ teachings, yet there is no conflict between the “foreign” elements and the traditional sources in his writings. Our author was for the most part a strict traditionalist; yet he made ample use of the insights available in other sources.

This essay will focus on R' Bachya's attitudes and philosophy regarding human reason, Divine unity and attributes of God, and free will. It is these areas in which he made a significant contribution to Jewish philosophy, though his originality can be seen in other discussions too; not to mention the entire enterprise of writing a book on the “duties of the heart”. Since the three aforementioned topics are all connected to some degree, it is not possible to treat them as entirely separate; a clear picture is only possible when viewing all the parts as a whole.¹²

10 Primarily in his positions regarding the transcendence of God and the need for negative attributes, which will be discussed later, as well as the spiritual nature of the soul and its “desire” to reconnect with God's light.

11 Sufism is a mystic Islamic tradition which began in the 8th century and developed considerably in the 10th and 11th centuries. Many of the concepts found in Chovot Halevavot are similar to those found in Sufi writings, and the illustrations are often identical. For the most part this affinity is in the areas of asceticism and how the soul experiences God, these issues are not addressed in the essay.

12 I am for the most part leaving the devotional aspects, including the important aspect of R' Bachya's asceticism, out of this essay.

Most of what can be considered proper philosophy is found in the first section of the book “Shaar Hayichud” – “The Gate of Oneness”-, where R' Bachya discusses God’s existence. However some important insights, as well as the general context of the book, are found in the introduction.

Human Reason

R' Bachya begins his introduction with an ode of sorts to wisdom. Wisdom – reason, is a supreme gift to mankind:

The greatest of all the good things the Creator gave His servants, humankind, after He gave them full consciousness and awareness, was wisdom. It is the life of their spirits and the light of their intellects. It enables them to fulfill God’s will and to be sheltered from His ire, both in this world and the next. As the verse says, “For God gives wisdom, from His mouth comes knowledge and understanding”...¹³

Without the ability to cognize, evaluate, investigate and reach conclusions, man would be unable to recognize his role in the world and understand God’s message to him.

The three types of wisdom which human reason is able to grasp are: 1) the natural world, which includes physics and chemistry, 2) the logical sciences such as mathematics and music, 3) and *Eloket*; theology, the Torah, and the workings of the soul and mind. These fields are beneficial and necessary for both the physical and the spiritual aspects of existence, and their study is required for success in both spheres¹⁴.

The Torah wisdom has two parts to it; the “obligations of the limbs” – the physical Mitzvot, and the “obligations of the heart” – the

13 Chovot Halevavot, Introduction

14 The same categorization was made by R' Saadia, Emunot V'deot, V, 73.

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internal responsibilities such as self-perfection and proper worship of God¹⁵. It is to the latter category that R' Bachya devotes his work, although it should not be understood that he in any way intended to minimize the importance of the physical obligations¹⁶.

Everything then is considered wisdom and should be studied and examined as a discipline, including the obligations of the heart. R' Bachya carries this rational approach over to the realm of God's existence, as we shall see presently.

Necessity of rational proof for God's existence

The first step, and the foundation upon which the structure of self-perfection is to be built according to R' Bachya, is the acceptance of God's unity. *Shaar Hayichud*, the first Gate of the ten Gates of Chovot Halevavot is thus dedicated to this theme. In this Gate the author insists that an individual seeking to begin serving God properly, must start with a rational acceptance of God's existence and His unity – a concept which R' Bachya explains at length. In this section, we also find the doctrine of the Divine attributes.

The starting point for service of God, must obviously be belief in His existence. However, R' Bachya points out that mere belief is neither sufficient nor desirable in and of itself. Only rational conclusion can indeed be considered “acceptance of God's unity”. He then describes four categories of people who affirm God's oneness: 1) The young

15 The distinction between duties of the heart and duties of the limbs may itself have been adapted from Islamic sources. Some of the earliest Sufi writers, Hasan al-Basri (8th century) and al-Muhasibi (781-857), spoke about a “science of the heart” and the need for consonance between action and intention. See introduction to Arabic edition of Chovot Halevavot edited by A.S. Yahuda [Leiden: 1912] for a more detailed discussion.

16 Unlike Graetz, who writes that R' Bachya indeed considered outward physical Mitzvot to be far less important than holiness of purpose, (History of the Jews, III, pp. 271-273).

and illiterate, who merely say God is one without any in depth understanding. 2) Those who say God is one based on a tradition they received. They are like a row of blind men following someone with sight; if the first stumbles they all fall, likewise these people are susceptible to arguments against their faith¹⁷. 3) Individuals who have actually come to a rational conclusion regarding His existence, but do not understand the different kinds of oneness¹⁸. 4) Those who say God is one after knowing and feeling based on rational proofs they have established and a thorough understanding of the concept of oneness.

R' Bachya insists that as a prerequisite for serving God and setting out on the path of fulfilling religious obligations, we must not only believe in God, but actually engage in rational investigation and come to an understanding of His existence and unity. Although he then sets forth proofs for the creation of the world and God's existence, it would seem that he does not want the reader to merely read the book and accept his arguments; such a reader would fall into the second group of people¹⁹. Each individual must investigate independently, and reach the proofs that seem the most reasonable to them. This would run contrary to Rambam's approach, whereby only certain methods are acceptable, and improper methodology is deplored even where the conclusion is identical. Thus Rambam devotes several chapters to dismantling the proofs of the Kalam²⁰ which he thought

17 The same comparison is made by the Ikhwan al-Safa. J. Guttman, *The Philosophies of Judaism*, [Northvale, NJ]: J. Aronson, 1988] p. 425, n 70.

18 And therefore they are lacking as they cannot accept His "unity".

19 See Y. Feldman, *op cit.* p. 19 n. 10.

20 Kalam generally refers to the Muslim schools of philosophy and theology in the middle ages. Many of their doctrines and methods were considered "popular" as opposed to scientific, lacking true philosophical reasoning. Several early Jewish philosophers, including R' Saadia, clearly aligned themselves with the Kalam, while others, like R' Bachya can be viewed as being on the periphery and only drew certain ideas from Kalam.

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were incorrect, although the latter – like Rambam - were attempting to prove God's existence²¹.

The need for a thorough rational investigation into the matter of God's existence is supported, like all important matters, by reason, scripture, and tradition. Reason dictates that one, who is capable of delving into the matter but neglects to do so, is intellectually and functionally lax; comparable to a sick person who has the knowledge and ability to discover the cure to his illness and refrains from doing so. The *passuk* “*V'yadata hayom v'hashevota el l'vavecha*” (“Know today and affirm it upon your heart”)²², instructs us to *know* that God is the L-rd in heaven etc. Knowing is only possible through rational understanding; blind faith – belief does not qualify as knowledge. Additionally, the *passuk* “*Ki hi chochmatchem u'binatchem l'einei ha'amim*” (“Because it is your wisdom and insight in the eyes of the nations”)²³, declares that a Jew's acceptance of Torah and observance of Mitzvot is a sign of wisdom which shall be apparent to the nations of the world. It is inconceivable that the Torah expected that pure (blind) faith would be a reflection of wisdom and insight. Additionally, our sages instructed that we should know what to respond to the heretic²⁴; clearly a thorough understanding of the subject is necessary if one is to engage in dialogue with a non-believer.

The above notwithstanding, and despite R' Bachya's respect for the capabilities of the human mind, a major qualification to the elevated status of man's intellect is stated before R' Bachya gives us his proof for God's existence. Unlike any other area where the probing of our intellect is unrestricted; in the realm of theology we are not allowed to ask what, how or why God is, rather we may only ask *if* he exists.

21 Moreh Nevuchim II, 8, 19

22 Devarim 4:39

23 Devarim 4:6

24 Avot 2:14

Proof of God

R' Bachya first sought to prove that the world came into existence at one point in time, as opposed to the position that the world exists eternally. Once we have established the fact of creation, we can infer the existence of a Creator. The proof R' Bachya uses is actually a combination of premises and arguments which are often offered as independent proofs.

Three premises

The first of what R' Bachya considers three premises necessary to prove God is the fact that nothing can create itself. This conclusion can be reached via simple logic; an object cannot create itself before it exists, and after it exists it is too late - there is nothing to create. Thus, if we can establish the world's coming into existence, we can take the next step and assume a divine Creator.

The second premise is: causes are necessarily limited in number, and must lead back to a first cause before which there was no beginning. This is established by adducing the following argument regarding infinity: Something infinite cannot be broken down into parts, because a part is a "measure that is removed from a whole which is defined by the sum of its parts"²⁵. If we were to imagine removing a part of something infinite, we would have to say that the part removed is smaller than the remainder, but both are infinite and there can be two infinite things of different sizes, which is impossible. Similarly, if the world were infinite, nothing new could be happening as that would be adding to infinity, which is equally unreasonable. When we look at any sequence of time in history, we are viewing something finite, so existence must be finite. If existence is finite it

²⁵ R' Bachya quotes this from Euclid's Geometry at the beginning of the 5th discourse.

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must have a cause or series of causes leading back to an ultimate first cause.²⁶

The concept of a first cause originates with Aristotle and in its fully developed form serves as an independent proof of God. R' Bachya preceded the developments of Avicenna, Averroes, and other medieval Aristotelians who clarified the concept; he uses it as a step towards his own proof of the existence of God.²⁷

The third premise is the assertion that since everything composite must be made of two things preceding it²⁸, a composite such as our world cannot possibly be infinite. At this stage R' Bachya seems to be alluding to a proof of God from the composition of the universe which appears as early as Philoponus²⁹, and may have even been prompted by Aristotle or Plato³⁰. According to this proof the fact of composition indicates a series of causes³¹, and the eternal cannot have a cause. This reasoning assumes that if something is causally prior, such as the components of a composite³², it must also be temporally prior. Therefore, anything that has a cause must necessarily come in to existence after that cause. R' Bachya seems to accept this logic,

26 This is known as the impossibility of an infinite number and an infinite regress of causes. A response is offered to the problem of an infinite number by Rambam (Moreh Nevuchim I, 75) in the name of Alfarabi: The problem of an infinite number is only valid when the series exists in actuality; since the previous individuals, for instance, only continue to exist “in imagination” and never together with the continuation, the absurdity of an infinite number does not apply. See H. Davidson, *Proofs for Eternity, Creation and the Existence of God in Medieval Islamic and Jewish Philosophy*, [New York: Oxford University Press, 1987] p. 128.

27 See H. Davidson, *op cit.* Chapter XI.

28 One thing can be said to precede another in several ways. See Aristotle, *Categories* 12.

29 Alexandrian philosopher and one of the early critics of Aristotle. Lived ca. 490–ca. 570.

30 H. Davidson, *op cit.* p. 146

31 Because the parts must have preceded the composite.

32 “Causally prior”: The composite is dependant upon it's parts for it's existence; hence the components can be called prior. “Temporally prior”: Preceding in time.

however we will see shortly that in the formulation of his own proof he combines another concept which hints at a different understanding.

Applying the aforementioned premises, R' Bachya enjoins the reader to observe the world surrounding him and to appreciate its functioning and perfection. All aspects of the world work together in harmony, designed for the good and well-being of man. Even elements that by nature are at odds with each other co-exist in the composition of the universe. Furthermore, these elements exhibit this complexity within themselves; they are all made of matter and form. It has been established that nothing can create itself and that there cannot be an infinite number of causes; therefore we have clear evidence of a divine Creator, who created the universe and the elements of which it is comprised and who is truly prior to everything.

R' Bachya then proceeds to ridicule those who suggest the world came into being on its own without a Creator. Would such an individual believe that an irrigation wheel came into existence without having been designed and manufactured, or that a piece of literature was composed of some ink accidentally splattered on paper?³³ Such a suggestion would be scoffed at; the universe, which is far more subtle and complicated and reflects the wisdom and perfection of a divine Creator, should certainly be viewed as something that must have a Designer and Creator.

What did R' Bachya consider the actual proof?

To prove the existence of God, R' Bachya combined the following ideas: An infinite series of causes is impossible, composition in general implies creation, co-existence of contrary elements implies a restraining force, and the perfection of the universe as a whole reflects the wisdom of a Designer. R' Bachya's main focus of proof is

33 Both of these examples appear already in Cicero, *De Natura Deorum*, II

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the idea of creation versus eternity of the universe; in fact he concludes his proof by saying that he has disproved the theory of eternity of the universe³⁴. This follows the standard Kalam procedure, which was to prove the existence of God by establishing the creation of the world, and to infer from creation the existence of a Creator³⁵. It was considered self-evident that what comes into being must have a creator. In R' Bachya's first premise, he reasoned that nothing can create itself, it then follows that anything that comes into existence must have an external cause. Following the standard formula, all that remains is to prove that the world could not have been eternal and must have come into existence at some point; we can then infer the existence of the Creator.

Despite the fact that he is using Kalam arguments to prove God, R' Bachya introduces a line of thought which was not needed to complete the argument he was constructing from the three premises. The teleological theme which appears as R' Bachya instructs the reader to look about him and appreciate the purposefulness of the universe is foreign to the Kalam origins of his proof. It is no longer only the fact of composition that we are using as evidence of creation, but also the beauty, grandeur and perfect functioning of the cosmos as a whole, which are testimony to a perfect Designer. The Ikhwan al-Safa³⁶ use a teleological theme to prove God, and its usage by R' Bachya could be due to their influence. Alternatively, another work which has been suggested as being one of R' Bachya sources,

34 End of Ch. 6

35 H. Davidson, *op cit.* p. 154

36 Literally “Brethren of Purity”, were an obscure group of Arabic philosophers that functioned in Basra, Iraq sometime in the 10th century, and composed a 52 volume encyclopedia of knowledge, known as the *Rasa'il*, including a large section on philosophy which has a strong Neo-Platonist flavor. The Neo-Platonist influence in Chovot Halevavot is attributed by many to the writings of the Ikhwan al-Safa.

the *K. al-Dala'il*³⁷, makes extensive use of the teleological argument³⁸. Another author suggests that in fact R' Bachya was not following the method of inferring Creator from creation; and since the three premises only prove that world came into existence in time, he introduced the design aspect to supplement the missing link – the intelligence and will of a Creator³⁹.

It is likely however that in the context of Chovot Halevavot, R' Bachya saw a particular advantage in advancing this line of thought. As noted, Chovot Halevavot is not intended as a theoretical work. Its primary goal is to guide the reader in realizing his religious responsibilities in the realm of the heart, mind, and soul. Although this section of the book *is* devoted to a rational presentation proving the existence of God, the author nevertheless saw fit to encourage the reader to be overwhelmed and inspired by the beauty seen in the world. We know that R' Bachya was not interested in mere inspiration as a basis for religious activity, yet he wished to point out, even in the context of rational demonstration⁴⁰, how the entire universe seems to have been specifically engineered for man's use and to encourage the religious devotion which comes as a natural result of that realization.

Creation ex nihilo

Another point regarding R' Bachya's proofs of God and creation, is that he claims to have proven creation ex nihilo. The proof from composition, however, only proves the creation of our universe – not

37 See D.S. Baneth, "M'kor Meshutaf l'R' Bachya bar Yosef v'Algazali" in Magnes Anniversary Book [Jerusalem: Hebrew University Press, 1938] pp. 23-30.

38 H. Davidson, op cit. pp. 219-228

39 S. B. Ohrbach, Amudei Hamachshava Hayisraelit - Chamesh Dmuyot B'philosofia, [Jerusalem: Hahistadrut Hatziyonit Haolamit, 1993] p. 113

40 In the second gate "Shaar HaBechina" he regards this "reflection" as an outright obligation.

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creation *ex nibilo*⁴¹. For whatever reason, R' Bachya chose not to address the various possible permutations of this question.⁴²It is possible that he felt no need to go beyond proving the existence of an external force who fashioned the world. Due to the fact that once we accept the existence of a Divine will within whose power it is to affect change in the universe, our acceptance of His Torah must follow.

R' Bachya has established, based on rational demonstration, that the world is created by a divine Creator. Acceptance of Gods unity, the first obligation in Chovot Halevavot, presupposes not only accepting the existence of a divine Creator, but also an intellectual grasp of His oneness, which R' Bachya develops along similar rational lines.

Unity

The author presents us with a list of reasons why logic dictates there can only be one God. First, we observe in all areas that the number of causes is always smaller than the number of effects. Therefore, if we reduce everything in the world to two primary antecedents, matter and form, it follows that their cause is a smaller number, namely one. Secondly, the wisdom one can observe in creation bears the mark of one designer; if there were more than one we would expect to see cross-purposes in the functions of the world. The use of the teleological theme again is characteristic of R' Bachya's religious philosophy, and would seem to lend support to the suggestion made earlier that R' Bachya wished to awaken a sense of awe in the reader, and so encouraged him to reflect upon the workings of the Creator. Thirdly, the existence of one creator satisfies the demands of the investigation into the creation of the world; it is logically improper to

41 D. Kaufmann, Die Theologie des Bachja ibn Pakuda, [Wien: K. Gerold, 1874] p. 48 n. 1

42 As opposed to Rambam who discussed the viability of the various opinions of Plato, Aristotle and the traditional approach of Chazal.

assume anything more than absolutely necessary⁴³. Fourth, the existence of multiple creators implies boundaries; one created this, the second created that, etc. Boundaries imply finitude, as that which is infinite cannot have boundaries. It has already been established that since there cannot be an infinite regress of causes, the first cause of the universe, by definition cannot be finite.

With the exception of the teleological argument, these proofs all follow the Kalam method of proving the unity of God, which R' Saadia followed as well. R'Bachya now switches to a different type of argument, that of pure theoretical reasoning, which marks the transition of his philosophy to Neo-Platonism.

The fifth point is based on Euclid's definition of "one": "The state of being which allows someone to refer to something as one"⁴⁴. Meaning, the concept of oneness must exist before anything in the world can be called one, just as the concept of heat must exist before anything can be considered hot. Furthermore, we can see that plurality must be preceded by unity; plurality – any number – must be multiples of one. The source of all things then must also be a true unity, for it precedes everything; conceptually and actually. As noted this is a Neo-Platonist idea, which R' Bachya in all likelihood took from the Ikhwan al-Safa⁴⁵. The sixth point is related to this idea: Plurality is a property (otherwise known in philosophy as an "accident") modifying an essence⁴⁶; it is inappropriate to assign a

43 An objection that can be raised to this logic is that absence of a proof is not proof of non-existence. Rambam, Moreh Nevuchim I, 75. See H. Davidson, op cit. p. 170.

44 Elements, Ch. VI

45 J. Guttman, The Philosophies of Judaism [Northvale, N.J.: J. Aronson, 1988] p. 106 and G. Vajda, "Bachya ben Josef Ibn Pakuda" entry in Encyclopedia Judaica [Jerusalem: 1972]

46 A person, a stone – refers to an essence or body, the assignation "two" describes something about the bodies, just as "big" would be a descriptive term regarding one body.

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property - or a description of any sort - to the Creator of all essences, who is beyond description or any comparison to His creations.

The final proof that there can only be one creator is the argument that a need for multiple creators undermines the abilities of a creator: If one could have created everything by itself, the others are superfluous and, essentially there is only one. If on the other hand, the others are needed that implies a weakness in each, and weakness implies a finite amount of strength and capability – an unacceptable conclusion with respect to the Creator. Additionally, the work would never be completed as the creators would disagree over the manner in which things should be done.⁴⁷

R'Bachya concludes this section with a return to the observation that the universe is a perfect, complete creation which functions properly. This can only be the handiwork of one creator, for any type of governance is only possible under one individual. To support this assertion, R' Bachya quotes Aristotle: “Plurality in leadership is not good”⁴⁸ and Shlomo Hamelech who says: “When the earth is sinful, it has a lot of officers”⁴⁹.

Oneness

R' Bachya has demonstrated that the world could only have originated with one creator; now he seeks to differentiate between the concept of oneness as we think of it regarding most things in our

⁴⁷An objection to the last point, that two creators would interfere with each other or be mutually exclusive, can be raised. Might not there exist two (or more) creators who agree and would not interfere with each other? The response is that the argument does not assume that these two creators will disagree; the fact that they can disagree is the point. In the event that there would be a conflict only the one who has the ability to execute its will can reasonably be considered the creator. See H. Davidson op cit. p. 168

⁴⁸ Metaphysics, XII, originates from Homer.

⁴⁹ Mishlei 28:2

world, and what he refers to as “true oneness”. While he alluded to the idea in the context of proving that the world could only have one creator, he did not stress its significance as he does now.

As stated earlier, something can only be called one after the concept of oneness exists. Once the concept exists, there are two ways in which something can be called one. The first is the more common usage; when “one” is a property of an essence or “circumstantial oneness”. This use of the term is used to describe something that in fact has many parts to it; the common factor among those parts allows them to collectively be called one, or one of something. For example: One person is really made of many, many components; however since together they form a unit we can refer to him as “one”. But since his arm or heart (or any part) can also be referred to as “one”, we realize that in truth he is an amalgam of many “ones” that can be isolated from each other. Only when viewed in a certain context is the term “one” used to describe the composite human being; hence “one” is merely a circumstantial property and does not say anything about the essence it describes.⁵⁰

The other type of “circumstantial one” is something that appears not to be comprised of individual parts; nevertheless since it is made of matter and form and is subject to change it cannot be considered “one” in the true sense. Anything subject to change cannot truly be called “one”; since after the change it is a different “one” than it was before. The use of “one” to describe such a body is incidental; a convenient way of viewing it, but really it is temporary, not the “true one” we are looking for, which R’ Bachya now turns to.

50 Other examples would be: An army battalion can be called “one”, though it is made up of many individuals who may in fact have nothing in common other than the fact of their belonging to the same battalion. A quart is the name of a unit describing a certain quantity; one quart is comprised of many parts. Both of these are units are made up of multiples and can themselves also be part of a larger unit; therefore the designation “one” is entirely incidental and temporary.

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True oneness can also be divided into two categories; abstract or reality. The number one is an abstract concept; it is the beginning of all numbers. This type of one always refers to a true beginning, a first, such as we find in Bereishis: “It was evening, it was morning; one day”. The *passuk* used “one” instead of “first” to teach us that the number one always describes a beginning. A number therefore is defined as “an amalgam of separate units”⁵¹. A number – not the object being counted - is an instance of “true oneness” since it has no composition. This type of oneness, although “true”, is abstract because it is a concept not tangible by any of the senses, even when the object being counted is.

The true definition of ‘oneness’, manifests itself as being “concrete” and tangible; the oneness of God, is something entirely different. It is not composed of multiple parts, or subject to change of any kind. It is so entirely different from anything we experience that it cannot be described in physical terms, and it does not possess any of the qualities which cause things to change or act in conjunction with anything else. True oneness is the root of all plurality, as R' Bachya explained earlier, and has no beginning and no end; as those events would require a change which indicates plurality.

The question can then be asked, perhaps our use of “one” to describe God is also merely a property modifying His Essence. The response is that in fact our use of oneness to describe God is a negation of any plurality, increase or change in Him; and indeed we cannot describe Him in any way.

Oneness of God

Following the abovementioned distinction between circumstantial, temporary oneness and true oneness, R' Bachya proceeds to prove

⁵¹ Euclid, Elements Ch. VII.

that the Creator considered one in the true sense; and consequently incomparable to anything else in human experience.

As discussed earlier, we know that plurality must always be preceded by a unity; since plurality is many units of one. Our world is a composite; many parts joined into one i.e. plurality turned singular. Since oneness must exist before plurality, it follows that the source of all things in the world is one in the true sense of the definition.

Secondly, that which is merely a property in one entity is actually the essence of another. Heat for example, is a property of hot water, but is the essence of fire. Moisture which is the essence of water is only a property of wet things. Similarly, oneness, which we have said is a property when referring to things in our world, must exist somewhere as an essence. The source of all things then is the essence of oneness, from which is derived any possible use of oneness as a property. Since any “temporary” physical use of oneness derives its meaning from a true essential oneness, and as it has been demonstrated that all things flow from an ultimate Source; that Ultimate Source and the essential oneness can be identified as one and the same.

The likely source from which R' Bachya drew this precise formulation is Plotinus, the father of Neo-Platonism, who stressed the teaching that God is a supreme, transcendent One, containing no division or multiplicity, and is beyond all categories of being or non-being. “Being” as we understand it is defined via the human experience, which God is beyond. As the works of Plotinus himself were not translated to Arabic, R' Bachya’s native tongue, the Ikhwan al-Safa, who drew heavily from Neo-Platonist philosophy, was probably his more immediate source. These ideas are certainly in synch with the prohibition of likening God to anything, albeit extended to the farthest possible conceptual understanding and application of the prohibition. This particular formulation though,

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can be considered an original contribution to the world of Jewish thought.⁵²

R' Bachya has arrived at a truly Neo-Platonist conception of God, accordingly God is the absolute unity which precedes all plurality, just as the abstract idea of the number one precedes all numbers. Consequently God has become very far removed from human perception. Any concept we would use to try to describe or understand Him will necessarily come from within our physical world and will be incorrect and thus a violation of His oneness.

Divine Attributes

We now have a problem. R' Bachya has meticulously differentiated between the temporary, circumstantial oneness of physical things and the true essential oneness of God. The latter oneness precludes any type of multiplicity or internal composition, as well as any type of change. How then can we speak about God in any way? Almost any statement made presupposes the existence of a part of God or the possibility of a change. For example the statement “God sees” assumes the existence of a part of Him that performs the act of seeing, and implies an activity which by nature has to denote change. He is now doing something that he was not doing before. Such a statement is not feasible according to what R' Bachya has taught us until this point. How then do we find not only ourselves, but the Torah itself, describing God and His activities?

The final chapter of Shaar Hayichud is devoted to resolving this important issue. Although this follows as a direct continuation from the work of R' Saadia, who began working on the problem of the

52 It is unclear if R' Bachya was preceded by R' Shlomo ibn Gabirol or not. The latter's work has a far more sophisticated Neo-Platonism, and emphasizes the transcendence of God and the impossibility of describing Him in greater philosophical detail.

attributes, R' Bachya's developments progress far beyond those of R' Saadia and they set the tone for all further discussion of God's attributes in medieval Jewish philosophy. It is entirely superfluous for R' Bachya to prove that God must be incorporeal⁵³; the conception of God which he has arrived at is far beyond any type of human understanding. Thus certainly attributing physical form to Him is absurd⁵⁴. The remaining question is only in what ways it is correct or appropriate for us to refer to or describe Him at all.

Essential attributes

There are two basic ways in which we attempt to talk about God: the first is by using an attribute to describe His essence, and the second is by referring to an act on His part. It is clear that in the case of the former, that which we have learned until this point precludes any such attempt. True oneness is a concept for which we have no point of reference; any description we use will only come from within our physical world. Nevertheless, R' Bachya, using the terminology of R' Saadia tells us that there are three words which we may and do use to describe Him: He Exists; for it has been demonstrated that He must exist, He is One; likewise it has been proven that the creator must be One, and He is Eternal; as the First Cause must be the beginning before which there was no beginning. These three "attributes" are necessarily connected, and the use of one presupposes an acceptance of the others. In fact, they are so dependant on each other that they should be one idea; it is only due to the limitations of language and

53 R' Bachya was among a group of Jewish writers, including Rambam and R' Saadia, who were branded heretics by R' Moshe of Taku (13th century Tosafist), because they refused to accept divine corporeality, which according to the latter constituted a rejection of many parts of the written and oral Torah.

54 Rambam, on the other hand, who is a more rigorous rationalist, did actually prove that God is incorporeal. Obviously, this could be merely due to the fact that his book set up as a theoretical presentation which seeks to demonstrate the mistakes of other positions.

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the restrictions which human communication places upon us that we must use three separate words. Using three distinct words, which in our world conveys three distinct concepts, puts us at risk of attributing some kind of plurality to Him; it is only for the aforementioned reason that we have no choice. The proper way to make use of these three “acceptable” descriptions is by way of negations; not positive statements. For example, based on the evidence we have explored it is inconceivable that God does not exist; or that the possibility of His being mortal is impossible. In this manner we can assert the conclusions of our investigation without taking the risk of making a positive statement about God, whom we cannot conceive in our minds.

This Neo-Platonist approach, which can possibly be traced as far back as Plato and Aristotle, goes hand in hand with the pasuk “Lo reisem kol temunah” (“You have not seen an image [of God]”)⁵⁵. This doesn’t merely apply in the base, physical sense of an image, but on the higher conceptual level as well. A “temunah” is any conceptualization that the mind uses to understand something; the process of negation insures that we stay away from a mistaken, and possibly heretical, conception.

Attributes of action

A different approach is to be employed when describing God’s actions. Here we are empowered to label an act of God using descriptions which we take from our own physical surroundings. It is legitimate to compare the activities of God to those of His creations because we must have knowledge of His ways as we are enjoined to emulate them. The only way that is available for us to “see” God is through the world which He created. Thus any phenomena which we experience in the world, if performed by a physical agent would be

55 Devarim 4:15

the result of a particular action, can be referred to as being the result of that same action on God's part. The difference is that with regards to a human we can attribute that act to a catalyst of some sort i.e. an emotion of the agent or some other motive. Regarding His actions however, all we can see are the results as we are not granted a view of the Agent or His motives.

We find the prophets often use such terminology to describe God. This is because the exhortations of the prophets were aimed at directing the listener towards proper service of God. It is possible that an individual just setting out on his spiritual path may need to conceptualize the focus of his service. The hope however was, that once the person progressed and their religious experience became more sophisticated they would be able to appreciate the concept of true oneness, and the impossibility of actually describing or using any physical point of reference to understand God would become manifest.

Proper attitude towards describing God

R' Bachya continues, following this model. It is incumbent upon anyone who has the ability, to go beyond the descriptions found in the pesukim and continue with the process of negation; which is the only true way to describe God. Only the illiterate and otherwise limited individuals can claim to be relying solely on the pesukim. This is reminiscent of his earlier statement that anybody who is able to investigate the matter of God's existence but fails to do so is intellectually and functionally lax. The same holds true for one who adheres to the simple reading of the pesukim describing actions of God. The intelligent mind, capable of realizing the inherent difficulty with attributing physicality to the Creator of all things, must probe further and discover the deeper layers of meaning that the attributes found in the pesukim are conveying.

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The distinction between the “essential attributes” named above; existence, oneness and eternity, and the attributes of actions is wholly R' Bachya's development. Although the terms are alluded to by R' Saadia, the concepts were not defined at all or used thematically. The clear differentiation, whereby the essential attributes should only be negations, while the attributes of actions reflect the human perception of a given result but do not state anything about God, is set out first by R' Bachya. The entire enterprise of explaining the nature of God's attributes as found in the works of subsequent Rishonim only restate and clarify the themes presented by R' Bachya. He is the first of the Jewish writers to use the negative theology adopted by many philosophers to follow.⁵⁶

Awareness of our limitations

In summation of the matter of the attributes, and really the entire approach to understanding God, he states that humans comprehend reality in three different ways: Through the experiences of the five senses, through rational investigation and understanding, and by receiving a tradition from others. When it comes to experiencing God, we are unable to use the five senses; God far supercedes that type of experience. We can rely on the report of our tradition, which has the shortcomings mentioned earlier, and we can observe Him as He manifests Himself through His actions. For this reason there is so much emphasis in the pesukim on the works of God; it is there that the probing of human intelligence can come closest to Him, as His actual essence cannot be comprehended. He offers the analogy – in fact he calls it “the closest analogy - of the mind and soul; which although we cannot picture or give form to, nevertheless, we are confident of their existence as their manifestations are obvious.

56 See S. B. Ohrbach, *Amudei Hamachshava Hayisraelit - Chamesh Dmuyot B'philosofia*, [Jerusalem: Hahistadrut Hatziyonit Haolamit, 1993] p.

Just as the five senses are limited, and cannot be used to experience that which belongs in the realm of a different sense, the mind too has its limitations. Thus attempting to use the latter to understand the essence of God is akin to trying to “hear” a taste. When someone sees a stone being thrown his senses initially inform him of what is happening; he sees or hears the stone being thrown etc., eventually though his mind must take over. Past experiences help him imagine what happens next; the stone is falling, perhaps striking something, and so on. Since we can have no sensual experience of God, the mind cannot go beyond the fact of His existence as it has nothing to draw upon. The person who desires to know about the sun can only observe its impact on the world; the light it provides, the heat, the seasons, etc. It is only the fool who believes that he will learn more about the sun by looking directly at it, for not only does he not learn anything – he loses his vision completely.

This is the proper way to think about and reflect upon God’s nature; effectively bringing us around full circle. Initially the human mind was the perfect tool which R' Bachya praised as being the greatest kindness bestowed upon mankind. After following the progression of Shaar Hayichud, beginning with proof of God’s existence and ending with full understanding and acceptance of His unity, reason demands that one suspend the activity of his mind when it comes to probing further, and submission of the intellect to the will of the Creator is, in fact, a rational conclusion. An attempt on the part of the intellect to approach any closer undermines that which has been reached; going further is effectively distancing oneself.

That which began as our only connection to Him has now encountered a reality it cannot contemplate; knowledge and experience of God can only come to the soul, which seeks to perform His will and perfect itself. This task is the one which R' Bachya maps out in the ensuing chapters of the book.

Now that we have rationally proven the existence of God, there is another source of authority joining our reason in determining how

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we are to live our lives; the word of God as it is made known to us through the Torah. Despite R' Bachya's demand that we not conduct ourselves as blind men who are dependant on the caution of the sighted man, he is also aware that the conclusion of one's mind may differ from the instructions of the Torah. Unlike R' Saadia who greatly encouraged further investigation into religious activity, such as understanding the reasons for the Mitzvot, as a means to further knowledge of God, R' Bachya understood that this is impossible. There is no attempt to rationalize any of the Mitzvot or explain their affect beyond the general approach that they serve to remind us of God and our responsibilities to Him⁵⁷; that would be an attempt at understanding something about God. It is not even necessary for the purpose of having proper "*kavana*" – intention when performing Mitzvot. Having proper "intention" is a feature and result of inner devotion and perfection, which can only be attained by way of the steps outlined in Chovot Halevavot.

That R' Bachya felt one's intellect could lead him astray is evident by a statement he made in his discussion of the various advantages and disadvantages to Torah-induced service of God over rationally induced service and vice-versa⁵⁸. One of the advantages of Torah-induced service is that just as one may fall prey to his bodily urges and abandon himself to physicality, he is similarly at risk of deferring entirely to the realm of the mind and shunning the world completely. Since neither of these extremes is desirable, the Torah is necessary to provide the means for resolving this potential conflict. Similar sentiments are expressed later in his discussion of asceticism⁵⁹, where

57 There are certainly Mitzvot which would be logical even without the command of the Torah, and R' Bachya explains why they are included as Mitzvot nonetheless. However, unlike Rambam and other writers who explained at least some of the non-rational Mitzvot, no such attempt was made by R' Bachya.

58 Chovot Halevavot, III, 3

59 Ibid, IX, 1,3

he details how the Torah modifies that which may seem to be entirely appropriate behaviour based on rational conclusion.⁶⁰

R' Bachya has not given up on the human mind completely and the claim that after establishing the existence of God and the authority of the Torah he considers the mind to be an improper device for discovering truth is unfounded⁶¹. This argument is based on a statement where R' Bachya says that the human mind is restricted from investigating certain things⁶²; indicating that the mind is in fact a dangerous tool and not to be relied upon. However, if this statement is viewed in context, it is then seen in a totally different light. R' Bachya is discussing how one must be introspective about the fact that he has become over-involved and indulged in this world. One of the examples of such a loss of focus is investigation into matters which do not lead to service and love of God, regarding which Shlomo Hamelech said “Al titchakem yoter miday” (“Do not be overly wise”)⁶³. It is not the mind which cannot be trusted but rather the individual’s desire to gratify himself with all that this world has to offer, which in turn leads him to neglect the correct service of God. Intelligence is indeed the greatest gift bestowed upon man and consequently, exercising that intelligence includes being aware of the things it is not capable of grasping and focusing on that which brings about positive awareness of God.

60 I. Heineman, *Ta’amei Hamitzvot B’sifrut Yisrael* [Jerusalem: 1966] p. 55. The topic of asceticism belongs in the realm of practice more than it relates to philosophy or theology. For this reason I have avoided a discussion on asceticism despite the fact that it is a major theme in *Chovot Halevavot* and one of R' Bachya’s unique contributions to Jewish thought and practice.

61 Y. Eisenberg, “Sechel V’regeish B’Chovot Halevavot”, in *Daat*, vol. 7.

62 *Chovot Halevavot*, VIII, 3 (25)

63 *Kohelet* 7:17

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Free will

This limitation of our intelligence, which prevents us from understanding God, relates to another issue; the question of free will versus Divine omnipotence. This problem, which all thinkers, regardless of religion, must grapple with, is presented by R' Bachya not only as a philosophical dilemma, but as an implicit contradiction in the Torah itself⁶⁴. Many pesukim seem to be saying that everything accomplished in the world is done by God alone. Man merely “adorns” the world and is no different than any other part of creation.⁶⁵ On the other hand, there are also pesukim that indicate that man does indeed act of his own free will.⁶⁶ Furthermore, the entire enterprise of Torah and Mitzvot, which presupposes a system of reward and punishment, affirms that man is indeed the master of his actions, deserving to be recompensed for his choices.

R' Bachya observes that while it is true that we may set out to do a specific task seemingly of our own free will, we are often unsuccessful at that endeavour. If in fact man was given full control over his actions and their results, his efforts should always meet with success; the fact that this is not the case demonstrates that he is not fully in control. The sense of powerlessness in the face of God’s will is directly related to the teleological themes R' Bachya writes about; we are expected to see and feel God everywhere, perhaps this sense is meant to be greater than our perception of having free will to act.

R' Bachya then discusses the opinions of “the sages” regarding this matter; apparently referring to the positions found in earlier philosophers. One opinion is that man’s actions are entirely in his hands. According to this opinion, the concept of God’s perfect justice must be preserved. Reward and punishment therefore are

64 Chovot Halevavot, III, 8. In IV, 4 he treats the matter differently, but possibly the context there is relying upon the conclusions of III, 8.

65 For example: Tehillim 135:6, 127:1.

66 For example: Devarim 30:15, 19, Iyov 34:11.

only possible if the individual is indeed responsible. If God was the agent of the person's act, how could the latter be punished (or rewarded) for such a deed? This is the opinion recorded by R' Saadia⁶⁷ following the Mu'tazilite branch of the Kalam, for whom the concept of God's justice is directly related to the central doctrine of His goodness and kindness⁶⁸. The second opinion quoted by R' Bachya, which corresponds to the Ash'arite view, is that in fact everything is controlled by God. According to this doctrine, which was for the most part rejected by Jewish writers⁶⁹, the concept of a perfect and omnipotent God precludes the possibility of an act having any source other than Him⁷⁰. The question of justice as it relates to reward and punishment is beyond human understanding.

A theoretical resolution is impossible since the nature of the relationship between God's omnipotence and His justice cannot be fathomed by the human mind. The matter relates to God's essence, which we cannot comprehend and are enjoined from attempting to do. Our only concern should be with how we are to conduct ourselves, lacking this knowledge. For R' Bachya this is not only a theoretical problem, it is an experiential conflict between our belief in

67 "God does not impose an obligation on anyone unless it lies within his competence and he is able to fulfill it. . . ." *Emunos v'Deos* IV.

68 See W. Montgomery Watt, *Free Will and Predestination in Early Islam* [London: 1948]

69 According to Rambam (*Moreh Nevuchim* I, 71), there were no Jewish counterparts to the Ash'arite theologians at all. See A. Hyman, "Divine Law and Human Reason" in *Scholars and Scholarship in Jewish History*, [New York: Yeshiva University Press, 1990] p. 43.

70 This is known as the doctrine of "acquisition" whereby every act is considered to have two agents; God who actually causes it, and man who "acquires" it. This would be similar to saying that a stone fell; we attribute the act to the stone despite the fact that it was not actually the cause of the act. For further explanation of this complicated philosophy see W. Montgomery Watt, "The Origin of the Islamic Doctrine of Acquisition" in *Early Islam*, [Edinburgh: Edinburgh University Press, 1990] pp. 117-128.

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God's justice (and His will that we choose to observe the Torah) and the religious experience of utter submission and dependence on God.

Therefore he instructs us to make decisions and choose to do good as if we have free will and attempt to act on those decisions. The outcome is not up to us, rather to God's will, and we must trust that He will reward us according to our choices rather than their fruition. This is not merely a working hypothesis, according to R' Bachya it is the only approach which synthesizes the two facets of religious experience – our trust in His justice and our experience of dependence - and enables us to function despite this limitation of our understanding⁷¹. The description of this approach as being a pragmatic solution that ignores the inherent contradictions⁷² is misleading. R' Bachya is not dealing with a theoretical proposition; a very real question affecting every aspect of the religious individual's life is at stake, and the resolution must address the realm of religious activity. The inherent contradictions, the philosopher's problem, are results of our inability to understand God; the philosopher also knows his limitations and can accept the existence of irresolvable questions. We are happy to use the “astrolabe, weighing machine, and millstone” despite the fact that we do not understand their workings; our inability to grasp the mysteries of God's justice should likewise not interfere with our service of God.

71 A. Altmann, “Free Will and Predestination in Saadia, Bachya, and Maimonides” in *Essays in Jewish Intellectual History*, [Hanover, N.H.: University Press of New England, 1981] p. 46. Altmann points out the connection between the approach of R' Bachya and that of the Sufis which is conscious of being under direct “control” of God. These sentiments are echoed by Avraham Ben HaRambam who was influenced by R' Bachya as well as Sufi piety.

72 T.M. Rudavsky, “Jewish Neo-Platonism” in *History of Jewish philosophy*, ed. Daniel H. Frank and Oliver Leaman, [London: Routledge, 1997] p. 162.

Conclusion

Chovot Halevavot is indeed a unique work. The author introduces the concept of “inner obligations” as an independent discipline in Torah study. This clearly stems from a worldview that religious activity and devotion encompass all aspects of human existence, as reflected in the author’s constant state of amazement at God’s creation and awareness of His presence. For this reason, the human mind, which is the gift God gave man as a means to understanding His world, must be active in all areas; including the study of “*Elokut*”. Philosophy is an important part of “*Elokut*”, which includes the Torah and all study of Godly matters; without it one cannot properly accept God’s existence. At best he will be among those who merely affirm His unity without appreciating the meaning of that statement. The resulting religious growth of such an individual is deficient; it lacks the fundamental aspect of a fulfilling a Divine purpose, for one can hardly claim to be serving a God which he has not contemplated. This contemplation must take the form of a rational approach to the necessity of God’s existence, and an understanding of His unity, the latter including correct use of the Divine attributes. However we cannot take this too far. After the individual has arrived at this point he realizes that God is a concept which the human mind cannot grasp, and should not try to. It is impossible to fully understand anything that relates directly to His essence, including matters such as how He created and runs the world or why, the nature of His essence or even whether or not man in fact has free will.

R' Bachya was a groundbreaker, yet the concept of inner obligations, which he introduced, became a central part of Jewish thought. His impact in the area of philosophy was no less significant, a near-perfect synthesis between the Torah and the philosophies which he drew upon. Despite the considerable amount of treatment given to these matters in the centuries following R' Bachya, the parameters he set up in defining God’s unity and the Divine attributes can almost be declared the final word in medieval Jewish philosophy. Additionally,

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parts of his proofs of God, primarily the teleological themes, are still used in a nearly identical manner to the way he expressed them. Chovot Halevavot was and remains a classic of Torah literature in all these areas, and provides a timeless and valuable insight in utilizing the paradigms of general scholarship to come to a fully developed understanding of God's will.

“Silence is your praise”

Maimonides’ Approach to Knowing God: An Introduction to Negative Theology

Rabbi Rafael Salber

The prophet Isaiah tells us,

For my thoughts are not your thoughts, neither are my ways your ways, saith the Lord. For as the heavens are higher than the earth, so are my ways higher than your ways.⁷³

The content of this verse suggests the inability of mankind to comprehend the knowledge and thoughts of God, as well as the divergence of “the ways” of God and the ways of man. The extent of

⁷³ Isaiah 55: 8- 9. The context of the verse is that Isaiah is conveying the message to the people of Israel that the ability to return to God (Teshuvah) is available to them, since the “traits” of God are conducive to this. See *Moreh Nevuchim (The Guide to the Perplexed)* 3:20 and the *Sefer haIkkarim* Maamar 2, Ch. 3.

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this dissimilarity is clarified in the second statement, i.e. that it is not merely a distance in relation, but rather it is as if they are of a different category altogether, like the difference that exists between heaven and earth⁷⁴. What then is the relationship between mankind and God? What does the prophet mean when he describes God as having thoughts and ways; how is it even possible to describe God as having thoughts and ways?

These perplexing implications are further compounded when one is introduced to the Magnum Opus of Maimonides⁷⁵, the *Mishneh Torah*. The *Mishneh Torah* is a legal composition, consisting of fourteen books, each containing several sections. The structure of each section is organized according to the mitzvot (as are enumerated in the *Sefer HaMitzvot*), whereby the basis of the section is the mitzvot being discussed, and within each chapter, the halachot pertaining to those particular mitzvot are elaborated upon. The first book of the *Mishneh Torah* is called the “Book of Knowledge”, *Sefer HaMadda* and the first section within the “Book of Knowledge” is called the “Foundations of the Torah”, *Yesodei HaTorah*. The first halachah, within the first section, which begins the first book of this legal masterpiece, opens with:

The basic principle of all basic principles and the pillar of all sciences is to know that there is a First Being who brought every existing thing into being. All existing things, whether celestial, terrestrial, or belonging to an intermediate class, exist only through His true Existence.⁷⁶

⁷⁴ Yosef Albo, *Sefer HaIkkarim*, Maamar 2, Ch. 3

⁷⁵ Moses son of Maimon was also known as Maimonides, or by the acronym of **Rabbi Moshe Ben Maimon**, Rambam. Born 1135 in Cordova, Spain and died 1204 in Fostat, Egypt. A great legal codifier, philosopher and physician whose works form the cornerstone of Jewish study.

⁷⁶ Maimonides, *Mishneh Torah*: *Yesodei HaTorah* 1: 1, Adapted from Maimonides, *Mishneh Torah*: The Book of Knowledge translated by Moses

The foundation upon which all else is based and which is of such primary importance, essential to the fulfillment of all legal requirements, is the active pursuit of the comprehension and knowledge of God. This fact, which Maimonides held to be so basic and fundamental that his great legal work, available for the masses⁷⁷, opens with, is a task which the prophet Isaiah seems to have deemed impossible.

The source for the halachah mentioned is found in Maimonides' work, entitled *Sefer Hamitzvot*⁷⁸. It is within this composition that Maimonides enumerates all of the six hundred and thirteen biblical commandments, and separates them into two categories; positive commandments and negative commandments. Not only does Maimonides differ from other medieval commentators with regard to this structure of categorizing the mitzvot⁷⁹, meaning the division into positive and negative commandments, he also differs in the order which he categorizes the mitzvot. Whereas other commentaries⁸⁰ follow a 'chronological' pattern, enumerating the mitzvot according to the order in which they appear in the five books of Moses, Maimonides begins with the first statement of God at the revelation of Mount Sinai, which is recorded half way through the second book. Thereafter, Maimonides seems to categorize the mitzvot according to their genre. The first statement of God, which is listed as the very first mitzvah, is "I am the lord thy God, who brought thee out of the

Hyamson (Boys Town Jerusalem Publishers/ Israel, 1962), p. 34a/ b. Future reference in this paper will be based on Hyamson's translation.

⁷⁷ Maimonides, *Mishneh Torah*: Introduction

⁷⁸ Maimonides, *Book of Commandments*

⁷⁹ *Baal Hilbot Gedolot* (Behag), *Sefer HaChinuch* and the *Sefer Mitzvot Gedolot* (Semag). The Behag was the forerunner in enumerating the Mitzvot, and Maimonides version of a list of enumerated mitzvot is seen as a reaction to the complicated and unclear organization of the Behag's list of mitzvot. See *Sefer Hilbot Gedolot*, Opening Word (Machon Yerushalayim, Israel, 1991)p. 11 (Hebrew)

⁸⁰ *Sefer HaChinuch*

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land of Egypt”.⁸¹ This statement commands one in the precept of belief in God, that one should believe that there is a Supreme Cause who is the Creator of everything.

By this injunction we are commanded to believe in God; that is to believe that there is a Supreme Cause who is the creator of everything in existence. It is contained in his words (exalted be He) ‘I am the lord thy God, who brought thee out of the land of Egypt’⁸²

The meaning of the very subject of this commandment, namely ‘to believe’, has caused much discussion amongst the commentaries on the *Sefer HaMitzvot*. There are those who propose⁸³ that the actual Hebrew translation of the *Sefer HaMitzvot* from the original Arabic text is not entirely accurate in this instance, and the word, which is translated as ‘to believe’, should be translated as ‘to know’. This proposal, apart from its philological claim, is strengthened further when the mitzvah in question is cross-referenced with its counterpart⁸⁴ in Hilchot Yesodei HaTorah, where the word ‘to know’⁸⁵ is used. Although there are others who contest that the Hebrew translation is in fact accurate and should remain as ‘to believe’, the explanation of belief according to Maimonides must be understood. It is apparent from the guide that belief means the entrenchment and internalization, through clarification and correct verification of a certain matter⁸⁶. This definition renders the injunction ‘to believe’ almost identical to the injunction ‘to know’.

⁸¹ Exodus 20: 2

⁸²Rabbi Dr. Charles B. Chavel, *The Commandments: Sefer HaMitzvot of Maimonides* (The Soncino Press, London/ New York, 1967), Vol. 1, p. 1, Mitzvah 1

⁸³ See R. Yosef Kapach’s commentary on Maimonides’ *Sefer HaMitzvot*, Mitzvah 1 and The Guide 1: 50.

⁸⁴ Meaning the Halachot in the Mishneh Torah which expound the practical application of the mitzvot listed in the *Sefer HaMitzvot*.

⁸⁵ Maimonides, *Mishneh Torah: Hilchot Yesodei HaTorah*, 1: 1

⁸⁶ See Tzionim, *Sefer HaMitzvot of Moses Maimonides* (Hotzaat Shabse Frankel LTD., Israel, 1995), Mitzvah 1. *The Guide* 1:50

The outcome is that the first commandment is to be understood as ‘to know that there is a Supreme Cause’. Once again this divine pursuit, to which Maimonides attributed such prime importance, so crucial for the fulfillment of the six hundred and thirteen biblical commandments⁸⁷, that it ‘merits’ to be the opening for yet another one of his great works, leads us towards the obstacle highlighted by the words of the prophet.

The message that reverberates throughout the writings of Maimonides is the necessity of intellectual pursuit within the framework of divine investigation. Before one discusses the nature and limitation of this aforementioned intellectual pursuit, one is compelled to question the source for attributing such importance and prime-status to this awe-inspiring task. Much has been said regarding whether Maimonides was a product of his time, thus explaining his philosophical leaning, or whether he more closely resembled a prophet illuminating the hidden word of God; however at present what we can glean from his writings are the sources which substantiate his proposal.

The significance of intellectual investigation and the elevation of the intellect as man’s most valuable possession are strikingly evident in yet another opening passage, this time in Maimonides’ great philosophical work, *The Guide to the Perplexed*. The subject of the first chapter is the Hebrew words *tzelem* and *demut*. *tzelem* is defined as the “specific form of a thing, which constitutes the essence of a thing, whereby the thing is what it is”. *Demut* is defined as the likeness of a thing which “denotes agreement with regard to some abstract relation.” The definitions of these two terms are introduced in order

⁸⁷ Even the Behag, who does not list knowledge or belief of God as one of the mitzvot, holds it to be entirely fundamental to fulfilling the 613 mitzvot. In fact it is due to the fundamental nature of this concept of knowledge and belief in God that the Behag does not enumerate it as a mitzvah, but rather views it as a prerequisite to all the mitzvot. See Maimonides, *Sefer HaMitzvot*: Hasagot HaRamban, Mitzvah 1, for reasoning of the Behag.

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to resolve a fundamental misunderstanding of a perplexing biblical verse. The verse in question is found in Genesis⁸⁸, at that ultimate point in the History of Man and the world, the creation of mankind. The verse says, “Let us make man in our image (*tzelem*) and our likeness (*demut*)”. An incorrect interpretation would lead one to attribute corporeality to God, thus overstepping the intellectual capacity of man in his comprehension of God, consequently causing him to promote disbelief in God. (Maimonides mentions that there is no such thing as an incorrect perception of God in this matter, rather there is either belief or disbelief. One who attributes corporeality to God is merely creating a fictitious invention and cannot be said to have a false belief, it is not even considered belief.⁸⁹) The true interpretation of this verse (at least on the surface of Maimonides’ explanation, the fact that there are layers upon layers of meaning and interpretation within the Guide notwithstanding) is that the *form* of man “is that constituent which gives him human perception”, and his intellectual perception is that with which he bears some resemblance and likeness, in an abstract relation, to the Divine perception.

Now man possesses as his proprium something in him that is very strange as it is not found in anything else that exists under the sphere of the moon, namely intellectual apprehension. In the exercise of this, no sense, no part of the body, none of the extremities are used; and therefore this apprehension was likened unto the apprehension of the deity, which does not require an instrument, although in reality it is not like the latter apprehension, but only appears so to the first stirring of opinion. It was because of this something, I mean because of the divine intellect conjoined with man, that it is said of the latter that he is in the image of God and in

⁸⁸ Genesis 1: 26

⁸⁹ See p. 12

His likeness, not that God, may he be exalted, is a body and possesses a shape.⁹⁰

The medium through which God and Man relate (one must understand the definition of the word relationship in this sense) is the faculty of intellectual perception. It is this faculty, which elevates Man above all other creations, and provides man with the bridge to venture into a world of metaphysical and theological study.

After investigating the opening passages of three of the classical works within the Maimonidean corpus, what should be overwhelmingly apparent is the emphasis and primary importance of intellectual investigation with the purpose of arriving at true knowledge of God. Yet, what remains to be addressed is the question of what one can know of God and what is the method by which one can attain that knowledge?

With this question as a backdrop, one can come to appreciate more fully the necessity and value of the treatise which Maimonides calls Negative Attributes⁹¹. Maimonides proposes the concept of Negative Theology or Negative Attributes in the *Guide*, primarily from chapters fifty through sixty. Although it constantly reappears throughout the entire *Guide*, this is the place where it is elaborated upon most extensively. It has been pointed out that this is not Maimonides' innovation, it is however certainly one of the most emphatic propositions presented by a Jewish philosopher, as is highlighted by Julius Guttmann:

Although essentially Maimonides teaches nothing that had not been said before by a number of earlier Jewish philosophers, yet the conceptual sharpness and the profound systematic consistency with which he developed these basic

⁹⁰ Maimonides, *The Guide of the Perplexed*, translated by Shlomo Pines (The University of Chicago Press, Chicago/ London, 1963), 1: 1

⁹¹ The Guide 1: 50- 60

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ideas make him their classical exponent in Jewish philosophy.⁹²

The treatise, called Negative Theology, proposes that since God is the Supreme Infinite Being who possesses no plurality or corporeality, it is impossible to ascribe any attribute to Him in an attempt to reveal or describe His essence, without in actuality detracting from His essence.

In order to fully appreciate the deficiency of inaccurate description, the reader is given an introduction to the different methods of description. Maimonides tells us that there are five possible methods of describing something. The first is when something is described by its definition, for example, man can be described as ‘a being that lives and has reason.’ The second is the description of something by part of its definition. The third is the description of a general quality of something, whereby the general quality is not identical with the essence of the object; rather it is an extraneous characteristic, determined by a prior cause. For example, the trait of humility is a quality which does not describe the essence of a person, but rather the quality which has been acquired through a certain means. The fourth method is the description of something by its relation to another thing and the fifth is the description of something through its actions. The first three methods of description all imply plurality and are therefore inappropriate and inaccurate to use in reference to God, since they violate the statute of the incorporeal nature of God. To describe all or part of the characteristics of God would be to affirm that God possesses parts which constitute His essence. Only a being which has a compound nature can be said to be ‘one’, whereby

⁹² Julius Guttman, translated by David W. Silverman, *Philosophies of Judaism: A History of Jewish Philosophy from Biblical Times to Franz Rosenzweig* (Shocken Books, New York, 1973), p. 180

One must ask then, who or what was Maimonides speaking out against and what provoked such a strong treatise at this juncture, if others had fulfilled this task prior to *The Guide*?

‘oneness’ is a unity of all its parts. Maimonides has already told us that the nature of God is not that of a composite compound:

This God is one. He is not two or more than two, but One; so that none of the things existing in the universe to which the term one is applied is like unto his Unity; neither such a unit as a species which comprises many units; nor such a unit as a physical body which consists of parts and dimensions. His unity is such that there is no other unity like it in the world.⁹³

The belief and knowledge of the unity and unique oneness of God is so fundamental it takes second place in the enumeration of the mitzvot by Maimonides, preceded only by the injunction to believe and know the primary nature of God.

By this injunction we are commanded to believe in the Unity of God; that is to say, to believe that the Creator of all things in existence and their First Cause is One. This injunction is contained in His words (exalted be He) ‘Hear O Israel: the Lord our God, the Lord is One’. In most Midrashim you will find this explained as meaning that we are to declare the Unity of God’s name, or the Unity of God, or something of that kind. The intention of the Sages was to teach us that God brought us out of Egypt and heaped kindness upon us only on condition that we believe in His unity, which is our bounden duty.⁹⁴

When dealing with definitions of God in an attempt to describe His essence, particularly through these three methods, one has to resign oneself to the fact that, in the words of Guttmann; “No positive

⁹³ Maimonides, *Mishneh Torah*, Yesodei HaTorah 1: 1

⁹⁴ Rabbi Dr. Charles B. Chavel, *The Commandments: Sefer HaMitzvot of Maimonides* (The Soncino Press, London/ New York, 1967), Vol. 1, p. 3, Mitzvah 2

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statement about God can go beyond the mere tautology that God is God.”⁹⁵

With regards to the fourth method, Maimonides states that this would be the most appropriate method to be employed, since “they do not imply that a plurality of eternal things exists, or that any change takes place in the essence of God, when these things change to which God is in relation”⁹⁶. However since one cannot ascribe any similarity or relation of God to one of His creations, the usage of this method is inadmissible. Relation between God and His creations must be denied, since God is incomparable to anything else. An example of this is illustrated with regards to true existence. The existence of God is absolute and not dependent upon anything else and our existence is only a possible or ‘accidental’ existence, dependant on other factors. This particular distinction is clearly expressed in *Sefer Yesodei HaTorah*:

If it could be supposed that He did not exist, it would follow that nothing else could possibly exist

If, however, it were supposed that all other beings were non-existent, He alone would still exist. Their non-existence would not involve His non-existence. For all beings are in need of Him; but He, blessed be He, is not in need of them nor any of them. Hence, His real essence is unlike that of any of them.⁹⁷

Due to the fact that definition of existence contains no similarity and the definition of relation is the correlation of two objects of the same

⁹⁵ Julius Guttmann, translated by David W. Silverman, *Philosophies of Judaism: A History of Jewish Philosophy from Biblical Times to Franz Rosenzweig* (Shocken Books, New York, 1973), p. 181. Wolfson also uses this expression, see note 54.

⁹⁶ *The Guide* 1: 52

⁹⁷ Maimonides, *Mishneh Torah: Yesodei HaTorah* 1: 1- 3

kind⁹⁸, there can be no relation and there can therefore be no description of God by His relation to another being.

The fifth method mentioned, the description of something through its actions is, according to Maimonides, the most appropriate. Despite the fact that the act or the action described is borne out of God's essence, it is however understood that it is not His essence. If one were to ask how it could be that a being that is one can have many different things coming out of it, Maimonides would answer that an example of this is fire⁹⁹. Fire, which performs actions such as bleaching, blackening, burning, boiling, hardening and melting, does not do so through different elements, rather it is the singular quality of heat that achieves all these tasks.

Maimonides outlines four basic principles which one cannot declare with regard to the essential nature of God: Corporeality, Emotion or Change, Potential or Non-existence and Similarity. The concept of incorporeality and the unity of God are intrinsically connected to negative theology. If God were of a corporeal nature, there would be no transgression by ascribing attributes to Him. If the unity of God were also in question, one would be pardoned from describing this type of god in terms of his parts. Both the unity and incorporeality of God are directly connected to the primary nature and 'Being' of God, namely that He is the first being in existence. This concept is more commonly known as the "prime mover" theory or the immovable mover, attributed to the Greek philosopher, Aristotle. A basic summary of this principle is that in order for something to move or to be in motion (a fundamental element of existence) there must be something that moved it. The sequence will backtrack to each preceding mover, which in turn has that which moves it, until we come to the immovable mover or prime mover, who is not moved by anything else.

⁹⁸ *The Guide* 1:56

⁹⁹ *The Guide* 1:53, Here Maimonides provides this analogy and logic.

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All movement requires a prime mover: if a is in motion, then there must be something that is moving a.” Therefore there must be unmoved movers: “a is moved by b, b is moved by c... eventually y is moved by z, which is itself motionless.¹⁰⁰

Since the Prime mover preceded all of creation, it must be that it is an entirely simple being (not in terms of non-complexity, but rather being Absolutely One) and therefore non-finite as well, for if that Being was of a compound nature it would imply corporeality. This Aristotelian philosophy is clearly utilized by Maimonides in the first chapter of *Yesodei HaTorah*:

The basic principle of all basic principles and the pillar of all sciences is to know that there is a First Being who brought every existing thing into being. All existing things, whether celestial, terrestrial, or belonging to an intermediate class, exist only through His true Existence.

This being is the God of the universe, the Lord of all the earth. And he it is who controls the sphere (of the universe) with a power that is without end and limit; with a power that is never intermitted. For the sphere is always revolving; and it is impossible for it to revolve without someone making it revolve. God, blessed be He, it is, who, without hand or body, causes it to revolve.¹⁰¹

In light of this, one seems to be thrown into darkness when one encounters Biblical literature. It would appear that the polar opposite of this treatise is presented. One is confronted with the form, sight, place, chair, ascent and descent, sitting and standing of God, to

¹⁰⁰ *The Cambridge Companion to Aristotle* edited by Jonathan Barnes: Metaphysics by J. Barnes (Cambridge University Press, Cambridge/ New York/ Melbourne, 1995), p. 66- 108.

“We are not discussing a chronological progression of motion, but rather all movements are simultaneous.”

¹⁰¹Maimonides, *Mishneh Torah*: *Yesodei HaTorah* 1: 1 & 5

mention but a few. If this were the gauge by which one was able to attribute characteristics, one would have a God who was not only corporeal, but also highly emotional and shared many similarities with His creations, heaven forbid! What then is it that warrants this flagrant violation of these principles in the very place that these principles should be upheld, according to Maimonides? The explanation is simply that “the Torah speaks in the language of man”.¹⁰² Therefore when the Torah uses an expression of emotion, one would have to interpret that expression as the attribute that would be applied to man, if man were experiencing that action. The expression reflects the emotion or action through the perception of man, and in no way denotes corporeality or emotion or change on behalf of God. It is with this in mind that Maimonides devotes a great amount of the first section of ‘the Guide’ dealing with these ambiguous expressions. His general method is to identify the homonymous nature of the particular biblical expression in question and to demonstrate that within that particular expression, there are multiple definitions and implications which do not suggest anthropomorphic qualities of God.

An example of this is found in the eighth chapter of *The Guide* where the subject being discussed is the Hebrew word *makom*, which literally means place. The simple definition of the word is applied to a ‘particular spot and space in general’; however it can also mean a position or degree regarding the perfection of man in certain areas. Similarly we find it used in this manner in the Babylonian Talmud, Ketuvoth¹⁰³, where it is said of Rabban Gamliel that “he fills his ancestors place in his fear of sin”. Therefore, when interpreting the verse “Blessed be the glory of the Lord from His place”¹⁰⁴, one should apply this figurative meaning which would render the verse, “Blessed be the Lord according to the exalted nature of His

¹⁰² *The Guide* 1:53

¹⁰³ Babylonian Talmud, Tractate Ketuvoth, p. 103b, "ממלא מקום אבותינו"

¹⁰⁴ Ezekiel 3:12

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existence”. The difficulties one encounters can therefore be resolved in one of two ways. Either the expression is to be understood as identifying the emotion or action man would experience when being confronted with this situation, and not a description of a real action or even less the essence of God, or one is to find the most appropriate definition of the expression which does not violate negative theology.

What emerges from this is that the sphere within which the descriptive methods are to be utilized is only with regard to the actions of God and not His essence. If one wishes to ascribe attributes to God, it can only be in reference to His actions. The fact that one cannot attempt to describe the essence of God is not just an arbitrary rule created in order to preserve the sanctity of the Almighty, rather it is due to the fact that “God is God” which makes His essence unfathomable and indescribable. The confines of our temporal existence, as that of a created entity, imprison us within a world of finiteness and definition, multiplicity and disparity, all of which contribute to the dissimilarity between Creator and creature. However it is also due to this state of existence that we can follow the breadcrumbs that lead us towards knowing what God is not.

The ability to know God through His actions is illustrated in the book of Exodus.¹⁰⁵ There, Moses requested two things from God: that God should let him know His attributes, as it says, “Show me now thy way, that I may know thee”¹⁰⁶, and that He should let him know His true essence, as it says, “show me thy glory”.¹⁰⁷ In response to the first question, God promised to show His attributes to Moses with the reply, “all my goodness”¹⁰⁸, which Maimonides interprets to mean the nature of all things, their relation to each other, and the way they are governed by God, and that these are only His actions.

¹⁰⁵ Exodus 33: 13-20

¹⁰⁶ Ibid. 33: 13

¹⁰⁷ Ibid. 33: 18

¹⁰⁸ Ibid. 33: 19

Regarding the second question, Moses is told that no human being can perceive the essence of God, as it says, “Though canst not see my face”.¹⁰⁹ What one learns from this interaction is that the way that God can be known is only through the knowledge of His work, which is the knowledge of His attributes, and that all attributes ascribed to God are attributes of His acts, and not His essence¹¹⁰.

Since the essence of God is incomprehensible, one has to know Him through what He is not, and what He is not is everything we experience and know, namely the creation. The study of creation is divided into two major categories: *Maaseh Bereishit* (Works of creation) and *Maaseh Merkavah* (Works of the chariot), which Maimonides renders as physics and metaphysics. Physics includes all of the natural sciences, whilst metaphysics is the study of theology, which is comprehended through the philosophical approach. As in the system of Aristotle, Maimonides’ opinion is that the study of metaphysics is the goal of one’s studies, as the study of metaphysics is the study of the first cause. Consequently, since the study of the first cause is the study of theology, and the study of first cause is primary, the study of theology is primary¹¹¹. The necessary requirements for the study of theology are clearly outlined by Maimonides in his introduction to *The Guide*.

We must first form a conception of the Existence of the Creator according to our capabilities; that is, we must have a knowledge of Metaphysics. But this discipline can only be approached after the study of Physics; for the study of Physics borders on Metaphysics, and must even precede it in the course of our studies...Therefore the Almighty

¹⁰⁹ Ibid. 33: 20

¹¹⁰ The interpretation of these verses are found in *The Guide* 1: 54

¹¹¹ *The Cambridge Companion to Aristotle* edited by Jonathan Barnes: Metaphysics by J. Barnes (Cambridge University Press, Cambridge/ New York/ Melbourne, 1995), p. 66- 108

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commenced Holy Writ with the description of the Creation, that is with Physical science¹¹².

The centrality of the reconciliation and synthesis of these two realms of philosophical knowledge and Biblical revelation is integral to negative theology. Thus, according to Maimonides, Philosophy is not something extraneous to biblical teaching; rather it is entirely necessary for full appreciation and understanding of the content of revelation:

Religious faith is a form of knowledge. Philosophical knowledge renders an immediate apprehension of the objects of faith possible.¹¹³

Therefore the means to attempt to bridge the relationship between God and us is through our knowledge of these spheres, through that very faculty that bears some slight resemblance to the Divine faculty, the mind.

We have mentioned previously that according to Maimonides knowing something means the internalization of a certain matter through clarification and correct verification. It is therefore crucial that one who attempts to know God understands how to actively implement the teachings of negative theology. If one were to describe an object by what it is not, one would eventually reach a more accurate understanding of that object than when they started. Let us take for example a ship, where one is told that it is not a mineral, another is told that it is not a plant growing in the earth, another that it is not a body whose parts are joined together by nature, that it is not a flat object, that it is not a sphere, that it is not pointed, and so on. The more a person progresses with the negative descriptions, the

¹¹² Maimonides, *The Guide for the Perplexed* translated by M. Friedlander PhD (Dover Publications, INC., New York), p. 4

¹¹³ Julius Guttman, translated by David W. Silverman, *Philosophies of Judaism: A History of Jewish Philosophy from Biblical Times to Franz Rosenzweig* (Shocken Books, New York, 1973), p. 176

closer they come to a fuller comprehension of the object being described. If one could positively describe something it is undoubtedly a far superior way of reaching an understanding, however, since it is inaccurate to provide positive affirmations of God, the sole method available to us is negative description. Every subject of research and every facet of knowledge can be used to understand what God is not. Therefore if one were to study the nature of time or the nature of space, the more time one devoted to them, the more that would deepen and widen one's understanding of these particular subjects. Consequently, one's understanding of the concept that God is beyond time and beyond space would increase, provided that one's knowledge was used in the intended direction of Divine investigation. Thus Maimonides states that, "Every time you establish by proof the negation of a thing in reference to God, you become more perfect".¹¹⁴

It is of interest to note that whilst in *The Guide* the Aristotelian method is explicitly employed in order to prove the existence of God, in *Hilchot Yesodei HaTorah* the Aristotelian method is only alluded to. There, Maimonides brings the verse "Hear O Israel, the Lord your God, the Lord is One".¹¹⁵ If the biblical verse is sufficient, why is there a need for the opinion of the philosophers, and if the logical verification of the philosophers is sufficient, then why is the verse required? On a simple level, one need only to look towards the audience Maimonides was addressing. For those who are comforted by the authoritative position of the Torah and its legislature, one need not venture any further than scripture. However for the one who is in need of logical confirmation of philosophical and theological dilemmas, a synthesis of philosophy and Biblical revelation is required. The one who is in this state of perplexity, is the student for whom Maimonides intended *The Guide*, as he says in the introduction to *The Guide*:

¹¹⁴ *The Guide* 1: 59

¹¹⁵ Deuteronomy 6: 4

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The object of this treatise is to enlighten a religious man who has been trained to believe in the truth of our holy Law, who conscientiously fulfils his moral and religious duties, and at the same time has been successful in his philosophical studies. Human reason has attracted him to abide within its sphere; and he finds it difficult to accept as correct the teaching bases on the literal interpretation of the Law...Hence he is lost in perplexity and anxiety. If he be guided solely by reason, and renounce his previous views which are based on those expressions, he would consider that he had rejected the fundamental principles of the Law; and even if he retains the opinions which were derived from those expressions, and if instead of following his reason, he abandon its guidance altogether, it would still appear that his religious convictions had suffered loss and injury. For he would then be left with those errors which give rise to fear and anxiety, constant grief and great perplexity.¹¹⁶

Yet each of these sources are not mutually exclusive (hence the strong Aristotelian undertones in the Mishneh Torah) and neither does the audience need to remain in mutually exclusive camps; rather, as we have mentioned, the purpose is the reconciliation and synthesis of these two realms.

The importance of negative attributes in reference to God has been emphasized throughout the writings of Maimonides, yet what remains to be clarified is the severity of positive affirmation and description. The purpose of description is to illustrate the characteristics of a certain object or subject. When this method is used in reference to God, it is void of purpose since no description can be ascribed to Him. When one then does describe God in these physical characteristics, what has been achieved? Maimonides tells us that what has been achieved is nothing more than the invention of a

¹¹⁶ *The Guide*, Introduction

fictitious being, bearing no relationship to God. Since there can be no true definition, any definition is untrue. An anecdote found in the Babylonian Talmud is brought by Maimonides in order to illustrate this point.

A certain person reading prayers in the presence of Rabbi Haninah said, ‘God the great, the valiant and the tremendous, the powerful, the strong, and the mighty.’ The Rabbi said to him, Have you finished all the praises of your master? The three epithets, ‘God, the great, the valiant and the tremendous,’ we should not have applied to God, had Moses not mentioned them in the Law, and had not the men of the Great Synagogue come forward subsequently and established their use in the prayer; and you say all this! Let this be illustrated by a parable. There was once an earthly king, possessing millions of gold coin; he was praised for owning millions of silver coin; was this not really dispraise to him?¹¹⁷

Maintaining this false perception is not only where the problem lies, rather it is within the consequence of this perception. We are told that this erroneous perception is tantamount to disbelief. Belief in God means knowing God, and knowing God can only be achieved through negative privations. Therefore, one who suggests positive affirmations of the nature of God, is in fact distancing himself from knowledge of God and thus from belief in God. What the anthropomorphist is worshipping is the figment of his own imagination. The consequence of this belief is not merely an obstacle to intellectual enlightenment, it also bears significance to the legal status of one who promotes these ideas. Thus, in Hilchot Teshuva Maimonides lists five individuals whose outlook renders them heretics. Of these five, the third is one who agrees to the monotheistic view of God; however he attributes physical characteristics to God and therefore denies the incorporeality of

¹¹⁷ Babylonian Talmud, Tractate Berachot, p. 33b, Quoted in *The Guide* 1: 59

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God. Whilst metaphoric interpretation of scriptural anthropomorphisms was the accepted view, and as we have mentioned Maimonides was not necessarily the pioneer of negative theology, there were those in the Jewish camp that rejected this treatise proposed by Maimonides.¹¹⁸

The validation of an anthropomorphic view of God is evident in the Critique, *Hasagot*, of the Ravad¹¹⁹ in response to this very halachah in Hilchot Teshuva. The Ravad is astonished by the ruling of Maimonides, since he claims that there are many great people, better than Maimonides who subscribed to this view due to scriptural and midrashic implications! This hasagah has received varying interpretations, some claim that the Ravad himself was amongst the anthropomorphists¹²⁰ and attributists, whilst others claim he was merely trying to defend the adherents of this view from receiving the status of a heretic. Professor Isadore Twersky argues that it is unlikely that the Ravad was an anthropomorphist himself; rather he was against the “doctrinaire statement that one who affirms corporeality of God is a heretic”.¹²¹ The fact that the Ravad passed over the first chapter of Yesodei HaTorah without comment, further substantiates the claim that he himself was not against the idea that God is of an incorporeal nature.

There was yet another group whose doctrine was the target of Maimonides emphatic declaration of negative theology; they were known as the Kalam. The Kalam, derived from the Arabic word which literally means speaking or speech, is the name given to a sect

¹¹⁸ For example, R. Moses b. Hasdai Taku, a Tosafist, author of *Ketav Tamim*. See p. 192 of the Article by Marc B. Shapiro, ‘The Last Word in Jewish Theology? Maimonides: The Thirteen Principles’, *The Torah U- Madda Journal* Vol. 4 (1993), pp. 187-277, for the prevalence of the anthropomorphists in the Jewish camp.

¹¹⁹ Rabbi Avraham ben David of Posquieres, ? – 1198. A Talmudic scholar noted amongst the “Sages of Provence”

¹²⁰ Professor Isadore Twersky, *Studies in Jewish Law and Philosophy* (Ktav Publishing House Inc., New York, 1982), p. 148- 179

¹²¹ *Ibid.*

of Islamic rationalists of the eighth century. Their initial purpose was the reconciliation of scripture and rational thought through debate. This goal was adopted by the Mutazilite group¹²²; however it became overshadowed at a later stage by the Ashirite group, who advocated the superiority of revelation, prophetic tradition and general consensus over the method of applying reason to questions of faith. In addition, Biblical interpretation was also limited, for if the plain meaning of the text was incompatible with reason, reason would have to be abandoned. The main theory of the Kalam which conflicted with negative theology was their concept of Divine Attributes. They claimed that God does possess attributes, however they are neither identical with his essence, nor are they an entirely separate entity, rather they are suspended between the two in some quasi state which eludes linguistic definition. Therefore Maimonides attempted to promote and clarify the treatise of negative theology in order to eradicate any contradiction and distortion of those claiming the ability to describe God. The clarification of mistaken thoughts would appear to be a background for Maimonides' proposal of negative attributes.¹²³ However when one places this chapter in context of *The Guide*, especially the Introduction, there seems to be a further explanation to the importance of this treatise, which is more than just reactionary. When the theologian fully accepts the theory of negative theology, particularly that God is indescribable, they are seemingly left without any means of knowing God. At that instance, Maimonides introduces his theory of investigating and knowing everything in the world in order to know what God is, by knowing what he is not.

¹²² The Mutazilites were an early sect of the Kalam whose influence was eventually eclipsed by another sect of the Kalam, the Ashirites.

¹²³ *The Guide* 1: 51. In the beginning of this chapter, Maimonides says that certain obvious concepts have to be proven, merely because they have been contradicted and distorted. For example, Aristotle and Motion.

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Amidst the proposition of Negative Theology, where we are told in no uncertain terms that it is a falsehood and borders on heresy to attribute characteristics to God, Maimonides seems to violate this very principle. God is described as possessing Knowledge, Will and Existence (some also claim that Maimonides attributes Power and Life as well), and that these attributes are identical with His essence. How does one reconcile this inconsistency, especially in light of the fact that it has been emphasized that one cannot describe the essence of God? Some have attempted to resolve the apparent contradiction by explaining the affirmations of Maimonides that God has knowledge and Existence, as excluding the implication that God does not have Knowledge. Therefore all affirmations are to be understood as confirming that God is not lacking, and not to be misconstrued as actually affirming an attribute¹²⁴. Others explain that what the doctrine of negative theology prohibits one from doing, is determining the essence of God. However what one can claim is that this simple essence includes within it certain perfections that correspond to Knowledge, Will and Power, provided that the details are left undefined.¹²⁵

Both of these attempted resolutions seem to maintain that one may use a description of God, provided that one specifies that the characteristic is identical to His essence, or that it implies that God does not lack this characteristic. For example, He possesses knowledge and His knowledge is identical to His essence, or He possesses knowledge, He possesses no ignorance. According to this, one should be able to ascribe most attributes to God, by claiming that it is identical to His essence. However, Maimonides seems to refer to God with the aforementioned attributes only. Furthermore,

¹²⁴ H. A. Wolfson, *Studies in the History of Philosophy and Religion: Maimonides on Negative Attributes* (Cambridge, 1973), Vol. 2, p. 195- 230

¹²⁵ Julius Guttmann, translated by David W. Silverman, *Philosophies of Judaism: A History of Jewish Philosophy from Biblical Times to Franz Rosenzweig* (Shocken Books, New York, 1973), p. 186

the ascription of knowledge to God is also apparent in the teachings of Aristotle, who also maintains the inability of man to describe God. W.D. Ross, in his introduction to Aristotle's *Metaphysics* highlights that "Aristotle can only ascribe to it mental activity, and only that kind of mental activity that owes nothing to the body, viz. knowledge; and only that kind of knowledge which does not grasp conclusions by the aid of premises but is direct and intuitive; i.e. the prime mover is not only form and actuality, but mind... The object of God's knowledge is therefore God himself."¹²⁶

It should be noted that the philosophic legacy that Maimonides followed is situated somewhere between Aristotelian and Platonic doctrine. Whereas the Aristotelian philosophy is employed in order to prove the existence of God, with regards to the concept of God as being "the highest and incomprehensible One, of which we know only that it beyond and above every known and knowable perfection"¹²⁷, he follows the Neoplatonic position. The merging of the Aristotelian and Platonic traditions is almost certainly due to the fact that the philosophic texts which Maimonides studied were the products of the translation movement of Baghdad in the eighth century. There the works of Aristotle were translated into Arabic from the original Greek, as well as the commentaries on his works, of which the majority of the classical Greek commentators on Aristotle were Neo-Platonist. The Arabic philosophers who mainly formed the basis and influenced the philosophical teachings of Maimonides were Al-Farabi, Avicenna and Ibn Bajja.¹²⁸

¹²⁶ W. D. Ross, *Aristotle's Metaphysics* (Clarendon Press, Oxford, 1924), Aristotle's Theology p. cxxx- cliv

¹²⁷ Julius Guttmann, translated by David W. Silverman, *Philosophies of Judaism: A History of Jewish Philosophy from Biblical Times to Franz Rosenzweig* (Shoken Books, New York, 1973), p. 183

¹²⁸ The Cambridge Companion to Arabic Philosophy: Islamic Philosophy and Jewish Philosophy (Cambridge University Press, Cambridge, 2005), p.353

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Why do the philosophers, and Maimonides in a similar vein, assume that knowledge is an integral quality that one is compelled to ascribe to the prime mover or God? It has been suggested that the answer lies in understanding how the Greek philosophers understood “thought” and knowledge. Thought was viewed as a concept completely separate from any corporeal implication. It was intangible even in a psychoanalytical sense, thus promoting it to a status of an ethereal nature. God, according to the philosophers, was also a concept far removed from any tangible analysis. In fact according to Aristotle, God is considered as existing eternally as pure thought.¹²⁹ Therefore when God is depicted as thinking or possessing knowledge or intellect, it bears no physical relation and is therefore appropriate to use. However an emotional quality such as love or happiness is inappropriate since it is associated with physical characteristics and bodily actions.

The characterization of God as ‘thinking’ is conditional upon certain prerequisites: that one realizes that the knowledge of God is not separate from His essence, and that His knowledge is unlike our knowledge, despite the fact that the same word, knowledge, is used. The homonymy of the word knowledge has misled people to assume comparison between man and God, whereas the difference between the two is “like the distinction between the substance of the heavens and that of the Earth”.¹³⁰ Thus the words of the prophet Isaiah, which state “For my thoughts are not your thoughts... saith the Lord. For as the heavens are higher than the earth, so are my ways higher than your ways”, should be interpreted with this idea in mind.

God is perceived as having thoughts and thinking, insofar as thought represents a quality elevated beyond physical definition and

¹²⁹ *Bertrand Russell*, *History of Western Philosophy: and its Connection with Political and Social Circumstances from the Earliest Times to the Present Day* (Routledge, London, 1996) p. 182

¹³⁰ *The Guide* 3: 20

implication. This quality resembles, but is not comparable to, that faculty in man which elevates him above the other creations in the physical realm. Since man possesses an intellect which resembles the realm of purely spiritual substances, he is subject to influence from the realm of purely spiritual substances. Therefore the more one utilizes one's intellect, the more one resembles the Divine Intellect and in turn becomes subject to influence from this realm, which is called Divine Providence. It is through this intellectual 'connection' that Maimonides explains the concept of providence; the greater the intellectual perception, the greater the providence. The concept of free will is also intrinsically connected to providence. The ability to discern between good and bad is directly proportionate to one's level of intellectual awareness. Therefore a similar equation unfolds, the amount that one draws upon the intellect will directly affect one's ability to discern between good or bad, which will actively resemble the Divine and will therefore affect the level of providence that they receive.

The endeavor that is thus placed before man is one which touches the very nature of his existence as an intellectual being in a world of other creatures, and as a lowly finite creation brought into existence by an infinite Creator. The treatise of negative theology, which disqualifies the usage of any description of the essence of God whereby one is only allowed to describe His actions, seems to provide no place for God to 'reside' in this world. God is portrayed as the 'platonian' God, a transcendent being where there is no possible way to connect to His essence.¹³¹ The Maimonidean perception of a transcendent God leaves the world empty of God; however it is filled

¹³¹ Even the Aristotelian God or Prime mover, which according to Ross "leads him to think of God not as operative with equal directness in all change and being, but as directly operative only at the outermost confines of the universe and as affecting human affairs only through a long series of intermediaries" is unknowable to Man and indescribable. See W. D. Ross, *Aristotle's Metaphysics* (Clarendon Press, Oxford, 1924), 'Aristotle's Theology' p. cxxx- cliv.

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with His influence through His actions.¹³² Investigating the world becomes a ‘holy’ pursuit, where everything is filled with purpose, namely the purpose of knowing what God is not, and the tool designated exclusively for this task is the intellect. Thus the void created by the unfathomable nature of God provides the sole opportunity for man to ‘connect’ to God, through intellectual investigation of the nature of all things in the world, their relation to each other, and the way they are governed by God (His acts). ‘Knowing God’ according to Maimonides is the direct result of the inability of man to positively affirm any characteristic of God; rather his ‘relationship’ can only be based upon the theory of negative attributes. The basis of this ‘relationship’ and the foundation of this theory are perhaps most clearly expressed in the words of King David, “Silence is Your Praise”.¹³³

¹³² Whether God is immanent or transcendent is not clear in Aristotle, however what is clear is that *order* is due to God, and can be said to “be at work in the world, and is in this sense immanent. See W. D. Ross, *Aristotle’s Metaphysics* (Clarendon Press, Oxford, 1924), Aristotle’s Theology p. cxxx- cliv.

¹³³ Psalms 65: 2

The Perception of Reality: contrasting views of the nature of existence

Rabbi David Sedley

Overview

Maimonides wrote his Guide of the Perplexed ostensibly as a response to the philosophy of the *Kalam*¹³⁴, which in his view had corrupted the clear thinking of his pupil Rabbi Joseph¹³⁵. He writes in his Letter to a Student at the beginning of the Guide:

I saw that you demanded of me additional knowledge and asked me to make clear to you certain things pertaining to divine matters, to inform you of the intentions of the *Me'tukallim* (Islamic philosophers of the *Kalam*) in this respect, and to let you know whether their methods were demonstrative and, if not, to what art they belonged.... Your absence moved me to compose this Treatise, which I have

¹³⁴ The *Kalam* is a general term for Medieval Islamic philosophy as we will explain below.

¹³⁵ As Pines points out (footnote 2, p. 3) and as Rambam himself states, the Guide was written for the benefit of this pupil and for those like him. Therefore we should take seriously Rambam's description of Joseph's corruption by the *Me'tukallim*, and understand that the Guide was intended as an antidote.

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composed for you and for those like you, however few they are.¹³⁶

Thus begins the Guide, and thus begins an argument about the nature of the world and the nature of reality. This argument continues in a slightly differing form to this day. The main point of contention, as Rambam saw it, between himself and the *Kalam* was the nature of existence and the validity of science.

This same basic argument between Rambam and the philosophers of the *Kalam* repeated itself several hundred years later after the Arizal's revelations of the kabballah to the world. It is most clearly expressed in the fundamental dispute between the Chasidim and the Vilna Gaon (and his followers). However, the language and terminology had changed over the course of 500 years, and their prime argument was over how to understand a single line of the Arizal's book *Etz Chaim*. As we will see, this argument led to almost the same two alternative theologies with all the implications and ramifications as between Rambam and *Kalam*.

As we will show, the implications of this argument affect most aspects of Jewish philosophy and have had a major impact on current Jewish thinking.

At its most basic, the argument can be stated in words adapted from Hamlet:

“Are we, or are we not? That is the question.”

The Debate

Rambam disagreed fundamentally with the *Kalam*, going so far as to describe those Jewish scholars who base themselves on *Kalam* philosophy “ill with the illness of the *Kalam*.”¹³⁷

¹³⁶ Pines translation.

He sums up his most basic disagreement with the *Kalam* in the following short phrase:

“To sum up: I shall say to you that the matter is as Themistius puts it: that which exists does not conform to the various opinions, but rather the correct opinions conform to that which exists.”¹³⁸

For Rambam, one of the main objections to *Kalam* was that it did not view the world as really existing, which led to theology and philosophy that melded the ‘world’ (or the illusion thereof) to fit what its followers felt was the truth. No matter that they often came to the correct result, Rambam’s argument was with the methodology.

Pines¹³⁹ shows that *Kalam*, for Rambam, represents the ‘anti-reality’ philosophy, and that the main purpose in writing the Guide was to argue against that position:

It should also be noted that Maimonides’ “premises” of the *Metukallimun*, as well as his “premises” of the philosophers, are mainly, or indeed exclusively, concerned with physical science if, in accordance with the medieval classification, the concept of this science is extended so as to include the psychology of perception. But whereas the propositions of the philosophers are expound and account for the order and the causality of the cosmos, the principles of the *Metukallimun*, such as their atomist, the assumption that everything that can be imagined can happen and so on, are meant to prove that no causality and no permanent order exist in the world; all events are determined directly, without the intervention of intermediate causes, by the will of God, which is not bound by any law. In other words, there is no

¹³⁷ *Sbmonah Perakim* (Introduction to *Pirkei Avos*) chapter 6. He is almost certainly referring to R’ Saadiah Gaon as we will discuss later.

¹³⁸ *Guide* I: 71 p. 179

¹³⁹ Introduction to his translation of *Guide for the Perplexed* p. cxxv

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cosmos and there is no nature, these two Greek notions being replaced by the concept of congeries of atoms, with atomic accidents inherent in them being created in every instant by arbitrary acts of divine volition.

Rambam himself writes about the *Kalam*:

Thus there arose among them this science of *Kalam*. They started to establish premises that would be useful to them with regard to their belief and to refute those opinions that ruined the foundations of their Law.... They also selected from among the opinions of the earlier philosophers everything that the one who selected considered useful for him, even if the later philosophers had already demonstrated the falseness of these opinions – as for instance affirming the existence of atoms and the vacuum.¹⁴⁰

The *Kalam*

Kalam is the common name of medieval Islamic, mostly rationalist, sometimes apologetic (or polemic), religious philosophy. *Kalam* is the Arabic word for ‘word’ (dibbur), showing that this Islamic philosophy grew out of discussions and exchanges. The philosophers of the *Kalam* are called *Me’tukallim*, ‘speakers’ (medabrim). The *Kalam* arose as a response to debates with Christian theologians.

The most famous amongst the early *Kalam* groups is the *Mu’tazilites*. Only a few of the early *Mu’tazilite* works have survived. Most of the information concerning the positions of early *Mu’tazilite* thinkers comes from polemic, hostile sources (mainly Ash’arite authors) or later *Mu’tazilite* authors who wrote comprehensive compendia of the schools’ system. They were based in Baghdad and Basra from approximately 750 – 900.

¹⁴⁰ *Guide* I: 71 (Pines edition pp. 177-8)

They were still active in Rambam's time, although some of their philosophy had changed due to the influence of the more dominant school of *Kalam* Islamic theology, the al-Ash'ari (Ash'arites).

The *Kalam* view of the reality of the world is explained by Frank and Leaman¹⁴¹:

“The large majority of *Me'tuzallim* tied the proofs for the created-ness of the world *ex nihilo* to a rather complex atomistic theory, which they may have derived from both ancient Greek and Indian philosophies. According to this theory, all bodies are composed of identical atoms of substance that do not have any essential characteristics, and that have been understood by many modern researchers to have no spatial dimensions. Upon these atoms reside the atoms of both physical (for example, composition and separation, motion and rest, colors) and abstract or mental properties (for example, life, knowledge, will, capacity). In many *kalam* compendia, the exposition of this theory constitutes the basis for the discussion of the createdness of the world.

The theory differs from any other atomistic theory on one important point of principle: the universe is not governed by chance; instead, the existence or the extinction of every single individual atom, of substance or accident, is a creation of God, whose absolute omnipotence is thus emphatically underlined.... Causality is thus denied; what appear to be laws of nature or a causal sequence of are rather a 'customary' recurrence of isolated, unrelated events that result from God's unlimited will and power. Some Mu'tazilites, mainly from the Baghdad school, did not accept the atomistic theory and established a theory that recognized

141 Frank, D and Leaman, O. (eds.) (1997) *History of Jewish Philosophy*, Routledge, London and New York. p. 119.

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essential properties of species and individuals, a certain mode of causality and the laws of nature.”

Rambam himself describes the way in which the *Kalam* viewed the reality of the world:

“The proofs of the Mutakallimun, on the other hand, are derived from premises that run counter to the nature of existence that is perceived so that they resort to the affirmation that nothing has a nature in any respect.... For whereas the proof, with the aid of which some Metakallimun prove by inference the creation of the world in time and which is their most powerful proof, is not consolidated for them until they abolish the nature of all existence and disagree with everything that the philosophers have made clear, I reach a similar proof without running counter to the nature of existence and without having recourse to violating that which is perceived by the senses.”¹⁴²

Although many Jewish philosophers, including R' Saadiah Gaon, made use of *Kalam* philosophy, when it came to the reality of existence, they abandoned the *Kalam* for a realist approach. The Routledge Encyclopaedia of Philosophy says as follows:

Saadiah Gaon makes especial use of arguments taken from the *Kalam*, as the plan of the *Amanat (Emunot v'Deot)* shows. Its first two chapters discuss the unity of God, the topic with which exponents of *kalam* usually begin their treatises, whilst the seven following chapters consider God's justice, the second main theme of the *Kalam*. None the less, Saadiah does not adopt one of the central ideas of the *Kalam*, that of atomism and the renewal of creation by God at every instant (the corollary, which is the denial that there are laws of

¹⁴² *Guide I*: 71 (Pines edition p. 182)

nature). He chooses instead a somewhat vague Aristotelian understanding of the physical world. (‘Islamic Theology’)

Rambam acknowledges the error of those Jewish philosophers who based themselves on the *Kalam* when he writes:

“It has so happened that Islam first began to take this road owing to a certain sect, namely the Mu’tazila, from whom our coreligionists took over certain things walking upon the road the Mu’tazila had taken.”¹⁴³

Rambam and the Eternity of the Universe

Rambam rejected the *Kalam*’s placing of the theological cart before the scientific horse. This is most clear in his attitude to the question of the eternity of the universe. In Rambam’s time, this was the major ‘reality’ issue, which led the philosophers of the *Kalam* to a rejection of any scientific method.

Rambam holds that the validity of the Torah would be disproved were Aristotle to be correct, and the universe would be proven to be eternal, as Rambam writes:

“If the philosophers would succeed in demonstrating the eternity as Aristotle understands it, the Law as a whole would become void.”¹⁴⁴

He rejected Aristotle’s eternity of the universe but is at pains to explain that he does so not because of theology, but rather because it has not been proved to be true. He writes:

“Know that our shunning the affirmation of the eternity of the world is not due to a text figuring in the Torah according to which the world has been produced in time.... Nor are the

¹⁴³ *ibid.* (pp. 176-6)

¹⁴⁴ *Guide* II: 25 p. 330

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gates of figurative interpretation shut in our faces or impossible of access to us regarding the subject of the creation of the world in time. For we could interpret them as figurative, as we have done when denying God’s corporeality. Perhaps this would even be much easier to do: we should be very well able to give a figurative interpretation of those texts and to affirm as true the eternity of the world, just as we have given a figurative interpretation of those other texts and have denied that He, may He be exalted, is a body.”¹⁴⁵

Rambam is stating explicitly that theology, and even our interpretation of the Torah, must follow from scientific reality and not vice versa. In this approach, Rambam was in line with almost all his contemporaries. R’ Saadiah Gaon¹⁴⁶, Ramban¹⁴⁷, Ralbag¹⁴⁸ and others all choose to reinterpret verses in the Torah in the light of scientific knowledge.

Rambam states clearly and forcefully that the search for reality must begin with an understanding of the physical world, and all theology can only grow from that:

I have already told you that nothing exists except God and this universe, and that there is no other evidence for His Existence but this universe in its entirety and in its several parts. Consequently, the universe must be examined as it is: the propositions must be derived from those properties of the universe that are clearly perceived, and hence you must know its visible form and its nature. Then only will you find

¹⁴⁵ *ibid.* p. 327-8

¹⁴⁶ E.g. *Emunot ve-Deot* VII: 2

¹⁴⁷ E.g. commentary to Genesis 9: 12 where he interprets the Torah non-literally to accommodate the Greek scientific description of the rainbow.

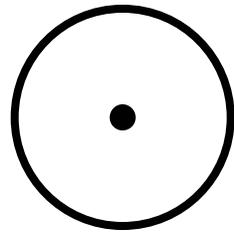
¹⁴⁸ E.g. *Milchamot Ha-Shem* chapter 6. See also Feldman, S. translation (1984) Jewish Publication Society of America, p. 96

in the universe evidence for the existence of a Being not included therein¹⁴⁹.

The Kabbalah of the Arizal and tzimtzum

Some 350 years after Rambam and his dispute with the *Kalam*, a new revelation of Torah occurred in Tzefat. Rabbi Yitzchak Luria, the AriZal, interpreted the Zohar in new ways, leading to new ideas in Jewish philosophy. He opens his *Etz Chaim* with a discussion of the interaction between the Divine Infinite and the finite world. His explanation is based upon the concept of tzimtzum, a ‘contraction’ of the Infinite (Ein Sof), which allows for the existence of the world. He writes:

You should know that before His exaltedness rested and before the creatures were created, there was simple supernal light filling all of existence. There was no empty place or void vacuum because everything was filled with the simple infinite light, and there was no aspect of beginning or end. Everything was simple and even with complete evenness, and this is called the infinite light. When it arose in His simple Will to create the worlds and to rest his exaltedness to bring to light the completeness of His Actions, and His Names and His Descriptions, which were the purpose of creation of the worlds, as we have explained... Then he contracted His infiniteness into a middle point which was in the absolute middle of His Light. He contracted this light and distanced it from the edges around this middle point. Then a space remained of empty space and void vacuum in the middle point like this:



¹⁴⁹ *Guide* I: 71

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The question is what did he mean by these words? Did the contraction actually happen, or is this a metaphor to describe to humanity how to live in the world and how to relate to God? Is God transcendent or immanent? In short, did God create a void in which to make a world, or is everything God, after creation just as it was before creation?

The dispute about the answer to this question is at the heart of the biggest division in Ashkenazi Jewry, the split between the Chasidim and the Mitnagdim.

Early Interpretations and Argument

The earliest two opposing views about the meaning of the AriZal’s concept of tzimtzum appear in Shomer Emunim (Ha-Kadmon) and Yosher Levav. They take completely opposite approaches to understanding this paragraph, and each accuses the other of being a very dangerous opinion.

Arguing the dangers of understanding tzimtzum to mean that God is no longer present in the world, R’ Yosef Irgas writes¹⁵⁰:

Anyone who wants to understand tzimtzum literally will come to make many mistakes and will come to contradict many of the principles of faith.

Presenting the opposing view, Yosher Levav states¹⁵¹:

From these things, we have learned that one who takes pity on His Creator must think in his heart that tzimtzum is literal so that he doesn’t come to insult God’s honour and think

150 *Shomer Emunim (Ha-Kadmon)* vikuach sheni, ot 35 ff.

151 1: 1: 12

that God's essence is present in the lowly, dishonourable, physical and even in the lowest things, God forbid.

It is apparent that these two world views are irreconcilable. Yet, ironically, the author of *Yosher Levav*, Rabbi Emanuel Chai Riki, wrote approbation for *Shomer Emunim* (Ha-Kadmon), even though he argues strongly against that position of *tzimtzum*. It seems that in his mind, these two divergent opinions, though poles apart theologically, were details rather than essentials in the study of kabbalah.

Chasidut – non-literal interpretation of *tzimtzum*

Dresner writes about the earliest beginnings of Chasidut that:

After seven years of seclusion high up in the Carpathian Mountains amidst those fields and forests he so loved to wander in since his childhood, the Baal Shem Tov burst upon the stage of history with a shocking cry – “*Altz iz Gott!*” “Everything is God!”¹⁵²

Even though this was a rallying cry for the new movement and not necessarily a reasoned philosophical position, it was not long before the philosophical backing was enunciated. The clearest statement of Chasidic philosophy was written by one of the leaders of the third generation of Chasidim, R' Schneur Zalman of Liadi. He explains:

Now, following these words and the truth [concerning the nature of the Creation], every intelligent person will understand clearly that each creature and being is actually considered naught and absolute nothingness in relation to his Activating Force and the “Breath of His mouth” which is in

152 Dresner, S (1981) ‘Hasidism and its Opponents’ in Jospe, R. and Wagner, S. (eds.) *Great Schisms in Jewish History* Centre for Judaic Studies; Denver. p. 143

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the created thing, continuously calling it into existence and bringing it from absolute non-being into being.... The spirituality that flows into it from “That which proceeds out of the mouth of God” and “His breath” – that alone continuously brings it forth from naught and nullity into being, and gives it existence. Hence, there is truly nothing besides Him.¹⁵³

We see here already a position similar to that of the Al Ashari *Kalam*. Everything is God, and God constantly brings the world into existence at every moment. It was this position that Maimonides had fought against with his Moreh Nevuchim. Yet it resurfaced a few centuries later.

Furthermore, R’ Schneur Zalman explicitly attacks any other understanding of tzimtzum and shows that it cannot possible by true:

In the light of what has been said above, it is possible to understand the error of some, scholars in their own eyes, may God forgive them, who erred and misinterpreted in their study of the writings of the Ari, of blessed memory, and understood the doctrine of *Tzimtzum*, which is mentioned therein literally – that the Holy One, blessed be He, removed Himself and His Essence, God forbid, from this world, and only guides from above with individual Providence all the created beings that are in the heavens above and on the earth below. Now, aside from the fact that it is altogether impossible to interpret the doctrine of *Tzimtzum* literally, [for then it] is a phenomenon of corporeality, concerning the Holy One, blessed be He, who is set apart from them [i.e. the phenomena of corporeality], many myriads of separations *ad infinitum*, they also did not speak wisely, ... [since] the Holy One, blessed be He, knows all the created beings in this

153 *Likutei Amarim Tanya* Shaar Hayichud ve-Ha-Emunah Chapter 3 p. 293

lower world and exercises Providence over them, and perforce His knowledge of them does not add plurality and innovation to Him, for He knows all by knowing Himself. Thus, as it were, His Essence and Being and His Knowledge are all one.¹⁵⁴

Mangel summarizes the position of R' Schneur Zalman in contrast to that of Maimonides (and explains that the departure from Maimonides' accepted position was necessitated by Luranc Kabballah):

Maimonides' interpretation of God's Unity emphasizes also that His Essence and Being is a simple and perfect Unity without any plurality, composition or divisibility and free from many physical properties and attributes....

The Chassidic interpretation of Unity, based on the Zoharic concepts of "Lower Level Unity" and "Higher Level Unity," gives it a more profound meaning. Rabbi Schneur Zalman explains that Divine Unity does not only exclude the existence of other ruling powers besides the One God or of any plurality in Him, but it precludes any existence at all apart from Him. The universe appears to possess an existence independent from its Creator only because we do not perceive the creating force that is its *raison d'être*. All created things, whether terrestrial or celestial, exist only by virtue of the continuous flow of life and vitality from God. The creative process did not cease at the end of the Six Days of Creation but continues at every moment, constantly renewing all existence.... Thus the true essence and reality of the

154 *Likutei Amarim Tanya* Shaar Hayichud ve-Ha-Emunah Chapter 7

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universe and everything therein is but the Divine power within it.¹⁵⁵

The difficulty with this position is that if everything is God, and tzimtzum is not to be understood literally, there is no room for free choice or meaningful human service to God. If everything is as it was before creation began, and everything is the Ein Sof, there can be no change, no choice, and no independent identity.

Rav Nachman of Breslav threw up his hands in despair when it came to resolving this inherent difficulty with our understanding of God and the purpose of human effort. We are forced to be either atheists or pantheists:

“Only in the future will it be possible to understand the tzimtzum that brought the 'Empty Space' into being, for we have to say of it two contradictory things... [1] the Empty Space came about through the tzimtzum, where, as it were, He 'limited' His Godliness and contracted it from there, and it is as though in that place there is no Godliness... [2] the absolute truth is that Godliness must nevertheless be present there, for certainly nothing can exist without His giving it life”¹⁵⁶.

The Vilna Goan and Mitnagdim: literal understanding of tzimtzum

The opposition of the Mitnagdim (led by the Gaon of Vilna) to the new chasidic movement was precisely over the same issue that became Maimonides' main attack on the *Kalam* – the nature of reality. As we have seen, according to R' Schneur Zalman, the world does

155 *Likkutei Amarim Tanya*, Bi-Lingual Edition; Revised edition 1998 Kehot Publication Society New York. Introduction to Part 2 by Rabbi Nissan Mangel. p. 855

¹⁵⁶ *Likkutei Moharan* I, 64:1

not really exist. Nature has no independent validity, and the world is constantly recreated every moment (just as the atomists had understood centuries earlier).

Although there is much discussion as to precisely why the Vilna Gaon saw fit to excommunicate the **ch**asidim (and certainly there were political and sociological reasons as well as theological), the only explicit writing we have from the Gaon on the issue seems to indicate that this was the main objection:

Into your ears I cry: Woe to him who says to his father, ‘What have you begotten?’ and to his mother, ‘What have you brought to birth?’ a generation whose children curse their fathers and do not bless their mothers; who have sinned greatly against them by turning their backs to them. Their stubborn hearts insist on rejecting good and choosing evil, transgressing the Torah and changing its laws.... They call themselves Chasidim – that is an abomination! How they have deceived this generation, uttering these words on high: “These are your Gods, O Israel: every stick and stone.” They interpret the Torah incorrectly regarding the verse “Blessed be the name of the glory of God from His dwelling place” (Ezekiel 3: 12) and also regarding the verse: “... and You give life to everything” (Nehemiah 9: 6).¹⁵⁷

Even though it is not certain that this was the main objection to **ch**asidut, it was certainly understood by R’ Schneur Zalman to be the crucial issue at stake.

I would welcome [a discussion] in matters of faith. According to a report from his disciples in our provinces, it is precisely in this area that the Gaon and Hasid found objections to [my] book *Likutei Amarim* and other similar works. The

157 Letter of the Gra to the rabbinic leadership of several Belorussian and Podolian communities 1796 in *The Faith of the Mitnagdim, Rabbinic Responses to Hasidic Rapture*, Allan Nadler 1997 p. 11.

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teachings that God “fills the world” and that “there is no place void of Him” are interpreted [by us] in a literal sense, whereas in his esteemed opinion, it is pure heresy to hold that God, blessed be He, is to be found in the mundane matters of our world, and it is for this reason, according to your esteemed letter, that the book [*Toledot Yaakov Yosef* or *tzava’at ha-Rivash*] was burned. For they explain the passages “the whole earth is full of His glory” etc. in a figurative manner, as referring to Divine Providence. Would that I might present our case to him, so as to remove from ourselves all his philosophical censures¹⁵⁸.

Dresner explains:

What moved the most noted rabbinic figure of his time, the Gaon, Elijah of Vilna, to declare Hasidism to be a heretical sect and issue a ban of excommunication against its followers?... according to the testimony of a letter we possess ... by Rabbi Schneur Zalman of Ladi, the foremost philosopher of the Hasidic movement and the one most directly involved in controversy with the Gaon, the latter questioned more seriously the conceptual basis of the new movement: particularly its doctrines (1) that God was literally ‘in all things,’ and (2) that man’s task was to redeem the holy sparks, which had fallen into the *kelipot*, the husks of evil.¹⁵⁹

For the Vilna Gaon, the passage “The whole earth is full of his glory” denoted a manifestation of divine transcendence and divine providence, rather than a manifestation of divine immanence. The text was praising God for the extension of His providence throughout the world, not for the presence of His essence in places

158 Translation in Dresner, S (1981) ‘Hasidism and its Opponents’ in Jospe, R. and Wagner, S. (eds.) *Great Schisms in Jewish History* Centre for Judaic Studies; Denver. p. 121-2

¹⁵⁹ *ibid.*

of impurity. To the Gaon, the passage spoke of the transcendence of God; to R. Schneur Zalman, it spoke of the immanence of God.

The Gaon believed in the reality of nature and that God runs the world indirectly, through natural forces, as he writes:

Elokim refers to God's relationship with the world through nature. This world works on nature. Therefore, in creation, the only name used is Elokim, which is nature¹⁶⁰

He is explicit of his understanding of tzimtzum in a recently published manuscript entitled *Asarah Klalim*:

This original contraction (*tzimtzum*) is called *Atik*. This word has two meanings. Firstly, it means 'old', and secondly 'removed'. It is called 'old' because it is first of all the contractions, therefore it is called *Atik*. This contraction was also the removal [of God from the world], and this is the other meaning of the name *Atik*¹⁶¹.

We see clearly that through the act of tzimtzum, God removed Himself from the world, allowing for an existence independent of Himself.

***Nefesh HaChaim*: non-literal understanding of tzimtzum**

The foremost student of the Vilna Gaon was Rav Chaim Volozhener. It is generally understood that in most areas, his opinions and Torah follow those of his teacher, the Gaon. However, when it comes to his explanation of tzimtzum, Rav Chaim diverges from the opinion of his teacher.

160 *Aderet Eliyahu* Devarim 33: 1

161 *Asarah Klalim* Clal 2

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Although his explanation of tzimtzum almost directly opposes the description found in the *Tanya*, Rav Chaim agrees on the basic point of whether it is to be understood literally or not. He writes:

The explanation of the word tzimtzum here is not ‘removal’ or ‘abandoning’ from one place to another in order to come back and reconnect Himself with Himself, as it were. Nor does it mean to make a space empty [of His Essence] – Heaven forbid. Rather it means... hidden or covered.¹⁶²

Clearly, this is not the opinion of the Vilna Gaon (who does define the word tzimtzum as ‘removal’ and ‘abandoning’. Perhaps Rav Chaim was influenced by the opinion of the chasidim, or perhaps he was seeking a ‘middle ground’, which would avoid both the ‘pantheism’ of chasidut, and the ‘atheism’ of the mitnagdim. In any event, the author of the *Leshem* (whose opinion we will explore later) saves his strongest attack on misunderstandings of tzimtzum for this opinion of the *Nefesh HaChaim*.

Modern Opinions

In contemporary writings, we find the same argument as to how to understand tzimtzum and the nature of reality. Rav Dessler writes:

We call God’s acts “nature” when He wills that certain events should occur in a recognizable pattern with which we become familiar. This familiarity presents you with a challenge. We can choose to recognize that these events, too, have as their sole and immediate cause the unfettered will of Hashem. Or we can imagine that Hashem has delegated certain powers to “Nature”, and that within the realm of Nature man, too, has the ability to influence events by the process of cause and effect. The whole concept of “nature” is

¹⁶² *Nefesh HaChaim* shaar 3, perek 7

thus nothing but a test for the human being. Nature has no objective existence; it is merely an illusion that gives man a choice to exercise his free will: to err, or to choose the truth.¹⁶³

Rav Adin Steinsalz also describes the world as not having any true reality. The connection through God is through Torah, which allows us to dream God's dream with Him:

“Intellectual and emotional immersion in Torah is therefore a way of making contact with the essence of all the worlds on various levels. For the Torah expresses the divine will, and wisdom itself, in all the world; whereas in the world of action the divine will express itself only in terms of the immediately surrounding reality. And the limitations of this reality in our world, which are experienced through the reign of nature, are extreme; they can be overcome only through man's freedom of choice. The relation between Torah and the world is thus the relation between idea and actualization, between vision and fulfillment. So that the intellectual study of Torah and the emotional involvement in its contents are a form of identification with the divine will, with what may be called God's dream of the existence of the world and the existence of man. One who is immersed in Torah becomes a partner of God, in the sense that man on one hand and God on the other are participating in the planning, the spinning out of the idea, the common dream of the existence of the world.”¹⁶⁴

At the other extreme, the *Leshem* claims to wear the mantle of the Vilna Gaon and attacks those who don't understand tzimtzum to be literal. He challenges not only the **ch**asidim, but primarily the Vilna

163 *Strive For Truth* vol. 2 p. 240

164 Steinsalz, A. (2006) *The Thirteen Petalled Rose* pp. 66-7; Basic Books, New York.

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Gaon’s main pupil, R’ Chaim Volozhiner, for not seeing existence as truly real. He writes:

I have also seen some very strange things in the words of some contemporary Kabbalists who explain things deeply. They say that all of existence is only an illusion and appearance and does not truly exist. This is to say that the *ein sof* didn’t change at all in itself and its necessary true existence and it is now still exactly the same as it was before creation, and there is no space empty of Him, as is known (see *Nefesh Ha-Chaim* Shaar 3). Therefore, they said that in truth, there is no reality to existence at all, and all the worlds are only an illusion and appearance, just as it says in the verse “in the hands of the prophets, I will appear” (Hoshea 12: 11). They said that the world and humanity have no real existence, and their entire reality is only an appearance. We perceive ourselves as if we are in a world, and we perceive ourselves with our senses, and we perceive the world with our senses. It turns out [according to this opinion] that all of existence of humanity and the world is only a perception and not in true reality, for it is impossible for anything to exist in true reality, since He fills all the worlds....

How strange and bitter is it to say such a thing. Woe to us from such an opinion. They don’t think and they don’t see that with such opinions, they are destroying the truth of the entire Torah....¹⁶⁵

165 *Leshem Sh-vo ve-Achlama Sefer Ha-Deab* drush olam hatohu chelek 1, drush 5, siman 7, section 8 (p. 57b)

The Claim that there is no Argument

Rav Dessler goes a step beyond any of his predecessors and claims that there is no argument about tzimtzum, and that, in essence, the Vilna Gaon and Rav Shneur Zalman agree.

I have already mentioned... that there is a doubt as to whether there is any argument between the author of the *Tanya*, may his merit protect us, and the Vilna Gaon, of blessed memory, regarding the definition of tzimtzum. That is to say, in the fundamental issues, such as the limits of tzimtzum, and whether it is literal or not, whether it was only in His light, or also in His illumination Himself, and the meaning of the concept of ‘filling the entire world’ and similar things.

In the famous letter of the Gaon, he hints that the error of the **ch**asidim was that they thought that there was Divinity in everything, even in sticks and stones. They understood ‘filling the entire world’ as if it was referring to God’s essence, as it were. It would seem that this is very fundamental.

The truth is that these were only [unfounded] concerns, for chasidut was at its early state and had not yet been fully explained. The Baal Shem Tov holds that tzimtzum is not literal, and does not apply to God’s Essence, because ‘filling all the worlds’ and ‘there is no place empty of Him’ applies even after tzimtzum. This is one of the fundamental beliefs of chasidut. It was only that some fools made a mistake to explain it as if the Divine was literally in every place and everything. This never entered the minds of the great chasidic Masters....¹⁶⁶

¹⁶⁶ *Mikhtav Me-Eliyahu* vol. 5 pp. 484-5

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The Vilna Gaon wrote the same thing, that tzimtzum does not apply to God’s Essence, in his statement about the foundation of tzimtzum. There he writes:

Know that we must not think about the *Ein Sof* at all... and what we are talking about with *sefirot* is only regarding His Will (*Ratzon*) and His Providence (*Hashgacha*), which is known from His actions. This is a basic rule in all areas of Kabbalah.... Therefore He contracted His Will in the creation and the worlds, and this is tzimtzum.¹⁶⁷

We see that the Gaon was only speaking about tzimtzum in His Will, and not in His Essence, Heaven forbid.

So the argument was not in these fundamentals at all. This argument is only how much to use these subtle concepts in the service of God. The chasidim used them widely, as is known. Rav Chaim of Volozhin warned against it in *Nefesh Ha-chaim* because they can lead to great mistakes.

This position seems truly untenable. If he is correct, why did the authors cited above argue with each other so vehemently? The simple reading of the *Tanya* and all later chasidic works is that tzimtzum occurred not only in His Will (*ratzon*) but also in His Essence (*atzmut*). And it does not seem reasonable to bring a proof from Rav Chaim to the position of the Gaon (as we have explained above, in this area, the student did not follow his teacher).

Furthermore, the last leader of Chabad chasidut, Rav Menachem Mendel Schneerson, held that the argument between the founder of his movement and the Gaon was from one extreme to the other:

The crux of the differences centres around two issues:

¹⁶⁷ *likutim on Safra de-Zneuta*

a) Should the concept of Tzimtzum be understood literally or not, i.e., are we speaking about a withdrawal of the light, or merely its concealment?

b) Did the Tzimtzum affect merely God's light, or did it also affect the Source of light, [i.e., that He Himself has withdrawn or is hidden from our world]?

[In dealing with these questions,] it is possible to outline four different approaches:

1) The Tzimtzum should be interpreted literally, and moreover, it affected God's essence. The proof offered in defense of this theory is that it is impossible for the King to be found in a place of filth, heaven forbid;

2) The Tzimtzum should be interpreted literally, but it affected only His light;

3) The Tzimtzum should not be interpreted literally, but it affected the Source of light as well; and

4) The Tzimtzum should not be interpreted literally, and it affected only His light.

As is well known, the misnagdim at the time of the Alter Rebbe followed the first approach mentioned. They explained the expression, "there is no place apart from Him," meaning - apart from His providence....

[Reb Chayim of Volozhin,] the author of Nefesh HaChayim which you mentioned in your letter, follows the third approach mentioned above. In this, he differs from his master, the Gaon, Rav Eliyahu [of Vilna]....

[As chassidim,] we follow solely the fourth approach mentioned, which explains that the concept of Tzimtzum

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should not be interpreted literally, and that it affects only [God's] light, but not the Source of light.¹⁶⁸

R' Shlomo Elyashiv, in his sefer *Leshem*, holds that the opinion of the Gaon was that tzimtzum was only in His Will and not in His Essence.

There are three aspects, which are one. The True Hidden Essence, Blessed is He, which is everything and in everything, just as before creation, and includes within Himself every kind of perfection... the Vilna Gaon wrote in the *likutim* about this that it is forbidden even to think about it....

The second aspect is that it arose in His Will to reveal Himself, and the existence of this Will is what we call revelation.... Those parts that are before the revelation are called the *Ein Sof*... And therefore He contracted Himself, as it were, into the middle point, and this is the tzimtzum.¹⁶⁹

Nevertheless, he understands that there is a vast chasm between understanding tzimtzum literally (within His Will) and non-literally.

It is clear from what we have said that the whole concept of tzimtzum is according to the simple meaning and the straightforward interpretation. This is the opinion of the Holy Rabbi, the author of *Mishnat Chasidim* in his book *Yosher Levan*, and also the opinion of the Holy Rabbi, the author of *Mikdash Melech* in his book *Hadrat Melech*.... We have explained at length, and you will see that it is proven and clear from all the writings of the AriZal regarding tzimtzum, that it is according to the simple meaning....

¹⁶⁸ *Igrot* section 3: 18 Kislev page 224

¹⁶⁹ *Leshem Shevo Ve-Ahlama Helek Ha-Biurim* Drushei Igulim ve-yoshar Anaf 1, Ot 1 (p. 1a-b)

And that which is written in the name of the Gra in the likutim at the end of *Safra de-tz'nenta* printed in Vilna 5642 that tzimtzum is in the *ratzon* but not in the essence [in truth, it seems to me that all these likutim are not the words of the Gra but were written by an unknown student. This seems clear to me], it is known that His *ratzon* and He are one and the same. The intention there is to give us an understanding according to our limited capabilities since it is impossible for us to grasp the essence of tzimtzum apart from in *ratzon*....¹⁷⁰

Finally, even if Rav Dessler is correct in his understanding of this line, it seems very unlikely that we can take this one phrase (along with a note in the siddur written by someone from the Gaon's Beit Midrash) to be representative of the Gaon's position in the face of all the other sources that we have brought above. Indeed, R' Menachem Mendel Schneerson states that someone who holds that there is no argument regarding tzimtzum clearly has not studied the Kabbalistic texts. He writes:

“With regard to your comments concerning the Tzimtzum, [the initial contraction of Godly light,] and the statement of your acquaintances that all the different approaches [to the concept] flow in a single direction. I was amazed to hear such a proposition, in particular insomuch as in your letter, you describe that person as one who has studied Kabbalistic texts. Obviously, he does not fit that description at all.”¹⁷¹

In his sefer *Kodshei Yehoshua*¹⁷², Rav Geldzheler (who is the son-in-law of Rav Dessler) tries to justify this position, and he explains Rav Dessler's meaning. It seems that he assumes Nefesh Ha-Chaim represents the opinion of the Gaon, which we have shown above to

170 *Leshem Shevo Ve-Ahlama Helek Ha-Biurim* Drushei Igulim ve-yoshar introduction to Anaf 2, Ot 5

171 *Igrot* section 3: 18 Kislev page 224

172 *Chelek* 5 siman 421

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be inaccurate. He then shows that the Nefesh Ha-Chaim and the *Tanya* are not so different in their views of tzimtzum, which is probably true. Yet it doesn't explain Rav Dessler's claim that the Vilna Gaon agrees that tzimtzum is not literal.

One can't help but feel that Rav Dessler's motivation for removing any opinion of a literal understanding of tzimtzum comes not from a quest for absolute truth, but rather because of the warning articulated by the Shomer Emunim (Ha-Kadmon) (cited above), which Rav Geldzheler brings as a proof that everyone, including the Gaon, must agree that tzimtzum is not literal.

In other words, Rav Dessler felt that the literal understanding of tzimtzum, would lead to a belief in an existence and reality outside of God, which in turn leads to the idolatry of belief in other forces (such as nature or science) and powers. For the sake of saving the Jewish people from fundamental error, he wished to deny the existence of such a dangerous position.

Nevertheless, we, who are searching for the truth of the opinions, are not forced to accept his explanation and can follow the simple understanding of all those who lived in the 300 years before Rav Dessler and accepted that there was a fundamental argument between the two opinions.

Practical Implications of this Dispute

Rav Dessler explains the most fundamental practical implication of the chasidic view of tzimtzum: If the world is only an illusion, which hides God's Presence, then the study of science and nature will never lead a person to God, but will only serve to maintain the illusion and thus distance him from a true understanding of God. Looking at nature as anything more than an illusion is “derived from anti-Torah bias.”

Rav Dessler thus decries any belief in nature as heretical, for just like the Islamic proponents of *Kalam*, for Rav Dessler, there is no such thing as nature or cause and effect. Everything is recreated by God at every instant:

By giving us His Torah in the desert, Hashem taught us that devotion to Torah is never compatible with belief in “nature”. Unbounded faith in “natural causes” cannot go hand in hand with Torah because this way of looking at the world derives from anti-Torah bias. A person who sees the world only as the arena of natural forces will inevitably consider any attempt to live a spiritual life as doomed to failure. The Torah demands from us faith in a Power Who is above nature and Who directs nature in accordance with spiritual purposes.¹⁷³

The question must then be asked, if we cannot see God in the natural world, for that merely is a mask hiding Him, how is it possible for a person to come to love and fear God?

R’ Tzadok HaCohen answers that the only way to come to closeness to God is through attaching oneself to Him, to accept the nihility of mortal existence and pray for God to bring a person close to Him. He writes:

The beginning of a person’s entry into the service of God is through fear of Heaven, which is the beginning of wisdom, meaning the beginning of a person’s awareness of the existence of God. Immediately, the person will be seized with fear and subjugation.... But it is impossible to attain love [of God] through a person’s endeavours. Love can only exist between similar things (such as two people). How could an axe have the gall to claim to love the woodcutter? Rather, God, with His great mercy and kindness, calls *Knesset Yisrael*,

173 *ibid.* p. 259

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His twin sister and love, and says, “I have loved you...” (Malachi 1: 2). When God loves a person, automatically the person comes to love God, but it must always be preceded by a Heavenly ‘awakening’.¹⁷⁴

The Vilna Gaon, based on what we have seen above, takes the opposite position. The physical world is a ‘book’ written by God, which must be ‘learned’ just as the Torah is learned. By seeking to understand nature through scientific enterprise, a person strives to come closer to God and to an understanding of His relationship with humanity. The Gaon writes:

So too, His Will was revealed twice, meaning in two ‘books’. The first is at the time of writing, when it was engraved and written, like the writing of Providence and Will with the Light with which all creatures were created. So, too, always, His Providence comes to use through the light, which is the Good, and which is His Will, as the verse states “God saw the light that it was good.” However, it is like a sealed book from which we cannot understand God’s Glory and true Will. Only the wise people who read it and delve deeply into the works of God and his handiwork [can understand]. As the verse states, “Raise your eyes to heaven and see Who created these.”¹⁷⁵

There is a very important caveat in the opinion of the Gaon, which is that while the world is real and can be used to understand God, this is only when it does not contradict statements of the Sages. For example, one of his students wrote in his commentary on the siddur Avnei Eliyahu:

Through ‘Kingship’, as it says “To You, God is Kingship, for all the host of Heaven bow to You.” From this, you can

174 *Takanat Hashavin* 5

175 *Asarah Clalim* Clal 2

understand that which Rav Simlai expounded “To You is greatness,” this refers to creation, as the verse states, “Who does greatness without limit.”¹⁷⁶ This comes to contradict the opinion of the heretics, who say that the world runs according to its custom, through nature, which was set in motion during the six days of creation. Rather, nature itself is greatness without limit. For example, God “spread the land over the water” even though by nature, water rises above land. Similarly, who forces the sun to rise every morning?¹⁷⁷

In addition, there is a famous comment of the Gaon on Shulchan Aruch Yoreh Deah 179: 13. The Shulchan Aruch there is discussing the existence of magic spells to cure illness. The Gaon says that there are many spells that are explained in the Talmud, and he claims that Rambam, who denies their validity, was misled by the “cursed philosophy”.

The Vilna Gaon is furthermore recorded as stating the earth must be flat in order to understand properly the verse in Job (38:13) "that it might take hold of the ends of the earth."¹⁷⁸

It seems, therefore, that even though the Gaon held that the created world had a validity, there are limitations on what we may learn from science (the ‘philosophy’ of the Rambam). If there is a contradiction between the Talmud and science, it seems that we must follow the Talmud. Therefore, even though both the world and the Torah are books of God, the latter will always take precedence over the former.

Let us save the last word for Rambam, who describes the path through which a person comes to love and fear God:

¹⁷⁶ Brachot 1

¹⁷⁷ commentary on *u-meshabhim u-mefaarim u-maariZim u-makdishim u-mamlkehim* (p. 51 *Siddur Ishei Yisrael*).

¹⁷⁸ See R. Y. Engel, *Gilyoni HaShas*, Shabbat, 74a and R. Reuven Margulies, *Nitzotzi Obr* on Zohar, Vayikra, 10a.

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1) It is a commandment to love and fear the venerable and feared Almighty, for it is written, "And you shall love the Lord your God," and it is also written, "You shall fear the Lord your God."

2) What is the way to love and fear God? Whenever one contemplates the great wonders of God's works and creations, and one sees that they are a product of a wisdom that has no bounds or limits, one will immediately love, laud and glorify [God] with an immense passion to know the Great Name, like David has said, "My soul thirsts for God, for the living God." When one thinks about these matters, one will feel a great fear and trepidation, and one will know that one is a low and insignificant creation, with hardly an iota of intelligence compared to that of God, like David has asked, "When I observe Your heavens, the work of Your fingers...what is man, that You are heedful of him?" Bearing these things in mind, I shall explain important concepts of the Creator's work, as a guide to understanding and loving God. Concerning this love, the Sages said, that from it a person will come to know God.¹⁷⁹

In Hilchot Teshuva, Rambam writes :

It is well known and clear that the love of God is not imbedded in man's heart until he pursues persistently and abandons everything else in the world, as it is stated “with all your hearts and with all your souls” – for this can only come about through his knowledge of Him. For only by knowledge of Him can one love God, whether a little or a lot. Therefore, one should devote himself to understand and contemplate the wisdoms and sciences, which make him aware of his

179 Rambam Yesodei Hatorah 2: 1-2

creator in accordance with his ability to understand and contemplate, as we explained in Yesodei HaTorah.¹⁸⁰

¹⁸⁰ chapter 10 law 6

Maimonides' Philosophy of the Evolutionary Structure of Jewish Law and of Natural Processes

Rabbi Dr. Meir Triebitz

Abstract:

This article develops a new understanding of Maimonides' ideas of *d'rabbanan* and *divrei soferim* in his *shoresb sheni*. My contention is that contextually, these terms refer to those things which were 'rabbinically generated'. These rabbinically generated laws were not transmitted at Sinai; they were derived and developed over the course of Jewish scholarship's long and rich history, through the traditional principles of exegesis. In *Sefer Hamitzvot* and *Commentary on the Mishnah*, Maimonides distinguishes between the unchanging laws which were revealed at Sinai and transmitted through the generations, and the laws which were generated by the Rabbis in later generations. The latter are subject to repeal and amendment at later stages in history, while the former are not. Nonetheless, Maimonides considers these rabbinically generated laws to have the same status as those received directly from Sinai. Maimonides thus describes two types of laws, both derived from interpretation of scripture. The first type originates directly from Sinai, these are constant and unchanging, while the other type is rabbinically generated and evolves through the generations.

Maimonides's Philosophy of the Evolutionary Structure of Jewish Law and of Natural Processes

Section I

Maimonides offers a new and unique approach to the challenges of the Karaite rejection of the authenticity of the oral law. While acknowledging the centrality of a continuous tradition from Sinai, Maimonides allows for the existence of equally binding laws which developed after Sinai. In this way Maimonides addresses the challenge of "machloket," dispute, which seems to contradict an authentic transmission. This historical realism is consistent in Maimonides' other writings.

During the Middle Ages, Karaism posed the chief challenge to Rabbinical Judaism. The Karaites contended that while the Rabbis of the Talmud claimed to be the sole authoritative interpreters of scripture, they actually possessed no authentic tradition. In fact, the Karaites claimed that the rabbinic claim of a 'continuous tradition' beginning at Sinai and extending throughout the Talmudic era was no more than a fabrication. As proof, the Karaites pointed to the following facts.

1. Scripture does not allude to the 'Oral Law' anywhere.
2. Rabbinic interpretations of certain verses blatantly contradict the clearly intended meaning of these verses.
3. The existence of so many disputes, both in legal analysis and in customs, fatefully undermines the existence of any notion of 'tradition.'
4. The Rabbis have historically lacked any consensus upon which to base their authority. Hence any interpretation of Scripture may claim legal validity.

The major expositions of the Oral tradition that we find in *Sefer HaGiluyim*¹⁸¹, *Kuzari*¹⁸², and *Sefer HaKaballah*¹⁸³ were all written as

181 R' Saadiah Gaon, Babylonia 892-942

182 R' Yehuda Halevi, Spain, 1075-1141

defenses of the Oral Tradition in the face of the Karaites. In all of these works, the Oral Law is presented as largely tradition from Sinai, for the most part devoid of the human creative process. Since the Karaites would accept nothing but a divine authority as the legitimate basis for the laws, the Oral Law is defensively presented as largely based on divine authority. Thus Raavad opens his *Sefer HaKaballah*:

This book of Tradition (“*Sefer HaKaballah*”) was written to inform rabbinical students that all of the words of our Sages (of Sainted memory), both of the Mishnah and the Talmud, constitute a tradition from one great sainted scholar to another from the head of the Talmudic Academy and his colleagues to another head of the Talmudic Academy and his colleagues, all from the Men of the Great Assembly who received the tradition from the Prophets, all of Blessed Memory. For the scholar of the Talmud, and certainly of the Mishnah, never uttered anything, even minor, which was original except for Ordinances which were unanimously agreed to in order to make a fence around the Torah. And should someone with heretical thoughts say to you that since the Sages argue in certain places and therefore their traditions are suspect, you answer him sharply and inform him that he is a heretic in rabbinical eyes. For the Sages were never in dispute concerning the commandment itself but only in details for they had the central command from their teachers but didn’t bother asking concerning the details¹⁸⁴.

Raavad's view of the Oral Law as largely derived through tradition, with only the details disputed due to human error, was the view of

183 R' Avraham ben David HaLevi, Spain, 1110-1180. Also known as Raavad I, not to be confused with Raavad II of Posquieres, the famous critic of Mishnah Torah.

184 All translations by the author

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many, if not all, of Maimonides's predecessors. It has remained the predominant view throughout the history of traditional Jewish thought, and still underlies contemporary Orthodox theology. It is still widely viewed as the point of contention between mainstream Orthodox Judaism and its contending streams of Judaism, such as Conservative and Reform. These contending branches have consistently employed what they regard as the human creative role in their interpretation of the history of Halachah in order to delegitimize the relevance of the Talmud and Jewish legal tradition for modernity.

The view that the oral law is a continuous tradition is predicated on the belief in the truth of traditional Rabbinical Judaism. The weaknesses of this view, however, are two-fold: it appears to dismiss the existence of dispute throughout the entire rabbinic literature, and it also ignores the historical context of much of Talmudic literature. The dichotomy between preserving the authenticity of a continuous oral tradition, and acknowledging historically recorded disputes in rabbinic literature provides an intellectual challenge to the believing Jew. This essay attempts to demonstrate that Maimonides, in several of his writings, presents us with a creative solution.

Maimonides' rebuttals of the first three Karaite contentions (mentioned above) are as follows:

1. *"There is no allusion to the oral law in scripture"*:

Maimonides begins his introduction to the Mishnah Torah with a verse stating that God told Moshe that He would give him "the Torah and *Mitzvot*"¹⁸⁵. Maimonides sees an allusion to the Oral Law in this verse, based on the Talmudic passage in Berachot 5a. The appearance of the two distinct terms 'Torah' and '*Mitzvot*' indicate that Moshe was given both the written law, and the oral law. Maimonides writes:

185 Shemot 24: 12

“All of the commandments which were given to Moshe at Sinai were given together with their interpretation, as the verse states, “I will give you the tablets of stone, and the Torah and the Mitzvah”. ‘Torah’ refers to the written law, and ‘Mitzvah’ refers to its interpretation. We are commanded to observe the written law according to the interpretation of the ‘Mitzvah’. This ‘Mitzvah’ is called the oral law. “

2. *“Rabbinic interpretations of verses seemingly contradict the intended meaning”*:

Maimonides response to the first Karaite contention answers this challenge as well. So long as the interpretation of scripture is from God, by definition this is the intended meaning. This, however, assumes that the interpretation presented by the Rabbis is in fact from God, and was revealed to Moshe at Sinai.

However, there exists another class of laws, which were not revealed at Sinai, but rather were rabbinically generated (as will be explained below). As such there is no claim being made that the interpretation is the intended meaning of the scripture. This undermines the challenge of the Karaites regarding intended meaning of the verses. See section V below for more on this.

3. *“The existence of dispute contradicts an authentic tradition”*:

Maimonides’ strategy in countering this contention differs from that of his predecessors. His argument is that the existence of dispute simply proves that in the case of that disputed law, there was not a tradition. Maimonides does not accept the claim, made by others including the Raavad, that there may have been human errors in the transmission of Halachah. Rabbinic dispute indicates lack of tradition in this area as far as he is concerned.

In what is clearly a critique of opinions such as that of Raavad cited above, Maimonides writes in his *Introduction to the Commentary on the Mishnah*:

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Those that are of the opinion that laws which are disputed [in the Talmudic literature] also originated at Sinai, but are disputed as a consequence of a mistaken or forgotten transmission, that is, one voiced a correct tradition and the other side faulty tradition, or just simply forgot, or did not pay sufficient attention to his teacher [as the Raavad holds, for example] – this is from the worst of opinions and is the opinion of those who lack any understanding, and are careless in fundamental principles and thereby cast doubt and dispersion on those who have transmitted the Torah and is thereby useless and void. On the contrary, it causes a lack of faith for it belittles the Talmudic Sages¹⁸⁶.

This excerpt clearly expresses Maimonides' belief that the view of the Oral Law as rooted largely in tradition does not support faith in the integrity of the oral Law, but, on the contrary, undermines it, for it subjects that tradition to attacks of inaccuracy and fabrication. For if disputed laws were products of faulty transmission, who is to say that one can ever rely on tradition? In Maimonides' opinion, it appears, the dogmatic defense of the tradition in the light of historical facts to the contrary works against that very tradition¹⁸⁷.

186 Author's translation based on Shilat edition of *Introduction to the Commentary on the Mishnah*.

187 It is interesting to note that Maimonides makes a similar point in his Guide to the Perplexed:

I am not satisfied with the proofs brought by the Metukallim who claim that they have vigorously proven creation ex nihilo. I refuse to delude myself into believing them to be 'rational proofs'. Someone who erroneously claims he has proven something does not strengthen that claim, but, on the contrary, weakens it and creates an opening to debate it. For once proofs are demonstrated to be fallacious; one is forever dissuaded from accepting the truth of the theory.

In this quote from the Guide, Maimonides confirms his stance in the Introduction to the Commentary of the Mishnah: One cannot compromise

Where Maimonides' strategy differs from that of the Raavad, and others¹⁸⁸, is in respect to the third contention, namely that the existence of so much Talmudic dispute clearly contradicts an authentic tradition. Maimonides basically conceded this point to the Karaites; he acknowledges that there is no comprehensive, authentic tradition. Nonetheless, the concession is only partial because it claims that in only specific areas of dispute is there no tradition. This, however, doesn't mean that no oral tradition can exist. Maimonides' response is thus far more comprehensive than other major Jewish philosophers because it allows for both tradition and creatively generated dispute to exist within the corpus of Jewish law.

Maimonides' reply to the third Karaite contention avoids the problem of historical accuracy. However, a legal-philosophical problem is created. If we are to contend that a significant part of the traditional rabbinical corpus is not rooted in tradition from Sinai, in what sense can Rabbinic Judaism be considered authentic? How can the Talmud, the basis of all Rabbinic Judaism, view itself as the expression of the Divine Will, revealed historically at Sinai? These are significant questions, which Maimonides most likely considered, and so we shall seek the answers within the corpus of his work.

4. *The Rabbis have historically lacked any consensus upon which to base their authority.*

Maimonides' response to this contention is in his introduction to the *Mishnah Torah* where he provides the foundation of the legal authority of the Talmud. However, this discussion is beyond the scope of this article.

methodology even in proving something one believes to be true. The ends do not justify the means even when in defense of fundamental beliefs.

188 E.g. R' Sherira Gaon *Epistle* and *Seder Tannaim ve-Amoraim*.

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Section II

Divrei soferim cannot be simply understood as being of mere rabbinical authority. In the Mishnah Torah it is clear that many scriptural laws are considered to be of divine authority but are not listed in the 613 Mitzvot.

Maimonides' views on laws derived from scripture through the thirteen principles of exegesis have been the subject of much controversy, and a wide range of interpretation. Maimonides' does explicitly state in his *Shoresb Sheni* of *Sefer HaMitzvot* that laws derived through exegesis, as opposed to laws stated explicitly in scripture, are assumed to be *d'rabannan* (unless the Talmud states explicitly that it is from the Torah), but the overall corpus of Maimonides' *Mishnah Torah* simply does not sustain such a proposition. In the myriad laws that appear in *Mishnah Torah* that are derived from scripture, there is no indication that their status is different from those laws explicitly stated in scripture. As a result, we are faced with an apparent discrepancy within Maimonides' writings, and this has served as a source for a broad spectrum of opinions. Each commentator presents a different solution in order to explain the apparent conflict between Maimonides' pronouncement in *Shoresb Sheni* and his wider legal corpus.

Scholars have outlined a gradual evolution in traditional interpretations of Maimonides' controversial statement about laws derived from scripture, from understanding Maimonides literally (as rabbinic), to a more "revisionist" interpretation of the terms *d'rabannan* and *divrei soferim* as Torah laws. These 'revisionist' understandings are commonly viewed by scholars as misrepresenting Maimonides' intent and thereby denying his 'bold' assertion. The most famous scholarly work on this topic is Neubauer's *HaRambam al Divrei Soferim*. Neubauer examines the commentary of medieval

commentator Rashbatz¹⁸⁹ who claimed that Maimonides did not mean to imply that *d'rabannan* meant “rabbinical” but merely that laws derived via rabbinical exegesis would not be listed among the 613 commandments: Neubauer states:

Rashbatz plays an important role in the history of commentaries on *shoresh sheni* and can be viewed as the founder of the methodology of ‘misrepresentation’ [“*gilui panim*”] – that is, the methodology which interprets the words of Maimonides not in accordance with their apparent meaning but rather by distorting the simple meaning of his words¹⁹⁰.

Neubauer’s charges of “misrepresentation” and “distortion” are based on his difficulty with recognizing that an entire corpus of Maimonides’s code might force someone to understand *d'rabannan* not in the usual sense. In fact, even “literalists” like Nachmanides did not seem obligated to understand *d'rabannan* literally. However, Neubauer’s discomfort with such a re-definition of Maimonides is not uncommon, nor is it confined to non-religious academia. A prominent Orthodox Torah scholar and authority on Maimonides, Rabbi Yoseph Kapach, like Neubauer, understands the term *divrei soferim* literally, as meaning rabbinic. His position is that while there are particular instances, such as the specific case of *kidushei kesef* - betrothal through monetary payment¹⁹¹ Maimonides changed his mind several times in his lifetime. Originally Maimonides held that *kidushei kesef* was rabbinic, but later in his life changed his mind, and

189 R' Shimon ben Tzemach Duran, Algiers 1361-1444

190 Neubauer *HaRambam Al Divrei soferim* Jerusalem: Mossad Harav Kook, 1957 p. 32

191 In Nashim chapter 1 Halachah 1 of Mishnah Torah Maimonides states that “betrothal of a woman by giving her something of monetary value is ‘divrei soferim’. This is in spite of the fact that the Talmud (Kidushin 2a) derives this law from scripture. Many commentators on Mishnah Torah, including Ramban, took exception to Maimonides’ apparent claim that *kidushei kesef* is Rabbinic.

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held that it was from the Torah. Therefore the standard texts of the Mishnah Torah have to be emended not to read *divrei soferim*, because in the final revision Maimonides held it to be a Torah law. Nonetheless, according to Kapach, Maimonides's position throughout the Mishnah Torah is that laws derived through exegesis are literally *d'rabbanan*.

I take objection to Kapach's argument. His position concerning *kidushei kesef* seems improbable, given the known fact that Maimonides continually edited and re-edited all of his works during his lifetime¹⁹². In addition there are literally hundreds of Talmudic laws derived through exegesis which clearly have the status of being *d'oraita*. They are not listed in the *Sefer HaMitzvot*. Therefore according to Maimonides they are to be considered rabbinic. As an example, Maimonides writes in *Hilkhot P'sulei Hamukdashin*¹⁹³ that there are three types of intention that render an animal sacrificed unfit:

1. An intention that changes the name of the sacrifice (“*lishma*”)
2. An intention that changes the place of the sacrifice (“*notar*”)
3. An intention that changes the time of the sacrifice (“*pigul*”).

Maimonides clearly rules¹⁹⁴ that all three kinds of thought render the sacrifice unfit on a *d'oraita* level. Nonetheless, the only thought rendering the sacrifice unfit that is listed in the *Sefer HaMitzvot* is the thought that changes the time of the sacrifice, as Maimonides writes in *Sefer HaMitzvot*¹⁹⁵:

192 See Davidson, N (2005) *Moses Maimonides; the man and his works* Oxford. p. 166. See also Lieberman, S. (1948) *Hilkhot Yerushalmi le-Ha-Rambam* introduction p. 6

193 Collecting writings (vol. 2 Midivrei Sofrim pp 549 ff. and especially p. 551-2)

194 Pesulei Hamukdashin 16: 1

195 Sefer Hamitzvot, Negative commandment 132.

If the meat of the sacrifice is eaten on the third day it will not be acceptable, and he who sacrifices it will not be credited, for it is *pigul*, and he who eats it will bear sin. The meaning of this verse¹⁹⁶ is known *by tradition* to be speaking about a sacrifice which has been rendered unfit through a thought at the time of sacrifice...¹⁹⁷.

In *Mishnah Torah*, Maimonides treats all three intentions as having equal Torah status. *Lishma* and *notar* are of the same *d'oraita* status as *pigul*. Yet, according to Maimonides, the first two are derived through exegesis of verses, while the third is stated in the *Torah*¹⁹⁸. For this reason, only *pigul* appears in the *Sefer HaMitzvot*, where Maimonides only lists *Mitzvot d'oraita*. Hence, Rav Kapach's thesis is clearly wrong in this case, as it is in many other examples¹⁹⁹.

In a similar vein, in a recent major work on the history of rabbinical exegesis, Jay Harris²⁰⁰, basing himself on Rabbi Kapach's conclusion²⁰¹, presents the following exposition of Maimonides' views on exegesis:

196 Vayikra 7: 18 "If some of the flesh of his feast thanksgiving peace offering was intended to be eaten on the third day, it is not acceptable." (Artscroll translation)

197 emphasis added by author

198 Pesulei Hamukdashin 13: 2

199 For example, in Maachalot Assurot 9: 1 Maimonides writes that the prohibition of milk and meat applies to eating, cooking and deriving benefit. There he brings sources for the prohibitions of eating and cooking from scripture. Likewise, these two prohibitions appear in his *Sefer Hamitzvot* 140, 141. The prohibition of deriving benefit is clearly treated as a Torah prohibition as is evident from Maimonides' comparison between it and other Torah prohibitions of benefit which one is obligated to bury (*ibid.* 9: 3). Nonetheless the prohibition of deriving benefit is not listed separately as a commandment because it is derived from exegesis and not from the verse itself.

200 Harris, Jay. (1998) *How Do We Know This*

201 Harris (1991) *Nachman Krochmal : guiding the perplexed of the modern age* New York : New York University Press p. 224 footnote 32

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Because they are the product of human intelligence, because they are subject to dispute, and because they are often quite distant from the plain meaning of scripture, they simply cannot have the authenticity of laws explicitly stated in scripture, or laws that are part of the tradition originating from Sinai. They are, therefore, of rabbinic authority. (Harris 1998).

The statement that laws derived from scripture through exegesis “cannot have the authenticity of laws explicitly stated in scripture” is based on Rabbi Kapach. However, Harris’s statement that because “laws are the product of human intelligence”, they “simply cannot have the authority of laws explicitly stated in scripture” is, in actuality, fundamentally rejected by Maimonides. For if Harris' claim would be true, how would we explain Maimonides' strong rejection of laws derived through prophecy?²⁰² Maimonides not only rejects halachic jurisprudence originating in prophecy, but he rejects any role of prophecy in interpreting the Torah? Only human intellect, not under the influence of divine prophecy, can interpret and decide the Torah. In all the cases brought in this section, the scholars make the same fundamental error of assuming that when Maimonides uses the term *d'rabannan* in must mean literally ‘of rabbinical authority’. In the next sections we will show that this is not an accurate reading of Maimonides’ intent, either in *Shoresb Sheni* or in *Mishnah Torah*.

Section III

Maimonides in his Introduction to the Commentary on the Mishnah distinguishes between interpretations originating at Sinai which are not subject to dispute; and laws which evolved later, including those based on reason and those derived through exegesis, which are subject to dispute. I will show that Maimonides consistently takes the position that many laws

202 Yesodei Hatorah 9. 1

were derived through exegesis by later generations of Rabbis, and were not received at Sinai.

In *shoresb sheni* Maimonides explicitly assumes familiarity with his introduction to his *Commentary on the Mishnah*. In the latter essay, Maimonides outlines the entire structure of the Oral Law, both Divine and rabbinic, and delineates specific categories, the first three of which will be of importance to the issues that we are discussing here:

1. The First Category – laws received directly from Moses at Sinai, these were received from God. These laws were revealed to Moses and transmitted in the form of interpretation of Scripture. They are either the plain meanings of the words, or exegeses of Scripture. These laws are never subject to dispute, for if they are challenged, the response is that they are known through tradition and therefore cannot be challenged. Laws of the first category are referred to by Maimonides as 'accepted laws', to indicate that they were never disputed in history. For example, the verse '*pri etz hadar*' refers to the *Etrug* fruit through a tradition that we have from Sinai. The Talmud case presents an exegetical exposition demonstrating that this is the meaning of the verse. Nevertheless, Maimonides claims that this exposition is only meant to show that the interpretation can be sustained by the semantics of the verse. However, it is not through rabbinic exegesis that we know the interpretation, but rather through a tradition from Sinai.

2. The Second Category – laws heard directly from Moses at Sinai, where he received them from God. These are termed explicitly in the rabbinical literature as '*Halachot l'Moshe m'Sinai*.' These also are not subject to dispute. The difference between the first category and the second is twofold: Laws of the first category are interpretations of scripture, whereas those of the second category are purely from tradition, and are not connected to any verse. In addition, laws of the

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second category are *explicitly* referred to in Talmudic literature as *Halachah l'Moshe m'Sinai* whereas those in the first are not.

3. The Third Category – laws which are derived through logical methodology. These laws *are* therefore subject to dispute.

According to Maimonides, the first two categories are traditions originating directly from Moshe at Sinai, and therefore are *Halachah l'Moshe m'Sinai*. The third category, states Maimonides, comprises laws derived through logical methodology. The major difference between the first two categories and the third is that the laws in the first category originate at Sinai, whereas the laws in the third category originate later in history. This last category includes laws that are a consequence of empirical reasoning, as well as laws that are derived through rational exegesis of verse. Because they are generated later in history they are subject to dispute. Maimonides's central thesis claims that there is a wide category of laws that are not traditions but were generated through rabbinic rationale over time. It is these laws that are disputed in the Talmud. As an example of this category, Maimonides quotes a Mishnah in the eighth chapter of tractate Berachot that records a dispute between Hillel and Shammai concerning the order in which one should clean the table and wash hands before *Birkat Hamazon*. This dispute is clearly rooted in logical reasoning and not as an interpretation of a verse.

Nonetheless, I would argue that it is clear that Maimonides is also including in this category laws derived from biblical exegesis²⁰³. In

203 My reading of Maimonides deviates from that of the Chavot Yair²⁰³ who believed that Maimonides' first category includes all laws derived through the Thirteen Principles of Exegesis, while the third category includes those laws which are totally based on reason (*sevara*), such as disputes concerning the order of blessings to be recited for the Kiddush or how a person is permitted to greet someone during the recitation of Shema. Consequently, according to the Chavot Yair's reading, Maimonides is claiming that all laws derived through exegesis are in fact traditions from Sinai and therefore cannot be subject to dispute. The Chavot Yair declares:

fact, I would argue that the third category includes both laws derived through logical reasoning that is purely rabbinic, not attached to Mosaic tradition or to biblical texts, as well as biblical exegesis unattached to Mosaic tradition. In other words, all laws in the third category are post-Sinai rabbinically created laws, either developed purely through logic, or through biblical exegesis.

One proof that Maimonides held that many laws were derived through exegesis later in history can be found in the introduction to the *Mishnah Torah*. There he writes that “laws that were not a tradition from Moshe and that the *Beis Din Hagadol* of each generation derived through principles of exegesis and established as law were included in Rav Ashi’s redaction of the Talmud. Maimonides is clearly indicating that many laws derived through exegesis were generated later in

“All of his words are puzzling and I am unable to absorb them, for the Talmud is full of disputes (involving laws learned through the Thirteen Principles of Exegesis) and even a ‘gezeira shava’ which everyone agrees can only be used based upon a tradition until Moshe Rabbeinu is often subject to dispute...”!

It appears that the Chavot Yair understands Maimonides’ statement - ‘laws that are derived through reason’ to mean logically derived laws, in contrast to laws derived from Scripture, which are apparently not “derived through reason.” This reading is somewhat surprising considering both that Maimonides also states that laws in the first category ‘may be derived through reason,’ and that here Maimonides is clearly referring to a derivation from Scripture through reason, as is clear from his example of the derivation of Etrog from the verse “Pri etz hadar” in tractate Succah.

Thus the Chavot Yair’s reading of Maimonides cannot be sustained either within the text itself, or within the background of dispute to be found in much of Midrash Halachah. Finally, Maimonides himself in *Shoresh Sheni* refers to what he wrote in his ‘Introduction to the Commentary on the Mishnah’. As such, we must recognize that the Third Category includes laws derived from Scripture, and only in this way do the various writings of Maimonides unite.

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history. Therefore, according to Maimonides' criteria, they are included in the third category.

An additional proof of this argument can be found in Maimonides' discussion of the third category, where he cites a Mishnah in Yevamot (Chapter 8): 'If it is a tradition, then we accept it – but if it is derived through reason, then we have the right to refute it'. This Mishnah is cited as proof that laws derived through reason can be disputed. Considering Maimonides' well-established scholarly capacity, we can safely assume that he was aware of the context of the Mishnah. I would therefore argue that his use of this Mishnah, was not accidental, and, in fact, when Maimonides writes 'laws derived through logical methodology,' he is referring to exegetical as well as purely creative logical reasoning. Further support for my claim can be found in the Talmudic terms that Maimonides chooses to indicate that the laws are disputed on the basis of reasoning. The terms, including '*bemai ka mijligei*' (what are they arguing about?), '*mai ta'ama d'Rebbe paloni*' (what is Rabbi X's reasoning?) and '*mai banaihu*,' (what is the difference between these two opinions) are all phrases that are commonplace in exegetical disputes. In addition, the sheer number of disputes rooted in exegesis, a number so large that Maimonides could not possibly ignore them, attests to the argument that Maimonides must also be referring to disputes of this nature.

Based upon this analysis we can resolve an apparent contradiction in Maimonides's *Introduction to the Mishnah Torah*. He opens by writing:

“All the commandments were given to Moshe at Sinai, together with their interpretations, as it is written, “I will give you the tablets of stone, the Torah and the Mitzvot” Torah refers to the written law, Mitzvah refers to its interpretation. We were commanded to obey the Torah based upon its interpretation. This ‘Mitzvah’ is called the oral law.

From this opening statement one can conclude that Maimonides understands, as do his predecessors, that the entire oral law was given

at Sinai. However, later on in his introduction, he twice speaks about “laws that were not a tradition from Moshe, and which the *beis din bagadol* in each generation derived through principles of exegesis and established as law.” From this one can conclude that, in fact, there are interpretations of commandments that were not given at Sinai, but generated later in history, up until the redaction of the Talmud.

This contradiction can be resolved only by reference to the three categories cited by Maimonides in his introduction to the *Commentary on the Mishnah*. When Maimonides prefaces his introduction with the term “interpretations given at Sinai” he was referring to laws of the first category (and perhaps second). However, when he later on refers to “interpretations generated later in history” he was referring to laws of the third category.

Nowhere does Maimonides state that the third category is to be treated any differently than the laws in the first two categories. The only distinction is an historical one. Laws of the first two categories originated at Sinai, while laws of the third were created later in history. The chief consequence of this is that laws of the first two categories are never subject to dispute or change, whereas those within the third are. This is what the Talmud implies when it states: 'If it is a tradition, then we accept it – but if it is derived through reason, then we have the right to refute it'. Nevertheless, once the laws of the third category are established as law by the Sanhedrin, they take on the same divine status as those laws that were revealed at Sinai.

Clearly, rabbinically generated laws are not literally 'divine,' as that would be endowing the rabbis with divine status, which is certainly a heretical idea. However, I would argue that the novel point that Maimonides makes, by virtue of not distinguishing between the statuses of the categories, is that man, through the creative power of his intellect, generates laws of divine *status*. Maimonides understands that man is created in the image of God in terms of his intellect²⁰⁴.

204 *Moreh Nevuchim* 1:1

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Therefore, it follows that he is able to create laws of equal status to those revealed at Sinai. This applies to all generations in history, with the proviso mentioned in *Introduction to the Commentary on the Mishnah* that after the redaction of the Talmud, man is no longer empowered to do so. This is due solely to the acceptance of the Talmud as binding by the entire Jewish nation, and not a reflection of man's diminishing intellect.

This is stated explicitly in Maimonides' closing statement of the third category:

We also do not dismiss anything disputed by the Sages, even though they are not of the stature of Shamai or Hillel, or beyond, for God, may He be exalted, has not commanded as such, except to listen to the Sages of whatever generation the person is in, as it says "And to the judge who will live in those days, you will seek out" etc²⁰⁵. For in this manner dispute arises it shouldn't be said that they have forgotten and erred, one side thereby having received the true law and the other side a mistaken law.

How evident are these principles to he who contemplates them, and how fundamental are they in the Torah!

The fundamental principle that Maimonides is referring to is the creation of divine laws by man in the generations after Sinai.

Section IV

Maimonides' description of laws categorized as *divrei soferim* and *d'rabbanan* in *shoresh sheni* corresponds to his description

205 Devarim 17:9

of laws derived through exegesis in the third category discussed in his commentary to the Mishnah.

Maimonides opens *Shoresb Sheni* with a direct reference from his introduction to the *Commentary on the Mishnah* in regard to the distinction developed there between laws of the first two categories and the laws of the third category.

'We have already explained in the introduction to the *Commentary on the Mishnah* that most of the laws of the Torah are derived from the Thirteen Principles of Exegesis. Some of the laws will be subject to dispute while others, being traditions from Moshe, cannot be disputed, but nonetheless will be derived using exegetical principles. For the wisdom of Scripture is such that one may find evidence for the traditional law either by allusion or by exegetical proof. All of this was explained there. As a consequence, not everything that the Sages derive rationally using the Thirteen Principles of Exegesis is a tradition from Moshe at Sinai. On the other hand, not everything derived as such should be considered *d'rabbanan* for sometimes it will be a law that is considered from the Torah that is known by tradition. As such the general rule is [that] anything not explicitly written in the Torah but derived through one of the Thirteen Principles of Exegesis in the Talmud, if explicitly stated that it is part of the corpus of the Torah (*guf Hatorah*) or that it is *d'oraita*, then it is fitting to list it [as one of the 613 *Mitzvot*], for we have a tradition that it is *d'oraita*. But if this is not made explicit, then it is *d'rabbanan*, for it is not in Scripture.'

As we have explained above (in section 1,) the term *d'rabbanan* used here has been the subject of much controversy and varied interpretation. The term is usually meant to mean 'of rabbinical authority,' in contradistinction to the term *d'oraita*, which means 'of

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the Torah'. Such an interpretation is unacceptable in view of Maimonides' other works, as we have already noted. In addition, the text itself does not sustain such an interpretation. In *shoresb sheni* the term d'oraita is not used in contradistinction to d'rabbanan. Instead, Maimonides refers to 'traditions from Moses,' etc. The explicit wording of the text is not the normative terminology of *d'rabbanan* versus *d'oraita*, but rather *d'rabbanan*, i.e., rabbinically derived, versus laws which are from Moses at Sinai. This is because Maimonides is directly referring to the introduction to the *Commentary of the Mishnah*, which distinguishes laws known by tradition from Moses at Sinai from those laws that were developed later in history through the rational methodology of exegesis. Hence, the term *d'rabbanan* used in *Shoresb Sheni* clearly does not mean 'of Rabbinic authority' but rather 'Rabbinically generated;' that is, not generated at Sinai, yet that does not mean they are not *d'oraita*. That is, in fact, precisely why Maimonides would avoid saying they are not d'oraita – because these laws, while rabbinically generated, are still of divine status. This reading of Maimonides allows us to resolve the historical difficulty of Maimonides' usage of *d'rabbanan* when referring to laws that elsewhere he clearly understands to be *d'oraita*.

The distinction that Maimonides draws in *shoresb sheni* between laws known by tradition from Moses and laws generated later in history clearly elucidates the Talmudic text that serves as the source for the enumeration of the 613 Mitzvot:

Rav Hamnuna says: what is the meaning of the verse “Moses has commanded us the Torah as a tradition” (Devarim 33)? Torah has the numerical value (gematria) of 611. [The first two commandments] “I am [the L-rd your God]”, and “You will not [have any other gods before Me] were both heard directly from God.” (Makkot 23b-24a)

The Talmud is explaining that there are 613 commandments that were passed down as traditions from Moses at Sinai (or more

accurately 611, with the other two being a tradition directly heard from God). These commandments constitute verses and their interpretations heard at Sinai. The Talmudic use of the verse “Moses has commanded us the Torah as a tradition” implies that there are other laws of equal halachic status. These other laws are *not* traditions from Moshe at Sinai but were rabbinically generated later in history. Hence the historical distinction is the natural criterion to be used in deciding which *Mitzvot* are to be included in the list of 613. Along the same lines, it is also safe to say that this Talmudic text is a strong proof of Maimonides' historical distinction in his Introduction and therefore proof that, as Maimonides states, most laws are not known through tradition but were generated later in history.

Even though both categories of law are divine, there is nevertheless a significant distinction between them, aside from whether or not they are included in the list of 613.²⁰⁶ In *Hilkehot Mamrim*, Maimonides writes:

Any High Court of Law that derived a law through the Thirteen Principles of exegesis, and acted accordingly, and another Court of Law after them finds a reason to nullify this law, they are permitted to do so, in any way they see fit, for it says “[You shall go] to the judge who will be in those days” – meaning one is only required to follow the court of law of his generation. (*Hilkehot Mamrim* 2:4)

In other words, laws derived through rational exegesis may be overturned by later courts, even of lesser authority. The point is clear: laws derived from Sinai (which are the 613) are immutable.

In summary, laws derived through biblical exegesis comprise of two categories:

1. A core set of laws received from Sinai, which were transmitted throughout history, undisputed and unchanging.

206 as claimed by Rashbatz

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2. Laws that were part of an evolutionary process, which derive their divine status from man's divinely empowered intellect²⁰⁷.

The laws of the second category do not derive their divine status from Maimonides' opinion that all rabbinic laws are included within the scriptural prohibition of deviating from the words of the Rabbis²⁰⁸. Instead, I would argue that they are of divine status because man is empowered by God to *create* laws based on his interpretation of scripture. They are therefore subject to the stringencies of explicit divine laws.²⁰⁹

Section V

Laws generated through exegesis do not necessarily convey the intended meaning of the verse. This introduces a major philosophic thesis concerning the limitations of divine knowledge.

Maimonides argues in *shoresh sheni*:

This foolishness (i.e. including every law that the Talmud learns from a verse as one of the 613 *Mitzvot*) increases, to the point where every time one finds a law derived through exegesis (*derash*), one thinks that on the basis of this exegesis one is required to perform an act or abstain from something, but in fact all of these laws are undoubtedly *d'rabbanan*, and I will count them among the 613 *Mitzvot*, even though the 'simple meaning' (*pashtus d'kra*) does not indicate any of these

207 *Moreh Nevuchim* 1: 1

208 *Hilchot Mamrim* 1:1 and *shoresh rishon* and Ramban's interpretation of Maimonides' position there.

209 This answers Ramban's attack on Maimonides in *shoresh sheni*. Even though Maimonides defines *kidushei kesef* as *divrei soferim* it is nevertheless subject to all the stringencies of the other categories of *kidushin*.

things, for the Sages have already declared “The Scriptural text never leaves its 'simple meaning.’”

The quote attributed to "the sages" is a direct quote from the Talmud in Shabbat 117a:

Rav Kahana said: When I was eighteen years old, I had finished the entire six orders (of the Mishnah) but until now I was not aware that the Scriptural text never leaves its 'simple meaning'.

Rav Kahana's statement appears as a response to a Talmudic proof based upon a verse in Tehillim indicating that armor constitutes a type of jewelry. When Rav Kahana objects that the verse has been interpreted figuratively to refer to 'words of Torah' the Talmud responds that "scriptural text never leaves its 'simple meaning'." Up until now, we have translated '*p'shuto shel mikra*' as 'simple meaning' which is the standard translation. Nonetheless, after a little thought, one should realize that this translation is not sufficient to understand the Ramban's argument, for why does only the 'simple meaning' account for the authority of law taken from the verse? This demonstrates that the term '*p'shuto shel mikra*' is used by Maimonides to refer to the divine intended meaning of the verse.

This concept of *p'shuto shel mikra* as the divinely 'intended' meaning of the verse is discussed by Rabbi Naftali Tzvi Yehuda Berlin (Netziv) in the introduction to his commentary on the Chumash, *Ha'Amek Davar*. There, the Netziv argues that *p'shuto shel mikra* in the Chumash is analogous to the meaning intended by the author in a literary sense. As such, the background and cultural disposition of the author are crucial in determining his literary intention.

In the case of a human author this concept is clear. However, in the case of a divine author, namely God, how is one to define the intended meaning of the verse? The Talmudic statement, 'a scriptural verse never leaves its intended meaning' is understood by Maimonides to indicate that not every exegetical interpretation

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represents the divinely intended meaning of the verse. Therefore, not every law derived through exegetical interpretation can be enumerated as one of the 613 commandments. This is what Maimonides means above when he declares that one should not think that “on the basis of exegesis one is required to perform an act or abstain from something.”

We have established in the previous section that those laws derived from exegesis have divine status, yet here Maimonides claims that exegesis is *not* a basis for a Mitzvah. I would argue that Maimonides is distinguishing between scriptural intent and human interpretation. The 613 commandments represent explicit divine intent and are thus contained within scripture. All other laws derived through exegesis are the product of human interpretation of the divine intent.²¹⁰

Maimonides' argument based on the Talmudic statement that 'the scriptural text never leaves its intended meaning' implies that every verse carries two meanings:

- 1) The divinely intended meaning that can only be known through revelation and tradition (and which is included in the 613) and:
- 2) human exegesis, which uses the semantics and syntax of the verse to create laws of *d'oraita* status.

Because the latter laws follow from the 'Thirteen Principles of Exegesis' they constitute rational extensions of the verse and are therefore of no less authority than the Divinely intended meaning.

210 One cannot simply interpret the term *d'rabbanan* in this context as meaning 'rabbinical in authority', (which would in turn bring us back to the point where Maimonides would indeed be claiming that laws derived through exegesis are Rabbinical in authority). This cannot be sustained and is contrary to the apparent usage that Maimonides makes of the term *d'rabbanan* in the beginning of *shoresh sheni* where he is clearly making a 'historical' distinction. Therefore the term *d'rabbanan* here too must likewise be interpreted as being rabbinically generated.

Nonetheless, since they are the product of the human mind, they cannot be called the 'intended meaning of the verse' for that can only be the product of God's mind and therefore cannot be said to be laws known directly from Moses at Sinai. They are therefore not to be enumerated among the 613 *Mitzvot*.

This leads to a theological problem. If rational exegesis is not the divine intention of scripture, Maimonides is limiting divine knowledge of the commandments to those directly in the scripture. If God's knowledge is infinite, He must have intended this rabbinically explicated meaning in scripture. For this reason, Maimonides is forced to voice a disclaimer:

Perhaps you think that I am avoiding listing the laws (derived through rational exegesis) because they are not true? The answer is that anything that man derives as branches from roots, which are the principles that were told to Moses at Sinai (by God), even if the one performing that act (of derivation) was Moses himself, it would not be fitting to include them (in the 613 *Mitzvot*).

Clearly, Maimonides is distinguishing human activity from divine activity, but still, given the logical nature of "Truth" as Maimonides understands it in all of his writings, how does one epistemologically distinguish between Divine meaning and rational deduction? Before we answer this question, we will first turn to the critique of Ramban.

Section VI

Nachmanides primary critique of Maimonides is that there cannot be any distinction between divine intention and exegetically derived meaning.

Nachmanides', in his comment on Maimonides' *shoresh sheni*, opens his attack on Maimonides with the following statement:

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I cannot comprehend what he is saying, for if we are to say that laws based upon the Thirteen Principles of Exegesis are not traditions from Sinai and that were therefore not divinely commanded in order to interpret the Torah, then they are consequently not [divinely] true. For the only true divine laws are those that come from the 'simple' meaning of scripture. All of this is based upon the Talmudic dictum: 'a scriptural verse never leaves its intended meaning.'²¹¹ Such an opinion (i.e. Maimonides') undoes our entire tradition of the Thirteen Principles of Exegesis and, as a result, the majority of the corpus of the Talmud that is based on it.

The Rav [Maimonides] insists that the reason is not because these laws are not true. However, if in fact they are true, then what difference does it make whether they are derived through exegesis or explicitly written...?

Perhaps he [Maimonides] believes that the law derived through exegesis is true but since it is not explicitly in the verse, the verse consequently cannot be said to have been intentionally written to teach this law, and is thereby called *d'rabbanan*... or perhaps he is in doubt as to whether they are genuine rabbinical laws created in the Rabbinical courts or were taught by Moshe and are called *divrei soferim* because they are not explicitly in Scripture and are therefore not to be included in the verse "Moshe commanded us the Torah" that is the 613 commandments. Nonetheless, this is not the opinion of the (Talmudic) Sages, for they considered all laws derived through the Thirteen Principles of Exegesis as laws that are explicit in Scripture..."

Nachmanides, surprisingly, actually supports our reading of *shoresh sheini*. We see from Nachmanides that the term *d'rabbanan* that Maimonides used did not necessarily mean of rabbinic status, as is

211 Shabbat 63a

generally understood by many commentators. He acknowledged that Maimonides' position could be that they were 'taught by Moshe', and consequently cannot be considered directly commanded by God as the verse "Moshe commanded us the Torah" indicates. Indeed, this is how we proposed above to understand Maimonides' meaning. Thus, we see that Nachmanides' primary attack on Maimonides' *shoresh sheini* is not because he felt that Maimonides necessarily considered laws derived through the Thirteen Principles of Exegesis to be of rabbinical status and authority. Rather, because Maimonides claims they are not part of the intended meaning of Scripture, they can not be considered of the same divine status as those laws explicitly written. Nachmanides' argument is clearly theological. He believed that that laws derived through rational exegetical principles from the text have the same divine status as the text itself. For Nachmanides, as far as divine intention is concerned, scripture and exegesis constitute 'one body'²¹².

Nachmanides could not accept that the Divine Mind could be limited only to the explicit intended meaning of the text and not include any law derived from the text through exegesis. As he writes 'I cannot comprehend what he saying.' Maimonides, in Nachmanides' opinion, was limiting Divine Knowledge and replacing it with human exegesis. The limiting of divine knowledge was the central point of contention, not the issue of rabbinical status of exegetically derived laws.

Section VII

Maimonides' theory of divine meaning and exegesis can be understood by an 'uncertainty principle,' which appears also in his other writings.

Nachmanides challenged Maimonides on theological grounds. How can a law derived through logic not be considered the intention of

212 Ramban in 'critique of shoresh sheni' and 'introduction to commentary on the Torah'

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God? In order to understand how Maimonides would respond to this we will look at two sections of *Moreh Nevukhim*.

In the first (*Moreh Nevuchim* 3: 26) Maimonides develops the view that the *Mitzvot* must have rational reasons because of the basic cosmological and theological premise that God does not do, create, or command anything without a rational intention and purpose. As a result, all reasonable people must believe that all *Mitzvot* have a rational purpose. As his primary example, Maimonides presents the laws of sacrifices. He claims that while we may be able to explain, in view of the purpose, why sacrifices should have been instituted in the first place; 'but the fact that one sacrifice is a lamb and another a ram; and the fact that their number is determined – to this one can give no reason at all, and whoever tries to assign a rationale will go crazy trying to find one.'

This statement is of profound theological significance. Maimonides is, in fact, implying that while one may be informed of the divine intention, this intention can never account for details, which will possess some quality of arbitrariness. This contention immediately raises a question: if in fact we are assuming that all divine acts, including commandments, are with rational purpose, why should details be arbitrary? Aren't details also Divine acts, or commandments, and are therefore of rational purpose? One is inclined to interpret Maimonides' opinion epistemologically: While man can be informed of God's general 'rational purpose' one can never be informed of the rationality of the details. However, if this is true because man's mind is human and therefore limited, and God's mind is infinite and Divine, why should one expect man to be informed of God's general 'rational purpose'? In which case Maimonides' argument for 'reasons for the commandments' begins to break down, and we are back to our original question.

We can clarify this point with a statement Maimonides makes later in *Moreh Nevukhim* (3:34):

‘Do not be surprised if the Torah plan for the world is not achieved with every individual, or if it is inevitable that certain individuals, even while directed by the Torah, will not reach through this perfection, just as natural processes which underlie nature will not be effective in each individual case, for everything (i.e. nature and Torah) has one Divine source and creator’.

Maimonides' statement above implies that both Torah and natural law are both equally subject to a certain ‘uncertainty principle,’ which places limitations on Divine intentions with respect to details. I would argue that one can apply this ‘uncertainty principle’ to Maimonides’ thesis on laws derived through exegesis. If we make the analogy between a natural process, (and even a *Mitzvah*), and a verse in the Torah, each of which is governed by a certain Divine intention. In the case of the natural process, this ‘intention’ is the well being of each individual of the species; in the case of the *Mitzvah*, it is the perfection of the individual; and in the case of the verse, it is the intended command. So too, just as within the natural process there will be individuals not affected by the intended process, or in the case of the *Mitzvah*, there will be individuals who will fall short of completion, in the case of the verse there will be laws derived that are not direct consequences of the Divine intention of the verse.

The essence of rabbinical exegesis is an emphasis on ‘details’ in the verse – the extra words, the specific words or phrases and other minutia that are carefully analyzed. As a consequence, exegesis can be no more ‘informed’ of the divine intention than the details of any divinely directed process, which, in the opinion of Maimonides, is always subject to an ‘uncertainty principle’. This, then, is the philosophical underpinning of the expression ‘every verse has a ‘simple’ (intended) meaning in addition to its meaning derived through exegesis.’ The ‘uncertainty principle’ that characterizes all divinely generated processes always produces a bifurcation between the divine intention and the details of the process. As a result, the

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laws derived through the Thirteen Principles of Exegesis are not necessarily synonymous with the 'intended' meaning of the verse, and therefore are called *d'rabbanan*. For as far as they are derived from details and are not part of the Divine Intention, their exegesis is in fact rabbinically generated.

However, one can still object that natural and anthropological (*Mitzvoit*) processes are not analogous to exegesis, for natural/anthropological processes involve a diverse spectrum of individuals who will not necessarily react or behave identically in the face of the same natural or divine law. In exegesis, however, the 'object' of interpretation is God's own word, and God certainly could find the proper syntax and/or semantics to convey one and only one idea.

One response to this is to be found in Maimonides himself, in his *Introduction to the Commentary on the Mishnah*, where he states:

Much disagreement occurred between them (the Rabbis) at the time of in-depth study in many things, for the analysis of each person differs in accordance with his intellectual abilities and his different view of fundamentals.

As such, Maimonides apparently understood that the methodology of exegesis, because it is so contingent on the rational analysis of verses, will inevitably vary from one person to another, given difference in intellect and priorities.

Further elaboration on this point can be found in another statement in Maimonides' *Guide of the Perplexed*: Maimonides states (MN 3:17) that while he believes that there is no direct divine providence on the individuals of all terrestrial species (with the exception of man); there is divine providence on the celestial spheres. This is because the celestial spheres' movements are mathematically precise, thereby being in total submission to the Divine Will. This being the case, there can certainly be no dispute with respect to their motion. Perhaps then, a verse should be more properly compared to the notion of a sphere, which is precise and not subject to any of the

uncertainty that is found in the sub-lunar terrestrial world, for there can clearly be no disagreement as to the motions of the spheres.

However according to Maimonides even celestial spheres are subject to uncertainty. This idea can be found in Maimonides' arguments against Aristotle's theory of the eternity of the world²¹³. According to Aristotle, the entire world is necessarily subject to natural law, and therefore can never be subject to a Divine will. In other words, nature is self-explanatory within natural law. Maimonides proceeds to argue against this based on the very fact that even those objects that are most subject to natural law - the celestial spheres - nonetheless exhibit a certain arbitrariness with respect to individual position and motion. We can only explain this by invoking Divine will, thereby refuting natural determinism.

One consequence of Maimonides' argument, and the one that is important for our purposes here, is that any process created by God, even one as exact and precise as the movement of the celestial spheres, will always be subject to a some uncertainty. Semantics and syntax of the Biblical text should not be essentially different. While the Divine intention was surmised, the choice of words and framer, which is always be subject to the 'uncertainty principle,' given the natural variation in the way people think, will give rise to different interpretations, both in historical and contemporary scholarship.

This is the fundamental reason that Maimonides believes that successive Sanhedrins can reinterpret the Torah and therefore change exegetically derived laws throughout history. When Maimonides invokes the verse "You shall go to the judge in your time", the necessary implication is that the Torah recognizes the fact that the thinking and values of people change over history. In brief, Maimonides recognizes that the structure of most of the oral law is one of a naturally evolving and organic process.

213 *Moreh Nevukhim* 2:19

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As we remarked at the end of section IV, the process of evolving exegesis was 'frozen' in history with the redaction of the Talmud in the fifth century by Rav Ashi²¹⁴. What distinguishes the evolutionary nature of the Oral Law from other evolutionary processes is that the evolutionary process of the Oral Law is deliberately frozen at certain points in history so that a vital balance between creation and tradition, hermeneutics and authority, is sustained. This freezing process took place at different points in Jewish history and created the canonical status of the Mishnah, Talmud and even of other works such as the *Mechilta*, *Sifra*, *Sifrei* and *Tosefta*. Through this 'freezing' process, the act of Rabbinical creation and originality does not submerge and essentially erase long-rooted legal traditions and the historical authenticity of the process is not compromised. Rabbinical creation then is not ex nihilo reasoning but a veritable interpretation of tradition that sustains the Divine core driving the process. This is the panoramic view of Torah mi-Sinai that Maimonides bequeathed to all future generations and it has allowed the Torah to flourish throughout all of history to this very day.

214 The process was actually frozen with the redaction of the Mishnah by Rebbe in the second century, but this constitutes an entirely different discussion

D'oraita, D'rabanan and Divrei Soferim: Interpretations to Shoresh Sheini of Sefer Hamitzvot

Rabbi Moshe Becker

Preface

Rambam²¹⁵, in the introduction to his *Sefer HaMitzvot*, presents the rules and principles that form the guidelines for determining which *Mitzvot* are to be included in the count of the *Mitzvot*²¹⁶. Rambam maintained that the “*Monei HaMitzvot*”²¹⁷ who preceded him were often mistaken, basing their count on faulty methodology. To rectify the situation, Rambam prefaced his count with a detailed explanation of his own methodology, in which context he points out the mistakes of his predecessors. However, many of his statements proved to be

215 pain, Egypt, 1135/8-1204

216 The concept of the “count of Mitzvot” originates in the statement of R' Samlai (Makkos 23b) that 613 Mitzvot were given to Moshe on Sinai.

217 The authors of works listing the Mitzvot. For the most part Baal Halakhot Gedolot (בה"ג). Others are R' Saadya Gaon, R' Shlomo Ibn Gabirol

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quite controversial, both in substance as well as his rejection of the earlier, accepted methods. In this study we will focus on the principle stated by Rambam in *Shoresh Sheini* and the various approaches to understanding it that developed over the generations following Rambam.²¹⁸

Rambam's statement in Shoresh Sheini

We have already explained in our Introduction to the *Mishna* that most laws of the Torah are learned by way of the 13 exegetical principles Thus not every law that we find the Sages learning by way of the 13 exegetical principles will we assume that it was said to Moshe on Sinai, but we will also not say that such a derivation is necessarily of Rabbinic authority, as it may have been a tradition (from Sinai). Therefore, anything that is not found to be written in the Torah, but is found in the Talmud as having been learned through one of the 13 exegetical principles²¹⁹ – if they themselves (the Sages of the Talmud) clarify and say that it is *d'oraita* or *guf torah* it can be counted as a *Mitzvah* because the bearers of the tradition said it is *d'oraita*. If no such statement is made, it is *d'rabanan* as there is nothing written (in the Torah) to indicate it.

Rambam: Sefer HaMitzvot Shoresh Sheini

Following the above, Rambam goes on to show how others made the mistake of including in the *Mitzvot* those which he just excluded, and

218 The most comprehensive discussion of this topic to date is Yehuda Neubauer's *HaRambam Al Divrei soferim* [Jerusalem: Mossad Harav Kook, 1957], which covers nearly all the available material on the topic. Our goal is to present the major opinions and trends in the analysis of Shoresh Sheini.

219 Rambam is not limiting this to the 13 principles – the same will be true for any of the hermeneutic tools known as drashot.

attacks them for being inconsistent. At face value, he seems to be saying something very clear: The only *Mitzvot* that can be considered *d'oraita* are either those that can be found explicitly written in the Torah, or those that are presented in the Talmud as having been learned through one of the 13 principles, but the Talmud says is actually *d'oraita*. Otherwise, anything learned by way of the 13 principles is to be called *d'rabanan*. This statement, simple as it may be, should be quite shocking to anyone familiar with the Talmud. The general understanding is that the 13 exegetical principles were tools given to Moshe together with the Torah as a means of getting to the true meaning and intent of the *passuk*²²⁰. Consequently, anything derived from the *passuk* by using those methods carries the same authority as that which is written explicitly, and is to be considered *d'oraita*.

An illustration of the apparent difference between the approach of Rambam and the generally understood principles of the Talmud is the oft-used statement in the Talmud “*It is really Rabbinical, and the passuk is just support,*” a solution often applied when the Talmud finds a *passuk* seeming to dictate a *Halakha* that is understood to be of Rabbinic authority. The implication is that unless the Talmud specifically says otherwise, wherever we find a *Halakha* derived from a *passuk*, namely something learned from the 13 principles, we assume that it is *d'oraita*. According to the rule set out by Rambam, the opposite should be true; by default, all *Halakhot* derived through the 13 principles will be *d'rabanan*, unless there is special indication to the contrary.

Although some of the categories put forth by Rambam elsewhere may only hold value to classify various types of *Halakhot* or *Mitzvot*²²¹, here the terminology is crucial because it has major legal

220 Referring here to any verse in Scripture.

221 For example, although Rambam in the introduction to *Peirush HaMishnayot* divides the *Mitzvot* into five categories, in that context he does not deal with the authority or stringency of any given category per se. However as we will see and

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repercussions. Probably the most significant one is the case of a “*safeik*” - a situation in which the proper ruling cannot be determined. Throughout *Halakha*, in any situation of doubt we follow the following rule: If the uncertainty involves a *Halakha* of *d'oraita* status, we must be as stringent as necessary to avoid violating a Biblical directive. If however we are facing a Rabbinic issue, we take a more lenient position²²². As Rambam points out²²³, were those who counted the *Mitzvot* derived from the 13 principles correct, there would be many thousands of *Mitzvot*. Accordingly, there would be many, many scenarios where in a situation of doubt Rambam would rule to be lenient, while the earlier authorities would maintain that given the *d'oraita* authority of the *Halakha*, one must be stringent. Clearly we are not dealing with a minor semantic disagreement, but rather an argument with colossal legal implications.

However, it seems that the legal implications, although serious enough to elicit an outcry, are not the only issue that Rambam's new principle raises. With the principle given here, Rambam has effectively moved the majority of *Halakha* from being of Siniatic (and thereby Divine) origin to the realm of the Rabbinic, in origin as well as authority. Such a position leaves room for the claim that Judaism is indeed a man-made religion, a claim which the medieval authorities expended much energy to disprove.

This combination of legal ramifications and theological difficulties prompted harsh attacks by Rambam's contemporaries and, in later generations, attempts to redefine or limit parameters of the principle given in *Shoresh Sheini*. Before moving on to discuss these arguments, we will list some of the places in Rambam's legal work, Mishna

as Rambam himself began, there is certainly a connection between the category created here and those given in *Peirush HaMishnayot*.

222 Although this is a general guideline in Halakha, it and Rambam's particular position in the matter are a topic of discussion on their own which will not be dealt with here beyond it's immediate relevance.

223 Later on in Shoresh Sheini, as an additional objection to Halakhot Gedolot

Torah, where he seems to have followed this principle by deeming certain *Halakhot d'rabanan*.

Rambam's rulings in Mishna Torah

In Hilkhot *Isbut* 1:2, Rambam delineates the three methods of *kiddushin* - betrothal; physical relationship (*Biah*), deed (*Shtar*), and monetary acquisition (*Kesef*). The first two are “from the Torah” (*d'oraita*) and the third (which will be referred to as *Kiddushei Kesef*) is “*m'divrei soferim*,” literally “from the words of the Sages,” meaning of Rabbinic origin and authority (*d'rabanan*). This differentiation is repeated later on in *Isbut* 3:20, where Rambam uses identical terminology, and in *Sefer HaMitzvot*²²⁴ as well.²²⁵ The Talmud uses a *Gezeira Shava*, one of the 13 principles, to derive *kiddushei kesef* from a *passuk*²²⁶, so this could be a clear example of Rambam following the principle of *Shoresh Sheini*. In fact, when challenged on this ruling,

Rambam wrote in response²²⁷ that this ruling is a result of the principle he established in *Shoresh Sheini*.

Although there are several rulings of Rambam that can be traced to the principle of *Shoresh Sheini*, this is the most notable. Many authorities, who would not otherwise have taken an interest in *Sefer Hamitzvot*, indirectly addressed the question of *Shoresh Sheini* while discussing Rambam's ruling in *Isbut* 1:2 and the practical implications thereof.

224 Positive Commandment 213

225 This opinion is found in the works of some of the Geonim as well, based on a passage in Kesubos 3a. It has been suggested that these Geonim shared the opinion of Rambam in Shoresh Sheini that drashot have a Rabbinic status. However, this is by no means conclusive as Y. Neubauer proves at length in *HaRambam Al Divrei Soferim*, from p. 5.

226 Kiddushin 2a

227 *Teshuvot HaRambam* Freiman ed. [Jerusalem: Mekitze Nirdamim, 1934] # 166, quoted by Ramban in Shoresh Sheini, and in Maggid Mishne, *Isbut* 1:2.

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For example, according to *Halakha*, once a woman is “*mekudeshet*” (betrothed), she is considered to be married, and a sexual relationship with another man is punishable by death. Because the death penalty is only implemented in a case of a Biblical transgression, a woman whose betrothal is of Rabbinic status would not have committed a Biblical transgression and should only have to face the punishment given for Rabbinic violations. Not only is this contrary to the Talmud and to the opinions of all other authorities, it is contrary to the opinion of Rambam himself. Immediately after designating *kiddushei kesef* as *divrei soferim*, he says that once a woman has become betrothed by *one of these* methods, she is married and can be put to death for committing adultery.

Because of the potentially grave consequences that result from a forbidden relationship, disqualifying *kiddushin* - and potentially releasing a married woman – is generally treated with the greatest seriousness. According to Rambam’s opinion however, such caution should be unnecessary in many cases. As early as the time of the Talmud, *kiddushei kesef* had already become the only commonly used (and acceptable) method of betrothal. Consequently, until the criteria of “*Nesuim*”²²⁸ is met, the couple are not considered married, and there is no special severity in the case of betrothal. As in any other *Halakha* that is *d'rabanan*, where in a situation of doubt we rule leniently, if the method employed for betrothal was *kiddushei kesef*, according to Rambam we should follow the general rule and disqualify the *kiddushin*²²⁹. Therefore, any case of a doubt regarding

228 The actual finalization of the marriage. Although nowadays all parts of the marriage are completed in one ceremony, it was common practice for many centuries to separate these two stages.

229 Disqualifying the *kiddushin* is a leniency as it removes all the laws and restrictions that apply to a married couple.

the validity of *kiddushin*²³⁰ will always be a Rabbinic issue, where we should rule leniently and assume the *kiddushin* to be non-existent.

Additionally, a woman who is betrothed to a Kohen²³¹ is entitled to eat the *Terumah* – tithes. Benefiting from *Terumah* is the exclusive privilege of a Kohen and his immediate family, and intentional consumption by a non-Kohen is punishable by death. The wife of a Kohen is permitted to eat *Terumah* from the time of betrothal²³². According to Rambam, this should only be true if a woman betrothed with deed or physical relationship, as this gives her a Biblically betrothed status. The Rabbinic method of *kiddushei kesef*, however, should not be sufficient to waive the Biblical prohibition against a non-Kohen eating *Terumah*. Nonetheless, Rambam makes no such distinction in the *Halakha* of the wife of a Kohen²³³.

It must be noted here that there are manuscripts of Mishna Torah containing variations in the text of the two *Halakhot* mentioned above. In these texts, Rambam says the exact opposite, namely that all three of the methods of *kiddushin* are “*din torah*” - Biblical²³⁴. According to R' Avraham ben HaRambam²³⁵ and R' Moshe HaKohen of Lunil²³⁶, although initially Rambam held that *kiddushei kesef* is Rabbinic, he subsequently changed his position and amended the text of Mishna Torah to say that they are all Biblical. The earlier manuscripts of Mishna Torah which had already been in circulation

230 Such as an occurrence of “*kiddushei s'khok*” – “play kiddushin” that were performed without all the conditions necessary for a proper kiddushin.

231 Priest

232 Although this is the law on the Biblical level, the Sages forbade the wife from eating *Terumah* until the final stage of *Nesuim* has been completed. (Mishna Torah, *Terumot* 6:3)

233 *Terumot* 6:3

234 It is interesting to note there are editions of Mishna Torah that do not have the gloss of Raavad in both of these places where he completely rejects the opinion of Rambam that *kiddushei kesef* is Rabbinic.

235 *Birkat Avraham* 44, quoted in *Kesef Mishne* to *Ishut* 1:2.

236 *Hasagot HaRamakh Ishut* 1:2

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at that point were never changed, and these were later used as the source for the printed editions²³⁷. Obviously, such a correction would leave the *Halakha* of *kiddushei kesef* outside our discussion of *Shoresh Sheini*. However, in all printed editions of Mishna Torah, the *Halakha* appears as we have it. Considerable literature has been created to explain Rambam's position surrounding this *Halakha*. Thus, the words of the commentators to *Isbut* 1:2 and 3:20 are important to the discussion of *Shoresh Sheini*, even if it is true that Rambam changed his position with regard to *kiddushei kesef*.²³⁸

In *Hilkhot Eidim* 13:1, Rambam enumerates the relatives considered invalid for testimony²³⁹. According to Rambam, only relatives of one's father are invalidated by the Torah, but the Sages added relatives of one's mother as well as relatives through a marriage to the list of "relatives." Once again, this law is learned in the Talmud²⁴⁰ from a *drasha*²⁴¹ indicating the source in the *passuk* that was used to derive the status of "*kravei ha'eim*".

As in the case of *kiddushei kesef*, there are potentially serious consequences that could result from this *Halakha*. If a marriage takes place in the presence of witnesses who are related to either member of the couple or to each other, the marriage is null and void. According to Rambam, this can only be said in a case in which the relationship is paternal. In the case of witnesses who are maternal relatives or relatives by marriage, the couple is married according to

237 Apparently many such corrections were made by Rambam himself after Mishna Torah was already in circulation, which could be a partial explanation for the numerous instances of discrepancies between manuscripts.

238 For a detailed list of the manuscripts with variations see *Yalkut Shinuei Nusha* not printed in the Frankel edition of *Sefer HaMitzvot*.

239 The ramifications of a relative not being fit to testify is not limited to the court. Any act that needs *Eidut*, such as a marriage, could not be completed in the presence of witnesses who are related to one of the parties or to each other.

240 *Sanhedrin* 28a

241 A hermeneutic device expanding the simple meaning of a verse allowing for a new law to be learned.

the Torah. However, because the witnesses were invalid by Rabbinic standards, they are in need of a new “proper” marriage that will meet the Rabbinic criteria.

In Aveil 2:7, Rambam rules that a Kohen may not come in contact with a corpse for any reason, with the exception of his immediate blood relatives²⁴², towards whom he has an obligation to assist in their burial. Rambam adds that although this is the law mandated by the *passuk*, the Sages required that a Kohen bury his wife as well. The law requiring the Kohen to assist in burying his wife is learned in the Talmud from a *drasha*. Rambam is calling this requirement Rabbinic, presumably following the rule that anything learned from a *drasha* is Rabbinic, yet he is giving it authority to override the Biblical restriction against a Kohen becoming impure.²⁴³

Literal understanding of Shoresh Sheini – Early Rishonim

Ramban, who is the primary critic of *Sefer HaMitzvot*, understands Rambam to be saying literally that all *Halakhot* or *Mitzvot* learned from *drashot* – the 13 exegetical principles as well as *ribui*²⁴⁴ - all should be considered *d'rabanan*, of Rabbinic origin as well as authority. In addition, he quotes the responsa mentioned earlier when Rambam reiterates his position specifically in the context of *kiddushei kessef*. For Ramban, this is further indication that Rambam indeed meant *d'rabanan* in the full legal sense and not merely as a formal classification. Based on this understanding, Ramban attacks Rambam very strongly, claiming that Rambam is either ignoring or distorting

242 These are a father, mother, son, daughter, brother, unmarried sister and wife; which is the subject at hand.

243 This Halakha is the source (according to Rambam) of the laws governing which relatives one mourns for. Much of the discussion on the topic is on Aveil 2:1 where those laws are found.

244 The hermeneutic principle of inclusion, whereby an unneeded word is understood to broaden the parameters of a given Mitzvah.

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many passages in the Talmud. As noted, there are countless instances in the Talmud where a *drasha* is used as a method for deriving *Halakha*. In each case unless the Talmud says otherwise, the resulting *Halakha* is considered to have Biblical status.

In addition to this apparent disparity between Rambam and our understanding of the Talmud, Ramban seems to be bothered by another one of Rambam's points. Rambam writes later in *Shoresh Sheini*: "Do not think that the reason to exclude that which is learned from the 13 principles is because those principles are not true. Rather, anything which a human derives from the text of the Torah is really a branch coming off the root, even if the agent was Moshe Rabbeinu himself." In the first half of this statement, Ramban sees a paradox. If the 13 principles are not tools given at Sinai as a means for interpreting the Torah, than the *Halakhot* derived through them are not true. If, on the other hand, they are from Sinai, why are we to differentiate between an instance where we are told explicitly that something is *d'oraita* and where we find a *drasha* unaccompanied by such a statement? If the *drasha* is there to tell us the intention of the *passuk*, then as far as we are concerned it is effectively written. Apparently, while Rambam was willing to have different layers in understanding a written *passuk*, whereby that which is explicit is different from that which is not, Ramban could not accept that any intended meaning will not be considered *d'oraita*.

The arguments of Ramban are quite lengthy and become somewhat technical. However, it seems that Ramban was bothered by both of the issues mentioned – both Rambam's apparent divergence from the Talmud as well as the logical and theological difficulties mentioned. Ramban says:

...It (*Shoresh Sheini*) uproots great mountains in the Talmud and destroys strong walls in the Gemara... should never be said.

Ramban on Sefer HaMitzvot, Shoresh Sheini

Following Ramban's understanding, as well as his position, are R' Shlomo ben Aderet²⁴⁵, R' Yitzchak bar Sheshet²⁴⁶, and R' Yehuda ben HaRosh²⁴⁷. These authorities do not bring any new arguments to the discussion. Instead, they reference the fact that Ramban already rejected the position of Rambam as stated in *Shoresh Sheini*. They are interested in possibly employing Ramban's opinion to resolve a legal question rather than dealing with the classification of *Mitzvot*. These authorities understood Ramban to have said that anything learned from the 13 principles is Rabbinic, a position with many legal ramifications as previously stated. Considering its rejection, Ramban's opinion could not be used to contribute to a legal ruling. None of these *Rishonim* questioned the literal reading or the arguments of Ramban.

There is an interesting exception to the apparently universally accepted reading of *Shoresh Sheini* in Ramban's lifetime and immediately thereafter. It does not seem that Raavad²⁴⁸, shared this understanding of *Shoresh Sheini*, or at the very least considered it far less relevant. Raavad was the earliest critic of Mishna Torah and we would have expected his attack in Mishna Torah to match Ramban's attack on Sefer Hamitzvos. However, in his glosses to the ruling of Rambam in *kiddushei kesef*, Raavad makes no mention of *Shoresh Sheini* or any such overarching principle. Rather, he attributes the Rambam's ruling to a mistaken understanding of a Gemara²⁴⁹. There is one place where Raavad refers to Rambam systematically calling

245 Barcelona 1235-1310, *She'elot u'Teshuvot HaRashba* V. II:230, V. I:1185

246 Spain 1326-1408, *She'elot u'Teshuvot HaRivash* 14

247 Toledo 1270-1349, *She'elot u'Teshuvot Zichron Yehuda* 81

248 Posquières (Provence) 1120-1197, one of the earliest and primary critics of Mishna Torah.

249 The Gemara referred to is in Ketubot 3a, where the implication of the words קדיש בכסף, קדיש בביאה מאי איכא למימר is that kiddushei kesef indeed have a Rabbinic status.

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Halakhot d'rabanan, but even there he makes no mention of *Shoresh Sheini*²⁵⁰.

Non-legal status of Shoresh Sheini - Rashbaz

R' Shimon ben Tzemach Duran (Rashbatz)²⁵¹, a younger contemporary of R' Yitzchak bar Sheshet, introduced a new understanding to *Shoresh Sheini* in particular, and to *Sefer HaMitzvot* in general. In his work *Zohar HaRakia*²⁵², R' Shimon states that the entire discussion of Rambam in *Shoresh Sheini*, and presumably in all of *Sefer HaMitzvot*, is only with regard to the count of the 613 *Mitzvot* and has no legal significance whatsoever. In his words:

After having researched and expounded upon the opinion of our teacher (Rambam), the matter is as follows: Our teacher never maintained that what is learned from *drashot* are to be considered Rabbinic [and therefore] to be lenient in a case of doubt, and his position will not be different than that of anybody else in any legal ruling. He only called them Rabbinic in one context; that they are not written explicitly in the Torah and due to that fact they should not be counted in the 613 *Mitzvot*.²⁵³

When Rambam says that *Mitzvot* or *Halakhot* learned from *drashot* are to be considered Rabbinic, he does not mean it the way we usually understand the very specific terminology of Rambam. The terms *d'oraita* and *d'rabanan* as they are used in *Sefer HaMitzvot*, are labels

250 Tum'at Meit 5:5

251 Algier 1361-1444

252 A commentary on *Sefer Azharot* of R' Shlomo Ibn Gabirol. In the introduction there is a short commentary to the beginning of *Sefer HaMitzvot*.

253 *Zohar HaRakia, Introduction, Shoresh Sheini*

used by Rambam in this particular work solely for the purpose of determining which *Mitzvot* are to be included in the count of 613 *Mitzvot*. Based on this understanding, he concludes that²⁵⁴ all the questions of earlier commentators have been removed, and it was his unique privilege to understand Rambam properly. He reiterates this position twice in the legal context of responsa: once directly addressing the issue of *kiddushei kessef*²⁵⁴ and elsewhere comparing his understanding to those preceding him²⁵⁵.

As R' Shimon himself realized, his approach was novel, and at least to him represented a breakthrough in understanding Rambam. We no longer need to reject Rambam's opinion as being in opposition to that of the Talmud. We simply can view it as unrelated to the question of the legal status of any given *Halakha*. From a historical perspective, it would seem that this illustrates a shift in attitude toward the works of Rambam. During the lifetime of Rambam and immediately following, the authorities were comfortable disagreeing with Rambam when they felt he had erred. However, after several generations, the role of the commentator changed. Instead of agreeing or disagreeing, he attempted to explain, resolve and elucidate. As the works of Rambam became accepted for large parts of the Jewish community²⁵⁶, it became necessary to address any perceived fundamental differences between the codes of law – the Talmud and Mishna Torah.

The approach of Rashbatz was later embraced by R' Yitzchak Leon Ibn Tzur²⁵⁷. In his commentary to *Sefer HaMitzvot*²⁵⁸, he quotes the

254 *Tashbatz* V. 1:1. Interestingly, in *Ishut* 1:2 he had the text saying “all three are Biblical.”

255 *Tashbatz* V. 1:151, directly addressing *She'elot u'Teshuvot HaRivash*

256 For a list of communities that accepted Mishna Torah as authoritative see H. Davidson, *Moses Maimonides* [New York: Oxford University Press, 2005] p. 280-281.

257 Ancona, died 1546

258 *Megillat Esther*, The primary focus of this work was to defend *Sefer HaMitzvot* against the questions of Ramban.

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words of Rashbatz and sees in them a complete refutation of the attacks of Ramban:

It appears to me that R' Shimon has done us a wonderful service, for having interpreted the intention of Rambam in this principle in a manner which avoids all the replies of Ramban. He established that in this principle also all that is learned from the 13 exegetical principles is Biblical and its (legal) status is similar to what is written in the Torah, only it will not be counted in the count of *Mitzvot*. But he did not call them *d'rabanan* because he felt that one should be lenient with them like all other Rabbinic enactments and restrictions, rather because they are not written explicitly and the Rabbis clarified them to us. And in order that you should comprehend all of his proofs, I have copied his words here....²⁵⁹

R' Yizchak Leon fully endorses the approach of Rashbatz, then goes on to address the questions of Ramban. There is no need for him to answer these question point by point because he believes Ramban completely misunderstood Rambam. In fact, he sees the severity of the questions as proof that Rambam could not have possibly meant what Ramban is attributing to him. R' Yizchak Leon also attempts to address how, despite the rule in *Shoresh Sheini*, Rambam includes in the count certain *Mitzvot* learned entirely from the 13 principles. This is an internal problem in *Sefer Hamitzvot* and must be addressed according to any understanding of *Shoresh Sheini*. R' Yizchak Leon does not provide a general explanation for this phenomenon, but rather finds a local reason for each case to explain why it is not subject to the principle *Shoresh Sheini*.

²⁵⁹ *Megillat Esther*, Sefer HaMitzvot Shoresh Sheini

Difficulties with Rashbaz's approach

There are numerous difficulties with understanding Rambam this way. First, as R' Yitzchak Leon addressed, Rambam included in the count *Mitzvot* that are learned through *drasha*, which Rashbatz says should not have made their way into the count.

Secondly, if the designation *d'rabanan* refers to nothing more than the formal count, why does Rambam repeatedly call *kiddushei kesef* Rabbinic? *Kiddushei kesef* is only a part of the *Mitzvah* of *kiddushin*, which everyone agrees is Biblical, and would not merit its own entry in *Sefer HaMitzvot* even if it is of Biblical origin. The same will go for the maternal relatives. All relatives are under one designation in *Sefer HaMitzvot*, so why is it significant that the maternal relatives are being called Rabbinic and being “excluded” from the count?

Understanding *Shoresb Sheini* this way poses other problems, as well. It is one thing to say that *Sefer HaMitzvot* is dealing with a formal, almost theoretical concept. It is far more difficult to say so with regard to Mishna Torah, which is a legal work employing very precise terminology. As explained earlier, it is clear that many of the rulings of Rambam in Mishna Torah are following the principles stated in *Sefer HaMitzvot*. Accepting the opinion of Rashbatz seems to mandate accepting that Rambam used the words *d'rabanan* and *d'oraita* to mean different things in *Sefer HaMitzvot* and Mishna Torah.

Another problem raised with this approach is the implication that all the arguments of Rambam in the fourteen principles preceding *Sefer HaMitzvot* are only dealing with a formality. Although this is possible, it is hard to accept that Rambam would argue so strenuously on a topic of relatively minor significance. Assuming this is the exact and stated purpose of *Sefer HaMitzvot*, we still come back to the previous problem – that these labels are used by Rambam in Mishna Torah as well, where the legal ramifications cannot be dismissed.

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Finally, if indeed Rambam held that *Mitzvot* learned through *drashot* have the same status as explicit Biblical commandments, why should the former not be included in the count of *Mitzvot*?

These problems notwithstanding, this approach was adopted by many later authorities, and in general became the context for any discussion of *Shoresh Sheini*. Even in the works whose authors chose alternative understandings of *Shoresh Sheini*, one can see the impact of Rashbatz, who allowed for a less literal understanding of *Sefer HaMitzvot*.

D'oraita and d'rabanan as Written versus Oral – Maggid Mishne

Another possible way of understanding *Shoresh Sheini* follows the approach of R' (Don) Vidal de Tolosa²⁶⁰, author of the earliest commentary to Mishna Torah – *Maggid Mishne*²⁶¹. Unlike Rashbatz, R' (Don) Vidal de Tolosa's remarks were written in the legal context of Mishna Torah and are not presented as a complete clarification of *Shoresh Sheini*. Over time, the words of *Maggid Mishne* themselves became a topic of discussion among later commentaries.²⁶²

In *Isbut* 1:2, the author of *Maggid Mishne* attempts to address the reason for Rambam labeling *kiddushei kesef* as Rabbinic, and in this context brings up the issue of *Shoresh Sheini*:

And that which our teacher wrote that monetary acquisition is *midivrei soferim*, this is a result of the

260 Catalonia, second half of 14th century.

261 There is some doubt as to the authorship of *Maggid Mishne*. See Y. Spiegel's *Maggid Mishne in Kiryat Sefer* 46 [Jerusalem: Hebrew University, 1970-71] p. 556.

262 Chronologically, *Maggid Mishne* was written before the works of Rashbatz. The latter was discussed first as his approach is a direct and far more straightforward commentary to *Shoresh Sheini*.

second principle, which he stated in *Sefer HaMitzvot* that we do not call that which is learned from exegesis or any of 13 principles *dvar torah*, rather *divrei soferim*, unless they clarified that it is Biblical... Know that even according to the words of our teacher that money is *midivrei soferim*, it is nevertheless a complete acquisition... that once she has become betrothed by any one of these three means, she is betrothed, and a man who has relations with her (except her husband) is given the death penalty... And the reason for all this is that even though he considers *kiddushei kesef* to be *midivrei soferim*, it is not a Rabbinical enactment, rather [it is] part of the Oral Law that was given to Moshe and was not written explicitly in the Torah, and for this [reason] it is called *divrei soferim*.

This novel concept promotes the idea that Rambam used the terms *d'rabanan* and *divrei soferim* in a manner different than the common usage. As a rule, we understand the distinction between *d'oraita* and *d'rabanan/divrei soferim* as being Biblical versus Rabbinic. The designation of a *Halakha* as one or the other carries with it all of the practical implications as mentioned above. According to *Maggid Mishne*, both in *Sefer HaMitzvot* and in *Mishna Torah*, Rambam uses these terms as a way of indicating what is directly learned from the text of the Torah and what is part of the oral tradition. The legal status of both will remain Biblical, as evidenced by the fact that Rambam will apply the death penalty in the case of a woman who was betrothed with *kiddushei kesef*.

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Difficulties with Maggid Mishne in Ishut

This rule is highly problematic, however. In *Ishut* 4:6, commenting on the status of a marriage performed in the presence of witnesses who are related to one's mother or wife, *Maggid Mishne* again mentions *Shoresh Sheini*:

Know that [with regard to] these invalid witnesses, there is a dispute among the authorities whether they are Biblical or Rabbinic. Some of the Geonim maintain that all those [invalidations] learned from *drasha*, such as relatives of the mother, are Rabbinic, and this is also what our teacher (Rambam) writes in *Eidus* 13:1. And this is also from the second principle in *Sefer HaMitzvot* as I have written in the first chapter (*Ishut* 1:2). They have already argued on this opinion and said that all things learned from *drasha* are Biblical, and this is the opinion of Ramban and Rashba.

Here in *Maggid Mishne*, the author clearly says that the principle of *Shoresh Sheini* does in fact cause *Halakhot* to be considered Rabbinic. The dispute he refers to demonstrates that we are dealing with a practical matter not just a Written versus Oral classification. Not only does *Maggid Mishne* contradict what he said earlier, he even refers to his remarks in 1:2, apparently ignoring that his conclusion there is the exact opposite of his current assertion. This inconsistency within *Maggid Mishne* often became a primary focus of the later commentaries attempting to understand the opinion of Rambam.

The first question that must be asked is whether the sum total of the approach found in *Maggid Mishne* is really very different from that of Rashbatz. Conceivably, we could read the statements in *Ishut* 1:2 as saying that *Shoresh Sheini* is only talking about the explicit, written *Mitzvot*, in which category *drashot* do not belong. In this case, *divrei*

soferim means “from the Oral Law,” both in *Sefer HaMitzvot* and in Mishna Torah, which would be a very similar approach to that of Rashbatz²⁶³. This in fact is the way the *Maggid Mishne* was understood by R' Yitzchak Leon, who following the section quoted above, adds: “and the same was written by the author of *Maggid Mishne*...”

However, this explanation was not given in *Isbut* 4:6, indicating that the author was somewhat reluctant to use this general approach. Apparently, with respect to *kiddushei kesef*, which the Talmud seems to have explicitly called Biblical, there is a need to reconcile Rambam with the popular position. On the other hand, in the case of the maternal relatives where there already was a dispute over their exact status, it was far easier for R' Vidal to accept the simple reading of Rambam and to point to *Sefer HaMitzvot* as the source.

In either case, it is problematic that in both places the ruling is attributed to *Sefer HaMitzvot*. If we are to resolve the issue by saying that the author of *Maggid Mishne* had a more nuanced view of the legal consequences and applicability of *Shoresb Sheini*, we will be left with an approach very different from that of Rashbatz, who maintains that everything is really Biblical.

Rashbatz and Maggid Mishne as shared approach – Later authorities

As noted, the question of how to understand Rambam went through various stages, apparently as a result of the changing attitudes toward Rambam in general. The same seems to be true with regard to the treatment of the *Maggid Mishne*; as the approaches to Rambam became more nuanced and complex, the tendency to view Rashbatz and *Maggid Mishne* as differing also became more prevalent.

263 Obviously not identical, but the difference is the detail of why *Sefer HaMitzvot* is not to be understood as saying that drashot are Rabbinic, not the essential point of whether this is stated in *Sefer HaMitzvot*.

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Obviously, these shifts did not occur overnight, and the original ideas began developing even while the accepted approaches were still mainstream. The following list of commentaries and authorities, among the first to address the contradiction in the *Maggid Mishne*, all understood the approach of R' Vidal to be like that of Rashbatz -- a broad and general understanding of Rambam.

One of the major commentaries who follows the approach presented in *Maggid Mishne* is R' Yosef Karo²⁶⁴. In several places throughout Mishna Torah²⁶⁵, R' Yosef Karo says that by using the term *d'rabanan* or *divrei soferim*, Rambam is telling us that the origin of the *Halakha* is in the oral tradition and not written in the Torah. In practical terms, however, they are of Biblical authority in every way. In one case²⁶⁶, he says this even though Rambam did indeed give a different ruling because of the “Rabbinic” nature of the *Halakha*.

R' Yosef Karo also quotes the opinion of Rashbatz that according to Rambam maternal relatives are Biblically invalidated as witnesses²⁶⁷. Following this, he rules that all first and second degree relatives are invalid for testimony, and makes no distinction between the relatives of one's father, mother, or spouse²⁶⁸. Thus, although he did not say so outright, R' Yosef Karo did not see any difference between the approaches of Rashbatz and R' Vidal – Rambam in *Shoresh Sheini* is classifying the *Mitzvot*, and the terminology of Mishna Torah follows that classification.

R' David Ibn Zimra²⁶⁹, in his commentary on Mishna Torah, understands the terms *midivreibem* and *divrei soferim* in the usual sense²⁷⁰

264 Tzfat, 1488-1575

265 Kessef Mishne - Ishut 1:2, 3:20, Aveil 2:1, 2:7, Tumat Meit 5:5

266 Tumat Meit 5:5

267 Beit Yosef, Even HaEzer 42

268 Shulchan Arukh, Choshen Mishpat 33:2

269 Egypt, Eretz Israel, 1479-1573

270 R' David Ibn Zimra only wrote his commentary, Ykar Tiferet, on the sections of Mishna Torah to which there is no *Maggid Mishne*. As such we do

– as being of Rabbinic origin and authority²⁷¹. Although this understanding is found in two places only, one would assume that we can extrapolate to all such places in Mishna Torah. However, Radbaz contradicts this reading elsewhere. He was asked²⁷² to explain how Rambam’s ruling that a Kohen is Rabbinically instructed to bury his wife can run contrary to the Talmud, where a *passuk* is given as the source that a Kohen should be involved in his wife’s burial. In his answer, Radbaz says that although Rambam uses the term *divrei soferim*, it is really of Biblical authority. The designation *divrei soferim* only means that it is learned from a *drasha*, and is not written explicitly in the Torah. He compares this to the case of *kiddushei kesef*, which Rambam also calls *divrei soferim*, even though, in his words “everybody agrees” *kiddushei kesef* is Biblical.²⁷³

For whatever reason, Radbaz changed his understanding of the terminology in Rambam. Because the latter position was said in the context of a specific question, it is hard to know whether Radbaz intended it as a general approach. However, he clearly was satisfied with the idea that a term usually understood as Rabbinic can be understood otherwise, at least in the legal context of Mishna Torah. In this respect, not to mention the practical application of *kiddushei kesef*, he is following the approach found in *Maggid Mishne*. We do not know whether he will also follow the approach of Rashbatz for *Sefer HaMitzvot*.

Radbaz’s novel opinion hints at a difference between *divrei soferim*, the term used in the *Halakha* of a kohen, and *midivreihem*, which is used to describe the mourning one must observe for one’s wife. As we will

not have his remarks on many of the places in Mishna Torah that these terms are used.

271 Aveil 2:1,2:7

272 *She’elot u’Teshuvot Radbaz* 1146(L’Ishonot HaRambam 172)

273 This is only said with regard to the Halakha of a Kohen; the laws of mourning for one’s wife are still Rabbinic.

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see, this idea became quite popular in the attempts to organize the terminology of Rambam.

R' Moshe Alashkar²⁷⁴, a contemporary of Radbaz, is among those who understood Rashbatz and *Maggid Mishne* as a common, general approach. A questioner suggested the possibility of applying to a Halakhic ruling Rambam's opinion that relatives through marriage can be valid witnesses Biblically and are only excluded Rabbinically, based on the rule of *Shoresh Sheini*²⁷⁵. In his response, R' Moshe Alashkar says that Rambam in *Sefer HaMitzvot* was only classifying the *Mitzvot* with regard to the count and never intended to make any distinctions in practice. This, he says, is the understanding of both Rashbatz and *Maggid Mishne*.

Another slightly later contemporary who shared a universal approach to understanding Rambam was R' Shmuel de Medina (Maharshdam)²⁷⁶. He also was asked a question²⁷⁷ regarding a marriage witnessed by relatives. In this case, one witness was the maternal cousin of a father accepting kiddushin for his daughter²⁷⁸. In his ruling, Maharshdam addresses the contradiction between the *Maggid Mishne* in *Isbut* 1:2 and 4:6, the resolution thereof being the key to the true position of Rambam. It is clear to him that the difficulties notwithstanding, one must understand Rambam as being consistent throughout Mishna Torah, either everything called Rabbinic is Rabbinic, or despite the label, they are in fact to be treated as Biblical. Since choosing the latter option would result in a greater consensus among the authorities, and neither possibility is devoid of problems,

274 Egypt, 1466-1542

275 *She'elot u'Teshuvot Maharshdam Alashkar* 68

276 Salonika, 16th century

277 *She'elot u'Teshuvot Maharshdam*, Even Haezer 33

278 A father has the right to betroth his daughter and receive the money given, until she is 11 years old, at which point she is "in her own property" and must acquiesce and receive the money herself.

he prefers that approach. Additionally, he quotes Rashbatz,²⁷⁹ whose opinions provide “strong support” for Maharshdam’s conclusion. Although Maharshdam does not discuss *Sefer HaMitzvot* directly, it is reasonable to conclude that he would use the same reasoning with regard to *Sefer HaMitzvot*. Again we see the ideas of *Maggid Mishne* and Rashbatz being treated as complimentary to one another but fundamentally the same.

A similar approach is found in the words of R' Betzalel Ashkenazi²⁸⁰. In his answer to the questioner regarding a marriage witnessed by a relative through marriage, he rules out the possibility that Rambam would deem such a witness valid Biblically. He quotes both Rashbatz and *Maggid Mishne* as explaining that the labels in Rambam are only formal descriptions, but in practice everything is Biblical.²⁸¹

There are, however, several new ideas that are introduced by R' Betzalel Ashkenazi. One is the attempt made to resolve the contradiction in *Maggid Mishne* by saying that not all of the 13 exegetical principles and *drashot* have the same status in *Halakha*. According to this suggestion, anything learned through a *gzeira shava* will be considered to have Biblical status, but anything derived through the other twelve principles will indeed be Rabbinic. The basis for such a distinction is the rule found in the Talmud that “one is not permitted to learn a *gzeira shava* on his own,” meaning that the *gzeira shava* must be received as a tradition from one's teacher. This rule seems to demand a higher level of accuracy for the method of *gzeira shava*, and consequently it has a higher status than the other methods. R' Betzalel refers to this possibility, but he rejects it saying

279 In Tashbaz□ 1:151 quoted in Beit Yosef, Even Haezer 42, not what he says in Zohar Harakia with regard to Sefer HaMizvot.

280 Egypt, Eretz Yisrael, 1520-1592

281 It may be possible to clarify the position of Radbaz based on this, although certainly not conclusively. The fact that his student, R' Betzalel Ashkenazi, chose this universal approach to understanding Rambam could be an indication that Radbaz endorsed such an understanding, although he never really spelled it out.

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that “we are not to create a new principle [which was not given by Rambam].”

The other interesting idea mentioned by R' Betzalel Ashkenazi is his own answer to the problem of the *Maggid Mishne* in *Isbut* 4:6. His reading of the *Maggid Mishne* is as follows: There exists a dispute among the authorities as to the whether these witnesses are excluded Biblically or Rabbinically, but Rambam’s ruling is unrelated to that dispute. Rather, Rambam refers to this as Rabbinic because of what he said in *Shoresh Sheini*, which is only relevant vis-a-vis the formalities of the count of *Mitzvot*. Really, this *Halakha* also is Biblical.

Thus, not only does R' Betzalel Ashkenazi understand Rashbatz and *Maggid Mishne* as saying the same thing, he also presents an original solution to the contradiction in the *Maggid Mishne*, removing the main obstacle to understanding *Maggid Mishne* as a general approach.

In summary, these authors, either explicitly or implicitly, combined the approaches of Rashbatz and *Maggid Mishne* and accepted that in *Sefer HaMitzvot*, Rambam is only dealing with the count of *Mitzvot*, but in Mishna Torah is identifying the *Halakhot* as being part of either the Written or the Oral law. In both books, we are not to understand the terminology as describing a legal status. This approach allows for both consistency in the words of Rambam as well as preserving the consensus among the early authorities, in the fundamental principle of *Shoresh Sheini* and in the resulting practical details of *Halakha*.

There is one interesting exception to the accepted approach in this period²⁸² that Rambam is not to be understood literally. R' Moshe Isserles²⁸³ rules that the relatives of one's mother²⁸⁴ are in fact only

282 From the later Rishonim in the 14th century through the completion of the Shulhan Arukh.

283 Cracow, 1520-1572, commonly known as “Rema”

284 Strangely, Rema does not include the relatives of one's spouse, although according to Rambam they would share the same status.

invalid Rabbinically, based on the opinion of Rambam²⁸⁵. Not only does R' Moshe Isserles accept the idea that Rambam may be understood literally, he actually follows this ruling in practice. Although R' Moshe Isserles admittedly does not present us with a discussion of the topic and his ruling could be explained in a number of ways²⁸⁶, he clearly did not follow the majority of his contemporaries, who were unwilling to allow for this reading of Rambam anywhere.

“Minimalist” understandings – subcategories in Rambam’s terminology

Toward the end of this period, the methodology used to explain Rambam shifted. We already saw the suggestions, made by Radbaz and the contemporary of R' Betzalel Ashkenazi, that there may be different categories within that which Rambam called Rabbinic. Although in the case of Radbaz this sort of solution was merely hinted at, and R' Betzalel Ashkenazi rejected it, similar ideas gained momentum from the beginning of the sixteenth century. Along with this creativity in understanding the words of Rambam came a tendency to view Rashbatz and *Maggid Mishne* as different approaches.

R' Tam Ibn Yahya²⁸⁷ was the first to question the approach of Rashbatz directly. Bringing up some of the difficulties mentioned earlier, he rejects this approach as a viable reading of Rambam, certainly with regard to Mishna Torah²⁸⁸. On the other hand, he refuses to adopt a strictly literal reading of Rambam, which would result in many *Halakhot* being Rabbinic, contrary to the accepted position. His conclusion is that there is a difference between the

285 Shulchan Arukh, Choshen Mishpat 33:2

286 Meaning that theoretically one could claim that Rema adopted one of the minimalistic approaches that will be discussed shortly.

287 Constantinople, early 16th century

288 *She'elot u'Teshuvot Ohalei Tam* 83

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usage of *midivreibem*, which is to be understood strictly as Rabbinic with all due implications, and *divrei soferim*, which can also be used to refer to *Halakhot* that are Biblical. This then leaves *kiddushei kesef* as being Biblical according to Rambam and minimizes the number of cases where there will be controversy. R' Tam Ibn Yahya claims that this is in fact the understanding of R' Vidal de Tolosa and accounts for the apparent inconsistency in *Maggid Mishne*.

This marks the beginning of the development of the minimalist approach to the interpretation of *Shoresh Sheini* and its ramifications. Although the details differ from author to author, the methodology seems to be the same; it seeks to resolve the difficulties in Rambam's classifications without resorting to the complete reinterpretation of Rashbatz. This is accomplished by creating different categories, some of which can fall under the clause of *Shoresh Sheini*, while others will not. For the most part, this new approach is presented as being the true opinion of *Maggid Mishne*. Such a claim necessitates the separation of Rashbatz and *Maggid Mishne*, but it allows the new approaches to maintain credibility as being based on the words of *Maggid Mishne*. The cryptic and apparently contradictory words of *Maggid Mishne* certainly left room for interpretations that may or may not have been the author's intent.

The main objection to the suggestion put forth by R' Tam Ibn Yahya is that Rambam used both terms, *midivreibem* and *divrei soferim*, for the same *Halakha*, apparently interchangeably. In *Aveil* 2:1, regarding the relatives for whom one is obligated to observe the laws of mourning, Rambam used the term *midivreibem*. Later, in *Aveil* 2:7, regarding the wife of a Kohen, the term *divrei soferim* is used. As stated, the relationship between the two *Halakhot* is clear, and both should have the same status, — whatever that may be.

An interesting result of R' Tam ibn Yahya's rejection of Rashbatz is the opinion of R' Yakov Poppers²⁸⁹. He accepts R' Tam ibn Yahya's

289 Frankfurt 1670-1740

conclusion that the understanding of Rashbatz is not viable, but he also prefers not to go the route of subcategories. Consequently, R' Yakov Poppers understands that if we accept that Rambam indeed meant that a *Halakha* learned from a drasha is Rabbinic, this applies to all *Halakhot* answering to that description, including *kiddushei kesef*²⁹⁰. He says this in an almost offhand manner as an obvious fact, not as the result of an investigation into the position of Rambam. This opinion, as unique as it is in the historical context, was wholly rejected later by R' Akiva Eiger²⁹¹ and did not make any inroads in the ongoing discussion of *Shoresh Sheini*.

Another commentary who directly addressed the problem in *Maggid Mishne* was R' Avraham de Boton²⁹², the author of *Lechem Mishne* on Mishna Torah. In *Ishut* 1:2, he, like *Maggid Mishne*, attributes Rambam calling *kiddushei kesef* Rabbinic to the principle of *Shoresh Sheini*. He then states some of the objections to this label, primarily because the Talmud sees to call *kiddushei kesef* Biblical.

Objections notwithstanding, R' Avraham de Boton's focus seems to be mostly on the label, not the fundamental question. This is further evidenced by his comments in *Ishut* 4:6, where he addresses the contradiction in *Maggid Mishne*. At first²⁹³, he suggests there is a difference between the 13 exegetical principles and the method of *ribui*; that which is learned from the former is considered Biblical, from the latter Rabbinic. *Kiddushei kesef* is learned from a *gzeira shava* – one of the 13 principles – and therefore is Biblical. The maternal relatives are learned in the Talmud from a *ribui*, resulting in the Rabbinic nature of the *Halakha*. In the second section, he addresses

290 *She'elot u'Teshuvot Shav Yakov* V. II:21

291 Prussia, Poland, 1761-1837, *Sh'elot u'Teshuvot R' Akiva Eiger* 94

292 Salonika, 1545/9-1588/1605. A student of and successor to Maharshdam.

293 *Lechem Mishne* was compiled and published posthumously from the manuscripts of the author. As a result the work is somewhat lacking organization. In this case, we have two “editions” of the commentary to *Ishut* 4:6 printed one after the other.

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the problem more directly. If it is legitimate to say that Rambam considers *kiddushei kesef* Biblical despite the implication to the contrary, R' Avraham de Botton claims, the same should be said regarding the relatives being invalid. We saw what he is saying suggested earlier. The difference between the two cases lies in the fact that the former is learned by way of *gzeira shava*, which has a higher status than any of the hermeneutic devices available to us. As earlier noted, such a claim can be justified because one may not employ this method on his own, a criterion which does not exist for the other 12 (of the 13) principles.

While R' Avraham de Botton was willing to consider certain *Halakhot* Rabbinic based on *Shoresh Sheini*, he did not consider the possibility of *kiddushei kesef* belonging to that group. His objective is only to clarify the words of R' Vidal in *Maggid Mishne* and account for the fact that in *Ishut* 4:6 R' Vidal accepted the literal meaning of *Shoresh Sheini*.

R' Yehuda Rosanes took a very similar position²⁹⁴ in his commentary *Mishne L'melekh*²⁹⁵. In his comments to *Ishut* 4:6, he asks what significance the label of *divrei soferim* will have if we accept the understanding of *Maggid Mishne* in *Ishut* 1:2 that indeed Rambam considers everything Biblical. He asks this as a local question on the words *Maggid Mishne* here, but he clearly takes the basic premise, that the terms *d'rabanan* and *divrei soferim* are not to be taken as legal terms, for granted.

Thus, the approach of *Maggid Mishne* developed into something distinctly different than that of Rashbatz. Two of the classical commentators to Mishna Torah, R' Avraham de Botton and R' Yehuda Rosanes, took this approach for granted and it became the norm for those approaching the issue. The task of the later authors on the topic was primarily to refine the parameters and to resolve all

294 Constantinople, d. 1727

295 Published posthumously by his student R' Yaakov Culi.

the issues within the minimalist understanding of *Maggid Mishne*, and, by extension, of Rambam.

As we have seen, the focus of discussion among the commentaries shifted eventually to addressing the *Maggid Mishne*. Any new ideas were presented as a new way of understanding the words of *Maggid Mishne*, and Rashbatz was, for the most part, ignored, if not rejected.

An exception to this is the opinion of R' Shabtai Cohen²⁹⁶. We previously noted the ruling of R' Moshe Isserles, who, following his understanding of Rambam, ruled that relatives through one's mother are only considered invalid witnesses rabbinically. R' Shabtai Cohen strongly rejected this ruling²⁹⁷, and at great length disputed this understanding of Rambam. In his opinion, the correct understanding of Rambam is that of Rashbatz, and he dismisses *Maggid Mishne* as inconsistent and difficult. Unlike the others who distinguished between *Maggid Mishne* and Rashbatz and adopted the approach of *Maggid Mishne*, R' Shabtai Cohen indeed noted the difference but actually rejected the former.²⁹⁸

Other authors

The last group of authors to be discussed are grouped together not because of a mutual conclusion, but because of a similar method in dealing with the topic. We do not see them taking any particular position for granted. Rather, their discussion took into account and incorporated all the relevant material, both in the works of Rambam, and all those who preceded them in addressing the subject. Their

296 Vilna, 1621-1662

297 Shakh, Choshen Mishpat 33:1

298 The arguments found in the Shach cannot be considered a proper treatment of the question of Shoreshe Sheini. At the end of his remarks regarding the opinion of Rambam, he says that “be that as it may” Rema is wrong anyway because “everybody” argued with Rambam. His focus seems to have been on disputing Rema, not interpretation of Rambam.

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work attempted to resolve the open questions and account for all the details.

R' Avraham Aligari²⁹⁹, a primary commentary on *Sefer HaMitzvot* belongs to this group. In his discussion, he quotes and analyzes all of the possible explanations and approaches³⁰⁰. First, he answers some of the conceptual problems raised by Ramban and in doing so refines much of what Rambam says in the matter of tradition and hermeneutic tools. In discussing the approach of Rashbatz, R' Avraham Aligari raises all of the objections discussed, as well as an exhaustive list of places that the terminology will lead to practical results. It is clear that R' Avraham expects complete uniformity of language between the works of Rambam and will not accept an approach that compromises that uniformity. R' Tam Ibn Yahya's answer is rejected based on the difficulty already mentioned, and R' Avraham quotes several such examples where the terms are used interchangeably. He does, however, approve of R' Tam Ibn Yahya's treatment of Rashbatz.

In a further attempt to clarify the meaning of Rambam, R' Avraham discusses the connection between *Shoresh Sheini* and Rambam's introduction to *Peirush HaMishnayot*. In his introduction to *Peirush HaMishnayot*, we also find Rambam classifying the *Mitzvot* based on their respective origins. However, according to R' Avraham Aligari, the categories in that context do not correspond exactly to the categories in *Sefer HaMitzvot*. By defining precisely which category in *Peirush HaMishnayot* is affected by the statement of *Shoresh Sheini* and delineating different types of *drashot*, R' Avraham refines the exact point of contention and proceeds to his own view.

R' Avraham Aligari comes to the conclusion that *Shoresh Sheini* is indeed saying that *Halakhot* or *Mitzvot* learned from *drashot* are to be considered Rabbinic, *in all respects*. However, numerous criteria exist

299 Constantinople, d. 1652

300 *Lev Sameach*, Sefer HaMitzvot, Shoresh Sheini

for the inclusion of a *Halakha* or *Mitzvah* in *Shoresb Sheini*, and therefore the practical implications of *Shoresb Sheini* are far more limited than was thought. Thus, anything that is a part of another *Mitzvah* that is Biblical is also considered Biblical and does not fall under the clause of *Shoresb Sheini*. The most prominent example is “*shiurim*” (quantities), which includes the measures used throughout *Halakha* to define quantities within the context of consumption-related *Halakhot*, the *Halakhot* of ritual impurity, and others³⁰¹. Although *shiurim* is not explicit in the *pasuk*, it is nevertheless treated as Biblical since it is a detail of many other (Biblical) *Halakhot*.

The approach taken by R' Avraham Aligari is unique, and his willingness to understand Rambam literally, on the conceptual level, stands in contradistinction to his contemporaries. It is hard to say why his attitude was not more popular, and the resolution of *Maggid Mishne*, through the creation of subcategories, generally remained the key to understanding Rambam. Be that as it may, independent of his conclusion, the work of R' Avraham Aligari remains an important contribution to the study of *Shoresb Sheini*.³⁰²

R' Eliyahu Alfandari³⁰³ took a similar route, though his starting point was not *Shoresb Sheini* per se. He set out to clarify the terminology employed by Rambam in the aforementioned *Halakhot* of Aveil 2:1 and Aveil 2:7³⁰⁴. In doing so, he considered all of the literature on the topic that was available to him and outlined the various approaches and difficulties, respectively. He criticizes the attempt to interpret *Maggid Mishne* as saying the same thing as Rashbatz. He goes to great lengths to argue with and disprove R' Betzalel Ashkenazi, who

301 The concept of *Shiurim* relates to many *Halakhot*, those mentioned here are just examples.

302 The discussion in *Lev Sameach* is very lengthy and detailed, both in dealing with the other commentaries as well as the original aspect of the presentation. Full justice has not been done here, but the salient points have been presented.

303 Constantinople, 1670-1717

304 *Seder Eliyahu Rabba V'zuta* p. 68

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strongly advocated this understanding. Apparently, R' Eliyahu did not consider the approach of Rashbatz to be a viable explanation of Rambam. His understanding seems to follow that of R' Avraham de Boton³⁰⁵, that *Halakhot* derived from a *gzeira shava* or *Halakha l'moshe misinai* are in fact Biblical, as opposed to the other hermeneutic devices that will generate Rabbinic *Halakhot*. He also appears to accept the possibility of differentiating between the terms *midivreiheim* and *divrei soferim* in the manner already suggested³⁰⁶.

In a similar attempt to that of R' Avraham Aligari, R' Eliyahu Alfandari explores the connection between *Shoresh Sheini* and *Peirush HaMishnayot*. In this context, he examines the origin and nature of the *drashot* in general and how the concept of a *drasha* is compatible with the idea that everything was taught to Moshe at Sinai. R' Eliyahu's conception of *drashot* leads him to conclude that although all *drashot* conceptually belong in *Shoresh Sheini*, when it comes to *Halakha*, we can make the distinction between different methods. Therefore, *gzeira shava* and *Halakha l'moshe misinai* are considered more reliable and in *Halakha* will have the status of Biblical laws.

R' Eliyahu Alfandari went to great lengths to clarify the various directions that the discussion of *Shoresh Sheini* took. His own answer tries to account for all the factors but seems to fall short of doing that. It does not preserve a consistency between the different works of Rambam and renders the terminology virtually meaningless. This latter point would not be so significant (and indeed he was not the first to cause this result), if not for the fact that his original intent was to clarify the terminology.

R' Aryeh Leib Horowitz³⁰⁷, another commentator on *Sefer HaMitzvot*, also presents a lengthy discourse on *Shoresh Sheini*³⁰⁸. His basic

305 In the “second version” in Lechem Mishne, Ishut 4:6

306 As mentioned, this only means that *divrei soferim* can also be referring to Biblical laws, whereas *midivreiheim* will be used exclusively as Rabbinic.

307 Lithuania, late 17th century

premise is that *Shoresb Sheini* deals only with the count of the *Mitzvot*, and Rashbatz and *Maggid Mishne* shared this understanding. He also strongly disagrees with any attempt to differentiate between types of *drashot*. The main task of R' Aryeh Leib Horowitz is to determine what criteria caused Rambam to include in the count even *Mitzvot* that appear from the Talmud to have been learned from *drashot*. To this end, he extensively and methodically demonstrates why the inclusion of these *Mitzvot* is legitimate. In accomplishing this, he resolves an aspect of Ramban's attack that had not been properly addressed: the fact that Rambam did list many *Mitzvot* that are learned from *drashot*.

R' Chanania Kazis³⁰⁹, also in a direct commentary on *Sefer HaMitzvot*³¹⁰, makes a similar attempt, although somewhat more detailed. He also took the approach of Rashbatz as the proper understanding of *Shoresb Sheini*, to the point where he is surprised that Ramban could maintain otherwise.

In addition, R' Chanania Kazis takes for granted the distinction between the usage of *d'rabanam* or *midivreibem* and *divrei soferim*, as the answer to the inconsistencies in Mishna Torah. He takes this so far as to say that where there are implications in *Sefer HaMitzvot* to the contrary, this is the result of translation mistakes, the translator not being aware of the nuanced difference. We now know that this claim is unfounded. In the original Arabic manuscripts of *Sefer HaMitzvot*, those words were written in Hebrew and were copied accurately in the translations.

Like R' Aryeh Leib Horowitz, R' Chanania Kazis primarily focuses on determining what factors caused Rambam to include many *Mitzvot* in *Sefer HaMitzvot*, despite the rule of *Shoresb Sheini*. This he also does at length and with great clarity.

308 Marganita Tava, Sefer HaMitzvot

309 Italy, d. 1704

310 *Kin'at Soferim*, Sefer HaMitzvot

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Despite the last two authors' appreciation for the nuances involved in the discussion, both chose the straightforward approach of Rashbatz. Thus, both go back to the understanding that all *Halakhot*³¹¹ that meet the criteria for inclusion in *Shoresh Sheini* in fact have Biblical status, and *Shoresh Sheini* is only excluding them from the formal count of *Mitzvot*.³¹²

Summary

To summarize, interpretation of the *Shoresh Sheini* in *Sefer HaMitzvot* underwent several stages in a process lasting several centuries. Like any such phenomena, the approaches that can be traced to certain periods are not precise changes that occurred from one day to the next, and there certainly are exceptions within these trends.

During the generation of Rambam and immediately thereafter, the words of Rambam in *Shoresh Sheini* were understood literally. Rambam's contemporaries understood him to be saying that all *Halakhot* learned from hermeneutic tools are given Rabbinic status. Such a position had radical ramifications in practical *Halakha* and posed a possible theological challenge to the authenticity of *Halakha*. Consequently, this opinion was argued with and rejected by Ramban, followed by such noted authorities as R' Shlomo ben Aderet and R' Yitzchak bar Sheshet.

As the works of Rambam gained popularity, Mishna Torah became a main corpus of *Halakha*, the most widely accepted since the

311 An exception is the Halakha of the maternal relatives in Eidut 13:1 and Ishut 4:6, where R' Chanania actually does rule that they are Rabbinic.

312 Both of these works are extremely long, and a proper study of each raises many interesting points. What is mentioned here is an outline of their general approach and basic conclusions.

Talmud³¹³. There was now a need to resolve any perceived conflict between Rambam and the Talmud, and, as much as possible, to reduce conflict between the opinions of the earlier authorities³¹⁴. To this end, we see *Shoresb Sheini* addressed in two different contexts. The first is a direct interpretation of *Shoresb Sheini* - the words of R' Shimon ben Tzemach Duran saying that this rule only affects the count of the *Mitzvot*. Since the entire question is a formality, the seriousness of the argument is reduced, if not completely avoided. The second context is the commentaries to Mishna Torah, where Rambam appeared to have followed the principle of *Shoresb Sheini*. The first of these is R' Vidal de Tolosa in *Maggid Mishne*, whose words themselves became a question among later commentators. According to some, R' Vidal de Tolosa subscribed to the approach of R' Shimon ben Zemach, but others say his interpretation was distinctly different.

Consequently, some suggested that there are differences between words that hitherto had been understood to be synonymous; *d'rabanan*, *midivreibem*, and *divrei soferim*. Likewise, the words of R' Vidal de Tolosa left room for the suggestion that Rambam made distinctions within the 13 exegetical principles, a category that was otherwise treated as one body.

At this point, we see a willingness developing on the part of some authors to understand Rambam more literally, that at least some *Halakhot* he indeed considered legally Rabbinic. This change can be understood, possibly, in light of the universal acceptance of the *Shulchan Arukh* as the authoritative code of *Halakha*. Once Rambam was no longer the primary source for legal rulings, a more controversial reading of Mishna Torah did not automatically mean a

313 For a list of communities that accepted Mishna Torah as authoritative see H. Davidson, *Moses Maimonides* [New York: Oxford University Press, 2005] p. 280-281.

314 At least with regard to practical rulings. Obviously there are numerous disputes in Halakha, this rule however potentially creates an entire body of Halakha which will be affected by the argument. See above regarding a “safeik”.

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controversial ruling. Furthermore, although Rambam's contemporaries were disturbed by the theological implications of *Shoresh Sheini*, the later authors were not fighting that particular battle. Returning, at least partially, to a literal understanding of Rambam was therefore not as threatening.

While the earlier authors on the topic adopted, for the most part, relatively simple explanations of Rambam, the approaches became more and more complex as time went on. An attempt was made to discover the true intent of Rambam while taking into account the words of the earlier commentaries. Thus developed the more detailed and nuanced approaches that sought to resolve all the various difficulties.

Conclusion

As has been presented, none of the suggested approaches are perfect. Each one raises a different question in its attempt to answer the others. It is not our place to claim that any one is more correct than another. It appears, however, that one must take into account the complexity of Rambam's writings. Throughout his works, we see legal, theological and philosophical principles intertwined, resulting in a fascinating *weltanschauung*. To properly understand the intent of Rambam in *Shoresh Sheini*, it is necessary to consider it in light of these factors. The nuanced studies found in the later commentaries on *Sefer HaMitzvot* began to incorporate a broader outlook. It is quite likely, however, that a full analysis of Rambam's approach toward tradition and the role of man in the interpretation of the Torah will yield a more satisfying and holistic understanding.

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 derisively dismisses this doctrine as both foolish and pernicious.

315 *Mishneh Torah, Hilkehot Teshuvah* 3: 8

316 *Ibid.*

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

317 Introduction to *sefer Hamizvot*, shoresh 2.

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 Siniatic 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 Talmud that cannot be directly and readily read back into the written Torah was a feather in the hat of the karaite movement. To this end, the claim that the entire corpus of halakha was indeed revealed to

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.

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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 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

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.

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 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

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

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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 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

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.

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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 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

324 p. 512

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, 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.

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

326 pp. 543-544

327 p. 549

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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 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 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

328 p. 575

329 Lev. 1, 9

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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 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

330 *The Guide* iii, 32 p. 527

331 In his *Sefer Haʿazikaron*, 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 Ramban was actually correlating these commandments with Israel in particular he would not

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.

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.

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

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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 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 is 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.

334 pp. 502-3

335 p. 504

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

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

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

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

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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 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

339 *The Guide iii*, chapter 26

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

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 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 nazarite 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.

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

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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 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

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 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.

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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 shemitah 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

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

348 25: 1

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

Any future halakhic movement cannot exceed the parameters of those mizvot that assume the status of de-oraitah.³⁵¹ The rabbinical

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

350 *Ibid. Hilkehot Teshuva*, 3: 8

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

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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 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.

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, Hilכות Mamerim*, 2: 4-9.

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 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.

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

354 See *Kesef Mishna*, *ibid*.

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

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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 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

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

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

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

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 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:

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.

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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 halkha 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.

