

SYSTEMATIZING GOD'S LAW: RABBANITE JURISPRUDENCE IN THE
ISLAMIC WORLD FROM THE TENTH TO THE THIRTEENTH CENTURIES

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For Debbie

And in loving memory of my grandparents

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Abstract

SYSTEMATIZING GOD’S LAW: RABBANITE JURISPRUDENCE IN THE
ISLAMIC WORLD FROM THE TENTH TO THE THIRTEENTH CENTURIES

Marc Daniel Herman

Talya Fishman

This study examines the jurisprudential writings of medieval Rabbanites, Jews in the Islamic world who saw themselves as heirs to the talmudic tradition. Rabbanite Jews were the first to author systematic accounts of talmudic law, which they attempted to transform from an amorphous, dialectical, and discursive corpus into a structured, elegant, and logical system. In so doing, they sought to impose a coherent structure on their legal traditions that would be compatible with larger theological, philosophical, and epistemological ideas. By subjecting Rabbanite legal theory to diachronic and synchronic analysis, this dissertation demonstrates that Rabbanites were involved in a multilayered conversation that engaged their talmudic past, Rabbanite and non-Rabbanite coreligionists, and elements of the Islamic intellectual tradition that were most helpful for the explanation and reconsideration of their own tradition. While Rabbanite legal theory drew heavily on talmudic ideas, it was, at its core, profoundly contemporary, spurred by both Qaraite and Islamic legal theory, among many other factors. This study concentrates on Rabbanite thinking about two, frequently intertwined, topics: the nature and scope of extra-scriptural traditions, known as Oral Torah, and the methodology to be used in enumerating the 613 commandments, which, talmudic legend claims, were given to Moses at Sinai. Acknowledging earlier scholarship on these topics, this study presents a

more holistic picture of Rabbanite legal theory. Particular attention is paid to the Judeo-Arabic writings of Moses Maimonides (1138-1204), the Rabbanite author who appears to have been most explicitly concerned with problems of legal theory. Other central figures include Sa'adya ben Joseph Gaon (882-942), Daniel ben Sa'adya ha-Bavli (fl. early thirteenth c.), and Abraham ben Moses Maimonides (1186-1237).

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Note on Transliteration and Translation

Transliterations from Hebrew follow the “General” system of the second edition of the *Encyclopedia Judaica*, with the exceptions of ’ for א, which is only marked in intervocalic position, ʔ for ו, ‘ for ץ, ʃ for צ, and q for ק. Exceptions have been made for journal titles such as *Tarbiẕ* and *Zion*, and similar transliterations that are adopted by the publishers themselves, as well as for names such as Shmuel and words that are commonly left untranslated in English, such as gaon or yisrael. Transliterations from Arabic follow the transliteration chart of the *International Journal of Middle East Studies*. Despite the inconsistency, the *tā’ marbūṭa* in Arabic transliterations is omitted, except in the construct state, but the final *heh* in Hebrew transliterations is recorded.

I have only drawn attention to non-standard spellings that appear in Judeo-Arabic texts in the body of this dissertation, but have not corrected them or otherwise noted them when they appear in footnotes.

Translations of the Bible are based on the 1999 *New Jewish Publication Society Tanakh*, but have been altered to accord with the understanding of the talmudic rabbis or medieval Jews when necessary. Unless otherwise noted, all other translations are my own.

Abbreviations

Bibliographical Abbreviations

<i>AJS Review</i>	<i>Association for Jewish Studies Review</i>
<i>BDD</i>	<i>Be-Khol Derakhekha Da'ehu</i>
<i>BJMES</i>	<i>British Journal of Middle Eastern Studies</i>
<i>BSOAS</i>	<i>Bulletin of the School of Oriental and African Studies</i>
<i>HUCA</i>	<i>Hebrew Union College Annual</i>
<i>IJMES</i>	<i>International Journal of Middle Eastern Studies</i>
<i>JAOS</i>	<i>Journal of the American Oriental Society</i>
<i>JJS</i>	<i>Journal of Jewish Studies</i>
<i>JPS</i>	<i>Jewish Publication Society</i>
<i>JQR</i>	<i>Jewish Quarterly Review</i>
<i>JSAI</i>	<i>Jerusalem Studies in Arabic and Islam</i>
<i>JSIJ</i>	<i>Jewish Studies, an Internet Journal</i>
<i>JSQ</i>	<i>Jewish Studies Quarterly</i>
<i>JSS</i>	<i>Journal of Semitic Studies</i>
<i>JZWL</i>	<i>Jüdische Zeitschrift für Wissenschaft und Leben</i>
<i>MGWJ</i>	<i>Monatsschrift für Geschichte und Wissenschaft des Judentums</i>
<i>NJPS</i>	<i>New Jewish Publication Society Tanakh (1999)</i>
<i>PAAJR</i>	<i>Proceedings of the American Academy for Jewish Research</i>
<i>REJ</i>	<i>Revue des Études Juives</i>
<i>SRHJ²</i>	<i>Salo W. Baron, A Social and Religious History of the Jews, 2nd edition</i>
<i>ZfHB</i>	<i>Zeitschrift für hebraeische Bibliographie</i>

Enumerations of the Commandments

Neg.	Negative Commandment
Pos.	Positive Commandment
Prin.	Principle

References to biblical and rabbinic literature follow the style guide of the *Jewish Quarterly Review*.

Till objects are distinguished, they cannot be arranged. It is thus that *truth* and *order* go on hand in hand. It is only in proportion as the former is discovered, that the latter can be improved. Before a certain order is established, truth can be but imperfectly announced: but until a certain proportion of truth has been developed and brought to light, that order cannot be established. The discovery of truth leads to the establishment of order: and the establishment of order fixes and propagates the discovery of truth.

Jeremy Bentham, *Introduction to the Principles of Morals and Legislation*

Introduction

Rabbanite Jews in the Islamic world were the first to author systematic accounts of talmudic law. These heirs to talmudic tradition are labeled Rabbanites in order to distinguish them from their late antique rabbinic predecessors and from their Qaraite coreligionists, who denied the exclusive authority of the talmudic rabbis to determine Jewish law. Rabbanites attempted to transform talmudic law from an amorphous, dialectical, and discursive corpus into a structured, elegant, and logical system. While late antique rabbis, particularly the Babylonian Amoraim, engaged in abstract legal thinking and in the construction of legal categories,¹ medieval Rabbanites proposed holistic and methodological accounts of revelation and of rabbinic law; in so doing, they sought to impose a coherent structure on their legal traditions that would be compatible with the larger theological, philosophical, and epistemological ideas then in circulation. This dissertation, which seeks to recover and analyze Rabbanite thinking, considers the attempt of these scholars to provide rational explanations for the disparate and often conflicting legal data found in earlier texts to have been a “legal theory” project.² This study concentrates on Rabbanite thinking about two, frequently intertwined, topics: the nature and scope of extra-scriptural traditions, known as Oral Torah,³ and the

¹ On talmudic-era “conceptualization,” see Benjamin de Vries, *Toldot ha-Halakhah ha-Talmudit: Peraqim Nivharim* (Tel Aviv: A. Šiyoni, 1962), 142-56; Ephraim E. Urbach, *Ha-Halakhah: Meqorotehah ve-Hitpathutehah* (Givatayim: Yad la-Talmud, 1984), 123-38; Jeffrey Rubenstein, “On Some Abstract Concepts in Rabbinic Literature,” *JSQ* 4, no. 1 (1997): 33-73; and Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: Mohr Siebeck, 2002); for review of earlier scholarship, see there, 11-15; for a definition of “conceptualization,” see there, 5-6; compare Rubenstein’s definition of “abstraction” (33). For suggested continuities between later conceptualization and Tannaitic pedagogic practices, see Elizabeth Shanks Alexander, *Transmitting Mishnah: The Shaping Influence of Oral Tradition* (Cambridge: Cambridge University Press, 2006), 174-219.

² I do not intend to preclude the possibility that legal theory shaped legal practice.

³ Of course, these writings debate the definition of “Oral Torah.”

methodology to be used in enumerating the 613 commandments, which, talmudic legend claims, were given to Moses at Sinai. From the perspective of rabbinic and early post-talmudic literature, there was no reason to expect that the number 613 would become central to the Jewish imagination, let alone to Rabbanite legal theory. Yet, Jewish jurists in both Islamic and Christian lands made this idea the basis of liturgical, philosophical, kabbalistic, and legal works. Acknowledging earlier scholarship on these theoretical topics, this study presents a more holistic picture of Rabbanite legal theory and points to some of the ways in which Rabbanite jurisprudence was in conversation with, and borrowed from, contemporaneous Islamic legal theory.

Written primarily in Baghdad, the Maghreb, Andalusia, and Fustāt, Rabbanite jurisprudential thought was facilitated by the rise of single-authored works in the Islamicate cultural sphere⁴ and spurred, in both polemical and non-polemical respects, by contemporaneous Islamic and Qaraite legal theory.⁵

Rabbanites of the Islamic world appear to have been the first medieval talmudists to engage these theoretical topics. As legal theory was held in high esteem in their society, like contemporaneous Qaraites and Muslims, Rabbanites were inclined to reflect on legal theory and to develop it through sustained discourse.⁶ One topic that was crucial

⁴ See below, n119.

⁵ On the development of Islamic legal theory, see Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 30-35; and below, n173. For an overview Qaraite and Rabbanite legal theory in the tenth and eleventh centuries, see Gregor Schwarb, “Uṣūl al-fiqh im jüdischen ‘Kalām’ des 10. und 11. Jahrhunderts: Ein Überblick,” in *Orient als Grenzgebiet? Rabbinisches und außerrabbinisches Judentum*, eds. Annelies Kuyt and Gerold Necker (Wiesbaden: O. Harrassowitz, 2007), 77-104.

⁶ Qaraites appear to have been somewhat more engaged in legal theory than Rabbanites; see Gregor Schwarb, “Capturing the Meaning of God’s Speech: The Relevance of *uṣūl al-fiqh* to an Understanding of *uṣūl al-tafsīr* in Jewish and Muslim *kalām*,” in *A Word Fitly Spoken: Studies in*

to Rabbanite self-understanding, and of vital import in their debates with Qaraites and Muslims, was the source of extra-scriptural traditions and the relationship of these traditions to Scripture. Other themes developed in Rabbanite legal theory may not have been triggered by polemical concerns; Moses Maimonides (Cordoba, Fustāt; 1138-1204),⁷ in particular, however, was concerned to depict Jewish law as a well-structured legal system. His *Sefer ha-Miṣvot* (*Book of the Commandments*) constitutes the most important and influential work on the enumeration of the commandments. In the Fourteen Principles of that work's Introduction, the author presented a systematic series of axioms for determining the commandments to be included in the enumeration. It would not be a stretch to suggest that Rabbanites were stimulated to systematize and rationalize their own law because of the cultural currency of legal theory in their environment. Moreover, contemporaneous legal theory offered Rabbanites linguistic and intellectual tools that classical rabbinic literature did not provide.

Historiography

Study of medieval Jewish legal theory, both Rabbanite and Qaraite, remains in its relative infancy,⁸ despite the fact that legal theory, as David Sklare argued, “is clearly

Mediaeval Exegesis of the Hebrew Bible and the Qur'ān Presented to Haggai Ben-Shammai, eds. Meir Michael Bar-Asher et al. (Jerusalem: Yad Ben-Zvi, 2007), 119*-21*.

⁷ On the year of Maimonides' birth, see S.D. Goitein, “Moses Maimonides, Man of Action: Revision of the Master's Biography in Light of Geniza Documents,” *Hommage à Georges Vajda: Études d'histoire et de pensée juives*, eds. Gérard Nahon and Charles Touati (Louvain: Peeters, 1980), 155; and Herbert Davidson, *Moses Maimonides: The Man and His Works* (New York: Oxford University Press, 2005), 6-9.

⁸ One early study is Judith Romney Wegner, “Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts,” *American Journal of Legal History* 26 (1982): 25-71. To Wegner's argument, compare Jany János, “The Four Sources of Law in Zoroastrian and Islamic Jurisprudence,” *Islamic Law and Society* 12, no. 3 (2005): 291-332. For review of scholarship on

important to our understanding of how people of this period comprehended their religious life.”⁹ Significant work in this field was pioneered by Moshe Zucker, who underscored the need to situate Judeo-Arabic legal theory in its Islamic context.¹⁰ More recently, Gideon Libson has turned attention to the role of custom (*minhag*) in geonic jurisprudence and other theoretical matters,¹¹ and Sklare himself has focused on the jurisprudential thought of Samuel ben Ḥofni (d. 1013), his contemporaries, and other pre-Maimonidean jurists.¹² Other scholars have begun to address this field,¹³ but most treatments consider Rabbanite and Qaraite legal theory within the context of other

comparative Jewish and Islamic law, see Gideon Libson, “Mishpaṭ Mashveh Yehudi-Muslami – Toldot ha-Meḥqar u-Va’ayotav,” *Pe’amim* 62 (1995): 43-81; idem, *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period* (Cambridge: Islamic Legal Studies Program, Harvard Law School, 2003), 1-15, 183-207; and idem, “Jewish and Islamic Law, A Comparative Review,” *Encyclopaedia Judaica*², eds. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference USA, 2007), 11:262-70.

⁹ David Sklare, *Samuel ben Ḥofni Gaon and His Cultural World: Texts & Studies* (Leiden: Brill, 1996), 158n62.

¹⁰ See Moshe Zucker, “Qeṭa’im mi-Kitāb Tahṣīl al-Sharā’i ‘al-Samā’iyya,” *Tarbiẓ* 41, no. 4 (1973): 373-410; idem, “Ha-Maḥloqet bein ha-Qara’im voha-Rabbaniyim be-‘Inyan ‘Aseh doḥeh lo Ta’aseh,” *Dine Israel* 6 (1975): 181-94; and idem, “Le-Va’ayat ha-Maḥloqet be-Masoret (ha-Rambam neged R. Ya’aqov ben Ephraim me-Ereṣ Yiśrael),” in *Salo Wittmayer Baron Jubilee Volume on the Occasion of his Eightieth Birthday*, eds. Saul Lieberman and Arthur Hyman (Jerusalem: American Academy for Jewish Research, 1975), 2:319-25. For another important example of geonic and Qaraite engagement with Islamic thought adduced by Zucker, see “Ha-Efshar she-Navi Yehaṭei? (‘Al Ba’ayat ‘Iṣma al-Anbiyā’ bi-Islam uve-Yahadut),” *Tarbiẓ* 35, no. 2 (1966): 149-73; see also idem, “Qeṭa’im mi-Feirush Rabbi Shmuel ben Ḥofni le-Farashat va-Eṭhanan,” *Alei Sefer* 5 (1978): 5-24.

¹¹ See Libson, *Jewish and Islamic Law*, 16-112; idem, “Halakhah and Reality in the Gaonic Period: Taqqanah, Minhag, Tradition and Consensus – Some Observations,” in *The Jews of Medieval Islam: Community, Society, and Identity*, ed. Daniel Frank (Leiden: Brill, 1995), 67-99; and idem, “Zikat ha-Rambam la-Halakhah ha-Muslemit ‘al Reqa’ Teqfato,” in *Ha-Rambam: Shamranut, Meqoriyut, Mahapkhanut*, ed. Aviezer Ravitsky (Jerusalem: Merkaz Zalman Shazar, 2008), 1:272-85.

¹² See Sklare, *Samuel ben Ḥofni Gaon*, 56-57, 143-65; idem, “Yūsuf al-Baṣīr: Theological Aspects of his Halakhic Works,” in *The Jews of Medieval Islam*, 249-70; idem, “R. David ben Sa’adya al-Ger ve-Ḥiburo al-Ḥāwī,” *Te’udah* 14 (1998): 103-123; and idem, “Are the Gentiles Obligated to Observe the Torah? The Discussion Concerning the Universality of the Torah in the East in the Tenth and Eleventh Centuries,” in *Be’erot Yitzhak: Studies in Memory of Isadore Twersky*, ed. Jay M. Harris (Cambridge: Harvard University Press, 2005), 311-46. On David ben Sa’adya, see also Y. Zvi Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad be-me’ah ha-11: Bein Geonim le-Rishonim (‘al pi Kitāb al-Ḥāwī le-R. David ben Sa’adya),” *Shenaton ha-Mishpaṭ ha-‘Ivri* 25 (2008): 217-36.

¹³ See below, n141.

disciplines, such as theology, philosophy, or scriptural exegesis. Mordecai Cohen's monograph on Maimonidean exegesis is one such example; while its focus is biblical hermeneutics, it delves into Maimonides' theories of law and discusses his views of the relationship between written Scripture and oral tradition.¹⁴

The closest thematic and chronological parallel to Rabbanite jurisprudence is Islamic legal theory (*uṣūl al-fiqh*); its exponents developed a complex and rich library of concepts and terms. Scholarly study of *uṣūl al-fiqh* has flourished in the past three decades,¹⁵ but much work remains to be done, especially in the study of individual jurists.¹⁶ This dissertation demonstrates that Rabbanite jurists frequently depicted their own legal system against the backdrop of Islamic legal theory. They found both the terms and concepts of *uṣūl al-fiqh* useful in presenting their ideas and, to a certain extent, in reconsidering their own tradition. However, before attempting to discern the influence of other legal cultures, Rabbanite ideas will be analyzed on their own terms and in relation

¹⁴ Mordecai Z. Cohen, *Opening the Gates of Interpretation: Maimonides' Biblical Hermeneutics in Light of his Geonic-Andalusian Heritage and Muslim Milieu* (Leiden: Brill, 2011), esp. chaps. 2, 5, 6, 8; see similarly, Diana Lobel, *Between Mysticism and Philosophy: Sufi Language and Religious Experience in Judah ha-Levi's Kuzari* (Albany: SUNY Press, 2000), 56-68.

¹⁵ In 1974, W. Montgomery Watt called for scholars to turn their attention to Islamic legal theory; "The Closing of the Gate of *Iḡtihād*," in *Orientalia Hispanica sive Studia F.M. Pareja Octogenario Dicata*, eds. Felix Maria Pareja Casañas and J.M. Barral (Leiden: Brill, 1974), 678. Around a decade later, two scholars independently noted the neglect of *uṣūl al-fiqh*; Nabil Shehaby, "Illa and Qiyās in Early Islamic Legal Theory," *JAOS* 102, no. 1 (1982): 27; and Wael Hallaq, "Considerations on the Function and Character of Sunnī Legal Theory," *JAOS* 104, no. 4 (1984): 679-80. See similarly George Makdisi, *The Rise of Colleges: Institutions and Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 340n145. Aron's Zysow's 1984 doctoral dissertation opened many issues in this field, now published as *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013); see the laudatory comments in Robert Gleave's Forward to that volume.

¹⁶ The jurist subject to the most sustained analysis is Muḥammad ibn Idrīs al-Shāfi'ī; see, e.g., George Makdisi, "The Juridical Theology of Shāfi'ī: Origins and Significance of *Uṣūl al-Fiqh*," *Studia Islamica* 59 (1984): 5-47; and Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfi'ī* (Leiden: Brill, 2007). On other jurists, see Bernard Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 2010); and Oussama Arabi et al., eds., *Islamic Legal Thought: A Compendium of Muslim Jurists* (Leiden: Brill, 2013).

to their rabbinic precedents. Thus, for example, this dissertation's analysis of the assumptions that informed the Principles in Maimonides' *Sefer ha-Miṣvot* will consider each theme discussed in relation to its treatment in pre- and post-Maimonidean thought.

Many of the medieval texts treated here, particularly those (Maimonidean and otherwise) that discuss the Oral Torah and the scope of Sinaitic revelation, have been studied copiously by both traditional and academic scholars. Whenever possible, I have made use of medieval and early modern interpreters of Maimonidean writings, though it must be noted that exceedingly few of them read Maimonides' Judeo-Arabic writings in their original language. As will become clear, academic interpreters of Maimonides' approach to the Oral Torah frequently took up issues raised by the earliest readers to have scrutinized his writings.

The seminal work of Jacob Levinger deserves credit for having challenged traditional assumptions about how Maimonides' *Mishneh Torah* should be read, for having proposed new explanations of his distinction between biblical and rabbinic law, and for having worked through certain aspects of Maimonides' approach to the enumeration of the commandments.¹⁷ Gerald Blidstein and Moshe Halbertal are among the more recent, influential, readers of Rabbanite approaches to the Oral Torah. The impact of Blidstein's writings – on geonic and Maimonidean approaches to the Oral Torah and on medieval understandings of rabbinic authority – can be discerned throughout this work. A book-length study by Blidstein treats what may be Maimonides' richest presentation of the Oral Torah in the *Mishneh Torah* (*Hilkhot Mamrim*, chaps. 1-

¹⁷ Jacob Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit shel ha-Rambam: Meḥqar 'al ha-Metodah shel Mishneh Torah* (Jerusalem: Magnes, 1965), chaps. 1-3.

4); some of his other publications have clarified “institutional” elements of Maimonides’ approach to the Oral Torah (e.g., the role of the elite in the promulgation and formulation of the law), and the relationship of Maimonidean thought to its geonic antecedents.¹⁸

Though Blidstein has not focused explicitly on the Islamic context of Maimonidean thought, he has been attentive to it.¹⁹ Moshe Halbertal has likewise illuminated many relevant themes in Rabbanite jurisprudence, with particular focus on Maimonides; his studies clarify important debates among medieval talmudists regarding the nature of rabbinic authority and analyze Rabbanite depictions of their own sacred history.²⁰

Though it focuses primarily on the modern period, Jay Harris’s study of Jewish understandings of halakhic *midrash* lays important groundwork; his chapter on the

¹⁸ Important studies include Gerald Blidstien, “Maimonides on ‘Oral Law’,” *Jewish Law Annual* 1 (1978): 108-122; idem, “Oral Law as Institution in Maimonides,” in *The Thought of Moses Maimonides*, eds. Ira Robinson et al. (Lewiston, NY: Mellen Press, 1990), 167-82; repr. in *The Legacy of Maimonides: Religion, Reason and Community*, eds. Yamin Levy and Shalom Carmy (Brooklyn: Yashar Books, 2006), 203-216 (references will be to the first version); idem, “Maimonidean Structures of Institutional Authority: *Sefer HaMizvot* Aseh 172-177,” *Dine Israel* 17 (1993-1994): 103-126; idem, *Samkhut u-Meri be-Hilkhat ha-Rambam: Peirush Nirḥav le-Hilkhot Mamrim 1-4* (Tel Aviv: ha-Kibūš ha-Me’uḥad, 2002); and “Halakhic Authority in Maimonides,” *Maimonidean Studies* 5 (2008): 31-55.

¹⁹ An example of Blidstein’s attention to this subject is his “*Muhtasib and Shoter – The Shape of Cultural Diffusion*,” in *Sobre la vida y obra de Maimonides: I congreso internacional*, ed. Jesus Pelaez del Rossa (Cordoba: Ediciones el Almendo, 1991), 37-43.

²⁰ Among other studies, see Moshe Halbertal, “*Sefer ha-Miṣvot* le-Rambam: ha-Arkiteqturah shel ha-Halakhah veḥa-Ṭe’oriyah ha-Parshanit Shelah,” *Tarbiz* 59, no. 3-4 (1990): 457-80; idem, *People of the Book: Canon, Meaning, and Authority* (Cambridge: Harvard University Press, 1997), 45-89; and idem, *Maimonides: Life and Thought* (Princeton: Princeton University Press, 2014), 92-133.

David Henshke has also extensively written on Maimonidean legal thought; see, e.g., his “Le-Yesodei Tefisat ha-Halakhah be-Mishnat ha-Rambam,” *Shenaton ha-Mishpaṭ ha-‘Ivri* 20 (1997): 103-149; “Le-Ṭa’amah shel Halakhah be-Mishnat ha-Rambam,” *Maimonidean Studies* 4 (2000): 45-80; and “Le-Ḥashivato ha-Hilkhatit shel ha-Rambam – bein Dinamiyut Penimit le-Shamranut Memasdit: le-Ṭivah shel Halakhah ha-Shaḥu’a be-*Sefer ha-Miṣvot*,” in *Ha-Rambam: Shamranut, Meqoriyut, Mahapḥanut*, 1:119-53.

medieval period offers a broad historical perspective, and his brief treatment of the thought of Judeo-Arabic authors identifies avenues for further research.²¹

On the whole, the studies mentioned above do not place Rabbanite legal thought in its Islamic context; for the most part, researchers have accessed the Judeo-Arabic writings of the jurists in question through Hebrew translations, medieval and modern. The language barrier alone obscures the detection of both the themes and technical terminology of Islamic law that Rabbanite writers employed.²²

Furthermore, as Blidstein noted more than twenty-five years ago, interest in Maimonides' legal theory has focused on Principles One and Two in his Introduction to *Sefer ha-Miṣvot* – those that address revelation and rabbinic authority.²³ Scholars have begun to address the other twelve Principles,²⁴ but much work remains to be done, particularly where the Judeo-Arabic original is concerned.

²¹ Jay Harris, *How Do We Know This? Midrash and the Fragmentation of Modern Judaism* (Albany: State University of New York Press, 1995), 73-89. Harris focused on Sa'adya Gaon, Abraham Ibn Ezra, and Maimonides.

²² On Maimonides' use of Islamic legal terminology, see Jon Irving Bloomberg, "Arabic Legal Terms in Maimonides," (PhD diss., Yale University, 1980); and idem, "Munaḥim Mishpaṭiyim 'Araviyim mi-Dinei ha-Qinyan be-Geonim uve-Rambam," *Shenaton ha-Mishpaṭ ha- 'Ivri* 14-15 (1989-1990): 61-87. Of course, not every Judeo-Arabic usage of Islamic legal terminology adopts the meaning of a given term in Islamic legal texts; see Phillip Ackerman-Lieberman, "Commercial Forms and Legal Norms in the Jewish Community of Medieval Egypt," *Law and History Review* 30, no. 4 (2012): 1020-1023; and idem, "Arabic Legal Terminology in Judaeo-Arabic: Loanwords or Loan Shifts?" *JSAI* 43 (2016): 1-10.

²³ Gerald Blidstein, "Where Do We Stand in the Study of Maimonidean Halakhah?" in *Studies in Maimonides*, ed. Isadore Twersky (Cambridge: Harvard University Center for Jewish Studies, 1990), 18. Blidstein noted that Ferdinand Rosenthal, "Die Kritik des maimonidischen „Buch der Gesetze“ durch Nachmanides," in *Moses ben Maimon: Sein Leben, seine Werke und sein Einfluss*, eds. Wilhelm Bacher et al. (Leipzig: Fock, 1908-1914), 1:475-95, only addressed Nahmanides' comments on the first two Principles, despite the fact that Nahmanides discussed several others.

²⁴ Subsequent studies of other Principles include Hanina Ben-Menaḥem, "Individu' aṣiyah shel Ḥuqim ve-Sefer ha-Miṣvot la-Rambam," *Shenaton ha-Mishpaṭ ha- 'Ivri* 15-16 (1998-1999): 95-106; idem, "Maimonides' Fourteen Roots: Logical Structure and Conceptual Analysis," *Jewish Law Annual* 13 (2000): 3-30; Avraham Feintuch, *Sefer Piqudei Yesharim: Bei 'urim 'al Sefer ha-Miṣvot la-Rambam zal* (Jerusalem: Ma'aliyot, 1992), 46-58; Albert Friedberg, *Crafting the 613 Commandments: Maimonides on the Enumeration, Classification and Formulation of the Scriptural Commandments* (Boston: Academic Studies Press, 2013), 52-60 and passim; Michael Abraham, "Miṣvot ve-Ḥelqei Miṣvot: 'al Mahutam ha-Filosofiyit

This dissertation also draws on the study of “meta-halakhah,” i.e., inquiry into principles of halakhic jurisprudence that considers such matters as the nature and scope of rabbinic authority, the methodology of halakhic decision making, and the role of non- or extra-halakhic factors in Jewish law.²⁵ When studies of meta-halakhah examine legal texts from jurisprudential, philosophical, or typological perspectives and ignore historical context, they frequently fail to notice chronological and cross-cultural relationships. The questions posed in these studies may also be examined from a historical perspective, often quite fruitfully.²⁶

Lastly, the present study is deeply informed by the historical study of the development of halakhah. This field’s pioneer, Jacob Katz, argued that a researcher interested in understanding halakhah’s historical development must first approach a source with the attitudes and assumptions of a traditional halakhist, and only second,

shel Musagim be-Halakhah,” *Aqdamot* 21 (2008): 160-75; idem, “Kelalav shel ha-Rambam le-Minyan ha-Miṣvot,” and Shlomi Adler, “Miṣvat ha-Shevithah vaha-Kelal ha-Shishi be-*Sefer ha-Miṣvot*,” in *Mi-Birkat Moshe: Qoveṣ Ma’amarim be-Mishnat ha-Rambam li-Khvodo shel ha-Rav Naḥum Eliezer Rabinovitch*, eds. Zvi Heber and Carmiel Cohen (Ma’aleh Adumim: Ma’aliyot, 2011), 1:121-72, 2:491-515. Recent, broader studies of *Sefer ha-Miṣvot* include Friedberg, *Crafting the 613 Commandments*; Feintuch, *Sefer Piqudei Yesharim*; and idem, *Sefer ha-Miṣvot le-Rambam ‘im Peirush Piqudei Yesharim* (Jerusalem: Ma’aliyot, 2010).

²⁵ Eliezer Goldman was apparently the first to use the term “meta-halakhah”; Alexander Kaye, “Eliezer Goldman and the Origins of Meta-Halacha,” *Modern Judaism* 34, no. 3 (2014): 324-28. For a definition of this term, see Avinoam Rozenak, *Halakhah ke-Meholelet Shinuy: ‘Iyunim Biqortiyim be-Filosofiyah shel ha-Halakhah* (Jerusalem: Manges, 2007), 107-129. See also Isadore Twersky, “Talmudists, Philosophers, Kabbalists: The Quest for Spirituality in the Sixteenth Century,” in *Jewish Thought in the Sixteenth Century*, ed. Bernard Dov Cooperman (Cambridge: Harvard University Press, 1983), 450n1.

²⁶ Useful studies include Yoḥanan Silman, “Torah Elohit she-‘Lo ba-Shamayim Hi’: Beirur Tipology,” *Bar Ilan Annual* 22-23 (1988): 261-86; idem, “Torat Yisrael le-Or Hīdusheha – Beirur Finomanologi,” *PAAJR* 57 (1990-1991): 49-67; idem, *Qol Gadol ve-lo Yasaf: Torat Yisrael bein Shleimut le-Hishtalmut* (Jerusalem: Magnes, 1999); Avi Sagi, “Halakhic Praxis and the Word of God: A Study of Two Models,” *Journal of Jewish Thought and Philosophy* 1 (1992): 305-329; idem, “Models of Authority and the Duty of Obedience in Halakhic Literature,” *AJS Review* 20, no. 1 (1995): 1-24; idem, *Elu ve-Elu: Mashma’uto shel ha-Siaḥ ha-Hilkhati* (Tel Aviv: ha-Kibuṣ ha-Me’uḥad, 1996); and Shlomo Kassierer and Shlomo Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit: Torah shebe-‘al Peh be-Mishnatam shel ha-Rambam vaha-Ramban* (Ramat Gan: Bar Ilan University Press, 2007).

from a historian's perspective; this sequence, wrote Katz, would help to clarify the impact of historical circumstances on a given halakhic ruling.²⁷ Katz's student Haym Soloveitchik has written that if historians are to avoid "a simplistic sociology of law," their detection of "extraneous factors ... impinging on the course of immanent developments" must reflect, what he termed, an "angle of deflection,"²⁸ such as economic, sociological, or other factors. This dissertation seeks to apply the methodology of this field to Rabbanite legal theory.

Central Themes

Rabbanites frequently disagreed about the interpretation of ambiguous concepts in rabbinic literature. One ancient binary they discussed – of particular importance for this dissertation – is the distinction between two types of laws: those of "biblical" (Hebrew: *divrei torah*; Aramaic: *de-orayta*) status, and those of "rabbinic" (Hebrew: *divrei sofrim*; Aramaic: *de-rabbanan*) status. This distinction is rooted in the Mishnah and was developed more fully in the Amoraic period.²⁹ While laws that are explicit in the

²⁷ See Jacob Katz, "Maḥloqet ha-Smikhah bein Rabbi Ya'aqov Berav voha-Ralbah," *Zion* 16 (1951): 41-44; and idem, *Halakhah ve-Qabbalah: Meḥqarim be-Toldot Dat Yisrael 'al Medorehah ve-Ziqatah ha-Ḥevratit* (Jerusalem: Magnes, 1984), 1-6, 342-46. See also Bernard Cooperman, "Afterword: Tradition and Crisis and the Study of Early Modern Jewish History," in Jacob Katz, *Tradition and Crisis: Jewish Society at the End of the Middle Ages*, trans. and ed. Bernard Cooperman (New York: NYU Press, 1993), 248-50. On earlier historical study of halakhah, see Marc Saperstein, "Abraham Geiger as Historian of Medieval Judaism," in *Jüdische Existenz in der Moderne: Abraham Geiger und die Wissenschaft des Judentums*, eds. Christian Wiese et al. (Berlin: W. de Gruyter, 2013), 277-78.

²⁸ Haym Soloveitchik, "Can Halakhic Texts Talk History?" *AJS Review* 3 (1978): 176; compare idem, "Religious Law and Change," *AJS Review* 12 (1987): 205-206. See also Jeffrey Woolf, "Methodological Reflections in the Study of Halakhah," *European Journal of Jewish Studies Newsletter* 11 (2001): 9-14.

²⁹ On this distinction in rabbinic literature, see Ḥanokh Albeck, *Mavo la-Mishnah* (Jerusalem: Bialik, 1959), 49-53; de Vries, *Toldot ha-Halakhah ha-Talmudit*, 69-95; Martin S. Jaffee, "Halakhah as Primordial Tradition: A Gadamerian Dialogue with Early Rabbinic Memory and Jurisprudence," in

Pentateuch are clearly of biblical status, and laws that are the result of rabbinic legislative activity are clearly rabbinic, there are many sources of law whose classification is far from obvious.³⁰ These include laws found in the Prophets and Writings, laws termed “*halakhah le-Moshe mi-Sinai*” (a law given to Moses at Sinai), laws “rooted in the Torah (‘*iqaro mi-divrei torah*) and explained by *divrei sofrim*” (see bSan 88b), and laws “derived” through rabbinic interpretation of Scripture.³¹ Further complicating matters, the Talmud claims that laws derived from “reasoning” (*sevarah*) are of biblical status, though they are not found in Scripture.³² It is certainly not clear that the designations “biblical” and “rabbinic” denote the source of the law (whether from God or from man) or its relationship to Scripture.

A related question pertains to the enumeration of the 613 commandments: what constitutes a distinct commandment? Though some seem to assume that the categories of biblical law and enumerated commandment are equivalent,³³ conflation of these categories has led to much confusion (this will be discussed in Chapters Two and Four). There is also no reason to assume that only laws that constitute distinct commandments are biblical in status, or that failure to include a law in the enumeration establishes its non-biblical status.

Interpreting Judaism in a Postmodern Age, ed. Steven Kepnes (New York: NYU Press, 1996), 99-107; and idem, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 C.E.* (New York: Oxford University Press, 2001), 92-99. See also Mayer I. Gruber, “The Meaning of אוריינות in the Babylonian Talmud,” *Hebrew Studies* 22 (1981): 25-33.

³⁰ Menahem Elon, *Ha-Mishpat ha- 'Ivri*, 3rd ed. (Jerusalem: Magnes, 1988), 1:186.

³¹ Compare Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 34-36, 46. Yiṣḥaq Gilat, “Le-Hishtalshelutam shel Isurei Shevut be-Shabbat,” *Proceedings of the World Congress of Jewish Studies*, 10, C, 1 (1989): 9-15, underscores the instability of the categories of “biblical” and “rabbinic” law.

³² See Elon, *Ha-Mishpat ha- 'Ivri*, 1:807-808.

³³ E.g., Elon, *Ha-Mishpat ha- 'Ivri*, 1:186-87; and Harris, *How Do We Know This*, 88.

The 613 Commandments

The notion that God gave Israel 613 commandments appears, first, in a non-legal passage of the Babylonian Talmud (bMak 23b-24a):

Rabbi Simlai expounded (*darash*): “613 commandments were said to Moses (at Sinai),³⁴ 365 negative commandments, like the days of the year, and 248 positive commandments, corresponding to man’s limbs (*eivarav*).”³⁵ Said Rav Hamnuna: “What is the verse? ‘Moses commanded us a Torah’ (Deut. 33:4) – *torah* in *gematria* (numerical value of letters) is 611.³⁶ ‘I am [the Lord your God who brought you out of the Land of Egypt]’ and ‘You shall have no other [gods before me]’ (Ex. 20:2-3) we heard from the Almighty.” “David came and established them (*he’emidan*) as eleven, as it is written, ‘A psalm of David: Lord, who may sojourn in Your tent, who may dwell in Your holy mountain? [1] He who lives without blame, [2] who does what is right, [3] and in his heart acknowledges the truth, [4] whose tongue is not given to evil, [5] who has never done harm to his fellow, [6] or borne reproach for acts towards his neighbor, [7] for whom contemptible man is abhorrent, [8] but who honors those who fear the Lord, [9] who stands by his oath even to his hurt, [10] who has never lent money at interest, [11] or accepted a bribe against the innocent. The man who acts thus shall never be shaken’ (Ps. 15). ... Isaiah came and established them as six, as it is written, ‘He who [1] walks in righteousness, [2] speaks uprightly, [3] spurns profit from fraudulent dealings, [4] waves away a bribe instead of grasping it, [5] stops his ears against listening to infamy, [6] and shuts his eyes against looking at evil’ (Isa. 33:16). ... Micah came and established them as three, as it is written, ‘He has told you, O man, what is good, and what the Lord requires of you: [1] Only to do justice, [2] and to love goodness, [3] and to walk modestly with your God’ (Mic. 6:8). ... Isaiah returned and established them as two, as it says, ‘Thus said the Lord: [1] Observe what is right [2] and do what is just’ (Isa. 56:1). Amos came and established them as one, as it says, ‘Thus said the Lord to the House of Israel: Seek Me, and you will live’ (Am. 5:4).”³⁷

³⁴ On the words “at Sinai,” see below, n190.

³⁵ This number is commonly accepted in rabbinic literature, e.g., mOhal 1:8; see Julius Preuss, *Biblical and Talmudic Medicine*, ed. and trans. Fred Rosner (London: Rowman & Littlefield, 2004), 60-61.

³⁶ *Tav* = 400, *reish* = 200, *vav* = 6, *heh* = 5.

³⁷ This translation follows the printed text, as the precise wording of this passage is not at issue. For treatment, see Wilhelm Bacher, *Aggadat Amorei Eres-Yisrael*, trans. Alexander Siskind Rabinovitz (Tel Aviv: Devir, 1924), 2:322-24 (on *he’emidan*, see there, 323n1); Ya’aqov Gartner, “‘Ibud Bavli shel Derashat Rabbi Simlai ‘al Taryag ha-Miṣvot,” *Sinai* 96 (1985): 236-49; and Naomi G. Cohen, “Taryag and the Noahide Commandments,” *JJS* 43, no. 1 (1992): 46-57.

This passing mention of the number 613 appears to indicate that it “is a symbolic rather than mathematical number;”³⁸ indeed, the narrative of the post-Sinaitic reductions of the commandments to ever smaller numbers suggests that the purpose of this passage is to assemble biblical verses that pithily catalogue man’s obligations. Furthermore, although printed editions of the Talmud cite the number 613 in other contexts, Ephraim Urbach showed that manuscripts of these passages almost invariably replace the phrase “613 commandments” with “all the commandments” or similar phrases.³⁹ It appears highly unlikely that Rabbi Simlai or anybody else in the rabbinic period counted the commandments,⁴⁰ especially because, as medieval jurists noted, the Talmud never treats the enumeration of the commandments in any substantive way.⁴¹

Though some Rabbanites expressed skepticism about the significance of the number 613, or its accuracy in reflecting the scope of Jewish law,⁴² this number became the basis for countless liturgical, philosophical, kabbalistic, and legal works in the post-talmudic period. In 1878, Adolph Jellinek catalogued 144 works dedicated to this number, and this list can be expanded in light of subsequent research.⁴³ The earliest and

³⁸ Cohen, “Taryag and the Noahide Commandments,” 47; see earlier Moïse Bloch, “Les 613 Lois,” *REJ* 1 (1880): 209-210.

³⁹ Ephraim E. Urbach, *Ḥazal: Pirqei Emunot ve-Dei’ot* (Jerusalem: Magnes, 1969), 302. Note Ḥananel Mack, “‘Im Lavan Garti Taryag Mišvot Shamarti’ – Darkhah shel ha-Derashah mi-Sifro shel R. Moshe ha-Darshan el Peirush Rashi la-Torah,” *Tarbiz* 65 (1996): 251-62.

⁴⁰ See Neil Danzig, “‘Shalosh Me’ot’ ve-Reishit Hitpathuto shel Minyan ha-Mišvot,” *Sinai* 83 (1978): 153-58. For an alternative approach, see David Henshke, “Kelum Natnu ha-Tana’im Mispar la-Mišvot? (Mashehu le-‘Arikhato shel ha-Sifrei le-Devarim),” *Sinai* 116 (1995): 47-58.

⁴¹ See below, n829.

⁴² See below, n60, and nn831-834.

⁴³ Adolph Jellinek, *Quntres Taryag* (Vienna, 1878), 1-23; see also Zalman Halberstam, *Igeret Biqoret, o He ‘arot ve-Hosafot le-S. Quntres Taryag* (Lyck, 1878). To Jellinek’s list, add the works treated in Adolf Neubauer, “Miscellanea Liturgica: Azharoth on the 613 Precepts,” *JQR* 6, no. 4 (o.s.) (1894): 709; Menahem Zulai, “Azharot R. Yiṣḥaq Ibn Gikatilla,” *Tarbiz* 20, no.1 (1949): 161-76; Isaac Hahn, “Qeṭa’ min ha-Targum ha-‘Aravi shel Azharot ‘Atah Hinḥalta Torah le-‘Amekha’,” in *Ginzei Kaufmann*, eds.

most widespread genre that employed the number 613 were liturgical poems (*piyuṭim*) known as *azharot* (“warnings”); these were recited on Shavu‘ot, which according to the rabbis, celebrates the giving of the Torah.⁴⁴ Israel Davidson’s 1933 *Thesaurus* of medieval *piyuṭ* lists more than fifty such poems.⁴⁵ What is probably the earliest surviving *azharah*, *Atah Hinḥalta*, a poem apparently of Babylonian provenance (even ascribed in one manuscript to a Babylonian *yeshiva*), contains fewer than 613 commandments.⁴⁶ The vast majority of *azharot* acknowledge various categories of commandments, adding *parshiyot* and punishments to the talmudic division between positive and negative

David Shmuel Levinger and Alexander Scheiber (Budapest, 1949), 71-80; Avraham Y. Havaṣelet, “Sefer Simanei Miṣvot le-Rabbeinu Avraham b.r. Ephraim,” in *Sefer ha-Zikaron li-Khvodo ule-Zikhro shel Rabbi Yiṣḥaq Yedidya Frank*, ed. David Lau (Jerusalem: Mekhon Yerushalayim, 1992), 281-304; Binyamin Bar Tikvah, “Qavim le-Ṣivyonam shel Piyuṭei ha-Azharot ha-Qaṭaloniyyim le-Ḥagim be-mei’ah ha-13,” in *Masoret ha-Piyuṭ*, eds. Benjamin Bar Tikvah and Ephraim Ḥazan (Ramat Gan: Bar Ilan University, 1996), 1:113-29; André Elbaz and Binyamin Bar-Tikva, “Tefillah le-David: Azharot Rabbi David ben Ḥasin,” *Revue Européenne des Études Hébraïques* 3 (2000): 1-73 (Hebrew pagination); Sklare, *Samuel Ben Ḥofni*, 224; and Saverio Campanini, “Commentaries on the Azharot and Other Liturgical Poems Found in the Biblioteca Civica of Alessandria,” in *Genizat Germania’ – Hebrew and Aramaic Binding Fragments from Germany in Context*, ed. Andreas Lehnardt (Leiden: Brill, 2010), 277-95. See also David Avraham, “Hagahot R. Tam ‘al Azharot Rabbeinu Eliyahu ha-Zaqein,” *Moriyah* 34, no. 4-6 (2015): 38-42.

⁴⁴ On this genre, see Jellinek, *Qunṭres Taryag*, 3-6; Halberstam, *Igeret Biqoret*, 2-6; Menahem Kasher, *Ḥumash Torah Shleimah* (New York, 1947-1983), 16:205-211; Shem Tov Gaguin, “‘Azharot,’” in *Essays in Honour of the Very Rev. Dr. J.H. Hertz*, eds. Isidore Epstein et al. (London: Edward Goldston, 1942), 45-50; Meir Havaṣelet, “Qeri’at ‘Azharot’ be-Ḥag ha-Shavu‘ot bi-Yemei ha-Geonim,” *Ha-Do‘ar* 54 (1975): 409; Menahem Zulai, “Azharot,” in *Encyclopedia ha-Ivrit* (Jerusalem, 1983), 2:346-47; Ezra Fleischer, “Yeṣirato shel Yosef ibn Avitur: Sugim ve-Tavniyyot be-Piyuṭav,” (PhD diss., Hebrew University, 1968), 304-309; idem, “Azharot le-R. Binyamin (ben Shmuel) Payṭan,” *Qoveṣ ‘al Yad* 11, no. 1 (21) (1985): 41-43; idem, *Shirat ha-Qodesh ha-Ivrit bi-Yemei-ha-Beinayim* (Jerusalem: Magnes, 2007), 73, 95; Yonah Frankel, *Maḥzor Shavu‘ot: le-fi Minhagei Benei Ashkenaz le-khol ‘Anfeihem* (Jerusalem: Koren, 2000), 11-14; and Shulamit Eliṣur, “Le-Ofyav ule-Netivot Hashpa‘ato shel ha-Merkaz ha-Payṭani be-Bavel,” *Tarbiz* 79, no. 2 (2010-2011): 244-45. See also Neil Danzig, “Bein Ereṣ Yisra’el le-Bavel: Dapim Ḥadashim mi-Ḥibur ‘Pirqoy ben Bavoy’,” *Shalem* 8 (2009): 7 lines 20-21, 26-27.

⁴⁵ Israel Davidson, *Oṣar ha-Shirah veba-Piyuṭ: mi-Zeman Ḥatimat Kitvei ha-Qodesh ‘ad Reishit Tequfat ha-Haskalah* (New York: Jewish Theological Seminary, 1924-1933), 4:493.

⁴⁶ Frankel, *Maḥzor Shavu‘ot*, 36-37; and below, n60.

commandments (see Chapter Four).⁴⁷ The number 613 even found its way into works of Samaritan⁴⁸ and Christian literature.⁴⁹

Listings of the 613 commandments may be related to other enumerations of (perhaps symbolic) numbers in Jewish texts,⁵⁰ foremost among them, the Ten Commandments. Although the Pentateuch refers to the “ten words” (*aseret ha-dibrot*) in three places (Ex. 34:28, Deut. 4:13, 10:4), neither scriptural presentation (Ex. 20:2-14; Deut. 5:6-15) contains a numbering.⁵¹ Attempts to enumerate other numbers appear throughout medieval Jewish literature.⁵²

⁴⁷ See below, nn864, 865.

⁴⁸ See Moses Gaster, “Die 613 Gebote und Verbote der Samaritaner,” in *Festschrift zum 75 jährigen Bestehen des Jüdisch-Theologischen Seminars* (Breslau: M. & H. Marcus, 1929), 393-404 (German), 35-67 (Hebrew); Abraham S. Halkin, “Taryag Mišvot ešel ha-Shomronim,” in *Ignace Goldziher Memorial Volume*, eds. Samuel Löwinger and Joseph Somogyi (Budapest: Globus 1948-1958), 2:86-100; Menahem Haran, “Minyan ha-Mišvot leha-Rambam be-Piyuṭ Shomroni (Shirat ha-Mišvot shel ha-Payṭan Aharon ben Manir, Zemano u-Meqomo),” *Ereš-Yisrael* 4 (1956): 160-69; idem, “Shirat ha-Mišvot le-Aharon ben Manir: Piyuṭ Shomroni le-Yom ha-Kippurim ‘al Taryag Mišvot ‘al-pi ha-Rambam,” *Divrei ha-Aqademyah ha-Le‘umit ha-Yisraelit le-Mada‘im* 4 (1971): 229-80; idem, “The Song of the Precepts of Aaron Ben Manir: A Samaritan Hymn for the Day of Atonement on the 613 Precepts as listed by Maimonides,” *Proceedings of the Israel Academy of Sciences and Humanities* 5 (1976): 174-209; and Ayala Lowenstamm, “Le-She’elat Taryag ešel ha-Shomronim,” *Tarbiz* 41, no. 3 (1983): 306-312.

⁴⁹ See Luis Diez Merino, “Los 613 preceptos de la ley de Moises (manuscrito inédito de Alfonso de Zamora, Ms. Bibl. Nac. Madrid, 4188),” *El Olivo* 18 (1983): 169-98; and Diana Di Segni, “La table des préceptes dans le ‘Dux neutrorum’ de Moïse Maïmonide,” *Das Gesetz – The Law – La loi*, eds. Andreas Speer and Guy Guldentops (Berlin: W. de Gruyter, 2014), 229-62.

⁵⁰ I owe this suggestion to Ḥaggai Ben-Shammai.

⁵¹ See Moshe Greenberg, “The Decalogue Tradition Critically Examined,” and Mordechai Breuer, “Dividing the Decalogue into Verses and Commandments,” in *The Ten Commandments in History and Tradition*, eds. Ben-Zion Segal and Gershon Levi (Jerusalem: Magnes, 1985), 96-109, 314-26; James Kugel, *Traditions of the Bible: A Guide to the Bible as it Was at the Start of the Common Era* (Cambridge: Harvard University Press, 1998), 641-43; Aaron J. Kleist, “The Division of the Ten Commandments in Anglo-Saxon England,” *Neuphilologische Mitteilungen* 103, no. 2 (2002): 227-40; Lesley Smith, *The Ten Commandments: Interpreting the Bible in the Medieval World* (Leiden: Brill, 2014), 48-75; and Jason S. DeRouchie, “Counting the Ten: An Investigation into the Numbering of the Decalogue,” in *For Our God Always: Studies on the Message and Influence of Deuteronomy in Honor of Daniel I. Block*, eds. Jason S. DeRouchie et al. (Winona Lake, IN: Eisenbrauns, 2013), 93-125; further references appear there, 94n3.

⁵² Unsystematic study has turned up the following examples. (1) Identifying the thirteen *middot* of R. Ishmael, as the list appears to include sixteen items; see Moshe Ostrovsky, *Ha-Middot sheha-Torah Nidreshet ba-hen* (Jerusalem: Mosad ha-Rav Kook, 1924), 26-28. (2) Sa’adya’s attempt to identify the “ten biblical songs” mentioned in Saul Horovitz and Israel Abraham Rabin, eds., *Mekhilta de-Rabbi Yishmael* (Frankfurt, 1931), 116 (*parashat ha-shirah*, §1); and J.N. Epstein, ed., *Mekhilta de-Rabbi Shimon ben*

The 613 Commandments as a Locus of Legal Reflection

Just as it was far from inevitable that the number 613 would gain a prominent place in Jewish literature, there was no reason to expect that it would become a locus of post-talmudic legal theory. The earliest compendia that went by the title “Book of the Commandments” were authored by (proto-)Qaraites, including ‘Anan ben David (Baghdad; late 8th c.) and Benjamin al-Nahāwandī (Iran[?]; mid. 9th c.); both authors were mentioned, among others, by the Qaraite Yefet ben ‘Eli (Jerusalem; fl. 960-1005) as having written works with this title.⁵³ It may well be that competition with Qaraites

Yoḥai (Jerusalem: Meqīṣei Nirdamim, 1955), 71; see Ḥaggai Ben-Shammai, “Meṣi’ah Aḥat she-Hi Shetayim: Peirush Ha’azinu le-Rav Shmuel ben Ḥofni u-Feirush va-Yosha’ le-Rav Sa’adya Gaon be-Khtav Nishkaḥ,” *Qiryat Sefer* 61, no. 2 (1987): 320-27; idem, “‘Aseret ‘Iqarei ha-Emunah shel Rav Sa’adya Gaon,” *Da’at* 37 (1996): 11-26; and idem, “Midrash Prognosti be-Khitvei Rasag: Petiḥat Peirusho le-Shirat David (2 Sam. 22) ke-Dugmah Meyaseget,” in *Mei’ah She’arim: ‘Iyunim be-‘Olamam ha-Ruḥani shel Yisrael bi-Yemei ha-Beinayim: le-Zekher Yiṣḥaq Twersky*, eds. Ezra Fleischer et al. (Jerusalem: Magnes, 2001), 1-19. Many of Ben-Shammai’s studies of Sa’adya are now collected in his *Mif’alo shel Manhig: ‘Iyunim be-Mishnato ha-Hagutit voha-Parshanit shel Rasag* (Jerusalem: Bialik, 2015); references will be to earlier versions. (3) Isaac ben Judah Ibn Ghiyāth’s explication of Sa’adya’s statement that women are exempt from thirty commandments; see B.M. Lewin, *Oṣar ha-Geonim, Masekhet Qidushin, Heileq ha-Teshuvot* (Haifa, 1928-1943), 9:79 (§177). (4) Attempts to figure out the “nine” prohibitions listed in Maimonides’ *Hilkhot Ishut*, 1:7, which appears to list several more. (5) Attempts to list the one hundred daily blessings; see below, n191. (6) Debate over the identification of the thirteen attributes of mercy in Ex. 34:6; see Cohen, *Opening the Gates of Interpretation*, 94-96. (7) Listing the thirty commandments accepted by Noahides (see bḤul 92); see Aaron Greenbaum, *Peirush ha-Torah le-Rav Shmuel ben Ḥofni Gaon* (Jerusalem: Mosad ha-Rav Kook, 1979), 66-74 (introductory pagination), 52-55 (Gen. 34:12; Hebrew pagination); Aaron Lichtenstein, “Noahide Laws from the Genizah: The Thirty Laws of Samuel ben Hophni Gaon,” *Hebrew Studies* 28 (1987): 113-16; and Ḥaggai Ben-Shammai, “Some Genizah Fragments on the Duty of the Nations to Keep the Mosaic Law,” in *Genizah Research after Ninety Years, the Case of Judaeo-Arabic: Papers Read at the Third Congress of the Society for Judaeo-Arabic Studies*, eds. Joshua Blau and Stefan C. Reif (Cambridge: Cambridge University Press, 1992), 24-25. (8) Sa’adya’s claim that there are eighteen appearances of the word *tefillah* (prayer) in the Bible, corresponding to the Eighteen Benedictions, and that other appearances of this word are “included under” the eighteen blessings; Sa’adya ben Joseph, *Kitāb Jāmi’ al-Ṣalawāt wal-Tasābīḥ*, eds. Israel Davidson et al. (Jerusalem: Meqīṣei Nirdamim, 1970), 6. Compare Muslim attempts to enumerate the “73 sects” into which Muḥammad’s community would divide; see Ignaz Goldziher, “Le dénombrement des sectes Mohamétanes,” *Revue de l’histoire des religions* 26 (1892): 129-137.

⁵³ See Samuel Poznański, “Anan et ses écrits,” *REJ* 45 (1902): 184. On these works, known by various titles, see Zvi Ankori, *Karaites in Byzantium: The Formative Years, 970-1100* (New York: Columbia University Press, 1959), 445n227; Bruno Chiesa, “A Note on Early Karaite Historiography,”

encouraged Rabbanites to compile similarly titled works. *Halakhot Gedolot*, a legal compendium of the geonic era ascribed to the ninth-century Simeon Qayyāra who may have hailed from Basra, Iraq,⁵⁴ may be the first Rabbanite legal work to engage the enumeration, as it begins with a laconic list of the commandments. Apart from the Introduction, however, this text makes little reference to the enumeration, leading some to wonder if the enumeration was originally part of this work.⁵⁵

Sa'adya ben Joseph al-Fayyūmī Gaon (882-942), who “pioneered the writing of halakhic monographs and of systematic talmudic works,”⁵⁶ appears to have been the first to do more than merely list the commandments. Sa'adya was ambivalent about the centrality of the 613 commandments in his prayer book, notwithstanding the reports of

History and Theory 27, no. 4 (1988): 59; and Fred Astren, *Karaite Judaism and Historical Understanding* (Columbia: University of South Carolina Press, 2004), 100n138, 171, 180. See also Haggai Ben-Shammai, “Qeṭa' Ḥadash meha-Maqor ha-'Aravi shel *Sefer ha-Miṣvot* le-Levi ben Yefet ha-Qara'i,” *Shenaton ha-Miṣpaṭ ha-'Ivri* 11-12 (1984-1986): 99-133. I did not find similar titles from this period in the indices in Abū al-Faraj Muḥammad ibn Ishāq Ibn al-Nadīm, *Kitāb al-Fihrist*, ed. Ayman Fu'ād Sayyid (London: al-Furqan Islamic Heritage Foundation, 2009); Fuat Sezgin, *Geschichte des arabischen Schrifttums*, vol. 1 (Leiden: Brill, 1967); and Carl Brockelmann, *Geschichte der arabischen Litteratur* (Leiden: Brill, 1937-1942).

⁵⁴ On this work, see Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven: Yale University Press, 1998), 223-30.

⁵⁵ For this position, see Michael Guttman, *Behinat ha-Miṣvot le-fi Minyanan, Siduran, ve-Hithalqutan* (Berlin: M. und H. Marcus, 1928), 11-12; Moshe Zucker, “Qeṭa'im Ḥadashim mi-Sefer ha-Miṣvot le-R. Hefesh ben Yaṣṣīyah,” *PAAJR* 29 (1960-1961): 9-10; Fleischer, “Azharot le-R. Binyamin,” 41; and Frankel, *Maḥzor Shavu'ot*, 12, 38. Zulai, “Azharot,” 346; and Cohen, *Opening the Gates of Interpretation*, 284n4, incline towards this view; see also Sklare, *Samuel ben Hofni Gaon*, 183n41, 222n152. Isadore Twersky, *Introduction to the Code of Maimonides* (Mishneh Torah) (New Haven: Yale University Press, 1980), 245n16, wrote that the date of this list “is not clear.” For the opposing view, see Yosef Tobi, “Piyuṭei Rav Sa'adya Gaon: Mahadurah Mada'it (shel ha-Yoṣrot) u-Mavo Kelali le-Yeṣirato,” (PhD diss., Hebrew University, 1982), 1:342n57a; and idem, “Shivata Sheniyah le-Shavu'ot le-Rav Sa'adya Gaon,” *Tarbiz* 53, no. 2 (1984): 227n20. See also Ezriel Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” in *Halakhot Gedolot* (Jerusalem: Meqīsei Nirdamim, 1972), 3:9n1 (Hebrew pagination). This list was probably the most influential on later enumerators, at least until Maimonides' time; see there, 24-26 (Hebrew pagination).

⁵⁶ Brody, *The Geonim of Babylonia*, 241.

two later authors.⁵⁷ Yet he did compose *azharot*, and explained, in Judeo-Arabic, his motive for doing so:

We find that the people of our time are accustomed to having the category headings (‘*uyūn*)⁵⁸ of the 613 commandments (*sharī‘a*) recited to them during the *musaf* prayer [of Shavu‘ot], which God commanded the Children of Israel, according to the work which begins *Atah Hinḥaltah*. I examined it and found that they (i.e., the commandments) fall short of 613. I saw in it repetitions and superfluties⁵⁹ unfit to mention in this book. I saw fit to replace it, not because it is an indispensable principle (*aṣl lā budd minhā*), but because the hearts of men, whom I have seen, are devoted to it.⁶⁰

In the end, Sa‘adya composed at least two *azharot* that list the commandments and a *reshut* (introductory *piyut*) that divides the commandments into more than twenty classes.⁶¹

⁵⁷ These ascribe to Sa‘adya the assertion that, when Joshua “*inscribed a copy of the teaching that Moses had written*” (Josh. 8:32) on stones, he “wrote on them the number of the commandments, as they are written in the *Halakhot Gedolot* and *azharot*.” This statement appears in at least two medieval citations: Abraham Ibn Ezra, *Peirushei ha-Torah le-Rabbeinu Avraham Ibn Ezra*, ed. Asher Weiser (Jerusalem: Mosad ha-Rav Kook, 1977), 3:291 (Deut. 27:1): ויאמר הגאון ז”ל כי כתוב עליהם מספר המצוות כמו הכתובות בהלכות; and David Qimḥi to Josh. 8:32 in Menaḥem Cohen, ed. *Miqra‘ot Gedolot ha-Keter* (Ramat Gan: Bar Ilan University Press, 1992-2012), 6:32: וכתב רבינו סעדיה ז”ל כי כתבו בהם מספר המצוות כמו שהן כתובות בהלכות גדולות ובאזהרות ויפה אמר. I thank Gabi Weinberg for providing me with a copy of this second text. See also Yosef Kafih, *Peirushei Rabbeinu Sa‘adya Gaon ‘al ha-Torah* (Jerusalem: Mosad ha-Rav Kook, 1963), 182.

⁵⁸ See Joshua Blau, *A Dictionary of Mediaeval Judaeo-Arabic Texts* (Jerusalem: Academy of the Hebrew Language, 2006), 472, s.v. عُن.

⁵⁹ This probably refers to commandments that, in Sa‘adya’s view, are repeated in this list.

⁶⁰ וּגְדִנָּה אֵלֶּה זְמַנָּה הַדְּאָ קָד עוֹדוֹ אֵן יְקַאֵל לְהֵם פִּי מוֹסַף עֵינֵן תִּרְיָג’ שְׂרִיעָה אֲלֵתִי שְׂרִיעָה אֱלֹהָ תַעִי עָלֵי בְנֵי אִסְרָאֵל עָלֵי אֲלֵתְאֵלִיף אֲלֵדִי אֹלֵה אֲתָה הַנְּחַלְתָּה פִּאֲמַתְחַנְתָּהּ פּוֹגֵדְתָּהּ לֹא תִכְמַל תִּרְיָג’ וְרֵאִיתָ פִּיהָ אַעֲאָדָתָּ וְחָשׂוּ לֹא תִצְלַח אֵן אֲדִכְרָהָ פִי הַדְּאָ אֲלִכְתָּאָב פְּרֵאִיתָ אֵן אֲגַעֵל עוֹצָהָ לִיס לֵאנָהָ אֲצֵל לֹא בַד מְנָה לִכֵּן לִתְעַלֵּק קְלוֹב אֲלֵנָאָס אֲלֵדִין רֵאִיתָ פִּיהָ; Sa‘adya ben Joseph, *Kitāb Jāmi‘ al-Ṣalawāt*, eds. Davidson et al., 156; see also below, n834. Note Sa‘adya’s comment that the Ten Commandments include the 613; Sa‘adya ben Joseph, *Peirushei Rav Sa‘adya Gaon le-Sefer Shemot, Maqor ve-Targum*, ed. and trans. Yehuda Raṣḥabi (Jerusalem: Mosad ha-Rav Kook, 1998), 317; see below, n65.

⁶¹ See Henry Malter, *Saadia Gaon, his Life and Works* (Philadelphia: JPS, 1921), 150, 330-31, 335-36; Robert Brody, *Sa‘adyah Gaon*, trans. Betsy Rosenberg (Oxford: The Littman Library of Jewish Civilization, 2013), 108; and Tobi, “Shivata Shenyah,” 226-29. See also Joshua Blau, “A Poem on the Decalogue Ascribed to Saadiah Gaon,” in *Ten Commandments in History and Tradition*, 355-62; and Joseph Dana, “The *Piyyut* on the Ten Commandments Ascribed to Saadiah Gaon,” *JQR* 86, no. 3-4 (1996): 323-75.

While Sa'adya's lists may have established a more careful enumeration of the 613 commandments (at least in his estimation), a greater literary innovation within the Rabbanite community was his *Kitāb al-Sharā'i'* (*Book of the Commandments*),⁶² which appears to have inaugurated a series of Rabbanite works with similar titles. In the Introduction to this work, Sa'adya identified three ways in which it would be superior to liturgical enumerations of the commandments: Its composition in (Judeo-)Arabic would make the text more broadly accessible; it would include not only the "category heading" of each commandment, but basic information about it; and it was more organized than the *azharot*, which mixed positive and negative commandments.⁶³ In this work, Sa'adya actually divided the commandments into 26 categories, among them, commandments that pertain to worship, impurity, particular places, and particular people.⁶⁴ (Elsewhere, he offered different taxonomies, providing six classes of commandments in one of his *azharot* and linking each commandment to one of the Ten Commandments in another.⁶⁵)

⁶² This work remains largely unpublished; selections appear in D.Z. Baneth, "Haḥalat Sefer ha-Miṣvot le-Rav Sa'adya," in *Rav Sa'adya Gaon: Qoveṣ Torani-Mada'i li-Melot Elef Shanah li-Feṭirato*, ed. Yehuda Leib Fishman (Jerusalem: Mosad ha-Rav Kook, 1943), 365-81; Alexander Scheiber and Isaac Hahn, "Leaves from Saadia's *Kitāb al-Šarā'i'* from the Kaufmann Geniza," *Acta Orientalia Hungarica* 8 (1958): 99-109; repr. in Alexander Scheiber *Genizah Studies* (Hildesheim: Georg Olms Verlag, 1981), 124-34; idem, "Dapim mi-Sefer ha-Miṣvot le-Rav Sa'adya Gaon," *Tarbiṣ* 28, no. 1 (1959): 48-53; idem, "Further Chapters from Saadia's *Kitāb al-Šarā'i'* from the Kaufmann Geniza," *Acta Orientalia* 9 (1959): 97-107; repr. in *Genizah Studies*, 146-56; Alexander Scheiber, "Peraqim mi-Sefer ha-Miṣvot le-Rav Sa'adya Gaon," in *Sefer Yovel Mugash li-Khvod ha-Rav Dr. Shimon Federbush*, ed. Judah Leib Maimon (Jerusalem: Mosad ha-Rav Kook, 1960), 330-35; and David Sklare, "The Religious and Legal Thought of Samuel ben Ḥofni Gaon: Texts and Studies in Cultural History," (PhD diss., Harvard University, 1992), 2:189-202. I thank Ḥaggai Ben-Shammai for providing me with a draft of a translation of the Introduction to this work.

⁶³ Sklare, *Samuel ben Ḥofni Gaon*, 184-85. On the disorganization of *Atah Hinḥalta*, see Frankel, *Maḥzor Shavu'ot*, 36.

⁶⁴ See the chapter headings cited in Samuel ben Ḥofni's *Kitāb fī al-Sharā'i'* in Sklare, *Samuel ben Ḥofni Gaon*, 223-24.

⁶⁵ For the former, see Sa'adya, *Kitāb Jāmi' al-Šalawāt*, eds. Davidson et al., 156; and Sklare, *Samuel ben Ḥofni Gaon*, 224; for the latter, see Dana, "Piyuṣ on the Ten Commandments," 327; Sa'adya ben Joseph, *Sefer Yeṣirah (Kitāb al-Mabādi')*: *im Peirush ha-Gaon Rabbeinu Sa'adya b.r. Yosef Fayyūmī*,

Dividing the law into 26 classes clearly required topical-conceptual arrangement,⁶⁶ yet the logic of this work is hardly self-evident. For example, the fourth division of Sa'adya's *Kitāb al-Sharā'i*, treating commandments that pertain to specific places, includes two commandments that obligate individuals and three that obligate the nation as a whole. Yet it is not clear what distinguishes this division from the fourteenth, which includes twenty-five commandments that obligate the collective and not the individual.⁶⁷ It would appear that Sa'adya's *Kitāb al-Sharā'i* was more a didactic composition than a work of legal philosophy.⁶⁸

The *Kitāb fī al-Sharā'i* (*Book on the Commandments*) of Samuel ben Ḥofni, which was extensively studied by Sklare, is markedly different from Sa'adya's *Kitāb al-Sharā'i*.⁶⁹ The first section of Samuel's work discusses several standard issues of contemporaneous Islamic legal theory, such as the imposition of obligation (*taklīf*), the interpretation of revealed texts, the validity of extending revelation by means of analogy (*qiyās*) for the determination of the law, and the importance of intention in the

Maqor ve-Targum, ed. and trans. Yosef Kafih (Jerusalem, 1972), 47-48; and Sklare, *Samuel ben Hofni Gaon*, 224. On other efforts to find the 613 commandments in the Ten Commandments, see Danzig, "Shalosh Me'ot," 156-57n16; and Zvi A. Yehuda, "Aseret ha-Dibrot ve-Taryag Mišvot," in *Sefer Avi'ad: Qoveš Ma'amarim u-Meḥqarim le-Zekher Dr. Yeshayahu Wolfsberg-Avi'ad*, eds. Oscar Wolfsberg and Yiṣḥaq Raphael (Jerusalem: Mosad ha-Rav Kook, 1986), 268-79. Qaraite legal works often structure the law around the Ten Commandments; Astren, *Karaite Judaism*, 131.

⁶⁶ Isadore Twersky used this phrase to describe the organization of Maimonides' *Mishneh Torah*; *Introduction to the Code of Maimonides*, 254.

⁶⁷ Similarly, Sa'adya had to determine the difference between laws that pertain to particular places and laws that pertain to sowing, addressed in part five, many of which are only operative in the land of Israel.

⁶⁸ Sklare, *Samuel ben Hofni Gaon*, 185.

⁶⁹ On Samuel's life and works, see Sklare, *Samuel ben Hofni Gaon*, 1-36; Moshe Gil, *Jews in Islamic Countries in the Middle Ages*, trans. David Strassler (Leiden: Brill, 2004), 359-72; and Gideon Libson, "Terumat ha-Genizah le-Ḥeiquer ha-Monografiyot ha-Hilkhatiyot shel Rabbi Shmuel ben Ḥofni," *Te'udah* 15 (1999): 189-239.

performance of the commandments. This section also addresses questions that are more distinctly Jewish, such as the status of the Noahide commandments and of laws revealed before Sinaitic revelation. Yet both these topics touched on the question of the universality of the law, a matter of great controversy in the tenth and eleventh centuries.⁷⁰

Following two chapters on the rational and revealed commandments, the second part of Samuel ben Ḥofni's work places the commandments into categories without much comment.⁷¹ The author explained that he did not intend this treatise to set forth the law (*fiqh*), but to address the "classification of the commandments" (*qismat al-miṣvot*) and to refute those that he deemed heretics.⁷² Noting that Samuel did not categorize the commandments into mutually exclusive groups and that Samuel does not appear to have listed all of the 613 commandments, Sklare suggested that his classificatory undertaking may reflect a perspective of the Basran Mu'tazilites. These theologians perceived revealed law as a gift of grace (*lutf*) given to man, and argued that the benefit (*maṣlaḥa*) of the law must change as man's condition changes throughout life. Sklare noted that, in his *ʿAshar Masā'il (Ten Questions)*, Samuel argued that the commandments vary according to one's circumstances (by time, place, personal status, etc.).⁷³ As Sklare

⁷⁰ For an outline of this part, see Sklare, *Samuel ben Ḥofni Gaon*, 172-75; on *taklīf*, see there, 148-52; on the universality of the law, see there, 152-58; idem, "Are the Gentiles Obligated to Observe the Torah," and Yoram Erder, "Early Karaite Conceptions about Commandments Given before the Revelation of the Torah," *PAAJR* 60 (1994): 101-140.

⁷¹ Sklare, *Samuel ben Ḥofni Gaon*, 175; the contents of the third part are unknown.

⁷² Sklare, *Samuel ben Ḥofni Gaon*, 33 lines 1096-1097 (Hebrew pagination); translation there, 177-78.

⁷³ Part two of the *Kitāb fī al-Sharā'ī* classifies laws into overlapping categories and only treats the revealed commandments (*sam'īya*), not rationally based commandments (*'aqlīya*), apparently because only revealed laws can vary; Sklare, *Samuel ben Ḥofni Gaon*, 232. For discussion of *lutf* and its relationship to *taklīf* in the thought of 'Abū al-Ḥasan 'Abd al-Jabbār, Samuel's contemporary whose work Samuel may have studied (Sklare, *Samuel ben Ḥofni Gaon*, 53), see J.R.T.M. Peters, *God's Created Speech: A Study in the Speculative Theology of the Mu'tazilī Qādī l-Qudāt Abū l-Ḥasan 'Abd al-Jabbār bn Aḥmad al-*

explained, the claim that the law's benefits vary in accord with a person's circumstance enabled Samuel to affirm the Torah's ability to accommodate every life condition. This rebutted the Muslim charge that abrogation (*naskh*) of the Torah was necessary because the earlier revelation was outdated.⁷⁴ When seen from this perspective, Samuel's partial enumeration of the commandments may be understood to have served larger theological, theoretical, and polemical purposes.⁷⁵

The last significant Rabbanite *Book of the Commandments* composed before that of Maimonides is the *Kitāb al-Sharā'ī* (*Book of the Commandments*) by Ḥefeṣ ben Yašliaḥ (late tenth century?), of which only fragments remain.⁷⁶ Unlike earlier Rabbanite works of similar titles, the legal compendium compiled by Ḥefeṣ was all-encompassing, structured around the 613 commandments. Benzion Halper, who first published sections of this work, estimated its length at 800 pages.⁷⁷ The Introduction to this work contains a

Hamadānī (Leiden: Brill, 1976), 32-33; Margaretha T. Heemskerk, *Suffering in the Mu'tazilite Theology: 'Abd al-Jabbār's Teaching on Pain and Divine Justice* (Leiden: Brill, 2000), 142-51; and Aron Zysow, "Two Theories of the Obligation to Obey God's Commands," in *The Law Applied: Contextualizing Islamic Sharī'a, Essays in Honor of Frank E. Vogel*, eds. Peri Bearman et al. (London: I.B. Tauris, 2008), 397-421. See also Zucker, "Qeṭa'im mi-Kitāb Taḥšīl al-Sharā'ī," 381.

⁷⁴ Sklare, *Samuel ben Ḥofni Gaon*, 186-88; see also there, 260-68. On the *Kitāb fī al-Sharā'ī*, see also Brody, *Geonim of Babylonia*, 295-96.

⁷⁵ Compare Boaz Cohen, "The Classification of the Law in the *Mishneh Torah*," *JQR* 25, no. 4 (1935): 526-27. Samuel offered a different, three-fold division of the law in his commentary to Deut. 11:32; unfortunately, this text is not preserved in full; see Greenbaum, *Peirush ha-Torah le-Rav Shmuel ben Ḥofni*, 515.

⁷⁶ For the identification of this author and his work, see Zucker, "Qeṭa'im Ḥadashim," 1-9; and Neil Danzig, "The First Discovered Leaves of *Sefer Ḥefeṣ*," *JQR* 82, no. 1-2 (1991): 54-60. Most of the medieval references to Ḥefeṣ are collected in Benzion Halper, *A Volume of the Book of Precepts by Hefes ben Yasliaḥ* (Philadelphia: The Dropsie College for Hebrew and Cognate Learning, 1915), 9-49. For published texts, see Halper's work; Simḥa Assaf, "Mi-Shiyarei Sifrutam shel ha-Geonim," *Tarbiṣ* 15, no. 1 (1944): 31-33; Zucker, "Qeṭa'im Ḥadashim," 13-68; idem, "Iyunim ve-He'arot," *PAAJR* 49 (1982): 99-100; and idem, "Milu'im le-Sefer ha-Miṣvot shel Ḥefeṣ ben Yašliaḥ," *Ha-Do'ar* 42, no. 23 (Nisan, 1963): 385-88.

⁷⁷ Halper, *A Volume of the Book of Precepts*, 50.

theoretical reflection on methodology and legal principles,⁷⁸ and the remainder divides Jewish law into at least 36 classes, such as laws that pertain to animal blemishes, human blemishes, or ritual defilement.⁷⁹ As in the cases of Sa'adya and Samuel ben Ḥofni, this work forced the author to grapple with questions of taxonomy.⁸⁰ The fragmentary state of the evidence unfortunately precludes significant analysis of Ḥefeṣ' theoretical reflections on the enumeration.

Moses Maimonides' engagement with the enumeration of the commandments both drew on and departed from these earlier models. In his Introduction to the *Commentary on the Mishnah*, a work completed by 1168,⁸¹ Maimonides' asserted that Sinaitic revelation centered on the 613 commandments (*sharī'a*) and on their "explanation."⁸² This claim suggests that already at this early stage, Maimonides somehow understood that Sinaitic revelation was structured on the 613 commandments.⁸³ The idea that God revealed precisely 613 commandments also appears elsewhere in this work,⁸⁴ in Maimonides' *Guide for the Perplexed*,⁸⁵ and in one of his letters to Joseph ibn

⁷⁸ See Halper, *A Volume of the Book of Precepts*, 51; and Zucker, "Qeta'im Ḥadashim," 13-17.

⁷⁹ Halper, *A Volume of the Book of Precepts*, 52-57.

⁸⁰ See, e.g., the text treated below, n901.

⁸¹ See Davidson, *Maimonides*, 147-48.

⁸² Note the following: [אעלם אן] כל שריעה אנול אללה עלי משה רבינו אנמא אנולת עליה מע [תפסירה פ]יקול: אללה לה אלנץ ת'ם יקול לה תפסירה ותאילה הכד'א אלסת מאיה ואלת'לאת' עשרה שריעה הי ותפסירה; Maimonides, *Mishnah 'im Peirush Rabbeinu Moshe ben Maimon: Maqor ve-Targum*, ed. and trans. Yosef Kafih (Jerusalem: Mosad ha-Rav Kook, 1963), 1:1-2, 3; idem, *Haqdamot ha-Rambam*, ed. and trans. Isaac Shailat (Jerusalem: Ma'aliyot, 1992), 327, 328. Texts from the Introduction to the *Commentary* follow Shailat's edition; references will be given to both editions.

⁸³ See also below, n527.

⁸⁴ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:247 (mMak 3:17); 5:212 (mHul 7:6). Note two references to *Sefer ha-Misvot*, apparently added after the completion of the *Commentary*; there, 5:121, (mMen 4:1: כתאבנא פי עדר אלמצות; see there, n6); 5:178 (mHul 1:5: כמה יבין לך מן כתאבי פי עדר אלמצות).

⁸⁵ *Guide*, III:27, 31; Maimonides, *Dalālat al-Ḥā'irīn*, eds. Salomon Munk and Issachar Joel (Jerusalem: Yunovits, 1930), 371, 383.

Jābir of Baghdad.⁸⁶ The *Mishneh Torah*, of course, is structured around the 613 commandments; as Halbertal put it, the commandments constitute the “architecture” of this work.⁸⁷ It has recently been suggested that when Maimonides first envisioned the *Mishneh Torah*, he divided it into sections that address one or more related commandments and only later imposed on it the fourteen-book structure that (later) earned this work the title *Yad* (=14) *ha-Ḥazaqah*, i.e., “The Strong Hand.”⁸⁸

Maimonides appears to have composed his Judeo-Arabic *Sefer ha-Miṣvot*⁸⁹ during the period that he was working on his Hebrew *Mishneh Torah*, which was completed in

⁸⁶ Maimonides, *Igrot ha-Rambam*, ed. and trans. Isaac Shailat (Jerusalem: Ma’aliyot, 1987-1988), 1:405.

⁸⁷ See Halbertal, “*Sefer ha-Miṣvot* le-Rambam,” 458-59, 465-66, 476.

⁸⁸ Davidson, *Maimonides*, 213; and Lawrence Kaplan, “Further Reflections on Classification of *Mishneh Torah*: Real Answers to Real Problems,” *Ḥakirah* 19 (2015): 41-44. Twersky, *Introduction to the Code of Maimonides*, 260, made this suggestion more tentatively. On the title *Yad ha-Ḥazaqah*, see Cohen, “The Classification of the Law,” 529n41; Isadore Twersky, “The Beginnings of *Mishneh Torah* Criticism,” in *Biblical and Other Studies*, ed. Alexander Altmann (Cambridge: Harvard University Press, 1963), 173n55; idem, “R. Yosef Ashkenazi ve-Sefer *Mishneh Torah* le-Rambam,” in *Salo Wittmayer Baron Jubilee Volume*, 3:185-92; and idem, *Introduction to the Code of Maimonides*, 105, 527.

⁸⁹ This work does not seem to have had a stable Judeo-Arabic title; on the title *Sefer ha-Miṣvot*, see Jacob Neubauer, *Ha-Rambam ‘al Divrei Sofrim* (Jerusalem: Mosad ha-Rav Kook, 1956), 91-100. For bibliographies, see Jacob I. Dienstag, “Ein ha-Miṣvot (Leksiqon Bio-Bibliografi le-Ḥoqrei *Sefer ha-Miṣvot* leha-Rambam ule-Mefarshav),” *Talpiot* 9 (1970): 663-759; and idem, “*Sefer ha-Miṣvot* leha-Rambam: Bibliografiya shel Hoṣa’ot, Targumim, Bei’urim,” *Areshet* 5 (1972): 34-80.

Sefer ha-Miṣvot was translated three times in the medieval period; see Maimonides, *Sefer ha-Miṣvot le-Rabbeinu Moshe be-Rabbi Maimon be-Tirgumo shel R. Moshe Ibn Tibbon, ‘al pi ketav yad Minkhen u-khtav yad London*, ed. Ḥayim Heller (Jerusalem, Mosad ha-Rav Kook, 1946), 2, 8 (introductory pagination). The standard translation is that of Moses Ibn Tibbon, the translation of Solomon ibn Ayyub is preserved mainly in manuscripts, and the translation of Abraham ben Ḥisdai ha-Levi is largely lost, though may be partially preserved in the *editio princeps* (Constantinople, 1510). On the question of which translation Naḥmanides possessed, see idem, *Sefer ha-Miṣvot*, ed. Heller, 7-9 (introductory pagination); and Ḥayim Heller, “Peli’ah ‘al ha-Ramban,” *Ha-Pardes* 12, no. 1 (1938): 11-16. This dissertation primarily utilizes the following editions: Maimonides, *Le Livre des Préceptes par Moïse ben Maimon dit Maïmonide*, ed. Moïse Bloch (Paris, 1888; hereinafter *Sefer ha-Miṣvot*, ed. Bloch); Maimonides, *Sefer ha-Miṣvot*, ed. Heller; and Maimonides, *Sefer ha-Miṣvot: Maqor ve-Targum*, trans. and ed. Yosef Kafiḥ (Jerusalem: Mosad ha-Rav Kook, 1971). On Kafiḥ’s edition, see Joshua Blau, “Mahadurah Ḥadashah shel *Sefer ha-Miṣvot*,” *Lēšonenu* 37 (1973): 291-302. I also occasionally use the translation found in David ben Samuel Kokhavi, *Sefer ha-Batim*, ed. Moshe Hershler (Jerusalem: Beit Midrash la-Torah, 1982), vol. 2, which generally includes the translation of Solomon ibn Ayyub. Unless otherwise noted, texts follow Kafiḥ’s edition of *Sefer ha-Miṣvot*.

1178.⁹⁰ The Introduction to *Sefer ha-Miṣvot* depicts this work, in the words of Isadore Twersky, “as a Talmudic enchiridion, a manual preparatory and auxiliary to the *Mishneh Torah*.”⁹¹ According to one of *Sefer ha-Miṣvot*’s medieval Hebrew translators, Moses Ibn Tibbon (fl. Montpellier; 1244-83), Maimonides “wrote [*Sefer ha-Miṣvot*] in Arabic in order that it not be attached to his great compendium, even though [*Sefer ha-Miṣvot*] is like an opening to [the *Mishneh Torah*].”⁹² Later in life, Maimonides addressed his linguistic choice for *Sefer ha-Miṣvot*, stating “I greatly regret composing it in Arabic because all ought to read it, and I now await [a time] that I will translate it into the holy tongue.”⁹³ However, as Abraham Halkin noted, it is unclear whether the phrase “because all ought to read it” explains Maimonides’ original decision to write this work in Judeo-Arabic or explains why it should be translated into Hebrew.⁹⁴

⁹⁰ See Davidson, *Maimonides*, 174; on the date for the *Mishneh Torah*, see below, n387.

Background on *Sefer ha-Miṣvot* appears in Davidson, *Maimonides*, 168-88. As Blidstein noted, however, “we possess a work produced in near chronological proximity with *Mishneh Torah* and yet ... studded with disagreements with the Code”; “Where Do We Stand,” 20.

⁹¹ Twersky, *Introduction to the Code of Maimonides*, 335; he also described this work as “propaedeutic” (24). Twersky deduced that Maimonides’ attitude towards *Sefer ha-Miṣvot* eventually grew more positive (336).

⁹² וחבר זה בלשון הגרי למען לא יחובר עם חבורו הגדול ואע”פ שהוא כפתחיה אליו; Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 27 (introductory pagination).

⁹³ וניחמתי הרבה על שחברתי בלשון ערבי מפני שהכל צריכין לקרותו ואני מחכה עתה שאעתיק אותו ללשון הקודש; Maimonides, *Teshuvot ha-Rambam: Yoṣa’ot le-Or be-Pa’am ha-Rishonah be-Meqoran ha-‘Aravi*, trans. and ed. Joshua Blau (Jerusalem: Meqīsei Nirdamim, 1957-1961), 2:725 (§447); idem, *Igrot*, ed. Shailat, 1:223.

⁹⁴ Abraham S. Halkin, “The Medieval Jewish Attitude Toward Hebrew,” in *Biblical and Other Studies*, 238n27: “this passage ... is somewhat ambiguous but probably the explanation offers the reason why it is in Arabic.” Twersky, *Introduction to the Code of Maimonides*, 334, wrote: “this comment is ambiguous, for it is not clear whether the explanatory clause (‘because all people ought to read it’) refers to his original motivation for writing it in Arabic or to the reason for his retrospective regret.” Recent scholars have accepted the latter explanation; Sarah Stroumsa, *Maimonides in His World: Portrait of a Mediterranean Thinker* (Princeton: Princeton University Press, 2009), 21: “on another occasion Maimonides expresses his regret at having written the *Book of Commandments* in Arabic, ‘since this is a book that everyone needs’”; and Simon Hopkins, “The Languages of Maimonides,” in *Trias of Maimonides, Jewish, Arabic, and Ancient Culture of Knowledge*, ed. Georges Tamer Berlin (New York: W. de Gruyter, 2005), 97: “when later he expressed regret for [writing *Sefer ha-Miṣvot* in Arabic], it was not because matter and medium were inherently unsuited, but because of the mundane practical consideration

The stated purpose of *Sefer ha-Miṣvot* is to provide the necessary evidence and background for the enumeration of the commandments; this would serve as the structure upon which the *Mishneh Torah* would be built. Maimonides asserted that he had long recognized the woeful inadequacy of earlier enumerations, writing that the *azharot* that he heard in his Andalusian youth caused him “pains” (*ālām*).⁹⁵ After the opening, which also outlines the plans for the *Mishneh Torah*, Maimonides offered fourteen principles (*uṣūl*; sing., *aṣl*),⁹⁶ claiming that these would rectify the errors of earlier enumerators of the commandments. In the body of *Sefer ha-Miṣvot*, he followed the talmudic distinction between positive and negative commandments. As he later put it, in this section, “I explained the enumeration of each and every commandment, and I brought proofs from the *Sifra* or *Sifrei* and from the *Tosefta* and from all places in the *gemara* for any commandment regarding which there is doubt.”⁹⁷

Gerald Blidstein noted that *Sefer ha-Miṣvot* “may well be the most pioneering of Maimonides’ works, at least in its undergirding concepts,” and yet, “as the most original

that the use of Arabic automatically restricted his readership to the Arabic-speaking world alone: ... ‘and I much regret having composed it in the Arabic language, because everybody ought to read it.’” Mordechai Cohen, “Hirhurim ‘al Heiḳer ha-Munah ‘Peshuṭo shel Miqra’ be-Teḥilat ha-mei’ah ha-‘Esrin ve-Ahat,” in *Le-Yashev Peshuṭo shel Miqra: Asupat Meḥqarim be-Farshanut ha-Miqra*, eds. Sarah Japhet and Eran Viezel (Jerusalem: Mosad Bialik, 2011), 41n160, also took this position.

⁹⁵ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 4, 5 (introduction). On *ālām*, see Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 4n2. On this passage, see Twersky, *Introduction to the Code of Maimonides*, 250-52. See also below, n856.

⁹⁶ In at least two places, Maimonides translated *uṣūl* in this context as “*peraqim*” (chapters); see *Teshuvot*, ed. Blau, 2:632 (§365), 2:725 (§447); and *Igrot*, ed. Shailat, 1:232, 2:451. For *aṣl*, Solomon ibn Ayyub used the word ‘*iqar*, and Moses Ibn Tibbon, *shoresh*; see idem, *Sefer ha-Miṣvot*, ed. Heller, 7 (introductory pagination). See also idem, *Sefer ha-Miṣvot*, ed. Kafih, 8n55; and idem, Maimonides, *Mishnah ‘im Peirush*, 1:78 and n5 (mBer 7:6, translating ‘*iqar* as *aṣl*), 4:7 (mBQ 1:1, translating *avot* as *uṣūl*).

⁹⁷ בארתי בו מנין כל המצוות מצוה ומצוה והבאתי ראיות על כל מצוה שיש בה ספק מן ספרא או ספרי ומן התוספתות ומן כל מקום בגמרא; Maimonides, *Teshuvot*, ed. Blau, 2:725 (§447); idem, *Igrot*, ed. Shailat, 1:232.

and daring ... [, it] would of necessity be the most flawed. For the basic question is whether the Talmud lends itself to the kind of systematization undertaken in this work, whether the Maimonidean categories and problems – Talmudic, of course – can be imposed consistently on the protean Talmud. The task was Herculean.”⁹⁸ Nowhere is this “Herculean” task more evident than in the Fourteen Principles of this work’s Introduction, which Twersky called *Sefer ha-Miṣvot*’s “real *novum*.”⁹⁹ Maimonides himself described the Fourteen Principles as ones which contain “great rules and many principles (*iqarim*), which are like mountains, on which all the matters depend. I placed them in the preface,” he wrote, “in order to understand the ways that man can comprehend the enumeration of the commandments.”¹⁰⁰

The final Judeo-Arabic text addressed in this study is a debate concerning Maimonides’ *Mishneh Torah* and *Sefer ha-Miṣvot* that involved Daniel ben Sa’adya ha-Bavli (Baghdad and Damascus; fl. early 13th c.) and Abraham ben Moses Maimonides (Fustāt; 1186-1237).¹⁰¹ In early 1213, Daniel sent Abraham forty-seven questions about

⁹⁸ Blidstein, “Where Do We Stand,” 26, 27.

⁹⁹ Twersky, *Introduction to the Code of Maimonides*, 3n3.

¹⁰⁰ שיש בהם כללים גדולים ועקרים רבים שהן כהררים שכל הדברים תלויין בהן וכולם הקדמתי אותם להבין הדרכים שיתפוס אדם במניין המצוות ושמ בתחלתו יד עקרים טובים; Maimonides, *Teshuvot*, ed. Blau, 2:725 (§447); idem, *Igrot*, ed. Shailat, 1:232. Compare Solomon ibn Ayyub’s comment in the Introduction to his translation: ומבוארים הראה בהם בראיות ברורות שאין ראוי למנות המצות כי אם על צד שמנאם הוא בספרו הגדול ומבוארים הראה בהם בראיות ברורות שאין ראוי למנות המצות כי אם על צד שמנאם הוא בספרו הגדול; Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 27 (introductory pagination).

¹⁰¹ The correspondence between Abraham Maimonides and Daniel ha-Bavli is preserved in a unique manuscript, Oxford MS. Huntington 185; see Adolf Neubauer, *Catalogue of the Hebrew Manuscripts in the Bodleian Library and in the College Libraries of Oxford* (Kessinger Publishing, 1886), no. 628; and Malachi Beit-Arié, *Catalogue of the Hebrew Manuscripts in the Bodleian Library: Supplement of Addenda and Corrigenda* (Oxford: Clarendon Press, 1994), no. 628. This text was first published as Abraham Maimonides and Daniel ben Sa’adya ha-Bavli, *Brikat Avraham, hu Sefer Teshuvot le-Rabbeinu Avraham ben ha-Rambam*, ed. Baer Goldberg (Lyck, 1859); and idem, *Ma’aseh Nissim, She’elot Rabbeinu Daniel ha-Bavli ‘al Sefer ha-Miṣvot shel ha-Rambam u-Teshuvot Rabbeinu Avraham beno Rabbeinu Moshe Maimon ‘al ha-She’elot*, ed. and trans. Baer Goldberg (Paris: Brill, 1867). For reviews, see Abraham Geiger, “Recensionen. Alte Schriften zum ersten Male herausgegeben,” *JZWL* 2 (1863): 55-63; and idem, “Daniel ha-Bavli und Abraham Sohn des Moses Maimonides,” *JZWL* 6 (1868):

the *Mishneh Torah*, five about the Principles in *Sefer ha-Miṣvot*, and eight about that work's enumeration of the commandments. (Abraham appears to have responded in

155-56. *Ma'aseh Nissim* has been reprinted twice: *Ma'aseh Nissim, She'elot Rabbeinu Daniel ha-Bavli 'al Sefer ha-Miṣvot shel ha-Rambam ve-Teshuvot Rabbeinu Avraham beno Rabbeinu Moshe Maimon 'al ha-She'elot*, ed. and trans. Kalman Kahana, in *Sefer Mishneh Torah le-Rabbeinu Moshe ben Maimon, ve-Nilvah elav Sefer ha-Miṣvot, gam hu la-Rambam, 'im Kol ha-Peirushim, Hosafot Hadashot mi-Khitvei Yad* (Tel Aviv: Pardes, 1958), 1-22 (repagination at the end of the volume); and *Sefer Teshuvot Rabbeinu Avraham ben ha-Rambam le-She'elot Rabbi Daniel ha-Bavli*, trans. David Zvi Hellman, in *Sefer ha-Miṣvot le-Rabbeinu Moshe ben Maimon 'im Hasagot ha-Ramban*, ed. David Zvi Hellman (Jerusalem: Hoṣa'at Shabbtai Frankel, 2002). Goldberg's transcriptions of the manuscript are largely accurate. I thank Uri Melamed for providing me with a new transcription and a translation of the first three queries and responses in *Ma'aseh Nissim*. I utilize the unique manuscript and Goldberg's editions; references will be to both.

Joseph Karo quoted this correspondence sixteen times in his *Kesef Mishneh*; in addition to the lists in Geiger, "Recensionen," 57n1; and Abraham Maimonides, *Milḥamot ha-Shem*, ed. Reuven Margaliot (Jerusalem: Mosad ha-Rav Kook, 1952), 25, see *Hilkhot Qorban Pesah*, 5:2; *Hilkhot Shegagot*, 2:12; and *Hilkhot Miqva'ot*, 4:4. Several of Daniel's queries also overlap with questions sent to Abraham Maimonides from Aden, Yemen; see Abraham Maimonides, *Teshuvot Rabbeinu Avraham ben ha-Rambam*, ed. A.H. Freimann and trans. S.D. Goitein (Jerusalem: Meqīsei Nirdamim, 1937), xv, 198-200, esp. n1.

Note that Daniel actually referred to himself as Daniel ha-Bavli ben Sa'adya; see T.S. 24.41, printed in Jacob Mann, *Texts and Studies in Jewish History and Literature* (Cincinnati: Hebrew Union College Press, 1931; Philadelphia: JPS, 1935), 1:409-411; and Salomo A. Birnbaum, *The Hebrew Scripts* (London: Palaeographia, 1954), 2 no. 193; and MS. Hunt. 185, 5b; *Birkat Avraham*, 2.

There is ongoing debate as to whether Daniel ben Sa'adya ha-Bavli is to be identified with Daniel Ibn al-Māshīṭa, author of a pietistic work titled *Taqwīm al-Adyān* (*The Rectifications of Religion*) and a (lost) *Commentary on Ecclesiastes*, both of which criticize Maimonidean philosophy. See Samuel Poznański, "Daniel Ibn al-Amschata: un adversaire littéraire de Maïmonide," *REJ* 33 (1896): 308-311; idem, *Babylonische Geonim im nachgaonäischen Zeitalter: Nach Handschriftlen und gedruckten Quellen* (Berlin: Mayer & Müller, 1914), 16-17; Abraham Maimonides, *Peirush Rabbeinu Avraham ben ha-Rambam 'al Bereishit u-Shemot*, ed. E.J. Wiesenberg (London, 1958), 104n10; Paul Fenton, "Le *Taqwīm al-Adyān* de Daniel Ibn Al-Māshīṭa, nouvelle pièce de la controverse Maïmonidienne en orient," *REJ* 144, no. 3-4 (1986): 287-89; and idem, "Daniel Ibn Al-Māshīṭa's *Taqwīm al-Adyān*: New Light on the Oriental Phase of the Maimonidean Controversy," in *Genizah Research after Ninety years*, 79-81. Fenton has found what he called "a near decisive proof" that Daniel ha-Bavli was indeed Daniel Ibn al-Māshīṭa; idem, "A Re-Discovered Description of Maimonides by a Contemporary," *Maimonidean Studies* 5 (2008): 274n28; idem, "The Literary Legacy of Maimonides' Descendants," in *Moses Maimonides (1138-1204): His Religious, Scientific, and Philosophical Wirkungsgeschichte in Different Cultural Contexts*, eds. Görg K. Hasselhoff and Otfried Fraisse (Würzburg: Ergon, 2004), 103; and idem, "Moreshet ha-Sifrutit shel Ṣeṣa'ei ha-Rambam," *Pe'amim* 97 (2004): 12; accepted in Menaḥem Ben-Sasson, "Masoret ve-Shinuy be-Defusei ha-Pulmus shel Shoshelet beit ha-Rambam (Ra'vam ve-Ravda)," in *Masoret ve-Shinuy ba-Tarbut ha-'Arvit-ha-Yehudit shel Yemei-ha-Beinayim: Divrei ha-Ve'edah ha-Shishit shel ha-Hevrah le-Heiqer ha-Tarbut ha-'Arvit-ha-Yehudit shel Yemei-ha-Beinayim*, eds. Joshua Blau and David Doron (Ramat Gan: Bar Ilan University, 2000), 79. The conclusion in Gil, *Jews in Islamic Countries*, 451, 478-80, is unclear. See also Elisha Russ-Fishbane, "Between Politics and Piety: Abraham Maimonides and His Times," (PhD Diss., Harvard University, 2009), 27-30, 115-20.

relatively short order, but the precise date is unknown.¹⁰²) Daniel posed his questions in the languages of Maimonides' works; his queries on the *Mishneh Torah* were written in Hebrew, and those on *Sefer ha-Miṣvot*, in Arabic.¹⁰³

In his *Milḥamot ha-Shem (Wars of the Lord)*, Abraham Maimonides reported that Daniel ha-Bavli was a student of Samuel ben 'Eli ibn al-Dastūr (Baghdad; d. c. 1194/7), self-styled gaon of the reborn Baghdadi yeshiva who engaged in protracted battles with Maimonides over political, halakhic, and philosophical matters.¹⁰⁴ Daniel's educational pedigree led several scholars to conclude that his challenges to Maimonides' halakhic

¹⁰² See Mordechai Akiva Friedman, "Maḥloqet le-Sheim Shamayim: 'Iyunim be-Pulmus ha-Tefillah shel R. Avraham ben ha-Rambam u-Vnei Doro," *Te'udah* 10 (1996): 264-66; idem, "Abraham Maimuni's Prayer Reforms: Continuations or Revision of His Father's Teachings?" in *Traditions of Maimonideanism*, ed. Carlos Fraenkel (Leiden: Brill, 2009), 150; and idem, "Abraham Maimonides on His Leadership, Reforms, and Spiritual Imperfection," *JQR* 104, no. 3 (2014): 508-510.

¹⁰³ Noted in Dienstag, "'Ein ha-Miṣvot," 688; and Russ-Fishbane, "Between Politics and Piety," 27n126.

¹⁰⁴ Abraham Maimonides, *Milḥamot ha-Shem*, ed. Margaliyot, 54. On Samuel, see Simḥa Assaf, "Qoveṣ shel Igrot R. Shmuel ben 'Eli u-Vnei doro," *Tarbiz* 1, no. 1 (1929): 102-130; 1 no. 2 (1930): 43-84; 1 no. 3 (1930): 15-80; Simḥa Emmanuel, "Teshuvat Rav Shmuel ben 'Eli Gaon Baghdad le-Ḥakhmei Ṣarfāt," *Tarbiz* 66, no. 1 (2007): 93-100; and Gil, *Jews in Islamic Countries*, 450-61. On Samuel and Maimonides, see Daniel Jeremy Silver, *Maimonidean Criticism and the Maimonidean Controversy, 1180-1240* (Leiden: Brill, 1965), 58-65; Gerald Blidstein, "Maimonides on the Renewal of *Semikha*: Some Historical Perspective," *Jewish Political Studies Review* 10, no. 3-4 (1998): 29-34; idem, *'Eqronot Mediniyim be-Mishnat ha-Rambam: 'Iyunim be-Mishnato ha-Hilkhatit* (Ramat Gan: Bar Ilan University, 1983), 143-45; Sarah Stroumsa, "Twelfth Century Concepts of Soul and Body: The Maimonidean Controversy in Baghdad," in *Self, Soul and Body in Religious Experience*, eds. A.I. Baumgartner et al. (Leiden, Brill: 1998), 313-34; idem, "Le-Pulmus ha-Rambam be-Mizraḥ: Meqomo shel Abū al-Barakat al-Baghdadi," in *Ḥiqrei 'Ever va-'Arav: Mugashim le-Yehoshua Blau*, ed. Ḥaggai Ben-Shammai (Tel Aviv: Tel Aviv University, 1993), 415-22; idem, *Reishito shel Pulmus ha-Rambam ba-Mizraḥ: Igeret ha-Hashtaqah 'al Odot Tehiyat ha-Meitim le-Yosef ibn Shimon* (Jerusalem: Yad Ben-Zvi, 1999); idem, *Maimonides in His World*, 165-83; Y. Tzvi Langermann, *Yemenite Midrash: Philosophical Commentaries on the Torah* (San Francisco: Harper, 1996), 297-302; idem, "Igeret R. Shmuel ben 'Eli be-'Inyan Tehiyat ha-Meitim," *Qoveṣ 'al Yad* 15 (2001): 39-64; Menahem Ben-Sasson, "The Maimonidean Dynasty – Between Conservatism and Revolution," in *Maimonides After 800 Years: Essays on Maimonides and his Influence*, ed. Jay Harris (Cambridge: Harvard University Press, 2007), 2n5; Herbert A. Davidson, "Maimonides and Samuel Ben Ali," in *Studies in the History of Culture and Science: A Tribute to Gad Freudenthal*, eds. Resianne Fontaine et al. (Leiden: Brill, 2011), 171-88; and the studies cited in below, n388.

writings continued the battle waged by his teacher.¹⁰⁵ (In fact, the son-in-law and successor of Samuel ben ‘Eli, Zekhariah ben Berakhel, wrote critiques of Maimonides’ *Commentary on the Mishnah*, though these are now lost.¹⁰⁶) According to Menahem Ben-Sasson, however, Daniel’s queries were an “accepted and legitimate genre” of halakhic writing; he concluded that figures in the circle of Abraham Maimonides misinterpreted Daniel’s goals.¹⁰⁷ Ben-Sasson’s assessment may be supported by the fact that bitter rhetoric is largely absent from Daniel’s questions, while Abraham’s responses are replete with vituperative remarks (and praise).¹⁰⁸

In an early version of his *Tahkemoni*, the poet Judah al-Ḥarīzī (b. Toledo, d. Aleppo; c. 1165-1225) wrote the following about Daniel ha-Bavli:

He is an ever-flowing spring (mAv 2:10) /
 In his wisdom he smashes cedars (cf. Ps. 29:5) /
 And exerts strength (Eccl. 10:10).¹⁰⁹

¹⁰⁵ Simon Eppenstein, *Abraham Maimuni: Sein Leben und seine Schriften* (Berlin: L. Lamm, 1914), 2; A.H. Freimann, “Teshuvot ha-Rambam le-R. Yosef ha-Ma’aravi Talmido ‘al Hasagot R. Shmuel be-R. ‘Elī Rosh Yeshivat Baghdad,” in *Sefer ha-Yovel: Qoveš Torani Mada’i Mugash le-Doqtor Binyamin Menasheh Levin le-Yovlo ha-Shishim*, ed. Judah Leib Maimon (Jerusalem: Mosad ha-Rav Kook, 1939), 28-29; Abraham Ben-Jacob, *Yehudei Bavel: mi-Sof Tequfat ha-Geonim ‘ad Yameinu (1038-1960)* (Jerusalem: Yad Ben-Zvi, 1965), 30; and Russ-Fishbane, “Between Politics and Piety,” 27-28. See also Silver, *Maimonidean Criticism*, 65-68.

¹⁰⁶ See Poznański, *Babylonische Geonim*, 32. On Zekhariah, see also Assaf, “Qoveš,” 107-108, 128; Mann, *Texts*, 2:196, 2:240-42, 2:252; Maimonides, *Igrot ha-Rambam*, ed. and trans. D.Z. Baneth (Jerusalem: Meqīsei Nirdamim, 1946), 31n2; and Gil, *Jews in Islamic Countries*, 459-63.

¹⁰⁷ Ben-Sasson, “Masoret ve-Shinuy,” 79; see there, 80-82.

¹⁰⁸ Margaliyot, in Abraham Maimonides, *Milhamot ha-Shem*, ed. Margaliyot, 25-28, listed many of the examples of praise and rebuke. See similarly A. Ovadiah, “Rabbi Avraham ha-Maimuni,” *Sinai 2* (1937): 86-91. One important exception is Daniel’s accusation that Maimonides adopted a view of the Qaraites; see below, n1236. I hope to return to this question. On polemic between Jewish jurists, compare Isadore Twersky, *Rabad of Posquières, a Twelfth-Century Talmudist* (Cambridge: Harvard University Press, 1962), 42, 178, 192.

¹⁰⁹ וְשֵׁם רֵאִיתִי הַחֶכֶם הַגָּדוֹל ר' דָּנְיָאֵל הַבְּבֵלִי / הוּא מְעִיֵן מִתְגַּבֵּר / וּבְחֻקְמָתוֹ אֶרְזִים מְשַׁבֵּר / וְחֵילִים יִגְבֵּר; Judah al-Ḥarīzī, *Tahkemoni: o, Maḥberot Heman ha-Ezrahi*, eds. Yosef Yahalom and Naoya Katsumata (Jerusalem: Yad Ben-Zvi, 2010), 438 lines 124-25. See similarly idem, *Kitāb al-Durar: ve-hu Sefer Peninei ha-Musarim ve-Shivḥei ha-Qeḥalim*, eds. Yehoshua Blau et al. (Jerusalem: Yad Ben-Zvi, 2009), 142 lines 221-32. Al-Ḥarīzī considered Daniel “among the people of knowledge and virtue, masters of piety and

While al-Ḥarīzī, a committed “Maimonidean partisan,”¹¹⁰ removed this passage in a later version of the *Taḥkemoni*,¹¹¹ his remarks about Daniel’s intellect are borne out in the latter’s analytical questions.

Abraham Maimonides loyally defended his father, though, on several occasions, he confessed to uncertainty regarding his father’s reasoning, suggested that his father had later changed his mind, and even conceded that his father’s positions were difficult to understand. At the outset of his comments, Abraham wrote that Daniel “challenged well and asked appropriately”; his words, wrote Abraham, “are good and correct, and they testify that [he is] among the intelligent.” On balance, however, Abraham deemed Daniel’s questions “weak”; he felt compelled to respond to them, he wrote, because they imply that Maimonides erred.¹¹² Abraham twice reminded readers that Daniel himself did

intelligence” (ומן אהל אלעלם ואלפצ'ל ואבראב \ אלדיאנה' ואלע'ל) and wrote that Daniel’s “intelligence flashes like a kindled fire” (ילו>ח< ד'כאה כאלנוד אלורי) (translation there, 27*, 91*).

¹¹⁰ Robert Chazan, *The Jews of Medieval Western Christendom: 1000-1500* (Cambridge: Cambridge University Press, 2006), 272, used this term to describe the poets, philosophers, and jurists who defended Maimonides’ legacy. On al-Ḥarīzī’s praise for Maimonides, see Samuel Miklós Stern, “Rabbi Yehuda al-Ḥarīzī be-shivḥo shel ha-Rambam,” in *Hagut Ivrit be-Eiropah*, eds. Menahem Zohori and Aryeh Tartakower (Tel Aviv: World Hebrew Union, 1969), 91-103; Twersky, “The Beginnings of *Mishneh Torah* Criticism,” 167; idem, “Some Reflections on the Historical Image of Maimonides: An Essay on His Unique Place in History,” in *The Legacy of Maimonides*, 3; and Angel Sáenz-Badillos, “Yēhudah al-Ḥarizi, admirador de Maimónides,” *Miscelánea de Estudios Árabes y Hebraicos* 34, no. 2 (1985): 61-71. Compare Bernard Septimus, *Hispano-Jewish Culture in Transition: The Career and Controversies of Ramah* (Cambridge, MA: Harvard University Press, 1982), 3, 40.

¹¹¹ See Judah al-Ḥarīzī, *Mas'ei Yehuda: Ḥamishah Pirqei Masa' Meḥorazim le-al-Ḥarīzī*, eds. Yosef Yahalom and Joshua Blau (Jerusalem: Yad Ben-Zvi, 2002), xiv-xv; idem, *Kitāb al-Durar*, 25*-28*; idem, *Taḥkemoni*, xlvi-l; and Joshua Blau and Joseph Yahalom, “*Kitāb al-Durar* – ve-hu Sefer Ḥadash shel al-Ḥarīzī ‘al Shivḥei ha-El ve-‘al Qehilot ha-Mizraḥ,” *Pe’amim* 108 (2007): 30-31. Compare the comments about Ḥarīzī’s temperament by a contemporary Muslim biographer in Joseph Sadan, “Rabbi Yehuda al-Ḥarīzī ke-Šomet Tarbuti: Biographiyah ‘Aravit shel Yošer Yehudi be-‘Enei Mizraḥan,” *Pe’amim* 68 (1996): 52; and idem, “Un intellectuel juif au confluent de deux cultures: Yehuda al-Harizi et sa biographie arabe,” in *Judíos y musulmanes en al-Andalus y el Magreb: Contactos intelectuales*, ed. Isabel María Fierro Bello (Madrid: Casa de Velázquez, 2002), 139.

¹¹² ואם יפה אדוני הקשיט וכענין שאלת במקומות ידועים הלא רוב הקושיות רעועים ובאמת דברך טובים ומעידים עליך MS. Hunt. 185, 8a; *Birkat Avraham*, 3 (introduction).

not offer a precise enumeration of the commandments, as if to imply that, whatever its difficulties, Maimonides had at least put forward a viable list.¹¹³

Outline of This Study

This dissertation is divided into two broad sections. The first three chapters address Rabbanite reflections on the identity of the extra-scriptural material that God gave the Israelites, and on the relationship of extra-scriptural traditions to written revelation. The final two chapters explore theoretical and methodological problems connected with the project of enumeration.

Chapter One examines geonic approaches to the Oral Torah, and notes that all surviving pre-Maimonidean enumerations of the commandments consider post-Sinaitic laws to be of divine origin. Though scholars have long assumed that geonic assertions about the divine origin of the Oral Torah were designed to thwart Qaraism, I point out that geonic-era presentations of the Oral Torah and of the origins of non-biblical institutions share several features with the claims of contemporaneous Sunni Muslims, who asserted that all religious practices must be firmly grounded in prophetic dicta. This cross-cultural perspective suggests that the geonim portrayed the Oral Torah in terms that were coherent in their day, informed by broader discussions of religious authority and its sources. It also accounts for the surprising claims of Sa'adya Gaon and others, who

¹¹³ See MS. Hunt. 126a, 142a; *Ma'aseh Nissim*, 1 (introduction), 21 (§3). See Abraham's comment that the Ten Commandments are the "roots" (*uṣūl*) of the 613 commandments; *Peirush*, ed. Wiesenberg, 321-33; noted in Naḥem Ilan, "Hanaḥot Te'ologiyot ve-'Eqronot Parshaniyim: Le-Ṭivo shel Peirush R. Avraham ben ha-Rambam la-Torah," in *A Word Fitly Spoken*, 56.

described such non-biblical institutions as the mathematical calendar and the festival of Hanukah as ones that were of divine authority.

Chapter Two examines Maimonides' approach to the Oral Torah, as developed in his Judeo-Arabic *Commentary on the Mishnah*, Judeo-Arabic *Sefer ha-Miṣvot* and Hebrew *Mishneh Torah*. After uncovering previously unnoticed pre-Maimonidean reflections on the Oral Torah composed in Andalusia, this chapter demonstrates that ideas in the writings of Isaac Ibn Ghiyāth (Lucena [?], 1038-89) influenced claims about the Oral Torah made by twelfth-century Andalusian Rabbanites. These, I suggest, spurred Maimonides to reject the geonic approach to revelation. This chapter next traces two themes in Maimonides' works: the content of Sinaitic revelation and the role of the rabbis. While many scholars have analyzed Maimonides' presentations, I employ a holistic approach that integrates Maimonides' Hebrew compositions with his Judeo-Arabic writings. I show that while Maimonides sharply distinguished between laws of divine and human origin, his attempt to align the content of revelation with precisely 613 commandments led him, on occasion, to blur his own neat definitions and conceptual boundaries.

Chapter Three traces the writings of two thirteenth-century Judeo-Arabic jurists who, for different reasons, engaged Maimonides' theories of the Oral Torah: Daniel ben Sa'adya ha-Bavli and Abraham Maimonides. While Daniel accepted that Maimonides had successfully dismantled the geonic-era approach to the Oral Torah, he felt that Maimonides had unduly minimized the scope of revelation – and vastly overstated the role of the rabbis – in the establishment of Jewish law. Daniel exploited several ambiguities in Maimonides' works in order to criticize the ways that Maimonides

diverged from classical rabbinic presentations of revelation. He also attempted to uphold geonic conceptions of the Oral Torah, but the force of Maimonides' arguments drove him to reread geonic assertions through a Maimonidean lens. Analysis of his comments on Maimonides' *Sefer ha-Miṣvot* further demonstrates that Maimonides influenced Daniel's terminology and his understanding of the Oral Torah. In his responses to Daniel, which, in all likelihood, constitute his earliest written reflections on the Oral Torah, Abraham Maimonides staunchly defended his father's system, at times with palpable bias. The remainder of this chapter examines treatments of the Oral Torah in Abraham's later writings, with particular focus on his *Kifāyat al- 'Ābidīn* (*The Sufficient Guide for the Servants of God*) and responsa, building on earlier studies of Abraham's *Commentary on Genesis and Exodus*. This study demonstrates that Abraham applied and expanded his father's system in both pietistic and non-pietistic contexts. Maimonides' understanding of the Oral Torah enabled Abraham to argue that human reason may support particular legal innovations and to defend his own pietistic reforms.

The final two chapters examine theoretical problems connected with the process of enumeration itself and demonstrate how Rabbanites used this topic as a vehicle for ruminating on larger, more speculative legal problems. Chapter Four highlights the difficulties intrinsic to the project of reducing Jewish law to 613 commandments. Because the number 613 bears no substantive relationship to the scope of Talmudic law, enumerators of the commandments needed to formulate a system for identifying "commandment-units" that could encompass numerous "laws." The first thinkers to tackle this problem, at least implicitly, were those who composed early *azharot*; later, Sa'adya Gaon, Samuel ben Ḥofni, and Ḥefeṣ ben Yaṣliaḥ acknowledged this challenge.

The most systematic Judeo-Arabic reflections on this problem – by Maimonides, Daniel ben Sa‘adya, and Abraham Maimonides – drew on formal logic, Islamic legal theory, and qur’ānic exegesis. The complexity of their systems underscores the challenges posed by enumeration and the creativity that such a project demanded.

Chapter Five examines Maimonides’ contention that the text of the Pentateuch plays a decisive role in determining the 613 commandments. Though this claim has roots in his earlier *Commentary on the Mishnah*, Maimonides fully developed it in his *Sefer ha-Miṣvot*. Analysis of these writings shows that he drew on careful readings of Scripture, rabbinic literature, earlier Rabbanite lexicographic and hermeneutical works, and even on contemporary writings which affirmed the theory of spontaneous generation. This problem also brings the development of Maimonidean halakhah into sharp relief. This chapter closes by examining the debate between Daniel ha-Bavli and Abraham Maimonides concerning Maimonides’ assertions regarding the relationship between the Pentateuch and the enumeration of the commandments, highlighting the ways that Daniel forced Abraham to critically evaluate his father’s halakhic corpus.

The Conclusion reflects on the ramifications of Rabbanite attempts to systematize the law on the historiography of medieval Judaism. I suggest that the themes examined in this dissertation shed new light on central questions in the study of medieval Jewish life and Jews in the Islamic world, in particular, the ways that scholars conceive of Jewish law in its Islamic context.

Chapter One: Geonic-Era Reflections on the Oral Torah

Introduction

Enumerators of the 613 commandments often wondered if the enumeration should include laws instituted after Sinaitic revelation. For many, this problem touched on the larger, more pressing question of the origin of the rabbinic tradition. Pre-Maimondiean enumerations consistently include laws that later jurists considered post-Sinaitic. The liturgical setting of many of these lists makes it difficult to determine if the authors – among them great jurists – were asserting the divine origin of rabbinic law, or if they had different goals, such as teaching or summarizing the law. Whatever the import of these texts, geonic-era literature often claims that God authorized extra-scriptural traditions and post-Sinaitic practices.

Geonic-era Rabbanites affirmed several, mutually-reinforcing themes. They argued that both the Written and Oral Torahs derive from revelation and asserted that the Written Torah is incomprehensible without the Oral Torah, they minimized the creative role of late antique rabbis – whom they characterized as tradents charged with preserving and transmitting traditions – and they deemphasized the talmudic distinction between biblical (*de-orayta*) and rabbinic (*de-rabbanan*) law. Many modern scholars have claimed that anti-Qaraite animus was the primary, if not exclusive, impetus for these perspectives. Several writers have even suggested that geonic anti-Qaraite polemic led the geonim to consciously adopt positions that were at variance with classical rabbinic understandings of the Oral Torah. Rabbanites themselves made the polemical context of their arguments clear, to be sure. However, I will argue that the scholarly focus on

Qaraism's causative role overlooks an important cross-cultural factor that helped shape Rabbanite claims. In the very centuries that Rabbanites asserted the divine origin of the Oral Torah, Muslim jurists jettisoned non-prophetic elements of religious law and argued that only prophetic authority is valid. I will demonstrate that the geonim adopted both the arguments and the assumptions found in contemporaneous Islamic texts. Situating geonic claims in a broader historical context shows that geonic-era ideology was not merely a response to Qaraite polemics. Rather, it was coherent in its own time and consistent with larger societal views of religious authority.

This chapter focuses on a cluster of claims about the Oral Torah and non-biblical institutions that, in my opinion, refer to “legal epistemology,” a phrase borrowed from studies of Islamic legal theory.¹¹⁴ I begin with a review of scholarly understandings of geonic-era legal epistemology, and then turn to Jewish and Islamic debates about the authenticity and authority of traditions that supplement written revelation. Next, I trace three topics in geonic-era texts – the scope of revelation, the role of the rabbis, and the origins of non-biblical institutions – in order to establish that Rabbanites utilized tropes from Islamic literature, and that they sought divine sources for all of their practices.

¹¹⁴ E.g., Wael Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 125; Joseph Lowry, “Does Shāfi‘ī Have a Theory of ‘Four Sources’ of Law?” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 43; idem, *Early Islamic Legal Theory*, 1, 8; and Ashk Dahlén, *Islamic Law, Epistemology and Modernity: Legal Philosophy in Contemporary Iran* (New York: Routledge, 2003), 4, 6. Joseph David has used this phrase in regards to Jewish jurisprudence; see his “Legal Comparability and Cultural Identity: The Case of Legal Reasoning in Jewish and Islamic Traditions,” *Electronic Journal of Comparative Law* 14, no. 1 (2010): 9; and idem, *Jurisprudence and Theology in Late Ancient and Medieval Jewish Thought* (Cham: Springer, 2014), 86.

This chapter primarily treats Rabbanite thought in the tenth and eleventh centuries, from approximately the time of Sa'adya Gaon until that of Hayya¹¹⁵ ben Sherira Gaon (939-1038),¹¹⁶ and it explores geonic and non-geonic sources from Iraq, Palestine, Qayrawān, and al-Andalus.¹¹⁷ While occasional voices of dissent are heard, and no single figure accepted all of the claims detailed in this chapter, the texts discussed here represent a significant trend in Rabbanite literature of this period. These centuries witnessed the crystallization of Qaraism (a Jewish movement that rejected the Talmud and Oral Torah),¹¹⁸ the efflorescence of new types of Jewish literature,¹¹⁹ and the

¹¹⁵ Traditionally pronounced Hai; on this pronunciation, see Shlomo Morag, "Hayyey=Hayim (le-mahut shmo shel Rav Hai Gaon)," *Tarbiz* 31, no. 2 (1961): 188-90, accepted in Brody, *The Geonim of Babylonia*, 11n35.

¹¹⁶ Earlier post-talmudic centuries are quite murky. Salo Baron described the period from 500-850 as "dark and inarticulate"; *SRHJ*² (New York: Columbia University Press, 1952), 6:132. According to S.D. Goitein, these centuries "are the most obscure in Jewish history"; *Jews and Arabs: Their Contacts Through the Ages* (Mineola, NY: Dover Publications, 2005), 95. For treatment, see Steven M. Wasserstrom, *Between Muslim and Jew: The Problem of Symbiosis under Early Islam* (Princeton: Princeton University Press, 1995), 17-18. Regarding the geonic academies in particular, Brody wrote, "our knowledge of the earlier Geonim and their doings is extremely limited"; *Geonim of Babylonia*, 10. On this last point, see also Ya'aqov Sussman, "Kitvei-Yad u-Mesorot-Nusah shel ha-Mishnah," *Proceedings of the World Congress of Jewish Studies* 3, Studies in the Talmud, Halakha, and Midrash (1977): 237n90.

¹¹⁷ The title gaon (pl., geonim) refers to the heads of the Jewish academies; see Brody, *Geonim of Babylonia*, 49, citing earlier scholarship.

¹¹⁸ See Ḥaggai Ben-Shammai, "Between Ananites and Karaites: Observations on Early Medieval Jewish Sectarianism," in *Studies in Muslim-Jewish Relations*, ed. R.L. Nettle (Chur: Harwood Academic, 1993), 19-29; idem, "Karaites Controversy – Scripture and Tradition in Early Karaism," in *Religionsgespräche im Mittelalter*, eds. Bernard Lewis and Friedrich Niewöhner (Wiesbaden: Otto Harrassowitz, 1992), 11-24; idem, "Return to the Scriptures in Ancient and Medieval Jewish Sectarianism and in Early Islam," in *Les retours aux Écritures: fondamentalismes présents et passés*, eds. Evelyne Patlagean and Alain Le Boulluec (Louvain: Peeters, 1993), 327-28; and Moshe Gil, "Qadmoniyot ha-Qara'im," *Te'udah* 15 (1999): 71-107; trans. in idem, "The Origins of the Karaites," in *Karaite Judaism: A Guide to its History of Literary Sources*, ed. Meira Polliack (Leiden: Brill, 2003), 73-118. Note Leon Nemoy's comments about the diversity of groups that came to be known as Qaraite; "Stroumsa's Edition of al-Muqammi's *Ishrūn Maqālah*," *JQR* 82, no. 1-2 (1991): 233.

¹¹⁹ On Sa'adya's role in expanding the Rabbanite library, see Rina Drory, *Reishit ha-Maga'im shel ha-Sifrut ha-Yehudit'im ha-Sifrut ha-'Arvit ba-mei'ah ha-'Asirit* (Tel Aviv: ha-Kibūš ha-Me'uḥad, 1988), 156-78; Brody, *Geonim of Babylonia*, 246; and Sarah Stroumsa, "Prolegomena as Historical Evidence: On Saadia's Introductions to his Commentaries on the Bible," in *Vehicles of Transmission, Translation, and Transformation in Medieval Textual Culture*, eds. Robert Winovsky et al. (Turnhout: Brepols, 2011), 131-34.

development of new approaches to exegesis and extra-scriptural traditions in the Islamic world. These and other factors inspired Rabbanite deliberations about the origins, scope, and nature of the Oral Torah.¹²⁰

Historiography of Geonic Approaches to the Oral Torah

Many have suggested that the need to parry Qaraism was the primary motive behind geonic claims for the divine origin of the Oral Torah. This position builds on the views of pre-modern writers such as Abraham Ibn Dā'ūd (Cordoba; 1110-80), who celebrated Sa'adya's anti-Qaraite activity, and Maimonides, who rebuked Sa'adya for overstating the case for the mathematical calendar's divine origin.¹²¹ Historians in the late

¹²⁰ I use the term “rabbinic” to refer to rabbis of the talmudic period and their literary output and “Rabbanite” to post-talmudic Jews who saw themselves as the intellectual descendents of the talmudic rabbis.

¹²¹ See Abraham ben David Ibn Dā'ūd, *The Book of Tradition: A Critical Edition with a Translation and Notes of the Book of Tradition* (Sefer ha-Qabbalah), ed. and trans. Gerson D. Cohen (Philadelphia: JPS, 1967), 42 lines 102-105, writing that Sa'adya “overcame (heretics)” (*naṣaḥum*); and Maimonides, *Mishnah 'im Peirush*, 2:317 (mRH 2:7); see also there, 5:161-62n32 (mMen 11:7); and idem, *Sefer ha-Miṣvot*, ed. Kafih, 9, 14n10, 136 and n40. Maimonides' criticism may draw on comments of Sherira and Hayya Gaon; see below, nn317-321. Alternatively, Maimonides drew his criticism of Sa'adya from the eleventh-century Andalusian talmudist and astronomer R. Isaac ben Barukh al-Balīya, whose criticisms of Sa'adya's views are preserved in Abraham bar Ḥiya, *Sefer ha-Ibur*, ed. Herschell Filipowski (London, 1851), 60-62 (2:8), see also there, 126 (3:5), 129 (3:7); and Isaac Israeli, *Yesod 'Olam*, ed. Baer Goldberg (Berlin, 1848), 2:9b-10a (4:6). On Maimonides' claim, see also Dror Fixler, “Lashon Taqifah be-*Feirush ha-Mishnah* le-Rambam: Leshono shel ha-Rambam be-Fesiqat Halakhah be-Meqomot Mesupaqim, ule-She'elat yaḥas ha-Peirush le-Talmud Masekhet Rosh ha-Shanah,” *Sinai* 135-136 (2005): 188-90; and Mordechai Akiva Friedman, “Minhag Avoteikhem be-Yadeikhem: Teshuvah min ha-Genizah 'al Yom Tov Sheini shel Galuyot,” *Tarbiṣ* 83, no. 4 (2015): 584-85. Compare David Messer Leon, *Kevod Hakhamim*, ed. S. Bernfeld (Berlin, 1899) 57-60.

Similar comments appear in other Jewish and non-Jewish chronographers. Sa'adya ben Maimun ibn Danan (Spain, North Africa; fl. second half of 15th c.) praised Sa'adya's “victorious responses” (*teshuvot niṣaḥot*) to heretics; *Ma'amar 'al Seder ha-Dorot*, in *Ḥemdah Genuzah*, ed. Z.H. Edelman (Königsberg, 1856), 28b; repr. in Judit Targarona Borrás, “*Ma'amar 'al Seder ha-Dorot* de Se'adyah ibn Danan: edición, traducción y notas,” *Miscelánea de Estudios Árabes y Hebraicos* 35, no. 2 (1986): 94; and Sa'adya ben Maimun ibn Danan, *Saadia ibn Danán: El orden de las generaciones 'Seder ha-Dorot'*, eds. C. del Valle and G. Stemberger (Alcobendas [Madrid]: Aben Ezra, 1997), 112. Moses ben Isaac da Rieti (Italy; d. c. 1460) claimed that Sa'adya entered paradise due to his rejoinders to sectarians; *Miqdash Me'at*, ed. Jacob Goldenthal (Vienna, 1851), 95a. And Ṣā'id ibn Aḥmad al-Andalusī (Spain; 1029-70), a Muslim

nineteenth and early twentieth centuries picked up on this theme; their debates focused on the question of whether *all* of Sa'adya's writings can be ascribed to anti-Qaraism or just *most* of them.¹²² Although Salo Baron downplayed the anti-Qaraite element of Sa'adya's

historian and philosopher, called attention to Sa'adya's engagement with theological argument and debate (*ṣinā'at jadal wa-tarīq al-tanāzur*); *Ṭabaqāt al-Umam*, ed. Husayn Mu'nis (Cairo: Dār al-Ma'ārif, 1998), 112. Joshua Finkel first drew attention to this last passage; see "An Eleventh Century Source for the History of Jewish Scientists in Mohammedan Land (Ibn Ṣā'id)," *JQR* 18, no. 1 (1927): 54; and Bernard Lewis, "Ha-Mada' ha-Yehudi le-fi Sofer 'Aravi ba-me'ah ha-11 (ibn Ṣā'id al-Andalusī)," *Sinai* 7 (1940): 25-29, repr. in *Sofrim Muslemim 'al Yehudim ve-Yahadut: ha-Yehudim be-Qerev Shkhenehem ha-Muslemim*, ed. Hava Lazarus-Yafeh (Jerusalem: Merkaz Zalman Shazar, 1996), 69-74. On this text, see also David Wasserstein, "The Muslims and the Golden Age of the Jews in al-Andalus," *Israel Oriental Studies* 17 (1997): 188-96. Several of these sources are mentioned in Samuel Poznański, "The Anti-Karaite Writings of Saadia Gaon," *JQR* 10, no. 2 (o.s.) (1898): 240.

For the attempts of Sa'adya's sons She'erit and Dosa to detail the scope of their father's anti-Qaraite polemics in a topically arranged inventory of his writings (*fihris*), see T.-S. 10 G 5.7, most recently printed in Neḥemya Allony et al., *Ha-Sifriyah ha-Yehudit bi-Yemei ha-Beinayim: Reshimot Sefarim mi-Genizat Qahir* (Jerusalem: Yad Ben-Zvi, 2006), 313 lines 23-24. Jacob Mann used the earlier shelfmark T.-S. 6 J9¹; see "A Fihrist of Sa'adya's Works," *JQR* 11, no. 4 (1921): 425 lines 24-25. See also Samuel Poznański, "A Fihrist of Saadya's Works," *JQR* 13, no. 4 (1923): 394-96; Malter, *Saadia Gaon*, 421-28; Alexander Scheiber, "Nusaḥ Shaleim shel Qeṭa' ha-Genizah 'al Toldot Yemei Sa'adya Gaon," *Qiryat Sefer* 40 (1965): 571; and Moshe Gil, *Be-Malkhut Yishmael bi-Tequfat ha-Geonim* (Tel Aviv: Tel Aviv University, 1997), 2:30-31. This text lists four polemical works; unfortunately, the document then cuts off.

¹²² Solomon Schechter, "Peirush 13 Middot me-Rav Sa'adya Gaon," *Beth Talmud: Zeitschrift für rabbinische Literatur und Geschichte* 4 (1883): 237, claimed that anti-Qaraism motivated Sa'adya's commentary on the *middot* of R. Ishmael. Samuel Poznański rejected this view, but stated that "a great portion of [Sa'adya's] chequered life was devoted to combating the Karaite doctrines"; "The Anti-Karaite Writings of Saadia Gaon," 240, 258-59. Hartwig Hirschfeld wrote, "it is no paradox that we owe the life work of Saadya to the Karaites. All his writings, without exception, served the one purpose of defeating the Karaites"; "Early Karaite Critics of the Mishnāh," *JQR* 8, no. 2 (1917): 166. Hirschfeld was more cautious in an earlier article, saying only, "to combat this Karaite interference was perhaps the main-spring of Sa'adyah's literary activity"; "The Arabic Portion of the Cairo Genizah at Cambridge. (Tenth Article.): Further Sa'adyāh Fragments," *JQR* 17, no. 4 (o.s.) (1905): 715. Citing Hirschfeld, Israel Davidson identified "an intimate connection between Saadia's polemical monographs and his Biblical commentaries," and wrote that Sa'adya's "earlier writings, such as his polemics against Anan and Hiwi, served him as a sketch for his later writings on Bible and philosophy"; *Saadia's Polemic Against Hiwi al-Balkhi: A Fragment* (New York: Jewish Theological Seminary of America, 1915), 36, 37. Judah Rosenthal concurred: "the literary activity of Saadia was to a great extent dedicated to combating the religious schism which menaced Judaism"; "Hiwi al-Balkhi: A Comparative Study," *JQR* 38, no. 3 (1948): 320-21; see also idem, "Le-Toldot ha-Minut be-Tequfat Sa'adya," *Horev* 9 (1946): 37. In his biography of Sa'adya, Henry Malter distanced himself from Hirschfeld, writing, "we need not go so far as to assume with one recent investigator that everything Saadia has written in the numerous branches of Jewish literature had as its sole purpose the refutation of Karaite doctrines." Malter nevertheless declared that "polemic against heresies in general and Qaraism in particular, direct and indirect, is a very conspicuous feature in most of Saadia's writings"; *Saadia Gaon*, 262; see also there, 168. Alexander Marx wrote: "polemical works by the great gaon fill an important part of his literary activity and are particularly characteristic of his fighting nature"; *Essays in Jewish Biography* (Philadelphia: JPS, 1947), 30.

activity,¹²³ recent scholars have largely – though not entirely – asserted that anti-Qaraism had an overwhelming impact on Sa‘adya’s writings.¹²⁴ Emphasis on the anti-Qaraite aspects of Sa‘adya’s oeuvre dovetails with the claim that Sa‘adya’s arguments for the divine origin of rabbinic tradition are “weak”¹²⁵ or unconvincing.¹²⁶ Many have characterized Sa‘adya’s approach to rabbinic tradition as “extreme,”¹²⁷ or claimed that he “exaggerated” in his arguments about the calendar.¹²⁸ Several others have taken

¹²³ Baron wrote that that Sa‘adya “was not particularly alarmed” by Qaraism and that “many other issues far overshadowed the struggle against these sectarians”; *SRHJ*², 5:277; 5:415. See also idem, “Saadia’s Communal Activities,” in *Saadia Anniversary Volume*, ed. Boaz Cohen (New York: American Academy for Jewish Research, 1943), 9, 17-19.

¹²⁴ Lawrence Hoffman wrote that “Saadia’s anti-Karaite bias ... marked his whole career” and that “much of Saadia’s geonic activity was directed at polemicizing against the Karaite heresy”; *The Canonization of the Synagogue Service* (Notre Dame: University of Notre Dame Press, 1979), 165, 15. See the similar conclusions in Eliezer Schlossberg, “Ha-Pulmus be-Yeširato shel Rav Sa‘adya Gaon,” *Sinai* 126-127 (2000-2001): 305-324. Robert Brody more cautiously concluded that geonic approaches to tradition “may be tinged by polemical motives”; “The Talmud in the Geonic Period,” in *Printing the Talmud: From Bomberg to Schottenstein*, eds. Sharon Liberman Mintz and Gabriel M. Goldstein (New York: Yeshiva University Museum, 2005), 35.

¹²⁵ Heinrich Graetz, *Geschichte der Juden von den ältesten Zeiten bis auf die Gegenwart* (Leipzig: Leiner, 1871), 5:270; trans. in idem, *History of the Jews* (Philadelphia: JPS, 1891-1898), 3:189.

¹²⁶ Solomon Zeitlin claimed that Sa‘adya put forward “untrue statements” that “gave the Karaites a weapon to attack both him and the Rabbinites [*sic*] and also the excuse to attack the rabbis, saying that they had distorted Jewish tradition”; “Saadia Gaon: Champion for Jewish Unity under Religious Leadership,” *JQR* 33, no. 3 (1943): 394 (for a reaction to Zeitlin, see below, n307). Samuel Krauss likewise declared that Sa‘adya’s proofs for the claim that rabbinic tradition is necessary to understand biblical *hapax legomena* “are not of the best kind”; “Saadya’s *Tafsir* of the Seventy Hapax Legomena, Explained and Continued,” in *Saadya Studies, in Commemoration of the One Thousandth Anniversary of the Death of R. Saadya Gaon*, ed. Erwin I.J. Rosenthal (Manchester: Manchester University Press, 1943), 47.

¹²⁷ Brody, *Geonim of Babylonia*, 98; Marina Rustow, *Heresy and the Politics of Community: The Jews of the Fatimid Caliphate* (Ithaca: Cornell University Press, 2008), 25-26; Harris, *How Do We Know This*, 79; Uriel Simon, *Four Approaches to the Book of Psalms: From Saadia Gaon to Abraham Ibn Ezra* (Albany: State University of New York Press, 1991), 39; and Bloomberg, “Arabic Legal Terms in Maimonides,” 30.

¹²⁸ See Davidson’s comments in Salmon ben Yeruḥim, *Sefer Milḥamot ha-Shem: Kolel Ta‘anot ha-Qara’i Salmon ben Yeruḥim neged Rav Sa‘adya Gaon*, ed. Israel Davidson (New York: Beit Midrash ha-Rabbanim be-America, 1934), 15; Cohen’s comments in Ibn Dā’ūd, *The Book of Tradition*, ed. Cohen, liii; and Rustow, *Heresy and the Politics of Community*, 53. See further Brody, *Geonim of Babylonia*, 245-46. Howard Kreisel wrote that Sa‘adya “exaggerates” about the scope of revelation; *Prophecy: The History of an Idea in Medieval Jewish Philosophy* (Dordrecht: Kluwer, 2001), 41.

Sa'adya's positions about the calendar as emblematic of the weakness of his defense of the divine origin of the Oral Torah.¹²⁹

Geonic assertions that halakhic *midrash* upholds laws known by tradition, but does not generate new law, have been particularly troubling. This perspective has been described as “thoroughly at odds”¹³⁰ and “difficult to reconcile”¹³¹ with the self-understanding of the rabbis. But as Gerald Blidstein noted, the geonic position is only radical if one concludes that the rabbis did, in fact, create law through exegesis, which is a matter of significant debate.¹³² Furthermore, geonic assertions about the origins of rabbinic tradition seem to echo what Blidstein termed “the dominant aggadic claim about the origins of the tradition,” namely, its divine origins.¹³³ Blidstein himself nevertheless described the geonic approach, at least in the eyes of Maimonides, as “intellectually untenable” and as “based on Karaitic premises ... that *only* that which had heavenly

¹²⁹ Abraham S. Halkin, “Saadia’s Exegesis and Polemics,” in *Rab Saadia Gaon: Studies in his Honor*, ed. Louis Finkelstein (New York: Jewish Theological Seminary of America, 1944), 140; Leon Nemoy, “Early Karaism (The Need for a New Approach),” *JQR* 40, no. 3 (1950): 312; David Weiss Halivni, “Reflections on Classical Jewish Hermeneutics,” *PAAJR* 62 (1996): 79-81; Schlossberg, “Ha-Pulmus be-Yesirato shel Rav Sa’adya Gaon,” 306; and idem, “Hanhaguto u-Manhiguto shel Rav Sa’adya Gaon,” *Amudot* 5 (2013): 240. See also Marc Shapiro, *Changing the Immutable: How Orthodox Judaism Rewrites its History* (Oxford: Littman Library of Jewish Civilization, 2015), 247-49.

¹³⁰ Harris, *How do we Know This*, 80; Harris added that the encounter with Islamic exegesis and lexicography also contributed to this, but this element is virtually absent from the remainder of his narrative.

¹³¹ Mordecai Cohen, *Opening the Gates of Interpretation*, 252. Note also José Faur’s claim that the geonim defended the divine origin of the rabbinic interpretation of the *lex talionis* due to polemical considerations; “Monolingualism and Judaism,” *Cardozo Law Review* 14, no. 6 (1993): 1736.

¹³² Gerald Blidstein, “Review of Jay Harris, *How Do We Know This? Midrash and the Fragmentation of Modern Judaism*, Albany, 1995,” *Qiryat Sefer* 68, no. 4 (1998): 212.

¹³³ Gerald Blidstein, “Oral Law as Institution in Maimonides,” 175. See also Blidstein, “Review of Jay Harris,” 213; and Berakhyahu Lifschitz’s argument that these geonic views have much in common with talmudic claims about the Oral Torah; “‘Minhag’ u-Meqomo be-Midrag ha-Normot shel ‘Torah shebe-‘al Peh’,” *Shenaton ha-Mishpat ha-‘Ivri* 24 (2006-2007): 213. See below, n185.

origins was sacred, significant, normative, and obligatory.”¹³⁴ Based on this line of reasoning, both Blidstein and Robert Brody questioned whether the geonim believed their own rhetoric. Blidstein demurred, “we wonder whether we do not read the geonim too simple-mindedly or too literally,”¹³⁵ and Brody wrote, “we cannot say to what extent Se‘adyah genuinely believed in the claims he advanced and to what extent he simply chose apologetic arguments which he estimated to have the greatest chances of success.”¹³⁶ Brody concluded, “whether [Sa‘adya] actually believed his own claims or chose them for purely polemical purposes, a tendency to wax nostalgic over an idealized past was certainly characteristic of him.”¹³⁷

Others have taken a different approach. Yoḥanan Silman and, more recently, Moshe Halbertal, have placed geonic claims in conversation with post-talmudic “models” of revelation. Silman categorized geonic legal epistemology as part of “the preservation approach” (*ha-tefisah ha-meshammeret*)¹³⁸ to received knowledge, a perspective that asserts the completeness and singularity of the Sinaitic revelation and downplays post-Sinaitic contributions to the law. Halbertal termed the geonic view a “retrieval” model of the Oral Torah that sought to recover and preserve data that would otherwise have been

¹³⁴ Blidstein, “Oral Law as Institution,” 176, 175 (emphasis in original). He added that Maimonides “challeng[ed] the Karaites, rather than responding to them as the geonim had done” (179). See also idem, “Masoret ve-Samkhut Mosdit le-Ra‘ayon Torah shebe-‘al Peh be-Mishnat ha-Rambam,” *Da‘at* 16 (1986): 18. Compare Harris’ claim that by rejecting the creativity of halakhic *midrash*, Sa‘adya refused to battle the Qaraites “on their own turf”; *How Do We Know This*, 75-76.

¹³⁵ Blidstein, “Oral Law as Institution,” 171-72.

¹³⁶ Brody, *Geonim of Babylonia*, 246.

¹³⁷ Brody, *Sa‘adyah Gaon*, 35.

¹³⁸ Silman, *Qol Gadol ve-lo Yasaf*, 39-69; see also idem, “Torah Elohit she-‘Lo ba-Shamayim Hi’,” 263-71. Because Silman offered a typology of Jewish understandings of revelation, he mingled talmudic and post-talmudic sources; his integration of the geonim into this view is apparent in the notes.

lost over time. He focused particularly on the chains of transmission used by geonim to defend the Oral Torah and on their claims that forgetful and lazy students were the cause of talmudic debates.¹³⁹ In their treatments of the geonic outlook as one of several post-talmudic approaches to the Oral Torah, Silman and Halbertal appear to assume that geonic ideas are coherent beyond the context of Qaraite polemic.

The Islamic context of geonic writings offers another vantage point on geonic claims about the Oral Torah's divine origins. Moshe Zucker was one of the first scholars to situate Qaraite and Rabbanite jurisprudence in the context of Islamic scriptural interpretation and legal theory (*uṣūl al-fiqh*);¹⁴⁰ other studies have continued this approach.¹⁴¹ Regarding the Oral Torah in particular, David Sklare detailed how the

¹³⁹ Halbertal, *People of the Book*, 54-57. See also idem, *Maimonides*, 100-103; and idem, 'Al *Derekh ha-Emet: ha-Ramban ve-Yesiratah shel Masoret* (Jerusalem: Shalom Hartman Institute, 2006), 21-22. Note Blidstein's comment that the geonic approach "attempt[s] to recover aspects of the tradition lost by forgetfulness or error"; "Oral Law as Institution," 171. On the term "model," see below, n448.

¹⁴⁰ See above, n10.

¹⁴¹ See above, nn11-12. On the role of *ijmā'* in geonic presentations of the Oral Torah, see Gerald Blidstein, "Ra'ayon Torah shebe-'al Peh ve-Toldotav be-Igeret Rav Sherira Gaon," *Da'at* 4 (1980): 13; repr. in "Oral Torah: Ideology and History in the *Epistle of Sherira Gaon*," in *Religious Knowledge, Authority, and Charisma: Islamic and Jewish Perspectives*, eds. Daphna Ephrat and Meir Hatina (Salt Lake City: University of Utah Press, 2014), 73-87 (references will be to the Hebrew version); idem, *Samkhut u-Meri*, 148; Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, lx-lxi; Bloomberg, "Arabic Legal Terms," 19-20; and Libson, "Halakhah and Reality in the Gaonic Period," 95. Gerson Cohen compared the tools of Rabbanite anti-Qaraite polemic to Islamic defenses of *ḥadīth*; see Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, l-lvii. For other issues, see John Wansbrough, "*Majāz al-Qur'ān*: Periphrastic Exegesis," *BSOAS* 33, no. 2 (1970): 260-65; Ḥaggai Ben-Shammai, "Shiṭot ha-Maḥshavah ha-Datit shel Abū Yusūf Ya'aqūb al-Qirqisānī ve-Yefet ben 'Eli," (PhD diss., Hebrew University, 1977), 1:89-100; Diana Lobel, *Between Mysticism and Philosophy*, 59-67; Gregor Schwarb, "Uṣūl al-fiqh im jüdischen 'Kalām' des 10. und 11. Jahrhunderts," 77-89; idem, "Capturing the Meaning of God's Speech," 111-56; idem, "Sahl b. al-Faḍl al-Tustarī's *Kitāb al-Īmā'*," *Ginzei Qedem* 2 (2006): 61-105; Joseph David, "Yedi'at davar ha-El: Ta'ut, Heqqesh, Zikaron u-Mesirah be-Sifrut ha-Geonim ve-Hakhmei Sefard ha-Rishonim," (PhD diss., Hebrew University, 2005), 125-39; idem, *Jurisprudence and Theology*, 89-93; and Miriam Goldstein, "Abū l-Faraj Hārūn (Jerusalem, 11th c.) on *Majāz*: Between *Uṣūl al-Naḥw*, *Uṣūl al-Fiqh*, and *I'jāz al-Qur'ān*," *Der Islam* 90, no. 2 (2013): 376-411. For an alternative approach, see Ḥava Lazuras-Yafeh, "Ha-Yahas le-Meqorot ha-Halakhah ba-Islam be-hashva'ah la-Yahadut," *Proceedings of the World Congress of Jewish Studies* 8, Division C: Talmud and Midrash, Philosophy and Mysticism, Hebrew and Yiddish Literature (1981): 47-49.

geonic portrait of the late antique rabbis as “transmitters and not initiators of tradition”¹⁴² drew on notions of tradition current in the Islamic world. Placing geonic-era understandings of the Oral Torah in their intellectual context brackets the question of what the geonim “really” believed; instead, it looks for ways that geonic legal thought can be contextualized within debates that engaged broader society – about Scripture, extra-scriptural traditions, and the role of jurists after prophecy. As Sklare explained, the geonic concept of tradition “had to make sense within [their] conceptual world.”¹⁴³

There are distinct advantages to framing geonic legal epistemology as an outlook that developed in conversation with concerns other than Qaraism. This approach helps to explain why later geonim, whose writings contain far less anti-Qaraite invective than those of Sa’adya, largely upheld his model of the Oral Torah.¹⁴⁴ Moreover, the assumption that Qaraism alone was responsible for geonic thinking about the Oral Torah does not explain geonic embrace of positions that would not have been helpful in anti-Qaraite polemic.¹⁴⁵ Researchers who did not place Sa’adya’s polemical writings in their

¹⁴² Sklare, *Samuel ben Hofni Gaon*, 43; see there, 43-47, 55-56, 158-65.

¹⁴³ Sklare, *Samuel ben Hofni Gaon*, 160.

¹⁴⁴ On the paucity of anti-Qaraite polemic among later Baghdadi geonim, see Poznański, “The Anti-Karaite Writings of Saadiah Gaon,” 274; Baron, *SRHJ*², 5:269; Brody, *Geonim of Babylonia*, 98-99, 242, 310-12; Sklare, *Samuel ben Hofni Gaon*, 56, 76-77, 280 (where Samuel ben Hofni besought divine blessing for both Sa’adya and Ya’qūb al-Qirqisānī); and Marina Rustow, “The Genizah and Jewish Communal History,” in “*From a Sacred Source*”: *Genizah Studies in Honour of Stefan C. Reif*, eds. Ben Outhwaite and Siam Bhayro (Leiden: Brill, 2010), 311-12. See also idem, “Rabbanite-Karaite Relations in Fatimid Egypt and Syria: A Study Based on Documents from the Cairo Genizah,” (PhD diss., Columbia University, 2004), 161-81. On a parallel development in eleventh-century Qaraism, see Haggai Ben-Shammai, “Major Trends in Karaite Philosophy and Polemics in the Tenth and Eleventh Centuries,” in *Karaite Judaism*, 354. See also Baron, “Saadia’s Communal Activities,” 18-19.

¹⁴⁵ Bliedstein, “Oral Law as Institution,” 172, noted that the claim that forgetfulness accounts for disagreements among the rabbis would not have been particularly helpful in disputes with Qaraites. This claim likely draws on contemporaneous Islamic approaches to *ḥadīth*; see below.

tenth-century context¹⁴⁶ failed to note that literary rebuttals were a popular genre in this period, and that authors who composed stylized critiques frequently revived the figures of religious “deviants.”¹⁴⁷ (This was particularly true, for example, of Sa’adya’s attacks on Ḥayyawayh¹⁴⁸ al-Balkhī [9th c.], the prototypical heretic in Qaraite and Rabbanite writings.¹⁴⁹) In short, while some writings of the geonic period were clearly polemical, geonic arguments were hardly “mere polemic.” It would be wrong to think that authors took positions that they knew to be false, merely to defeat their opponents.

Other scholars have interrogated the portrait of geonic theology as motivated solely by polemics,¹⁵⁰ and this chapter builds on their studies. It aims to illuminate the

¹⁴⁶ Davidson wrote, “the virulent expressions frequently met with in this polemic jar upon our sense of decency. Some of them would shame an infuriated fishwife”; Salmon ben Yeruḥim, *Sefer Milḥamot ha-Shem*, ed. Davidson, xliii. See also Rosenthal’s emphasis on Sa’adya’s attacks on Ḥayyawayh al-Balkhī; “Ḥiwi al-Balkhi: A Comparative Study,” 320-21. Halkin drew attention to the fact that Sa’adya’s writings reflect contemporary style; “Saadia’s Exegesis and Polemics,” 139; and Nemoy described the tenth century as “an age and milieu of *Sturm und Drang*”; “Review of *A Critical Edition, with a Translation and Notes, of the Book of Tradition (Sefer ha-Qabbalah)* by Gerson D. Cohen,” *Jewish Social Studies* 31, no. 1 (1969): 49.

¹⁴⁷ See Norman Calder, “The Barāhima: Literary Construct and Historical Reality,” *BSOAS* 57, no. 1 (1994): 43-45. This motif likely has roots in the disputational nature of *kalām* discourse; see Steven Wasserstrom, “Islamicate History of Religions?” *History of Religions* 27, no. 4 (1988): 409; Josef van Ess, “Disputationspraxis in der islamischen Theologie: Eine vorläufige Skizze,” *Revue des Études Islamiques* 44 (1976): 23-60; and idem, *Theologie und Gesellschaft im 2. und 3. Jahrhundert Hidschra* (Berlin: W. de Gruyter, 1991) 1:48-55.

¹⁴⁸ Earlier scholars transcribed his name as Ḥīwī; on this spelling see Ben-Shammai, “Major Trends in Karaite Philosophy,” 352n75; and Gil, *Jews in Islamic Countries*, 318.

¹⁴⁹ See Sarah Stroumsa, *Freethinkers of Medieval Islam: Ibn al-Rāwāndī, Abū Bakr al-Rāzī and Their Impact on Islamic Thought* (Leiden: Brill, 1999), 219-21; and Ezra Fleischer, “Sarid me-Hasagotav shel Ḥiwi ha-Balkhī ‘al Sifrei ha-Miqra,” *Tarbiṣ* 51, no. 1 (1982): 50.

¹⁵⁰ Sarah Stroumsa questioned Malter’s evaluation of Sa’adya’s eclectic approach to *kalām* as “polemical”; see Malter, *Saadia Gaon*, 198-99; and Sarah Stroumsa, *Sa’adya Gaon: Hogeḥ Yehudi be-Hevrah Yam-Tikhonit* (Tel Aviv: Tel Aviv University, 2002), 35. Others have debated the role of polemics in Sa’adya’s commentary on *Sefer Yeširah*; see Ḥaggai Ben-Shammai, “Saadya’s Goal in his *Commentary on Sefer Yešira*,” in *Straight Path: Studies in Medieval Philosophy and Culture*, ed. Jeremiah Hackett (Washington D.C.: Catholic University of America Press, 1987), 6-7; Gyongyi Hegedus, “The Double Path: The Two Layers of Thinking and the Twofold Nature of Knowledge in the Works of Saadya Gaon,” in *Reflecting Diversity: Historical and Thematic Perspectives in the Jewish and Christian Tradition*, eds. Péter Losonczi and Géza G. Xeravits (Vienna: Lit, 2007), 43-61; and idem, *The Double Path of the Mystic and the Rationalist* (Leiden: Brill, 2013), 13-14. For discussion of the role that polemic played in Sa’adya’s

context that provided the geonim with the tools to defend the Oral Torah and it notes correspondences between Rabbanite claims of the geonic-era and the contemporaneous Muslim assumption that the only valid source of religious authority is revealed material, i.e., the Qur'ān and prophetic *ḥadīth* (extra-scriptural traditions). Throughout, I will consider Rabbanite claims in light of earlier rabbinic writings and contemporaneous Islam and Qaraism.

Historical Background

Tenth- and eleventh-century geonic defenses of the Oral Torah were in dialogue with both Qaraite criticism of the rabbis and Islamic debates about extra-scriptural traditions. The tenth-century Qaraite, Ya'qūb al-Qirqisānī, reported that messianic figures in the first half of the eighth century were the first to endorse practices at variance with talmudic Judaism.¹⁵¹ The next well-known figures who opposed talmudic authority, 'Anan ben David and Benjamin al-Nahāwandī, also denied the authority of the Talmud,

understanding of Psalms, see Simon, *Four Approaches to the Book of Psalms*, 31-42; Ḥaggai Ben-Shammai, "Review of Simon, Uriel. *Arba 'Gishot le-Sefer Tehillim, me-R. Sa'adya Gaon 'ad R. Avraham Ibn Ezra* (Ramat Gan: Bar Ilan University Press, 1982)," *Qiryat Sefer* 58, no. 2 (1983): 400-406; and idem, "'Al Yesod Pulmusi be-Torat-ha-Nevu'ah shel Rasag," *Jerusalem Studies in Jewish Thought* 7 (1988): 130-32. Compare David I. Shyovitz, "Christians and Jews in the Twelfth-Century Werewolf Renaissance," *Journal of the History of Ideas* 75, no. 4 (2014): 522: "medieval discourses of monstrosity were treated not solely as founts of polemical rhetoric, but also as theological problems in pressing need of solutions." In a different context, Shaye Cohen wrote, "all is fair in love and polemics"; *Why Aren't Jewish Women Circumcised: Gender and Covenant in Judaism* (Berkeley: University of California Press, 2005), 92, 181. This, I believe, is an overstatement in the context of geonic legal thought.

¹⁵¹ Qirqisānī mentioned Abū 'Īsā of Iṣfahān and Yūdghān of Hamadan; see *Kitāb al-Anwār wal-Marāqib*, ed. Leon Nemoy (New York: Alexander Kohut Memorial Foundation, 1939-1943), 1:51-53. On the doctrines of these figures, see Israel Friedlander, "Jewish-Arabic Studies," *JQR* 1, no. 2 (1910): 214-15; 3, no. 2 (1912): 295-99; and on the 'Isāwīya specifically, Wasserstrom, *Between Muslim and Jew*, 84-88. On seventh- and eighth-century messianic movements, see Aaron Aescoly, *Ha-Tenu'ot ha-Meshihiyot be-Yisrael: Oṣar ha-Meqorot voha-Te'udot le-Toldot ha-Meshihiyut be-Yisrael* (Jerusalem: Mosad Bialik, 1956), 1:115-55.

but were more measured opponents of Rabbanite Judaism than were non-Rabbanites of the later ninth century.¹⁵² The most vigorous early anti-Rabbanite figure was Daniel al-Qūmisī, who moved to Jerusalem from Iran around 880 and introduced anti-Rabbanite polemic into nascent Qaraism.¹⁵³ Ḥaggai Ben-Shammai has argued that al-Qūmisī's rejection of tradition as a source of legal authority made him the first true Qaraite "scripturalist."¹⁵⁴ The term "Qaraism" covers a diverse group of tenth- and eleventh-century thinkers,¹⁵⁵ but leading figures such as Qirqisānī, Salmon ben Yeruḥim¹⁵⁶ (Jerusalem; fl. mid. 10th c.), Sahl ben Maṣṣliḥ (Jerusalem; fl. late 10th c.), and Yefet ben 'Eli upheld earlier expressions of opposition to the Oral Torah and polemicized against

¹⁵² See above, n118. On 'Anan's legal methodology, see Ḥaggai Ben-Shammai, "Babylonian Aramaic in Arabic Characters: A Passage from 'Anan's *Book of Precepts* in a Work of Yeshu'ah B. Judah the Karaite," *JSAI* 32 (2006): 419-32. On al-Nahāwandī, see Yoram Erder, *Avlei Ṣion ha-Qara'im u-Megillot Qumran: Le-Toldot Halufah le-Yahadut ha-Rabbanit* (Tel Aviv: ha-Kibbuṣ ha-Me'uḥad, 2004), 71-81.

¹⁵³ Ḥaggai Ben-Shammai, "Ha-Parshan ha-Qara'i ve-Savivato ha-Rabbanit," *Proceedings of the World Congress of Jewish Studies*, 9, Panel Sessions: Bible Studies and Ancient Near East (1985): 50-51. On the absence of explicit polemic in 'Anan's writings, see also Leon Nemoy, "Anan Ben David: A Re-Appraisal of the Historical Data," in *Semitic Studies in Memory of Immanuel Löw*, ed. Sándor Scheiber (Budapest: Alexander Kohut Memorial Foundation, 1947), 246n37; repr. in *Karaite Studies*, ed. Philip Birnbaum (New York: Hermon Press, 1971), 316n37.

¹⁵⁴ Ben-Shammai, "Return to the Scriptures," 327-28; and earlier, Moshe Zucker, *'Al Targum Rasag la-Torah: Parshanut Halakhah u-Polemiqah be-Targum ha-Torah shel R. Sa'adya Gaon* (New York: Feldheim, 1959), 168. On Daniel, see Jacob Mann, "A Tract by an Early Karaite Settler in Jerusalem," *JQR* 12, no. 3 (1922): 257-98; Leon Nemoy, "The Pseudo-Qūmisīan Sermon to the Karaites," *PAAJR* 43 (1976): 49-105; Ḥaggai Ben-Shammai, "Fragments of Daniel al-Qūmisī's Commentary on the Book of Daniel as a Historical Source," *Henoch*, 13, no. 3 (1991): 259-81; idem, "Seridei Peirush Daniel le-Daniel al-Qūmisī ke-Meqor Histori le-Toldot Ereṣ Yisrael," *Shalem* 3 (1981): 295-307; and Neḥemyah Gordon, "Ha-Omnam raq Mashma'ut aḥat la-Miqra? 'Iyun be-Gishato ha-Parshanit shel Daniel al-Qūmisī be-'Pitron Shenayim 'Asar," *Tarbiz* 76, no. 3-4 (2007): 385-414.

¹⁵⁵ Qirqisānī ascribed the diversity of contemporary Qaraites to their reliance on laws that are the product of reason (*nustakhrij al-'ilm istakhrājan bi-'uqūlinā*). Rabbanites, he claimed, should not allow disagreement, given their assertion that they possess prophetic tradition (*naql 'an al-nubūwa*); *Kitāb al-Anwār*, ed. Nemoy, 1:63-64. On this passage, see Ankori, *Karaites in Byzantium*, 219-20. On the rise of opposition to Rabbanite Judaism in this period, see in general, Brody, *Geonim of Babylonia*, 83-95.

¹⁵⁶ On the spelling of Salmon's patronymic, see Michael G. Wechsler, *The Arabic Translation and Commentary of Yefet ben 'Eli the Karaite on the Book of Esther* (Leiden: Brill, 2008), 125n9; and James Robinson, *Asceticism, Eschatology, Opposition to Philosophy: The Arabic Translation and Commentary of Salmon Ben Yeroham on Qohelet (Ecclesiastes)* (Leiden: Brill, 2012), 3n1.

Sa'adya and other Rabbanites.¹⁵⁷ Qaraites rejected the divine origin of the Oral Torah, accused the ancient rabbis of adding to revelation, and denied the authority of contemporary Rabbanites.

Midrashic literature of the geonic-era contains what may be the earliest responses to the sundry critics of Rabbinic Judaism.¹⁵⁸ Defenders of the Talmud in this period used midrashic literature to advocate on behalf of the geonic academies,¹⁵⁹ to respond to al-

¹⁵⁷ For background on these and other figures, see Samuel Poznański, *The Karaite Literary Opponents of Saadia Gaon* (London: Luzac, 1908), 4-65; Mann, *Texts and Studies*, 2:3-49; Gil, *Jews in Islamic Countries*, 260-69; Daniel Frank, *Search Scripture Well: Karaite Exegetes and the Origins of the Jewish Biblical Commentary in the Islamic East* (Leiden: Brill, 2004), 1-32; and Yoram Erder, "The Mourners of Zion: The Karaites in Jerusalem in the Tenth and Eleventh Centuries," in *Karaite Judaism*, 213-35.

¹⁵⁸ See in general Zucker, 'Al Targum Rasag, 203-218; and Myron B. Lerner, "The Works of Aggadic Midrash and the Esther Midrashim," in *The Literature of the Sages, Second Part: Midrash and Targum, Liturgy, Poetry, Mysticism, Contracts, Inscriptions, Ancient Science and the Languages of Rabbinic Literature*, eds. Shmuel Safrai et al. (Assen: Van Gorcum, 2006), 2:153. On several relevant passages in the *Tanna de-vei Eliyahu*, see Wilhelm Bacher, "Antikaräisches in einem jüngeren Midrasch," *MGWJ* 23, no. 6 (1874): 266-71; and Zucker, 'Al Targum Rasag, 205-206. On the dating of this text, see Hermann Leberecht Strack and Günter Stemberger, *Introduction to the Talmud and Midrash*, ed. and trans. Markus Bockmuehl (Minneapolis: Fortress Press, 1996), 340-41. See also the *Tanḥuma's* denigration of those who sit in darkness on the Sabbath, treated in Leopold Zunz, *Die gottesdienstlichen Vorträge der Juden historisch entwickelt* (Frankfurt, 1892), 236n; and Marc Bregman, *Sifrut Tanḥuma-Yelammedeinu* (Piscataway, NJ: Gorgias Press, 2003), 185.

This literature builds on earlier rabbinic polemics apparently directed against scripturalist critics of Rabbinic Judaism. For example, Ben-Shammai dated bMak 22b to the early Islamic period and used it as evidence of late talmudic-era scripturalism; see "Karaite Controversy," 24-26; and idem, "Return to the Scriptures," 328. Yaakov Elman dated this passage and others like it to the fourth century; see "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition," in *The Cambridge Companion to the Talmud and Rabbinic Literature*, eds. Charlotte Elisheva Fonrobert and Martin S. Jaffee (Cambridge: Cambridge University Press, 2007), 176-80; idem, "Acculturation to Elite Persian Norms and Modes of Thought in the Babylonian Jewish Community of Late Antiquity," in *Neti'ot Ledavid: Jubilee Volume for David Weiss Halivni*, eds. Yaakov Elman et al. (Jerusalem: Orhot Press, 2004), 38-43; and idem, "Rava as *Mara de-Atra* in Maḥoza," *Ḥakira* 11 (2011): 68-75. For another late *sugya* that may respond to the Islamic environment, see Yaakov Elman, "The World of the 'Saboraim': Cultural Aspects of Post-Redactional Additions to the Bavli," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammim) to the Aggada*, ed. Jeffrey L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 383-98. Ya'akov Sussman suggested that *sugyot* that relax the prohibition on writing the Oral Torah are relatively late as well; "'Torah shebe-'al Peh' – Peshuṭa ke-Mashma'a: Koḥo shel qoṣo shel yod," in *Mehqarei Talmud 3, Muqdash li-Zikhro shel Profesor Ephraim Elimelekh Urbach*, eds. Ya'akov Sussman and David Rosenthal (Jerusalem: Magnes, 2005), 325, 334-35.

¹⁵⁹ See the *Tanḥuma* passage adduced in Zunz, *Die gottesdienstlichen Vorträge*, 235-36n; treated in Avigdor Aptowitz, "Untersuchungen zur gaonäischen Literatur," *HUCA* 8-9 (1931-1932): 415-17;

Qūmisī and Yefet ben ‘Eli,¹⁶⁰ and to defend the Oral Torah more generally.¹⁶¹ (It is noteworthy that scholars have identified numerous *ḥadīth* that respond to Muslim *ḥadīth* critics.¹⁶²) Brody has also identified a pro-Rabbanite/anti-scripturalist defense of the Oral

Benjamin Klar, *Mehqarim ve-‘Iyunim be-Lashon, be-Shirah uve-Sifrut* (Tel Aviv: Hoṣa’ at Maḥbarot le-Sifrut, 1954), 333; and Bregman, *Sifrut Tanḥuma-Yelammedeinu*, 185-86, 192n8. Similar sentiments appear in *Mishnat R. Eliezer*; see H.G. Enelow, ed., *Mishnat Rabbi Eliezer o Midrash Shloshim u-Shetayim Middot* (New York: Bloch, 1933), 259; and in *Otiyot de-R. Aqiva*; see Abraham Joseph Wertheimer, *Batei Midrashot: ‘Esrin va-Ḥamishah Midreshei Ḥazal ‘al pi kitvei yad mi-Genizot Yerushalayim u-Miṣrayim* (Jerusalem: Mosad ha-Rav Kook, 1950), 2:415. On the dating of these texts, see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 22-23, 349; and below, n161.

¹⁶⁰ Burton L. Visotzky, “Midrash Mishle: A Critical Edition Based on Manuscripts and Early Editions with an Introduction and Annotated English Translation of Chapters One through Ten,” (PhD diss., Jewish Theological Seminary of America, 1983), 1:47-64; and idem, *The Midrash on Proverbs: Translated from the Hebrew with an Introduction and Annotations* (New Haven: Yale University Press, 1992), 10-12.

¹⁶¹ See the linguistic similarities between Pirqoy ben Baboy’s defense of the Oral Torah and a *Tanḥuma* passage that praises God for giving the Written and Oral Torahs at Sinai; treated in Aptowitz, “Untersuchungen zur Gaonäischen Literatur,” 417; Klar, *Mehqarim ve-‘Iyunim*, 333; Jacob Mann, “Genizah Studies,” *The American Journal of Semitic Languages and Literatures* 46, no. 4 (1930): 266; Sussman, “Kitvei-Yad u-Mesorot-Nusah shel ha-Mishnah,” 238n91; and Neil Danzig, *Mavo le-Sefer Halakhot Pesuqot: ‘im tashlum Halakhot Pesuqot* (New York: Beit ha-Midrash le-Rabbanim ba-America, 1993), 21n28. A similar phenomenon is detectable in the thirty-two *middot* ascribed to R. Eliezer ben Yossi ha-Glili, which, in the words of David Stern, were probably compiled in order “to legitimate [rabbinic] hermeneutical methods and to provide polemical documentation against competing exegetical schools”; “Midrash and Indeterminacy,” *Critical Inquiry* 15, no. 1 (1988): 147. Zucker argued that this text belongs to the period after Sa’adya; “Le-Pitron Ba’ayat 32 Middot u-‘Mishnat R. Eliezer’,” *PAAJR* 23 (1954): 1-19; and idem, *‘Al Targum Rasag*, 250-60; accepted by Israel Ta-Shma, *Minhag Ashkenaz ha-Qadmon: Heiqer ve-‘Iyun* (Jerusalem: Magnes, 1992), 300-301. Others disagreed; see J.N. Epstein, “Le-‘Mishnat Rabbi Eliezer beno shel Rabbi Yossi ha-Glili’,” *Tarbiz* 4, no. 4 (1933): 343-353; idem, “Mishnat R. Eliezer,” *HUCA* 23, no. 2 (1950-1951): 1-15; Menaḥem Moreshet, “Le-Loshona shel ‘Mishnat R. Eliezer’ o ‘Midrash de-32 Middot’,” *Bar Ilan Annual* 11 (1973): 183-223; and Richard C. Steiner, “*Muqdam u-Me’uḥar* and *Muqaddam wa-Mu’ahḥar*: On the History of Some Hebrew and Arabic Terms for Hysteron Proteron and Anastrophe,” *Journal of Near Eastern Studies* 66, no. 1 (2007): 39-41. See also Naftali Wieder, *The Judean Scrolls and Karaism* (London: East and West Library, 1958), 65-66; Ben-Shammai, “Ha-Parshan ha-Qara’i,” 47n20; and Robert Brody, *Pirqoy ben Baboi ve-Toldot ha-Pulmus ha-Penim-Yehudi* (Tel Aviv: Tel Aviv University, 2003), 30n49.

¹⁶² Ignaz Goldziher, *Muslim Studies*, ed. and trans. S.M. Stern (Albany: State University of New York Press, 1971), 2:126-31; Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 53-56; Michael Cook, “Anan and Islam: The Origins of Karaite Scripturalism,” *JSAI* 9 (1987): 172-73; John Burton, *The Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh: Edinburgh University Press, 1990), 22-25; and more generally, Aisha Y. Musa, *Ḥadīth as Scripture: Discussions on the Authority of Prophetic Traditions in Islam* (New York: Palgrave Macmillan, 2008), 11-14, 17-21. For examples, see Muḥammad ibn Idrīs al-Shāfi‘ī, *The Epistle on Legal Theory*, ed. and trans. Joseph Lowry (New York: NYU Press, 2013), 75-77 (treated in Schacht, *Origins*, 46); and Cook, “Anan and Islam,” 173.

Torah that formed the basis of Pirqoy ben Baboy's *Epistle* (written at the turn of the ninth century to advocate for the Babylonian tradition).¹⁶³ By contrast, geonic texts with named authors prior to the time of Sa'adya preserve relatively few responses to Qaraites and others that the geonim deemed heretics.¹⁶⁴ Although Sa'adya was not the first to engage in polemics, his sustained criticisms of a wide range of opponents, most prominently Ḥayyawayh and 'Anan, was atypical among the Babylonian geonim.¹⁶⁵

The period from the eighth to the tenth centuries also witnessed significant changes in the framing, rhetoric, and sources of Islamic law. Prior to the ninth century, prophetic authority was one of several competing and complementary sources of legal practice. Jurists in this period freely cited *ḥadīth* ascribed to Muḥammad, his Companions (i.e., contemporaries), and his Successors (i.e., the subsequent generation).¹⁶⁶ Many

¹⁶³ Brody, *Pirqoy ben Baboi*; based on the text in B.M. Lewin, "Mi-Shiyarei ha-Genizah," *Tarbiz* 2, no. 4 (1931): 400-405; see also Louis Ginzberg, *Ginzei Schechter* (New York: Beit Midrash ha-Rabbanim Asher be-America, 1928-1929), 2:571-72, 2:638-39. See Lewin, "Mi-Shiyarei ha-Genizah," 394-97; Shalom Spiegel, "Le-Farashat ha-Pulmus shel Pirqoy ben Baboy," in *Sefer ha-Yovel li-khvod Zvi Wolfson*, ed. Saul Liberman (Jerusalem: American Academy for Jewish Research, 1965), 261-66; and Sklare, *Samuel ben Ḥofni Gaon*, 39. For background on Pirqoy's *Epistle*, see Menaḥem Ben-Sasson, *Ṣemīḥat ha-Qehilah ha-Yehudit be-Arṣot ha-Islam: Qairawan 800-1057* (Jerusalem: Magnes; 1996), 241-44; and idem, "Benei ha-Maghreb ve-Qishreihem le-Ereṣ Yisrael, Me'ot 9-11," *Shalem* 5 (1997): 31-43.

¹⁶⁴ A responsum ascribed to the eighth-century gaon Naṭronai ben Neḥemiah mentions two types of people whom the author viewed as heretics: those who reject the Talmud and those who reject the Torah entirely. See B.M. Lewin, *Oṣar ha-Geonim, Masekhet Shabbat, Heileq ha-Teshuvot*, 2:128-29 (§396); and *Oṣar ha-Geonim, Masekhet Yevamot, Heileq ha-Teshuvot*, 7:113-14 (§263). For authorship and background, see Ben-Shammai, "Karaite Controversy," 19; Robert Brody, *Teshuvot Hilkhatiyot shel Rav Naṭronai bar Hillay Gaon* (Jerusalem: Ofeq, 2011), 31n18; and idem, *Geonim of Babylonia*, 84-85. Another responsum, attributed to the ninth-century gaon Naṭronai bar Hilay, indicates that the author had little direct knowledge of 'Anan's writings; see Brody, *Teshuvot Hilkhatiyot*, 256-58; and idem, *Geonim of Babylonia*, 96.

¹⁶⁵ See Brody, *Geonim of Babylonia*, 96-98, citing earlier scholarship, for the claim the Sa'adya "broke with geonic precedent"; see the modification of his view there, xii, based on the evidence cited above, n163.

¹⁶⁶ See Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 15-16; idem, "The Traditionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society* 8, no. 3 (2001): 389-90, 399, 402-405; idem, *Ahmad Ibn Hanbal* (Oxford: OneWorld, 2006), 20, 41, 49-50; Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge:

jurists before the eighth century also employed *ra'y*, a term that might be rendered “considered opinion”¹⁶⁷ or legal rulings with an “element of human reasoning,”¹⁶⁸ to supplement received sources (both revealed and non-revealed), or to serve in their stead.¹⁶⁹ In this period, the word *Sunna* – which in the Qur’ān does not refer to prophetic practices – denoted practices of Muḥammad or of early caliphs, or long-established practices (especially in Medina, where Mālik ibn Anas [d. 795] and others understood lived practice [‘*amal*'] as the best guarantor of prophetic tradition).¹⁷⁰

Against this background, the insistence of Muḥammad ibn Idrīs al-Shāfi‘ī (d. 820 in Egypt)¹⁷¹ that only revealed sources may constitute “any law which lay claim to being

Cambridge University Press, 2005), 69-74; and Umar F. Abd-Allah Wymann-Landgraf, *Mālik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013), 102-107. This is also the conclusion of the quantitative studies in Harold Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, trans. Marion H. Katz (Leiden: Brill, 2002), 107-108, 187, 209, 235, 242, 255-56, 295-96. See also Scott Lucas, “Where are the Legal *Ḥadīth*? A Study of the *Muṣannaḥ* of Ibn Abī Shayba,” *Islamic Law and Society* 15 (2008): 238-314.

¹⁶⁷ Following Hallaq, *The Origins and Evolution of Islamic Law*, 68; or “discretionary opinion” (44). See also Norman Calder, *Studies in Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 12.

¹⁶⁸ Joseph Schacht, *Encyclopaedia of Islam*, 2nd ed., s.v. “Aṣḥāb al-Ra’y,” 1:691 (Leiden: E.J. Brill, 1986); see Melchert, “The Traditionist-Jurisprudents,” 386-87. Or, “the speculative elaboration of norms”; Lowry, in Shāfi‘ī, *The Epistle on Legal Theory*, ed. Lowry, xvi.

¹⁶⁹ See the earlier treatments in Goldziher, *Muslim Studies*, 2:78-83; and Schacht, *Origins*, 98-132. Later studies complicated this picture but confirmed the frequent use of *ra'y*; see, e.g., Melchert, *The Formation of the Sunni Schools of Law*, 1-13; idem, “The Traditionist-Jurisprudents,” 385-88; Hallaq, *The Origins and Evolution of Islamic Law*, 74-76; Motzki, *The Origins of Islamic Jurisprudence*, 288, 297; idem, “The Jurisprudence of Ibn Shihāb al-Zuhrī. A Source-Critical Study,” in *Analysing Muslim Traditions: Studies in Legal, Exegetical and Maghāzī Ḥadīth* (Leiden: Brill, 2009), 6, 13, 19, 25-29; and Wymann-Landgraf, *Mālik and Medina*, 141-45.

¹⁷⁰ See Schacht, *Origins*, 58-77; Zafar Ishaq Ansari, “Islamic Juristic Terminology before Šāfi‘ī: A Semantic Analysis with Special Reference to Kūfa,” *Arabica* 19, no. 3 (1972): 259-82; Patricia Crone and Martin Hinds, *God’s Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 58-96; G.H.A. Juynboll, “Some New Ideas on the Development of *Sunna* as a Technical Term in Early Islam,” *JSAI* 10 (1987): 97-118; Lowry, *Early Islamic Legal Theory*, 167-69; and Wymann-Landgraf, *Mālik and Medina*, 293-328.

¹⁷¹ For Shāfi‘ī’s biography, see Kecia Ali, *Imam Shafi‘i: Scholar and Saint* (Oxford: Oneworld, 2011), 1-45.

truly Islamic,¹⁷² was a dramatic change. Shāfi‘ī’s *Risāla (Epistle)*, one of the earliest texts to articulate a theoretical justification of Islamic law,¹⁷³ argued that only revealed texts constitute acceptable legal sources.¹⁷⁴ Shāfi‘ī maintained that the Qur’ān and the (exclusively) prophetic Sunna constitute the entirety of revelation. He thus limited the concept of Sunna to *sunnat al-nabī*, the Sunna of the Prophet, or *sunnat rasūl Allāh*, the Sunna of God’s messenger,¹⁷⁵ and he considerably reduced the role played by *ḥadīth* from the Companions and Successors to Muḥammad.¹⁷⁶ Shāfi‘ī further insisted that the

¹⁷² This phrase belongs to Zysow, *The Economy of Certainty*, 168, describing the views of the critics of *qiyās*.

¹⁷³ On Shāfi‘ī and later *uṣūl al-fiqh*; see Wael Hallaq, “Was al-Shafi‘i the Master Architect of Islamic Jurisprudence?” *IJMES* 25, no. 4 (1993): 587-605; idem, *A History of Islamic Legal Theories*, 30-35; Lowry, “Does Shāfi‘ī Have a Theory of ‘Four Sources’ of Law?” 23-50; idem, *Early Islamic Legal Theory*, 51-59; idem, “The Reception of al-Shāfi‘ī’s Concept of *Amr* and *Nahy* in the Thought of his Student al-Muzanī,” in *Law and Education in Medieval Islam: Studies in Memory of George Makdisi*, eds. Joseph Lowry et al. (Cambridge: E.J.W. Gibb Memorial Trust, 2004), 128-49; and idem, “Some Preliminary Observations on al-Šāfi‘ī and Later *Uṣūl al-Fiqh*: The Case of the Term *bayān*,” *Arabica* 55, no. 5-6 (2008): 505-527. Devin Stewart has identified traces of pre-Shāfi‘ī *uṣūl al-fiqh*; see “Muḥammad b. Dawūd al-Zāhirī’s Manual of Jurisprudence, *al-Wuṣūl ilā Ma‘rifat al-Uṣūl*,” in *Studies in Islamic Legal Theory*, 102-106; and idem, “Muḥammad b. Jarīr al-Ṭabarī’s *al-Bayān ‘an Uṣūl al-Aḥkām* and the Genre of *Uṣūl al-Fiqh* in Ninth Century Baghdad,” in *‘Abbasid Studies: Occasional Papers of the School of ‘Abbasid Studies*, ed. James E. Montgomery (Leuven: Peeters, 2004), 330-49. For the legal theory of another early jurist, see Joseph Lowry, “The First Islamic Legal Theory: Ibn al-Muqaffa’ on Interpretation, Authority, and the Structure of the Law,” *JAOS* 128, no. 1 (2008): 25-40. Norman Calder questioned Shāfi‘ī’s authorship of the *Risāla*; see *Studies in Muslim Jurisprudence*, 241-43. This has largely been put to rest by Joseph Lowry, “The Legal Hermeneutics of al-Shāfi‘ī and Ibn Qutayba: A Reconsideration,” *Islamic Law and Society* 11, no. 1 (2004): 1-41; Ahmed El Shamsy, “From Tradition to Law: The Origins and Early Development of the Shāfi‘ī School of Law in Ninth-Century Egypt,” (PhD diss., Harvard University, 2009), 265-77; and idem, “Al-Shāfi‘ī’s Written Corpus: A Source-Critical Study,” *JAOS* 132, no. 2 (2012): 199-220.

¹⁷⁴ Lowry, *Early Islamic Legal Theory*, 166-67; Hallaq, “Was al-Shafi‘i the Master Architect,” 592-93; and idem, *A History of Islamic Legal Theories*, 24-29. This argument appears in the later, surviving, Egyptian version of this text, but was apparently not the claim in the earlier, Iraqi version; Ahmed El Shamsy, “The First Shāfi‘ī: The Traditionalist Legal Thought of Abū Ya‘qūb al-Buwayṭī (d. 231/846),” *Islamic Law and Society* 14, no. 3 (2007): 317-18; and idem, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 151.

¹⁷⁵ Lowry, *Early Islamic Legal Theory*, 170-87.

¹⁷⁶ Hallaq, *A History of Islamic Legal Theories*, 18, put this strongly: “the elimination of the role of the Companions’ reports from the construction of the law was completed by [Shāfi‘ī] who insisted, consistently and systematically, that the Quran and the Sunna of the Prophet are the sole material sources of the law.” Lowry, *Early Islamic Legal Theory*, 203-205, was more cautious: “non-prophetic reports play a de facto role in legal analysis, ... and so are not rejected outright by Shāfi‘ī. ... Shāfi‘ī did not banish these

Qur'ān and Sunna – written and oral revelation – are of equal standing, apparently arguing against the view that non-Qur'ānic reports reflect a lower degree of revelation.¹⁷⁷ Joseph Lowry showed that the *Risāla* is an extended argument about the interaction of revealed sources;¹⁷⁸ according to Shāfi'ī, although abrogation, *naskh*, may affect one body of revelation, the Qur'ān may not abrogate the Sunna nor the Sunna the Qur'ān. This position – apparently unique in the history of Islamic law – appears to result from Shāfi'ī's commitment to protect oral revelation as a valid source of law. Were it possible for the Qur'ān to abrogate the Sunna, Shāfi'ī explained, one might claim that any Qur'ānic source should prevail over a Sunna that appears to modify it. Such reasoning, noted Shāfi'ī, could render the Sunna entirely extraneous.¹⁷⁹ Lastly, Shāfi'ī downplayed non-divine sources of law, such as consensus (*ijmā'*); he used this only to corroborate otherwise debatable interpretations of revealed texts.¹⁸⁰

Many of Shāfi'ī's contemporaries who preferred legal *ḥadīth* to speculative reasoning continued to affirm the authority of *ḥadīth* ascribed to non-prophetic figures. Aḥmad Ibn Ḥanbal, one of the most prominent mid-ninth century authorities, reportedly

entirely from his legal thought, but one suspects that he would have liked to do since they interfere with the neat categories ... that implicitly draw a line between divine and human authority” (203); “their continued existence in Shāfi'ī's legal thought shows how difficult it was to account neatly for all the legal materials in circulation during Shāfi'ī's lifetime” (204). See also Mohyiddin Yahia, *Shāfi'ī et les deux sources de la loi islamique* (Turnhout: Brepols, 2009), 491-98.

¹⁷⁷ Melchert, “The Traditionist-Jurisprudents,” 403-404.

¹⁷⁸ Lowry, *Early Islamic Legal Theory*, 23-46.

¹⁷⁹ See Shāfi'ī, *The Epistle on Legal Theory*, ed. Lowry, 163-65; Hallaq, *A History of Islamic Legal Theories*, 71-73; and Lowry, *Early Islamic Legal Theory*, 89-91. See also John Wansbrough, *Qur'anic Studies: Sources and Methods of Scriptural Interpretation*, ed. Andrew Rippin (Amherst, NY: Prometheus Books, 2004), 196; and Zysow, *The Economy of Certainty*, 86.

¹⁸⁰ Lowry, *Early Islamic Legal Theory*, 322-27; writing that Shāfi'ī used *ijmā'* “as a source of corroborative authority for interpretations of difficult passages from the revealed source texts” (357).

allowed *ḥadīth* from Muḥammad and from the first four caliphs. Others – including some of Shāfi‘ī’s followers – were even more lenient. Nevertheless, Shāfi‘ī’s revelation-only view of Islamic law became standard within Sunni Islam over the course of the late ninth and early tenth centuries, and jurists generally came to limit *ḥadīth* to prophetic texts.¹⁸¹ The result of this process was “an exclusively textualist ... conception of revelation,” in which “the ultimate author of the Sunna was God himself.”¹⁸² The Muslim jurist correspondingly sought to “salvage the authentic memory of the prophetic age and delegitimize the later accretions to the law,”¹⁸³ so that prophetic traditions – as transmitted through written and oral revelation – became the sole source of religious authority.

Many geonic claims become intelligible when read in light of this shift to a revelation-only perspective of religious law in broader Islamic society. Sa‘adya, whose “highest aspiration” Brody described as “the restoration of a long-ago Golden Age,”¹⁸⁴ first articulated these assertions. Despite some criticism from Sherira ben Ḥanina Gaon (c. 906-1006), his son Hayya, and others, Rabbanites in Baghdad and North Africa largely upheld this perspective, successfully integrating and manipulating earlier rabbinic

¹⁸¹ Schacht, *Origins*, 57, 80, portrayed Shāfi‘ī’s position on this issue as immediately victorious, a position accepted in Bernard Weiss, “The Primacy of Revelation in Classical Islamic Legal Theory as Expounded by Sayf al-Dīn al-Āmidī,” *Studia Islamica* 59 (1984): 84. For the view presented here, see Melchert, “The Traditionist-Jurisprudents,” 399-405. On Ibn Ḥanbal, see also Saud Al Sarhan, “The Responsa of Aḥmad Ibn Ḥanbal and the Formation of Ḥanbalism,” *Islamic Law and Society* 22 (2015): 18, 38-39. On the position of Shāfi‘ī’s followers, see Éric Chaumont, “Le «dire d’un Compagnon unique» (*qawl al-wāḥid min l-ṣaḥāba*) entre la *sunna* et l’*iğmā‘* dans les *uṣūl al-fiqh* šāfi‘ītes classiques,” *Studia Islamica* 93 (2001): 59-76; Susan Spector, “Hadīth in the Responses of Iṣḥāq b. Rāḥwayh,” *Islamic Law and Society* 8, no. 3 (2001): 429; Shamsy, “The First Shāfi‘ī,” 317-19; and idem, *The Canonization of Islamic Law*, 216-20. See the similar conclusions about al-Bukhārī in Scott C. Lucas, “The Legal Principles of Muhammad b. Ismā‘īl al-Bukhārī and Their Relationship to Classical Salafī Islam,” *Islamic Law and Society* 13, no. 3 (2006): 300.

¹⁸² Weiss, “The Primacy of Revelation,” 83-84.

¹⁸³ Shamsy, *The Canonization of Islamic Law*, 70; and idem, “Rethinking Taqlīd in the Early Shāfi‘ī School,” *JAOS* 128, no. 1 (2008): 7.

¹⁸⁴ Brody, *Geonim of Babylonia*, 247.

sources, and augmenting them with arguments found in contemporary Islamic texts. They thus established a doctrine that was consistent with many of the assumptions of the time. Because Rabbanite Judaism and Sunni Islam asserted the doctrine of a dual revelation, it is unsurprising that jurists in both communities defended their systems of religious law in similar ways.

Late Geonic-Era Claims about the Scope of Revelation

Geonic affirmations that revelation encompassed both the Written and Oral Torahs were largely continuous with claims about the origins of rabbinic tradition found in rabbinic *aggadah*.¹⁸⁵ These theological and homiletical assertions do not necessarily reflect the views of the Tannaim, however; Azzan Yadin has argued that the Aqiva and Ishmael schools debated the scope of extra-scriptural tradition,¹⁸⁶ and others have noted that the Mishnah and Tosefta do not claim to be divinely authorized documents.¹⁸⁷ According to Martin Jaffee, the ambiguous relationship in these tannaitic documents

¹⁸⁵ As noted by Blidstein and Lifschitz; see above, n133. On rabbinic *aggadah*, note also Bernard J. Bamberger, “Revelations of Torah after Sinai: An Aggadic Study,” *HUCA* 16 (1941): 97: “Most of the Aggadot either imply or state plainly, that ... Moses received the Torah in absolutely completed form.”

¹⁸⁶ Azzan Yadin, “4QMMT, Rabbi Ishmael, and the Origins of Legal Midrash,” *Dead Sea Discoveries* 10, no. 1 (2003): 130-40; idem, “Resistance to Midrash? Midrash and ‘Halakhah’ in the Halakhic Midrashim,” in *Current Trends in the Study of Midrash*, ed. Carol Bakhos (Leiden: Brill, 2006), 35-58; idem, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* (Philadelphia: University of Pennsylvania, 2004), 1-11, 142-54; idem, “Concepts of Scripture in the Schools of Rabbi Akiva and Rabbi Ishmael,” in *Jewish Concepts of Scripture: A Comparative Introduction*, ed. Benjamin Sommer (New York: NYU Press, 2012), 47-63; and idem, *Scripture and Tradition: Rabbi Akiva and the Triumph of Midrash* (Philadelphia, University of Pennsylvania Press, 2014), 193-206. See also Yishai Rosen-Zvi, “‘Mi Yigaleh ‘Afar me-‘Einekha’: Mishnat Soṭah pereq 5 u-Midrasho shel R. Aqivah,” *Tarbiz* 75, no. 1-2 (2005-2006): 125-27; and earlier, Abraham Joshua Heschel, *Torah min ha-Shamayim be-Aspaqlaryah shel ha-Dorot* (London: Shontsin, 1962-1990), 2:220-62, 2:360-413.

¹⁸⁷ Mayer I. Gruber, “The Mishnah as Oral Torah: A Reconsideration,” *Journal for the Study of Judaism in the Persian, Hellenistic and Roman Period* 15 (1984): 112-22; and Jaffee, *Torah in the Mouth*, 100.

between laws rooted in Scripture and laws established by the Sages gave rise to “a pressing jurisprudential problem” of determining the relationship and hierarchy of legal sources. In Jaffee’s view, the first to promulgate an ideology of the Oral Torah that located all post-scriptural innovations in divine revelation were the authors of third-century midrashic literature.¹⁸⁸ Rabbanite defenses of the Oral Torah maintained this ideological stance, but they did so in the language of contemporaneous Muslim defenses of extra-scriptural traditions.

Enumerations of the Commandments

Geonic-era enumerations of the 613 commandments – all of which include post-Mosaic laws¹⁸⁹ – are an important, if somewhat enigmatic, example of the ways that Rabbanites located post-biblical legislation at Sinai. Rabbanites cited different versions of the Talmud’s description of the 613 commandments (bMak 23b); some preserved a reading that the 613 were “said to Moses at Sinai,” or simply “said to Moses,” and others, that “Israel was commanded 613 commandments.” While some jurists after the twelfth century claimed that the “correct” wording of this passage should dictate whether or not the enumeration was intended to include post-Sinaitic laws, geonic-era works freely quote various versions of this text.¹⁹⁰ Geonic-era enumerations counted some, or all, of

¹⁸⁸ Jaffee, *Torah in the Mouth*, 84-92.

¹⁸⁹ Herbert A Davidson, “The First Two Positive Commandments in Maimonides’ List of the 613 Believed to Have Been Given to Moses at Sinai,” in *Creation and Re-Creation in Jewish Thought, Festschrift in Honor of Joseph Dan*, eds. Rachel Elior and Peter Schäfer (Tübingen: Mohr Siebeck, 2005), 118; repr. in idem, *Maimonides the Rationalist* (Oxford: Littman Library of Jewish Civilization, 2011), 20.

¹⁹⁰ See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9 (Prin. One); Naḥmanides, *Sefer ha-Miṣvot leha-Rambam im hasagot ha-Ramban*, ed. Charles Ber Chavel (Jerusalem: Mosad ha-Rav Kook, 1981), 8-10 (Prin. One); and Simeon b. Ṣemaḥ Duran, *Azharot le-Rabbeinu Shlomo ben Gabirol z"l ve-'alav Sefer*

the following as commandments: the festival of Purim; the post-biblical festival of Hanukah; the lighting of Sabbath candles; the recitation of one hundred blessings a day, and the recitation of *Hallel* (Ps. 113-18) on celebratory days.¹⁹¹ Reflecting on this claim, Abraham Ibn Ezra (b. Toledo; 1089-1164) observed: “There is no difference between matters from them [i.e., the rabbis] and matters from the Torah where the commandments are concerned. They [i.e., the former] are also given to us; they, too, are a tradition from their fathers, and the fathers of their fathers from the prophets – all is from God to

Zohar ha-Raqi'a, ed. David Abraham (Jerusalem, 1987), 6 (introductory pagination, Prin. One; hereinafter *Zohar ha-Raqi'a*). For treatment, see Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 5n1; idem, *Sefer ha-Miṣvot*, ed. Kafih, 7n53, 9n61; and Hildesheimer, ed. “Haqdamat *Halakhot Gedolot*,” 70n324. Contrary to Nahmanides’ argument, the words “at Sinai” do appear some surviving versions of the enumeration in the *Halakhot Gedolot*; see Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 112; noted in Yeruḥam Fishel Perla, *Sefer ha-Miṣvot le-Rasag: ‘im bei’ur Raḥav Meva’er Devarav ve-Yesodotav ve-Shiṭato* (Jerusalem: Qeset, 1973), 1:17. See also Shmuel Mirsky, *She’iltot de-Rav Aḥai Gaon* (Jerusalem: Sura, 1959), 5:77.

¹⁹¹ The best collection of sources on these counts is Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*.” On Purim, see there, 94-95n421. On Hanukkah and Sabbath candles, 84n378. On Sabbath candles, see also B.M. Lewin, “Le-Toldot Ner Shabbat,” in *Essays and Studies in Memory of Linda R. Miller*, ed. Israel Davidson (New York: Jewish Theological Seminary of America, 1938), 58-68 (Hebrew pagination); and Myron Bialik Lerner, “Peirush Midrashi le-Shir ha-Shirim mi-Yemei ha-Geonim,” *Qoveṣ ‘al Yad* 14 (8) (1976): 145, 159. Brody concluded that the blessing on Sabbath candles was not instituted due to anti-Qaraite motives; see *Teshuvot Hilkhatiyot*, 174n5. For Sa’adya’s *Ma’amar Ner Shabbat*, see Klar, *Mehqarim ve-Iyunim*, 242-58. On one hundred blessings a day, see Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 70-71n324; Naftali Wieder, “‘Mei’ah Berakhot’ = ‘Birkot ha-Shaḥar’,” *Sinai* 44 (1959): 258-60; repr. in idem, *Hitgabshut Nusah ha-Tefillah ba-Mizraḥ uva-Ma’arav: Qoveṣ Ma’amarim* (Jerusalem: Mekhon Ben-Zvi, 1998), 1:281-83; Brody, *Teshuvot Hilkhatiyot*, 106-113; and Stefan C. Reif, *Jewish Prayer Texts from the Cairo Genizah: A Selection of Manuscripts at Cambridge University Library, Introduced, Transcribed, Translated, and Annotated, with Images* (Leiden: Brill, 2016), 12-27. On *Hallel*, see Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 81-82n367; note the language of Eliezar ben Samuel of Metz: “the eight days of Hanukkah are rabbinic, but since R. Simeon [Qayyāra, the presumed author of *Halakhot Gedolot*] included them in the count, I also included them among the positive biblical commandments” (וח’ ימי חנוכה דרבנן נינהו והואיל וכללם ר’ שמעון בחשבון כללתיים גם אני במצות עשה דאורייתא); *Sefer Yirei ‘im* (Warsaw, 1931), 239 (§262 [§125]). Abraham Ibn Ezra, on the authority of Baḥya ibn Paquda, included *Hallel* as an example of a commandment hinted to in the Torah; *Yesod Mora ve-Sod Torah*, eds. Joseph Cohen and Uriel Simon (Ramat Gan: Bar Ilan University Press, 2007), 126 (6:1). See also Meir ha-Levi Ibn Migash, *She’elot u-Teshuvot ha-Ri Migash* (Salonika, 1791), 7a (§44); and the sources in Menahem Kasher, *Torah Shleimah*, 11:220-21, 12:163-74. Perla, *Sefer ha-Miṣvot la-Rasag*, 1:508, argued that Sa’adya omitted *Hallel* from his enumeration.

Moses.”¹⁹² It is possible, however, that enumerators of the commandments sought to anthologize Jewish law and did not seek to limit themselves to laws of biblical (or divine) origin.¹⁹³ By the same token, an author’s exclusion of a law from the enumeration need not have meant that he considered it rabbinic in origin, as the categories of biblical law and enumerated commandments overlap but are not equivalent. It seems likely, however, that enumerations of the commandments are consistent with a broader geonic-era trend in legal epistemology to downplay human contributions to divine law.

Having said this, both Sa’adya and Ḥefeṣ ben Yaṣṣiah, who were more cautious about listing post-Mosaic laws than other Rabbanite enumerators of this period, also counted laws that appear to be of rabbinic status.¹⁹⁴ Ḥayim Sabbato recently argued that Sa’adya only included three post-Mosaic laws in his *Kitāb al-Sharā’i* (*Book of the Commandments*): Purim, Hanukah, and second-order prohibitions of forbidden sexual relations (*sheniyot le-‘arayot*).¹⁹⁵ Elsewhere, Sa’adya claimed pentateuchal authority (for Purim and Hanukah) or divine, extra-scriptural authority (*naql*; regarding the *sheniyot*) for these laws;¹⁹⁶ this seems to indicate that his enumeration of the commandments only

¹⁹² ואין הפרש בדברי המצות בין דבריהם ובין דברי תורה כי גם נתונות לנו הן וגם קבלה מאבותם ואבות אבותם
 משה
 מהנביאים והכל מפי השם ליד משה
 Abraham Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 106 (2:14); for treatment, see there, 31.

¹⁹³ On this aspect of Ḥefeṣ’s work, see Halper, *A Volume of the Book of Precepts*, 49-50. I thank Bernard Septimus for his help clarifying some of these problems.

¹⁹⁴ For example, Perla noticed that unlike other enumerators, Sa’adya did not count lighting Sabbath as a commandment in one of his liturgical enumerations; *Sefer ha-Miṣvot le-Rasag*, 1:507.

¹⁹⁵ Ḥayim Sabbato, “Ha-Im hekir ha-Rambam et *Sefer ha-Miṣvot* ha-Shaleim le-Rasag?” in *Mi-Birkat Moshe*, 2:760. It is hard to know if Sabbato’s assessment is correct until Sa’adya’s *Kitāb al-Sharā’i* appears in print. I thank Robert Brody for his help on this matter. On the *sheniyot*, see tYeb chap. 3 and bYeb 21a-22a.

¹⁹⁶ On Purim and Hanukah, see below. On the *sheniyot*, see Moshe Zucker, “Shenei Qeṭa’im Neged Qara’im,” *PAAJR* 18 (1948-1949): 9 (on this text, see below, n294). Note Maimonides’ comment about the *sheniyot*; *Sefer ha-Miṣvot*, ed. Kafih, 12 (Prin. One). Maimonides categorized these laws as: אסורות מפי הקבלה ואיסורן מדברי סופרים (*Hilkhot Ishut*, 1:6); see Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 88;

included laws that he considered to be of divine origin. Judah Ibn Bil'am (Toledo, Seville; late 11th c.) reported that Ḥefeṣ had criticized the inclusion of rabbinic laws in the enumeration but did count both Purim and Hanukah among the 613 commandments.¹⁹⁷

Early enumerations of the commandments also included laws based on post-Mosaic prophecy, such as the requirement to clothe the naked; according to Maimonides, this was rooted in Isa. 58:7 (“when you see the naked, clothe him”), further suggesting that, for these enumerators, the 613 covered all divine laws.¹⁹⁸ In his *Kitāb fī al-Sharā'ī* (*Book on the Commandments*), Samuel ben Ḥofni described laws found in the Prophets as oral traditions from Moses (compare bTan 17b and parallels¹⁹⁹), describing each as a *khabar* (pl., *akhbār*; a prophetic report).²⁰⁰ Similarly, an anonymous geonic letter relied

and Eliav Shoḥetman, “Halakhah mi-Pi ha-Qabbalah’ ve-‘Halakhah le-Moshe mi-Sinai’: ‘Iyun be-Leshonot ha-Rambam,” *Shenaton ha-Mishpat ha-‘Ivri* 22 (2001-2004): 411-12.

¹⁹⁷ According to Ibn Bil'am, Ḥefeṣ criticized those who counted commandments to visit the sick and comfort the bereaved; Salomon Fuchs, *Studien über Abu Zakaria Jachja (R. Jehuda) Ibn Bal'am* (Berlin, 1893), xxii-xxiii; Halper, *A Volume of the Book of Precepts*, 105; and Maravi Perez, “Commentary on Number & Deuteronomy (from ‘Kitāb altargih’) by Jehuda b. Shmuel Ibn Bal'am,” (MA thesis, Bar Ilan University, 1970), 63-64. Like Ibn Bil'am, Maimonides praised Ḥefeṣ for excluding rabbinic ordinances from the enumeration; *Sefer ha-Miṣvot*, ed. Kafih, 5 (introduction). Maimonides referred to the “author of the famous *Book of the Commandments*” (or “the famous author of *Book of the Commandments*”; צאתב אלמשהוור (כתאב אלשראיע אלמשהוור). Solomon Judah Rapoport first identified Ḥefeṣ as the author that Maimonides had in mind; “Meṣi'ot Rav Ḥefeṣ ve-Qorot Sefarav,” in *Qevuṣat Ḥakhamim*, ed. W. Warnheim (Vienna, 1861), 58. On this passage, see also Halper, *A Volume of the Book of Precepts*, 6. A fragment of Ḥefeṣ's *Kitāb al-Sharā'ī* corroborates that Ḥefeṣ included Hanukah among the 613 commandments; see Zucker, “‘Iyunim ve-He'arot,” 99.

¹⁹⁸ For background in geonic-era literature, see Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 72-73n329. See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 11 (Prin. One). On this issue, see Halbertal, “*Sefer ha-Miṣvot* le-Rambam,” 462-68; and idem, *Maimonides*, 126-33.

¹⁹⁹ On the rabbinic claim, see Halivni, “Reflections on Classical Jewish Hermeneutics,” 107-108. On this passage, see Ephraim Urbach, “Halakhah u-Nevu'ah,” *Tarbiz* 18, no. 1 (1946): 19-20.

²⁰⁰ Sklare, *Samuel ben Ḥofni Gaon*, 215-16. The word *khabar* may denote a non-prophetic report; Sklare noted the Samuel and other geonim understood *akhbār* as “traditions from the Prophet Moses, transmitted by scholars from generation to generation” (43) and “conceive[d] of the Oral Law as the simple transmission of unwritten prophetic traditions,” terming rabbinic sources *khabar* (269n112). On this term, see also Raphael Jospe, “‘Ha-Haggadah ha-Ne'emenet’ shel R. Sa'adya Gaon: Mi Hem 'Qahal ha-Meyahdim'?” *Da'at* 41 (1998): 6-8.

on laws found in the Prophets to defend rabbinic tradition as a whole.²⁰¹ The author drew the following analogy: Just as laws that are not found in the Pentateuch yet appear elsewhere in Scripture were known before they were written, so too, laws reported by the rabbis must have been known before they were written.²⁰²

Claims about the Scope of Revelation

Enumerations of the commandments that treat laws as Sinaitic in origin that rabbinic literature appears to consider to be rabbinic in status are consistent with geonic-era claims about the scope of revelation. Sa'adya's writings contain the sharpest formulations of the geonic view. He proclaimed that God revealed both the *uṣūl* (roots or principles) and the *furū'* (branches or details) of the law,²⁰³ that the Mishnah and Talmud were transmitted orally until they were compiled,²⁰⁴ and that all of the details of how to

²⁰¹ Jacob Mann surmised that the author of this text was the head of one of the academies after their late ninth-century move to Baghdad; "The Responsa of the Babylonian Geonim as a Source of Jewish History," *JQR* 9, no. 1-2 (1918-1919): 145-46; see also idem, *Texts and Studies*, 1:73. On the date of the move to Baghdad, see Brody, *Geonim of Babylonia*, 31.

²⁰² T.-S. 13J 31.4, fol. 4r lines 1-5; printed in Mann, "The Responsa of the Babylonian Geonim as a Source of Jewish History," 149; see analysis there, 140-41. Mann later published more of this responsum from Mosseri II, 60.1; see "Gaonic Studies I, The Last Period of the Sura Gaonate," in *Hebrew Union College Jubilee Volume, 1875-1925*, ed. David Philipson (Cincinnati, 1925), 260-61. Mann did not publish the entire second manuscript. Compare the claims about post-Mosaic prophecy in Enelow, ed., *Mishnat Rabbi Eliezer*, 117; mentioned in Urbach, "Halakhah u-Nevu'ah," 8n65. On the dating of this text, see above, n161.

²⁰³ See ENA NS 74.14 (now NS 28.13); first noted in Moshe Zucker, *Peirushei Rav Sa'adya Gaon le-Bereishit* (New York: Jewish Theological Seminary of America, 1984), 13-14n9 (introductory pagination); see also Sklare, *Samuel ben Hofni Gaon*, 160-61. The transcription in both of these works should be corrected; I thank David Sklare for providing me with a new transcription of this fragment. See also Cohen, *Opening the Gates of Interpretation*, 245-46; and Solomon Schechter, *Saadyana: Geniza Fragments of Writings of R. Saadya Gaon and Others* (Cambridge: Deighton and Bell, 1903), 5. Sa'adya's use of the distinction between *uṣūl* and *furū'* is noted in Brody, *Geonim of Babylonia*, 246n38.

²⁰⁴ Abraham Elijah Harkavy, *Zikhron le-Rishonim: Ha-Sarid veba-Paliṭ mi-Sefer ha-Egron ve-Sefer ha-Galuy* (St. Petersburg, 1891), 153; and Henry Malter, "Saadia Studies," *JQR* 3, no. 4 (1913): 497. See also Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, lii. See similarly his commentary to *Sefer Yeṣirah*, writing: וְלֹא תִזְלֵ מִנְקוּלָה פִּי מֵא בֵּין אֲמִתָּנָא גִיר מִכְתוּבָה כִּמָּא כְּאֵנָת אֵלְמִשְׁנָה מִנְקוּלָה גִיר מִכְתוּבָה; *Sefer Yeṣirah*, ed. Kafih,

perform the commandments were transmitted as “the nation witnessed them from acts of the messenger (i.e., Moses).”²⁰⁵ Sa’adya contended that just as the Pentateuch presented the Tabernacle and its inauguration in great detail, so, too, God would not leave any of the commandments “unexplained” (*ghayr bayyin*). Therefore, he concluded, explanations that are not found in Scripture (*al-maktūb*) must be in the tradition (*al-manqūl*).²⁰⁶

Later Rabbanites endorsed many of Sa’adya’s views. An unknown student of Sa’adya²⁰⁷ maintained that Ps. 19:8 (“*The Torah of the Lord is perfect [temimah]*”), a

33. Sa’adya claimed that the ‘*ulamā*’ (“scholars,” i.e., the rabbis) collected the orally transmitted *dīqduq sharā’i*’ and *aḥkām fiqh* (details of the law[s]; (ואחכאם פקהא וסאיר אלאכ’באר אלתי לם תכון מכתוב פאלעלמא אלד’ין אהמהם הם אלאמה חתי חצלו להא דקדוק שראיעהא); *Sefer Yeşirah*, ed. Kafih, 142.

²⁰⁵ שאהדיתהא אלאמה מן פעל אלרסול; Zucker, *Peirushei Rav Sa’adya*, 15. Zucker suggested that Sa’adya drew the emphasis on witnessing the prophet’s actions, as opposed to his words, from Muslim sources (185n100). See also Sa’adya’s commentary on Proverbs 25:1; *Mishlei: ‘im Tirgum u-Feirush ha-Gaon Sa’adya ben Yosef Fayyūmī*, ed. and trans. Yosef Kafih (Jerusalem, 1976), 104. Note the report of one Qaraite that Sa’adya said that “just as all of the commandments were ancient and unwritten, so too the Mishnah and the Talmud are ancient and were unwritten” (כל המצות היו מקדם ולא היו נכתבו כן משנה והתלמוד היו) (מקודם ולא נכתבם); Simḥa Pinsker, *Liquṭei Qadmoniyot: le-Qorot Dat benei Miqra voha-Liṭeraṭur shelahem* (Vienna, A. della Torre, 1860), 1:94. These two sources were adduced in Shraga Abramson, “Ketivat ha-Mishnah (‘al Da’at Geonim ve-Rishonim),” in *Tarbut ve-Hevrah be-Toldot Yisrael bi-Yemei-ha-Beinayim*, eds. Robert Bonfil et al. (Jerusalem: Merkaz Zalman Shazar, 1989), 38, 29. See also José Faur, *Iyunim be-Mishneh Torah leha-Rambam* (Jerusalem: Mosad ha-Rav Kook, 1978), 95-96.

²⁰⁶ בל ואג’ב אן יכן קד שרח ד’לך שרחא שאפיא פאד’ לם יוג’ד פי אלמכתוב פהו פי אלמנקול; Zucker, “Qeṭa ‘im mi-Kitāb Taḥṣīl al-Sharā’i,” 403; first published by Abraham Elijah Harkavy, “Me-Genizah Mizrahit aḥat beha-Biblioteqiyah ha-Qesarit be-Petersburg,” *Ha-Qedem* 1 (1906): 65; see also Abramson, “Ketivat ha-Mishnah,” 29. Sa’adya’s central argument in the Introduction to his *Commentary on Genesis* is that the Written Torah is incomprehensible without the Oral Torah; see Zucker, *Peirushei Rav Sa’adya*, 13-15. For analysis, see Samuel Poznański, “Zu dem Geniza-Fragment,” *ZfhB* 3 (1899): 173n8; Abraham Halkin, “Mi-Petiḥat Rav Sa’adya Gaon le-Feirush ha-Torah,” in *Sefer ha-Yovel li-Khvod Levi Ginzberg li-Melot lo Shiv ‘im Shanah*, eds. Saul Liebermann et al. (New York: American Academy of Jewish Research, 1946), 132; Wieder, *The Judean Scrolls and Karaism*, 75; and Harris, *How Do We Know This*, 76. In his *Essa Meshali*, Sa’adya suggested two options for the scope of revelation: the decoding (or: deciphering; *pi’nuah*) of the commandments can be derived entirely from Scripture, or “our Holy One established all of the explanations” (*kol peirushim kedoshenu konen*). It is clear which he preferred; B.M. Lewin, “*Essa Meshali le-Rasag*,” in *Rav Sa’adya Gaon*, 525 lines 20, 26. See Wieder, *The Judean Scrolls and Karaism*, 74-75; and Harris, *How Do We Know This*, 77-78.

²⁰⁷ Samuel Poznański, suggested that the author was Jacob ben Samuel, the target of a lengthy missive from Sahl ben Maṣliah; “Die Streitschrift eines Schülers Saadja’s gegen Salmon b. Jerocham,” *ZfhB* 10 (1906): 46-47. On these two figures, see idem, *The Karaite Literary Opponents*, 31; and Leon Nemoy, “The Epistle of Sahl ben Maṣliah,” *PAAJR* 38-39 (1970-1971): 145-77.

verse that Qaraites cited to prove the Written Torah's self-sufficiency,²⁰⁸ refers to both the written and oral revelations (*al-maktūb wal-manqūl jamī'an*).²⁰⁹ In his view, revelation as a whole requires no human supplement.

Sherira's famed *Epistle* tempers some of Sa'adya's claims, but it also locates rabbinic tradition in hoary antiquity and deemphasizes rabbinic legislative activity. Against Sa'adya, for example, Sherira asserted that the Mishnah was transmitted with linguistic diversity before it was compiled,²¹⁰ and that the amoraic rabbis participated in the development of the Talmud.²¹¹ Sherira, however, largely minimized the role of the rabbis in developing Jewish law, declaring that while they used their intellects in order to work out legal problems and followed the majority in order to determine a ruling, they merely ascertained what earlier generations had already known.²¹² At the same time, the

²⁰⁸ Wieder termed this verse the "the battle-cry" of Qaraism; *The Judean Scrolls and Karaism*, 57-58. See also Salmon ben Yeruḥim, *Sefer Milhamot ha-Shem*, ed. Davidson, 12.

²⁰⁹ Poznański, "Die Streitschrift eines Schülers Saadja's," 49.

²¹⁰ B.M. Lewin, *Igeret Rav Sherira Gaon* (Haifa, 1921), 18, 22. See the treatment in Blidstein, "Ra'ayon Torah shebe-'al Peh," 6-10; see also there, 15n44. On the differences between Sa'adya and Sherira, see Harry Fox, "Neusner's *The Bavli and Its Sources*, A Review Essay," *JQR* 80, no. 3-4 (1990): 353-54; and Abraham Rosenthal, "Gilyon Nosaf mi-'*Sefer ha-Galuy*' le-Rav Sa'adya Gaon," in *Osef ha-Genizah ha-Qahirat be-Geneva: Qatalog u-Meḥqarim*, ed. David Rosenthal (Jerusalem: Magnes, 2010), 247-49. On Sherira's ascription of divine origins to the Mishnah, see Talya Fishman, "Claims about the Mishnah in the Epistle of Sherira Gaon: Islamic Theology and Jewish History," in *Beyond Religious Borders: Interreligious Interaction and Intellectual Exchange in the Medieval Islamic World*, eds. David Freidenreich and Miriam Goldstein (Philadelphia: University of Pennsylvania Press, 2012), 65-77.

²¹¹ E.g., Lewin, *Igeret Rav Sherira Gaon*, 52-54, 63-66. On the term "Talmud" in the *Epistle*, see Blidstein, "Ra'ayon Torah shebe-'al Peh," 14-15; and Talya Fishman, *Becoming the People of the Talmud: Oral Torah as Written Tradition in Medieval Jewish Cultures* (Philadelphia: University of Pennsylvania Press, 2011), 26-27. I do not find the argument in Faur, *Iyunim be-Mishneh Torah*, 96, compelling.

²¹² E.g., Lewin, *Igeret Rav Sherira Gaon*, 9 (citing the statement that R. Yoḥanan ben Zakkai was aware of the debates [*havayot*] of Abaye and Rava; bBM 134a), 17 (concerning following the majority), 36-37, 43, 49, 52, 62. Note also Blidstein's comment that while the Talmud uses the phrase *lehitgader bo* to countenance the creation of a new law, Sherira used it to defend the replication of established norms; "Ra'ayon Torah shebe-'al Peh," 15.

Epistle repeats the talmudic notion that *hora'ah* (decision or instruction)²¹³ existed throughout the talmudic period (bBM 86a), accepts that “explanations and opinions approximating *hora'ah*” continued into the Saboraic period,²¹⁴ and tangentially describes certain rabbinic and geonic ordinances (*taqqanot*).²¹⁵

Among the North Africans, Ḥananel ben Ḥushiel of Qayrawān (c. 981-1053) affirmed that the Mishnah was a received tradition and asserted the equivalence of the oral and written traditions;²¹⁶ his compatriot Nissim ben Jacob ibn Shāhīn (990-1062) also asserted that the Mishnah and Talmud are received traditions.²¹⁷

²¹³ Strack and Stemberger, *Introduction to the Talmud and Midrash*, 192: “It is not certain how *hora'ah* should be more precisely interpreted. Most likely it is to be regarded as a particular form of the teaching and authoritative decision of the halakhah, which is limited to the time of the Amoraim.”

²¹⁴ אע"ג דהוראה לא הוה איכא פירושי וסבארי קרובים להוראה ואיקרו הנהו רבואתא רבנן סבוראי; Lewin, *Igeret Rav Sherira Gaon*, 69; translation based on Brody, *Geonim of Babylonia*, 5. See Avinoam Cohen, “Le-Ofyah shel ha-Halakhah ha-Savora'it: Sugyat ha-Bavli Reish Qiddushin u-Mesoret ha-Geonim,” *Dine Israel* 24 (2004): 166-75, 203-210.

²¹⁵ Lewin, *Igeret Rav Sherira Gaon*, 75 (on the *taqqanot* of R. Yoḥanan ben Zakkai), 101, 105, 108 (on the *taqqanot* of the geonim). On the latter, see Robert Brody, “Kelum hayu ha-Geonim Meḥoqeqim?” *Shenaton ha-Mishpat ha-'Ivri* 11-12 (1984-1986): 290-315. For the suggestion that Sherira mentioned these two *taqqanot* because they were the only two geonic *taqqanot*, see Eliav Shoheitman, “Le-Derekh Qevi'atan shel Taqqanot ha-Geonim ule-Mahutah shel Hora'at ha-Geonim be-Din 'Qim li be-Gavei,” *Shenaton ha-Mishpat ha-'Ivri* 11-12 (1984-1986): 665. Sherira also mentioned that Rav Ashi ordained “good ordinances” (*taqnata shapirata*) and festivals and fasts like the festival of the Reish Galuta (Lewin, *Igeret Rav Sherira Gaon*, 91); it is unclear how to categorize this activity. On the festival of the Reish Galuta, see J.N. Epstein, *Mevo'ot le-Sifrut ha-Amora'im* (Jerusalem: Magnes, 1962), 612; and Mirsky, *She'iltot de-Rav Aḥai Gaon*, 1:4-5.

²¹⁶ Ḥananel ben Ḥushiel, *Peirushei Rabbeinu Ḥananel 'al ha-Torah*, ed. Charles Ber Chavel (Jerusalem: Mosad ha-Rav Kook, 1972), 9 (Gen. 18:4); treated in Faur, *Iyunim be-Mishneh Torah*, 96. Ḥananel also reiterated Sherira's claim that later rabbis only stated laws that had been known to earlier rabbis; see Gerald Blidstein, “Mashehu 'al ha-Meimad ha-Idiologi shel Peirushei Rabbeinu Ḥananel le-Talmud,” *Sidra* 15 (1999): 9.

²¹⁷ Nissim ben Jacob, *Maftaḥ shel Man'ulei ha-Talmud* (Vienna, 1847), 2a. The Arabic *Kitāb Miḥtāḥ Maghālīq al-Talmūdh* only survives in medieval Hebrew translation; see idem, *Hamishah Sefarim: Seridim me-Ḥiburav*, ed. Shraga Abramson (Jerusalem: Meqisei Nirdamim, 1965), 27-28. See there, 353-54; Faur, *Iyunim be-Mishneh Torah*, 96; Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, liv; and Sklare, *Samuel ben Hofni Gaon*, 164n80. For similar claims about the Mishnah (or what is apparently an imagined Mishnah-like work), see *Sha'arei Teshuvah* (Leipzig, 1858), 2b (§20); and Kalman Kahana, ed., *Seder Tana'im ve-Amora'im* (Frankfurt, 1935), 8 lines 6-8. Note the claim in Ibn al-Nadīm, *Kitāb al-Fihrist*, ed. Sayyid, 1:54, citing a “learned” Jew (*rajulan min afādilihim*) that the Mishnah (*al-mishnā*) is Mosaic (in origin?). This may refer to the Talmud, as Ibn al-Nadīm described this as a Aramaic and Hebrew work.

In Sa'adya's view, the Oral Torah, as a divinely revealed body of knowledge, may reinterpret the Written Torah. Sa'adya presented this claim in discussing when Scripture should be read according to its apparent or manifest sense, known as its *zāhir*, and when a non-“apparent” reading was warranted.²¹⁸ Sa'adya argued that, just as the *zāhir* of Scripture's anthropomorphisms, and of verses that contradict reason, cannot be accepted, received tradition may justify ignoring Scripture's *zāhir*.²¹⁹ For instance, whereas Scripture limits punitive lashes to forty (Deut. 25:3), rabbinic tradition removed the *zāhir* sense of that verse and set the maximum number at thirty-nine (mMak 3:10). Tradition

Some criticism of the attempt to portray the entirety of rabbinic tradition as Sinaitic appears in *Kitāb Istidrāk al-Sahw al-Mawjūd fī Kutub Ra's al-Metība al-Fayyūmī* (*The Book of the Correction of the Mistakes Caused by Forgetfulness found in the Books of the Head of the Academy al-Fayyūmī*) of Mubashshir ben Nissi ha-Levi ibn 'Unāba. Mubashshir identified several places where he felt that Sa'adya exaggerated by describing traditions as prophetic in origin (i.e., *jā'a al-āthār*); see his *Kitāb Istidrāk al-Sahw al-Mawjūd fī Kutub Ra's al-Metība al-Fayyūmī*, ed. and trans. Moshe Zucker (New York: Feldheim, 1955), 31-36. On Mubashshir, see Marina Rustow, “Mubashshir ben Nissi ha-Levi,” *Encyclopedia of Jews in the Islamic World*, ed. Norman Stillman (Brill Online, 2014); and Gil, *Jews in Islamic Countries*, 356. Zucker described Mubashshir as seeking to undermine Sa'adya's authority; Mubashshir, *Kitāb Istidrāk*, ed. Zucker, 2-5. Others have viewed his critique as “in-family jousting”; Sklare, *Samuel ben Hofni Gaon*, 111n34; similarly, Shraga Abramson, “Teḥilat Sefer Hasagot Rav Mubashshir 'al Rav Sa'adya Gaon,” *Sinai* 57 (1965): 16-17. See also Samuel Miklós Stern, “The Beginning of Mubashshir's Critique of Sa'adya Gaon's Writings,” *REJ* 126 (1967): 113-17; and Moshe Zucker, “Beirurim be-'Hasagot Rav Mubashshir 'al Sa'adya Gaon,” *Sinai* 58 (1966): 95-98.

²¹⁸ For the range of meanings of *zāhir al-naṣṣ* in Maimonides' writings, many of which were utilized in earlier Rabbanite texts, see Cohen, *Opening the Gates of Interpretation*, 87-105. On the term *zāhir* among Muslim writers, see Robert Gleave, *Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory* (Edinburgh: Edinburgh University Press, 2013), 63-93.

²¹⁹ See Moshe Zucker, “Mi-Peirusho shel Rasag la-Torah,” *Sura* 2 (1956-1957): 319-20; Haggai Ben-Shammai, “Ha-Sifrut ha-Midrashit-ha-Rabbanit be-Feirushei Rasag: Hemshekh ve-Hiddush,” in *Masoret ve-Shinuy ba-Tarbut ha-'Arvit-ha-Yehudit shel Yemei-ha-Beinayim*, eds. Joshua Blau and David Doron (Ramat Gan: Bar Ilan University, 2000), 35; idem, “Haqdamat R. Sa'adya Gaon le-Yesh'ayah – Mavo le-Sifrei ha-Nevi'm,” *Tarbiz* 60, no. 3 (1991): 379n38, and Simon, *Four Approaches to the Book of Psalms*, 34-36. For parallels between Sa'adya and contemporary Qur'ān interpretation, see Haggai Ben-Shammai, “Ribbuy Mashma'uyot ha-Ketuvim be-Shiṭato ha-Parshanut shel Rasag,” in *Minḥah le-Mikhael: Mehqarim be-Hagut Yehudit u-Muslemit Muqdashim le-Professor Michael Schwarz*, eds. Sara Klein-Braslavy et al. (Tel Aviv: Tel Aviv University, 2009), 26-29. On God as a “consuming fire” (Deut. 4:24), see Zucker, *Peirushei Rav Sa'adya*, 18; and Ben-Shammai, “Haqdamat R. Sa'adya Gaon le-Yesh'ayah,” 381-82. Anthropomorphism was a common reason to reject the *zāhir* of Scripture; see Binyamin Abrahamov, *Anthropomorphism and Interpretation of the Qur'ān in the Theology of al-Qāsim ibn Ibrāhīm: Kitāb al-Mustarshid* (Leiden: Brill, 1996), 1-9.

similarly removed the *zāhir* of the prohibition against cooking a kid in its mother's milk (Ex. 23:19, 34:26, and Deut. 14:21) when it forbade all mixtures of milk and meat (mḤul 8:1).²²⁰ This controlling and determinative role of extra-scriptural traditions parallels the claim of Muslim jurists that the Sunna often establishes the meaning of the Qur'ān. They argued that a Prophetic *ḥadīth* could narrow a broad Qur'ānic term to a limited set of cases (i.e., from *'āmm* to *khāṣṣ*); for example, the general prohibition against the consumption of carrion (Q. 5:3) was qualified by a *ḥadīth* that excludes fish from the prohibition.²²¹

The Widespread Nature of Rabbinic Tradition

In their defense of rabbinic tradition, geonic-era Rabbanites resorted to two other (related) concepts found in contemporary Islamic texts, *tawātur* and *ijmā'*, which find confirmation for extra-scriptural traditions in widespread knowledge or approval. A *mutawātir* tradition is a “concurrent” report whose transmission by multiple individuals

²²⁰ Ben-Shammai, “Ha-Sifrut ha-Midrashit,” 36; but see idem, “Haqdamat R. Sa'adya Gaon le-Yesh'ayah,” 382n50. Despite Sa'adya's view that rabbinic tradition overrides Scripture's *zāhir*, Sa'adya occasionally ignored rabbinic tradition where he could have integrated it into his Pentateuch translation (*tafsīr*); Zucker, *Al Targum Rasag*, 319-479; see also David M. Freidenreich, “The Use of Islamic Sources in Saadiah Gaon's *Tafsīr* of the Torah,” *JQR* no. 3-4 (2003): 368-69. On Qaraite use of *zāhir* and *ta'wīl*, see Ben-Shammai, “Major Trends in Karaite Philosophy,” 347. On Qirqisānī, see Ben-Shammai, “The Tension Between Literal Interpretation and Exegetical Freedom,” 42. On Yefet ben 'Eli, see Daniel Frank, “The Limits of Karaite Scripturalism: Problems in Narrative Exegesis,” in *A Word Fitly Spoken*, eds. Bar-Asher et al., 45.

²²¹ On *'āmm* and *khāṣṣ*, see Zysow, *The Economy of Certainty*, 86-91; and Hallaq, *A History of Islamic Legal Theories*, 45-47. For Shāfi'ī's views, see Lowry, *Early Islamic Legal Theory*, 69-87; on the Sunna as an interpretative tool for the Qur'ān, see there, 104-118 (on *jumla* and *naṣṣ*); on *'āmm* and *khāṣṣ*, see also idem, “The Legal Hermeneutics of al-Shāfi'ī and Ibn Qutayba,” 7-20. On the relationship of the Sunna and the Qur'ān, see Shamsy, *The Canonization of Islamic Law*, 58, 77-78, 206, 219; and from a different perspective, Wansbrough, *Quranic Studies*, 174-77. Many argued that Muḥammad's acts recorded in *ḥadīth* clarify the Qur'ān; see Weiss, *The Search for God's Law*, 452-53.

in the generation of the Companions suffices to guarantee its authenticity. (This stands in contrast with reports that have a single point of origin [*khabar al-wāḥid*] and are thus less widespread; reports of this sort render “uncertain” knowledge).²²² Sa’adya, Samuel ben Ḥofni, Jacob ben Ephraim al-Shāmī (Palestine, 10th c.), and Judah ha-Levi (Spain, d. 1141) all repeated the trope, found in Islamic sources, that received tradition is *mutawātir* because can never be mass collusion (*tawāṭu’*) on falsehood.²²³ Jacob, Nissim of Qayrawān, and Judah ha-Levi also claimed that rabbinic tradition as a whole is *mutawātir*,²²⁴ and Sa’adya argued that Hanukah is based on a *mutawātir* tradition.²²⁵

In pre-ninth century Islamic texts, *ijmā’* could denote practice supported by scholars, ongoing practice in Medina, or universal consensus of all scholars or all

²²² See Zysow, *The Economy of Certainty*, 8-22; Hallaq, *A History of Islamic Legal Theories*, 60-64; G.H.A. Juynboll, “(Re)Appraisal of Some Technical Terms in Ḥadīth Science,” *Islamic Law and Society* 8, no. 3 (2001): 326-31; and Hüseyin Hansu, “Notes on the Term *Mutawātir* and Its Reception in Ḥadīth Criticism,” *Islamic Law and Society* 16, no. 3-4 (2009): 383-408.

²²³ For Sa’adya, see Sa’adya ben Yosef, *Iyov: ‘im Tirgum u-Feirush Sa’adya ben Yosef*, ed. and trans. Yosef Kafih (Jerusalem, 1972), 100. For Samuel, see Abramson, “Min ha-Pereq ha-Ḥamishi shel ‘Mavo ha-Talmud’ le-Rav Shmuel ben Ḥofni,” *Sinai* 85, no. 5-7 (1981): 216-17; Zucker, “Le-Va’ayat ha-Maḥloqet be-Masoret,” 320-21; and Sklare, “The Religious and Legal Thought,” 2:183-84; and idem, *Samuel ben Ḥofni*, 255, 257 (from Samuel’s ‘*Ashar Masā’il*). On the ascription of Zucker’s text to Samuel ben Ḥofni, see Abramson, “Min ha-Pereq ha-Ḥamishi,” 206-207; idem, “He’arot be-‘Inyan Shmuel ben Ḥofni,” *Sinai* 92 (1982-1983): 25-29; and Sklare, *Samuel ben Ḥofni*, 17n58; see also Zucker, “‘Iyunim ve-He’arot,” 100-104; and Ibn Dā’ūd, *The Book of Tradition*, ed. Cohen, lxi. For Jacob, see Zucker, “Qeṭa’im mi-Kitāb Taḥṣīl al-Sharā’i,” 410. See also Jospe, “‘Ha-Haggadah ha-Ne’emenet’ shel R. Sa’adya Gaon,” 8n16. On Jacob, see Mann, *Texts and Studies*, 2:26; Klar, *Mehqarim ve-‘Iyunim*, 321n7; and Gil, *Jews in Islamic Countries*, 254-55. For ha-Levi, see Ehud Krinis, “The Arabic Background of the *Kuzari*,” *Journal of Jewish Thought & Philosophy* 21 (2013): 49. On Muslim views, see Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras Hamori (Princeton: Princeton University Press, 1981), 50; Zysow, *The Economy of Certainty*, 116; Hallaq, *A History of Islamic Legal Theories*, 75-76; and Bernard Weiss, “Knowledge of the Past: The Theory of *Tawātur* According to Ghazālī,” *Studia Islamica* 61 (1985): 92-93, 102-103.

²²⁴ Nissim, *Ḥamishah Sefarim*, ed. Abramson, 353-54; and Judah ha-Levi, *Kitāb al-Radd wal-Dalīl fī al-Dīn al-Dhalīl*, eds. D.H. Baneth and Ḥaggai Ben-Shammai (Jerusalem: Magnes, 1977), 12 (1:26), 26 (1:89); treated in Faur, *Iyunim be-Mishneh Torah*, 133. See also Krinis, “The Arabic Background of the *Kuzari*,” 49. For Jacob ben Ephraim, see the previous note.

²²⁵ Samuel Atlas and Moshe Perlmann, “Saadia on the *Scroll of the Hasmoneans*,” *PAAJR* 14 (1944): 6 line 14.

people.²²⁶ In later centuries, *ijmā'* was a tool to grant rulings based on sources of questionable authenticity the certainty of the Qur'ān and *mutawātir* traditions.²²⁷ At least two prominent Rabbanites dismissed the idea that rabbinic tradition was subject to *ijmā'*: Sa'adya invoked *ijmā'* in several contexts,²²⁸ but explicitly rejected it as grounds for defending the authenticity of the Oral Torah;²²⁹ and Sklare showed that Samuel ben Ḥofni Gaon similarly considered *ijmā'* secondary to *mutawātir* traditions, a view that he probably adopted from a Muslim contemporary.²³⁰

Some later Rabbanites, however, appealed to *ijmā'*-type authority for the Oral Torah, though they did not always use the word *ijmā'*. An anonymous student of Sa'adya asserted that the reason the Mishnah, which he seems to have ascribed to Moses, does not

²²⁶ Ansari, "Islamic Juristic Terminology before Šāfi'ī," 282-87; and Schacht, *Origins*, 82-87. Mālik's position is somewhat more complex, that the living practice in Medina stretched back to the time of Muḥammad; see Wymann-Landgraf, *Mālik and Medina*, 131, 136n167.

²²⁷ Zysow, *The Economy of Certainty*, 147-48; Lowry, *Early Islamic Legal Theory*, 319-21; and Norman Calder, "Ikhtilāf and Ijmā' in Shāfi'ī's *Risāla*," *Studia Islamica* 58 (1983): 72-81; see also above, n180. Zysow rejected earlier claims that *ijmā'* formed the basis of Islamic law, see George F. Hourani, "The Basis of Authority of Consensus in Sunnite Islam," *Studia Islamica* 21 (1964): 49-56; Weiss, "The Primacy of Revelation," 79-82; and Zysow, *The Economy of Certainty*, 113-14.

²²⁸ On the resurrection of the dead, see Sa'adya ben Joseph, *Kitāb al-Amānāt wal-I'tiqādāt*, ed. and trans. Yosef Kafih (Jerusalem, 1970), 218. In the standard version, Sa'adya emphasized this at the beginning of this treatise, but in the other recension, it appears at the end; see Wilhelm Bacher, "Ma'amar Tehiyat ha-Meitim le-Rav Sa'adya Gaon," in *Festschrift zum achtzigsten Geburtstage Moritz Steinschneider's* (Leipzig: O. Harrassowitz, 1896), 121 (Hebrew section). For background on this text, see Ben-Shammai, "The Tension Between Literal Interpretation and Exegetical Freedom," 36; and idem, "Medieval History and Religious Thought," in *The Cambridge Genizah Collections: Their Contents and Significance*, eds. Stefan C. Reif and Shulamit Reif (Cambridge: Cambridge University Press: 2002), 146-47. On the Second Day of Festivals, see Hartwig Hirschfeld, "The Arabic Portion of the Cairo Genizah at Cambridge. (Third Article.): Saadyāh Fragments," *JQR* 16, no. 1 (o.s.) (1903): 103-104; and Zucker, "Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'ī," 407; see also Samuel Poznański, Samuel Poznański, "Addenda and Corrigenda to My Essay on 'The Anti-Karaite Writings of Saadia Gaon' (*JQR*, X, 238-76)," *JQR* 20, no. 2 (o.s.) (1908): 233-34. For the argument that the sages did not unanimously endorse the anthropomorphic *Shi'ur Qomah*, see Judah ben Barzillay al-Bargeloni, *Peirush Sefer Yeṣirah*, ed. Shlomo Zalman Ḥayim Halberstam (Berlin, 1885), 21 (לא נתקבצו עליו דברי כל החכמים מפני שאינו לא במשנה ולא בתלמוד).

²²⁹ Zucker, "Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'ī," 404-405. See Bloomberg, "Arabic Legal Terms," 20-21.

²³⁰ Sklare, *Samuel ben Ḥofni*, 163, 257.

actually cite Moses is because when Israel was gathered together (*mujtami'a*), they preserved mishnaic traditions orally, only adding names after the exile.²³¹ Sherira claimed that all Israel accepted the Mishnah as authoritative,²³² and his assertion that the Mishnah was recited with “one mouth” (*peh ehad*) was described, by Shraga Abramson, as an *ijmā'*-type defense of that work.²³³ Hayya Gaon's defense of the way that Rabbanites blow the *shofar* (ram's horn) on Rosh ha-Shanah also appears to invoke *ijmā'*; he argued that this practice – and rabbinic tradition as a whole – rests on an unbroken chain of transmission and on “the words of the multitudes” (*divrei ha-rabim*).²³⁴ Nissim of

²³¹ Poznański, “Die Streitschrift eines Schülers Saadja's,” 49. See the similar idea, also without the term *ijmā'*, in Sa'adya's *Sefer ha-Galuy*, in Harkavy, *Zikhron le-Rishonim: Ha-Sarid veba-Paliṭ mi-Sefer ha-Egron ve-Sefer ha-Galuy*, 153.

²³² Lewin, *Igeret Rav Sherira Gaon*, 30. See Blidstein, “Ra'ayon Torah shebe-'al Peh,” 13.

²³³ See Nissim ben Jacob, *Hamishah Sefarim*, ed. Abramson, 29n2; and Lewin, *Igeret Rav Sherira Gaon*, 21. See also Epstein, *Mevo'ot le-Sifrut ha-Amora'im*, 614; and Uziel Fuchs, “Meqomam shel ha-Geonim be-Mesoret ha-Nusah shel ha-Talmud ha-Bavli,” (PhD diss., Hebrew University, 2003), 76-77, 102-103.

²³⁴ דברי הרבים המוכיח על כל משנה ועל כל גמרא; Lewin, *Oṣar ha-Geonim, Masekhet Rosh ha-Shanah, Heileq ha-Teshuvot*, 5:62 (§117). Translation follows Fishman, *Becoming the People of the Talmud*, 50. For the suggestion that Hayya's claim is similar to claims for *ijmā'*, see there, 51; and Blidstein, *Samkhat u-Meri*, 148. On this text, see also Daniel Sperber, “Divrei Rav Hayya Gaon 'al Teqi'at Shofar veba-Pulmus ha-Qara'i,” in *Bi-Heyoto Qarov: Asupat Ma'amarim la-Yamim ha-Nora'im*, eds. Elhanan Ganzel et al. (Merkaz Shapira: Or Eṣion, 2000), 246-54. For background, see Ben-Sasson, *Ṣemihat ha-Qehilah ha-Yehudit*, 173-74; Reuven Bonfil, “Mitos, Reṭoriqah, Hiṣṭorīyah? 'Iyun be-Megillat Aḥima'aṣ,” in *Tarbut ve-Hevrah*, 119-23; and earlier, Samuel Poznański, *Anshei Qayrawān, Mesudarim 'al Seder Alef Bet* (Warsaw, 1909), 14-15. Hayya's responsum echoes a partially preserved responsum of his father; see Abramson, *Inyanot be-Sifrut ha-Geonim* (Jerusalem: Mosad ha Rav Kook, 1974), 192; and Ben-Sasson, *Ṣemihat ha-Qehilah ha-Yehudit*, 46. On Hayya's position, see also Menahem Kasher, “Yom Teru'ah – Yom Yevava,” *Ha-Darom* 12 (1960): 211-13. For another example of *ijmā'*-type ideas in Sherira and Hayya, see Lewin, *Oṣar ha-Geonim, Masekhet Berakhot, Heileq ha-Teshuvot*, 1:6 (§7).

For Qaraite opposition to Rabbanite *shofar* practices, see Bernard Revel, *The Karaite Halakah and its Relation to Saduceean, Samaritan and Philonian Halakah* (Philadelphia: Cahan Print, 1913), 78-79; Ankori, *Karaites in Byzantium*, 283-85; Philip E. Miller, “At the Twilight of Byzantine Karaism: The Anachronism of Judah Gibbor,” (PhD diss., New York University, 1984), 94-111; and idem, “Karaite Perspectives on *Yôm Tēru'ā*,” in *Ki Baruch Hu: Ancient Near Eastern, Biblical, and Judaic Studies in Honor of Baruch A. Levine*, eds. Robert Chazan et al. (Winona Lake, IN: Eisenbrauns, 1999), 537-41. For talmudic background, see Ephraim Bešalel Halivni, “Mi Tiqen Ribbuy Qolot be-Rosh ha-Shanah?” *Neṭu'im* 19 (2015): 131-35.

Qayrawān, Ibn Dā'ūd, and Judah ha-Levi also turned to *ijmā'* to defend rabbinic tradition.²³⁵

Geonic-Era Portrayals of the Role of the Rabbis

Portrayal of the ancient rabbis as transmitters of tradition, and not as its initiators, is a second pillar of geonic-era Rabbanite legal epistemology. While late antique rabbinic literature does not definitively state whether the rabbis generated non-scriptural laws, the Rabbanite writers in Iraq, Palestine, and North Africa discussed below rejected the idea

²³⁵ For Nissim, see Nissim ben Jacob, *Ḥamishah Sefarim*, ed. Abramson, 353 lines 10-12 (see Sklare, *Samuel ben Ḥofni*, 164n80); and A. Hirschfeld, "Be-Sefer *Megillat Setarim*," in *Festschrift zum siebzigsten Geburtstag A. Berliner's*, eds. Aron Freimann and Meier Hildesheimer (Frankfurt: J. Kauffmann, 1903), 47 (see Nissim ben Jacob, *Ḥamishah Sefarim*, ed. Abramson, 282n237; and Ben-Sasson, *Ṣemīḥat ha-Qehilah ha-Yehudit*, 51). On the ascription of this text Nissim, see Abraham Maimonides, *Teshuvot*, ed. Freimann, xii, with reference to earlier scholarship. For Ibn Dā'ūd, see Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, 3 (English), 1 (Hebrew pagination); see there, lx-lxii, and 106n13. See also Simḥa Emmanuel, "Sarid Ḥadash mi-Sefer *Megillat Setarim* le-Rav Nisim Gaon," in *Sefer ha-Yovel le-Rav Mordecai Breuer: Asupat Ma'amarim be-Mada'ei ha-Yahadut*, eds. Moshe Ahrend and Moshe Bar-Asher (Jerusalem: Aqdamon, 1992), 2:550. Naphtali Wieder noted that Ibn Dā'ūd's claim for *ijmā'* relates to Qaraite reliance on this concept; he did not, however, point out the resonance of this claim in its Islamic context; "Berakhah Bilti Yadu'ah 'al Qri'at Pereq 'be-Mah Madliqin' mi-tokh ha-Genizah," *Sinai* 82 (1978): 206, repr. in idem, *Hitgabshut Nusah ha-Tefillah*, 1:334. For ha-Levi, see Lobel, *Between Mysticism and Philosophy*, 60, 63; Y. Tzvi Langermann, "Science and the *Kuzari*," *Science in Context* 10, no. 3 (1997): 505-507; and Krinis, "The Arabic Background of the *Kuzari*," 50. *Ijmā'* may lie behind Natan ha-Bavli's depiction of the geonim answering queries in the presence of the entire academy; see Adolf Neubauer, *Mediaeval Jewish Chronicles and Chronological Notes* (Oxford: Clarendon Press, 1887), 2:88. The Arabic original of this part of Natan's report has not survived; for background, see Israel Friedlaender, "The Arabic Original of the Report of R. Nathan Hababli," *JQR* 17, no. 4 (o.s.) (1905): 747-61; and Menaḥem Ben-Sasson, "Ha-Mavneh, ha-Megamot vaha-Tokhen shel Ḥibur Rav Natan ha-Bavli," in *Tarbut ve-Ḥevrah*, 137-96. On this line, see Brody, *Geonim of Babylonia*, 61-62; and Fishman, *Becoming the People of the Talmud*, 62-63. Study of Rabbanite use of *ijmā'* remains a desideratum; as noted in Blidstein, "Ra'ayon Torah shebe-'al Peh," 13n34; and Ben-Sasson, *Ṣemīḥat ha-Qehilah ha-Yehudit*, 51n116. Qirqisānī reported that many 'Ananites and Qaraites accepted *ijmā'* to verify knowledge of the commandments, and that some even termed the body of knowledge known through *ijmā'* "naqlan" (transmission); *Kitāb al-Anwār*, ed. Nemoy, 1:141. On this last claim, see Ankori, *Karaites of Byzantium*, 229n48; and Wieder, "Three Terms for 'Tradition'," *JQR* 49, no. 2 (1958): 108-109; see also Geoffrey Khan, "Al-Qirqisānī's Opinions Concerning the Text of the Bible and Parallel Muslim Attitudes Towards the Text of the Qur'ān," *JQR* 81, no. 1-2 (1990): 59-73. For another claim from *ijmā'*, see Friedman, "Minḥem Avoteikhem be-Yadeikhem," 564-65.

that the rabbis had done so. Instead, they maintained that the ancient rabbis were tradents, dedicated to transmitting received wisdom.

Geonic denial that the rabbis created law through exegesis, a corollary of their affirmation of the Oral Torah's divine origin, drew on Islamic debates about the validity of *qiyās* to form a coherent anti-Qaraite argument.²³⁶ The Mu'tazilite Abū Ishāq Ibrāhīm al-Nazzām (d. c. 836) famously rejected *qiyās*, which, in this period, denoted the results of any intellectual speculation;²³⁷ he seems to have done so because of revealed law's inconsistent and arbitrary nature, which precludes attempts to deduce new laws.²³⁸ Other

²³⁶ Non-Rabbanites held a range of views on the use of *qiyās* in the determination of law. Qirqisānī reported that Benjamin al-Nahāwandī studiously avoided *qiyās* (*yab'udu minhu jiddan*), preferring clear texts (*nuṣūṣ*) over *qiyās*, but was willing to use *qiyās* to derive law if there were "two premises" (*muqaddimatayn*) and not merely one. Qirqisānī described this as an "intermediate" position between the use of *qiyās* and strict scripturalism (*mutawassiṭ bayna al-qiyās wal-naṣṣ*); *Kitāb al-Anwār*, ed. Nemoy, 1:13. Qirqisānī also mentioned a group (*jamā'a*) of 'Ananites and Qaraites who utilized *qiyās*; *Kitāb al-Anwār*, ed. Nemoy, 1:141. On 'Anan's use of *qiyās*, see also Zucker, "Mi-Peirusho shel Rasag," 323-27; and idem, *Al Targum Rasag*, 149. Note Sa'adya's claim that 'Anan used a great deal of *qiyās*; idem, "Qeṭa'im mi-Kitāb Taḥšīl al-Sharā'i," 402. While there is some evidence for the persistence of Qaraite opposition to *qiyās*, the use of *qiyās* became a feature of later Qaraite thought. See Ankori, *Karaites in Byzantium*, 217n26; Ḥaggai Ben-Shammai, "Jewish Thought in Iraq in the 10th Century," in *Judaeo-Arabic Studies: Proceedings of the Founding Conference of the Society for Judaeo-Arabic Studies*, ed. Norman Golb (Amsterdam: Harwood Academic Publishers, 1997), 29n48; and Sklare, *Samuel ben Ḥofni Gaon*, 218n141. On later use of *qiyās*, see Wieder, *The Judean Scrolls and Karaism*, 76-77; Klar, *Meḥqarim ve-'Yunim*, 320-24; Faur, *'Yunim be-Mishneh Torah*, 86-92; and Erder, *Avlei Šion ha-Qara'im*, 326-27. On Qirqisānī's engagement with the *middot*, see Aviram Ravitsky, "Peirusho ha-Biqortī shel Ya'qūb al-Qirqisānī le-'Erqonot ha-Derashah ha-Talmudit: Targum 'Ivri le-Kitāb al-Anwār wal-Marāqib, ḥeileq 4, paraqim 9-21, 'im mavo ve-he'arot," *Jerusalem Studies in Jewish Thought* 22 (2011): 123-57; and Frank, *Search Scripture Well*, 9.

²³⁷ Josef van Ess, "The Logical Structure of Islamic Theology," in *Logic in Classical Islamic Culture*, ed. Gustave E. von Grunebaum (Wiesbaden: O. Harrassowitz, 1970), 34-35. On *qiyās* as more than just analogy, see Wael Hallaq, "Non-Analogical Arguments in Sunni Juridical Qiyās," *Arabica* 36, no. 3 (1989): 286-306; and below, n426.

²³⁸ Josef van Ess, *Das Kitāb an-Nakṭ des Nazzām und seine Rezeption im Kitāb al-Fuṭyā des Ḡaḥiẓ* (Göttingen: Vandenhoeck & Ruprecht, 1972), 20-21. See Zysow, *The Economy of Certainty*, 169; David Vishanoff, *The Formation of Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law* (New Haven: American Oriental Society, 2011), 71n37, 73n43; and Josef van Ess, *The Flowering of Muslim Theology* (Cambridge: Harvard University Press, 2006), 175-77; see also George F. Hourani, *Reason and Tradition in Islamic Ethics* (Cambridge: Cambridge University Press, 1985), 188-89. On debates about *qiyās* in general, see Zysow, *The Economy of Certainty*, 167-87; Hallaq, *A History of Islamic Legal Theories*, 30-33; and idem, *The Origins and Evolution of Islamic Law*, 122-25.

ninth-century figures rejected *qiyās* and speculative attempts to reconcile conflicting *ḥadīths*, probably due to the uncertain nature of the interpretative process. Among them were early “*Zāhirīs*,” whom medieval biographers depicted as committed to the “literal” (*zāhir*) meaning of revealed texts.²³⁹

Creating New Laws through Midrash and Qiyās

Scholars have long debated whether halakhic *midrash* creates law or upholds law through *ex post facto* linkages to Scripture. (These views are known, respectively, as *midrash yoṣer* and *midrash meqayem*). Twentieth century scholars, who usually framed this problem as a radical dichotomy, asked if halakhic *midrash* or apodictic rulings

²³⁹ See Zysow, *The Economy of Certainty*, 173-84; Vishanoff, *The Formation of Islamic Hermeneutics*, 78-88; and Gleave, *Islam and Literalism*, 147-50. On the rise of *Zāhirīsm*, see Melchert, *The Formation of the Sunni Schools of Law*, 178-90; and Amr Osman, *The Zāhirī Madhhab (3rd/9th-10th/16th Century): A Textualist Theory of Islamic Law* (Leiden: Brill, 2014), 11-47; see also Stewart, “Muḥammad b. Dawūd al-Zāhirī’s Manual,” 99-158; and Abū Ḥanīfa Nu‘mān ibn Muḥammad (al-Qāḍī al-Nu‘mān), *The Disagreements of the Jurists: A Manual of Islamic Legal Theory*, ed. and trans. Devin J. Stewart (New York: NYU Press, 2015), 212-67. On Ibn Ḥazm’s rejection of *qiyās*, see Roger Arnaldez, *Grammaire et theologie chez Ibn Hazm de Cordoue* (Paris: Vrin, 1956), 165-93. On Ibn Ḥazm’s connection to earlier *Zāhirīs*, see Camilla Adang, “The Beginnings of the *Zāhirī* Madhhab in al-Andalus,” in *The Islamic School of Law: Evolution, Devolution, and Progress*, eds. Peri J. Bearman et al. (Cambridge: Harvard University Press, 2005), 117-25.

Al-Nazzām also appears to have denied the authority of most *ḥadīth*, apparently because he viewed the Companions as untrustworthy; see Vishanoff, *The Formation of Islamic Hermeneutics*, 71-74; and Zysow, *The Economy of Certainty*, 13-14, 16. See al-Nazzām’s sharp criticism of conflicting *ḥadīth* in Josef van Ess, “Ein unbekanntes Fragment des Nazzām,” in *Der Orient in der Forschung: Festschrift für Otto Spies*, ed. Wilhelm Hoenerbach (Wiesbaden: Otto Harrassowitz, 1967), 171-72. On earlier rejection of *ḥadīth*, which may be linked to Mu‘tazilite theology and Khārījite thought, see Burton, *The Sources of Islamic Law*, 22-23; Melchert, “The Traditionist-Jurisprudents,” 403-405; and Musa, *Ḥadīth as Scripture*, 6, citing earlier scholarship. On the Mu‘tazilite background, see Michael Cook, “Anan and Islam,” 165-69; and Vishanoff, *The Formation of Islamic Hermeneutics*, 68-71. On Khārījites and scripturalism, see Cook, “Anan and Islam,” 169-72; and Gerald R. Hawting, “The Significance of the Slogan ‘*lā hukma illā lillāh*’ and the References to the ‘*Hudūd*’ in the Traditions about the Fitna and the Murder of ‘Uthmān,” *BSOAS* 41, no. 3 (1978): 460-63.

emerged first. Recent scholars, however, have shown that these two methods probably coexisted in the early rabbinic period.²⁴⁰

Sa'adya's discussion of this topic set the tone for tenth- and eleventh-century Rabbanite discourse.²⁴¹ Sa'adya argued that the rabbis listed the hermeneutical principles ascribed to R. Ishmael (*middot*), not because they inferred (*yastadillūn*)²⁴² laws using the *middot*, but because the laws in their possession divided into (*yanmāz 'ilā*)²⁴³ thirteen types (*fann*). He compared this to the activity of the Masoretes, who arrived at their

²⁴⁰ See Steven Fraade, "Interpreting Midrash 2: Midrash and its Literary Contexts," *Prooftexts* 7, no. 3 (1987): 287-90; Aharon Shemesh, *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis* (Berkeley: University of California Press, 2009), 176-77n36; Adiel Schremer, "[T]he[y] Did Not Read in the Sealed Book?: Qumran Halakhic Revolution and the Emergence of Torah Study in Second Temple Judaism," in *Historical Perspectives: From the Hasmoneans to Bar Kokhba in Light of the Dead Sea Scrolls*, eds. David Goodblatt et al. (Leiden: Brill, 2001), 105-126; Vered Noam, "Creative Interpretation and Integrative Interpretation in Qumran," in *The Dead Sea Scrolls and Contemporary Culture*, eds. Adolfo Daniel Roitman et al. (Leiden: Brill, 2011), 363-76; and above, n186. For earlier views, see Jacob Lauterbach, "Midrash and Mishna: A Study in the Early History of Halakhah," *JQR* 5, no. 4 (1915): 503-527; 6, no. 1 (1916): 23-95, no. 2: 303-323; repr. in idem, *Rabbinic Essays* (Cincinnati, Hebrew Union College Press, 1951), 163-256; J.N. Epstein, *Mevo'ot le-Sifrut ha-Tana'im: Mishnah, Tosefta, u-Midreshei Halakhah* (Jerusalem: Magnes, 1957), 501-515; Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 101-150; Albeck, *Mavo la-Mishnah*, 40-62; idem, "Ha-Halakhah voha-Derashot," in *Sefer ha-Yovel li-Khyod Alexander Marx*, ed. Saul Lieberman (New York: Beit ha-Midrash le-Rabbanim, 1950), 1-8; Ephraim E. Urbach, "Ha-Derashah ke-Yesod ha-Halakhah u-Va'ayat ha-Sofrim," *Tarbiz* 27, no. 2-3 (1958): 166-82; de Vries, *Toldot ha-Halakhah ha-Talmudit*, 12-21; Abraham Goldberg, "Ha-Midrash ha-Qadum voha-Midrash ha-Me'uhar," *Tarbiz* 50 (1981): 99-100; David Weiss Halivni, *Midrash, Mishnah, and Gemara: The Jewish Predilection for Justified Law* (Cambridge: Harvard University Press, 1986), 18-21; and Elon, *Ha-Mishpat ha-'Ivri*, 1:260-63. For further background, see Ya'aqov Sussman, "Heiqer Toldot ha-Halakhah u-Megillot Midbar-Yehuda: Hirhurim Talmudiyim Rishnoim le-or Megillat 'Miqsat Ma'aseh ha-Torah'," *Tarbiz* 59, no. 1-2 (1990): 12-18. For treatment of earlier positions, see Harris, *How Do We Know This*, 103-250; and Menaḥem Kahana, "The Halakhic Midrashim," in *The Literature of the Sages*, 2:64n289 and n292. On the ambiguity in rabbinic literature, see Robert Goldenberg, "The Problem of Originality in Talmudic Thought." In *From Ancient Israel to Modern Judaism; Intellect in Quest of Understanding*, eds. Jacob Neusner et al. (Atlanta: Scholars Press, 1989), 2:19-27; and Shmuel Safrai, "Oral Torah," in *The Literature of the Sages*, 1:56-60.

²⁴¹ Harris, *How Do We Know This*, 80.

²⁴² On *istidlāl* in contemporaneous *uṣūl al-fiqh*, see Wael Hallaq, "Logic, Formal Arguments and Formalization of Arguments in Sunnī Jurisprudence," *Arabica* 37, no. 3 (1990): 317-18; and Vishanoff, *The Formation of Islamic Hermeneutics*, 85-87.

²⁴³ Zucker, "Qeṭa'im mi-Kitāb Tahṣīl al-Sharā'ī," 378, transcribed *yanhāz*, but the manuscript (T.-S. Ar. 26.119) clearly reads *yanmāz*.

conclusions by examining received tradition.²⁴⁴ According to Sherira's depiction, the early rabbis "discovered" the laws of the Torah (*le-giluyei ta'amei torah*) by means of scriptural interpretation (including the *middot*).²⁴⁵ Blidstein noted that this language is somewhat ambiguous, but assumed that Sherira meant that the rabbis searched for proofs for laws that they already knew from tradition. This is consistent with Sherira's statement that halakhic *midrashim* identify scriptural passages which hint at received laws (*heikha ramizan hilkheta be-gra'i*).²⁴⁶ In a well-known responsum, Hayya wrote that a certain talmudic derivation is not a true proof (*lav re'ayah hi*); rather the law in question is a received tradition (*halakhah mequbelet*).²⁴⁷ Israel son of Samuel ben Ḥofni (d. 1033) asserted that since Scripture can be interpreted in many ways, one should heed "the words of the rabbis, who have transmitted them (*he'etiquim*) in order to explain each and

²⁴⁴ Zucker, "Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'i," 378. Treatment in Blidstein, "Oral Law as Institution," 171; Harris, *How Do We Know This*, 76-80; Sklare, *Samuel ben Ḥofni Gaon*, 45; Brody, *Sa'adyah Gaon*, 34; Cohen, *Opening the Gates of Interpretation*, 246-47; and Aviram Ravitsky, *Logiqah Aristotelit u-Metodologyah Talmudit: Yisumah shel ha-Logiqah ha-Aristotelit ba-Feirushim la-Middot sheha-Torah Nidreshet Bahen* (Jerusalem: Magnes, 2009), 26-32. On Sa'adya's criticism of the Masoretes, see Brody, *Sa'adyah Gaon*, 154. On Sa'adya's commentary to the *middot*, see most recently Menahem Kahana, "Qavim le-Hitpathutah shel Middat Kelal u-Peraṭ be-Tequfat ha-Tana'im," in *Mehqarim be-Talmud uve-Midrash: Sefer Zikaron le-Tirṣah Lifschitz*, eds. Aryeh Edrei et al. (Jerusalem: Mosad Bialik, 2005), 173n2, 175n7. Sa'adya's depiction appears to echo the notion of *takhrīj*, an activity which sought revelational support for juristic formulations of rules; see Hallaq, *Authority, Continuity, and Change*, 43-51.

²⁴⁵ Lewin, *Igeret Rav Sherira Gaon*, 48-49.

²⁴⁶ Lewin, *Igeret Rav Sherira Gaon*, 39; Blidstein, "Ra'ayon Torah shebe-'al Peh," 14; see also de Vries, *Toldot ha-Halakhah ha-Talmudit*, 10. On this line, see Epstein, *Mevo'ot le-Sifrut ha-Tana'im*, 505.

²⁴⁷ Simḥa Assaf, ed., *Teshuvot ha-Geonim mi-tokh ha-Genizah* (Jerusalem: Darom, 1928), 102 (§13); and Lewin, *Oṣar ha-Geonim, Masekhet Bava Qamma, Ḥeileq ha-Teshuvot*, 12:28 (§68). On this passage, see Epstein, *Mevo'ot le-Sifrut ha-Tana'im*, 511n103; and Albeck, *Mavo la-Mishnah*, 53-55n21. While Hayya's statement is not a sweeping dismissal of the creativity of the rabbis, it may represent a larger assumption; see also Harris, *How Do We Know This*, 81.

every commandment.”²⁴⁸ According to this perspective, the rabbis (often?) approached Scripture having already reached their legal conclusions.

Though Jay Harris described the geonic position as a “stunning” break with rabbinic precedent,²⁴⁹ it may be useful to focus on what the geonim affirmed, rather than on what they rejected, in order to understand geonic legal epistemology on its own terms. Sa’adya formulated his anti-*qiyās* views in several places. According to the rabbis, God had punished Nadab and Abihu because they had made a halakhic ruling in Moses’ presence (Lev. 10; bYom 53a). Expanding on this, Sa’adya took a jab at the Qaraites’ use of *qiyās* and *ta’wīl* ([subjective] interpretation), and asserted that Nadab and Abihu followed their own *ra’y* (personal view) and *ta’wīl*. Noting that his contemporaries similarly perform *ta’wīl* without consulting interpretations received from the messenger (i.e., Moses; *tafāsīr al-rasūl*), Sa’adya warned that if Nadab and Abihu were punished for disagreeing with “any single rule of the commandments” (*far’ min furū’ al-sharā’i*), God would certainly punish those who ignore received traditions.²⁵⁰

²⁴⁸ ובשוב אדם אל דברי רבותינו אשר העתיקום בפתרון כל מצוה ומצוה; T-S Misc. 35.4; Mann, *Texts and Studies*, 1:174 line 9-11. It is difficult to determine whether or not geonic denial of the creativity of rabbinic exegesis impacted legal practice. Abramson identified several authors who rejected an earlier view that marriages transacted before witnesses who are invalid by dint of rabbinic *midrash* require a bill of divorce (*get*) because biblically, such marriages are valid; *Inyanot be-Sifrut ha-Geonim*, 24-31; see also Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 8-15. The later view may reflect the claim that biblical law is equivalent to laws derived by *midrash*.

²⁴⁹ Harris, *How Do We Know This*, 78.

²⁵⁰ Zucker, “Mi-Peirusho shel Rasag,” 337-38. Sa’adya interpreted Jeremiah’s demand not to describe God’s word as “*the burden of the Lord*” (Jer. 23:38) as an argument that the responsibility to interpret the law belongs to God’s messenger, not the people; *ibid*, 341. On the dating of Sa’adya’s anti-*qiyās* work, *Kitāb Taḥṣīl al-Sharā’i ‘al-Sam’īya*, see Zucker, “Qeta’im mi-Kitāb Taḥṣīl al-Sharā’i,” 386. On the anti-Qaraite context of these arguments, see also Faur, *Iyunim be-Mishneh Torah*, 95-96. On the pejorative use of *ra’y*, see below, n483.

Like al-Nazzām, Sa‘adya argued that, because the details of the revealed commandments are, at times, inconsistent with reason, human reasoning cannot extend their scope.²⁵¹ What else, Sa‘adya asked, accounts for the arbitrary distinctions between men and women or for the laws of the red heifer?²⁵² He added that the laws of the Pentateuch are internally inconsistent: If the Torah could provide an alternative opportunity to bring the paschal sacrifice for those who had missed its scheduled time (Num. 9:9-12), why did it not do the same for those unable to fast on the Day of Atonement?²⁵³ Those who utilized *qiyās* extended the rationale (*‘illa*) of an original case (*aṣl*) to a new case (*far‘*), but skeptics of *qiyās* denied the possibility of identifying an *‘illa* with certainty.²⁵⁴ Expressing such skepticism, Sa‘adya noted that the Pentateuch sometimes contradicts an explicit *‘illa*. For example, the Pentateuch condemns murder because God created man in His image (Gen. 9:6), yet it ordains capital punishment for numerous crimes!²⁵⁵

²⁵¹ Zucker, “Qeṭa‘im mi-Kitāb Taḥṣīl al-Sharā‘i,” 388-89; see Sklare, *Samuel ben Hofni Gaon*, 219n143. Samuel ben Hofni reported this view in Sa‘adya’s name; idem, “The Religious and Legal Thought,” 2:130-31. On the similarities between Sa‘adya’s arguments and Muslim writers, see Zucker’s notes throughout “Qeṭa‘im mi-Kitāb Taḥṣīl al-Sharā‘i”; see also idem, “Mi-Peirusho shel Rasag,” 321-31; George Vajda, “Études sur Qirqisani,” *REJ* 107 (1946-1947): 57-60; Ravitsky, *Logiqah Aristotelit*, 38n43; and idem, “Rav Sa‘adya Gaon ‘al ha-Logiqah shel ha-Heqqesh ha-Hilkhati ve-‘al Gevulotav,” *Masorah le-Yosef* 6 (2009): 329.

²⁵² Zucker, “Qeṭa‘im mi-Kitāb Taḥṣīl al-Sharā‘i,” 395-400. See idem, “Mi-Peirusho shel Rasag,” 327-29; Ravitsky, *Logiqah Aristotelit*, 39-42; and idem, “Rav Sa‘adya Gaon ‘al ha-Logiqah,” 321-22. On Sa‘adya’s comments regarding biblical distinctions between men and women, compare Ilana Sasson, “Gender Equality in Yefet Ben Eli’s Commentary and Karaite Halakhah,” *AJS Review* 37, no. 1 (2013): 62-65.

²⁵³ Zucker, “Qeṭa‘im mi-Kitāb Taḥṣīl al-Sharā‘i,” 401.

²⁵⁴ The classic example is the prohibition on wine: the *‘illa* is identified as inebriation and the prohibition is extended to other intoxicating beverages; see Zysow, *The Economy of Certainty*, 159; and Hallaq, *A History of Islamic Legal Theories*, 83-84. For the anti-*qiyās* view, see Shehaby, “*‘Illa* and *Qiyās* in Early Islamic Legal Theory,” 36; and Vishanoff, *The Formation of Islamic Hermeneutics*, 72-73n43.

²⁵⁵ Zucker, “Qeṭa‘im mi-Kitāb Taḥṣīl al-Sharā‘i,” 395. On the apparent contradiction between this argument and other places in Sa‘adya’s writings, see Ravitsky, *Logiqah Aristotelit*, 44-48; and idem, “Rav Sa‘adya Gaon ‘al ha-Logiqah,” 329-30. One important aspect of Sa‘adya’s rejection of *qiyās* remains

Rabbanite rejection of *qiyās* continued for some time. Samuel ben Ḥofni arrived at the same conclusion as Sa'adya using a different claim; he rejected *qiyās* not because it is epistemologically problematic but because there is no scriptural evidence that it is allowed. (Contemporary Muslims made similar arguments.²⁵⁶) According to Jacob ben Ephraim, “concurrent tradition” (*al-khabar al-mutawātir*) is preferable to *qiyās*. Qirqisānī explained that Jacob accepted *qiyās* for laws that would have been known on the basis of human reason (*'aqlīya*), without revelation, but not for laws that were derived solely from revelation (*sam'īya*).²⁵⁷ Judah ha-Levi also spoke disparagingly about *qiyās*.²⁵⁸

unclear. Sa'adya distinguished between “rational” (*'aqlīya*) commandments and “revealed” (*sam'īya*) commandments. As its title indicates, Sa'adya's *Kitāb Taḥṣīl al-Sharā'ī' al-Sam'īya* (*Book on Attaining the Revealed Commandments*) focused on whether jurists could extend the scope of *sam'īya* laws through *qiyās*. Several scholars have claimed that this implies that Sa'adya accepted *qiyās* regarding the *'aqlīya* commandments; Halkin, “Mi-Petiḥat Rav Sa'adya Gaon le-Feirush ha-Torah,” 133n30; and Yoav Elstein, “Torat ha-Mišvot be-Mishnat Rav Sa'adya Gaon,” *Tarbiẓ* 38, no. 2 (1968): 131-33; see also Bloomberg, “Arabic Legal Terms,” 29-30. However, Qirqisānī noted that while Sa'adya's arguments should lead to this conclusion, he did not explicitly state this; *Kitāb al-Anwār*, ed. Nemoy, 1:87. Ravitsky concluded that according to Sa'adya, jurists cannot apply *qiyās* to either the *'aqlīya* or the *sam'īya*; *Logiqah Aristotelit*, 43-44; and idem, “Rav Sa'adya Gaon 'al ha-Logiqah,” 326n29. See also Moses Ibn Ezra, *Sefer ha-'Iyunim ve-ha-Diyunim* (*Kitāb al-Muḥādarah wal-Mudhākarah*), ed. and trans. Abraham Halkin (Jerusalem: Meqīṣei Nirdamim, 1975), 204. For background on the division between *'aqlīya* and *sam'īya*, see Alexander Altmann, “Saadya's Conception of the Law,” *Bulletin of the John Rylands Library* 28 (1944): 320-21; Arthur Hyman, “A Note on Maimonides' Classification of Law,” *PAAJR* 46 (1979-1980): 323-31; and Ḥaggai Ben-Shammai, “Ḥaluqat ha-Mišvot u-Musag ha-Ḥokhmah be-Mishnat Rasag,” *Tarbiẓ* 41, no. 2 (1973): 170-82.

²⁵⁶ See Zucker, “Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'ī',” 385; Sklare, “The Religious and Legal Thought,” 2:133-341; and idem, *Samuel ben Ḥofni Gaon*, 218-20. See also Zucker, *Peirushei Rav Sa'adya*, 23-24. For the arguments of Samuel's contemporaries, see there, 220n143; compare Zysow, *The Economy of Certainty*, 191.

²⁵⁷ Zucker, “Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'ī',” 410; and Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 1:86-87.

²⁵⁸ See Lobel, *Between Mysticism and Philosophy*, 59-67. See more generally, Daniel Lasker, “Judah Halevi and Karaism,” in *From Ancient Israel to Modern Judaism*, 3:111-25; and Blidstein, *Samkhut u-Meri*, 155. On the proposed anti-Qaraite intent of the *Kuzari* as a whole, see D.Z. Baneth, “Le-Otographim shel Yehuda ha-Levi ule-Hithavut Sefer ha-Kuzari,” *Tarbiẓ* 26, no. 3 (1947): 297-303; Langermann, “Science and the *Kuzari*,” 501n6; Mordecai Akiva Friedman, “Judah Ha-Levi on Writing the *Kuzari*: Responding to a Heretic,” in *From a Sacred Source*, 157-69; and Yishai Glazner, “Le-Ketivato shel *Sefer ha-Kuzari*,” *Da'at* 77 (2014): 13-14n42. On ha-Levi's affirmation of the divine origin of Jewish law, see Naḥum Arieli, “Tefisat ha-Halakhah ešel R. Yehuda ha-Levi: Rihal ke-Ish Halakhah,” *Da'at* 1 (1978): 46-49. On ha-Levi and Qaraism, see also Yehuda Raṣhabi, “Shirim Ḥadashim le-R. Yehuda ha-Levi,” *Sinai* 113 (1994): 1-4; Shraga Feivel Kornbluth, “Rabbi Yehuda ha-Levi lo Katav Shir be-Shevaḥ

The Ancient Rabbis as Transmitters

Rabbanites in this period used other tools to emphasize that the ancient rabbis had transmitted received law. For example, they cited chains of transmission to demonstrate the authenticity of rabbinic tradition. Like the Islamic *isnād*, a chain of transmitters that traces the transmission of *ḥadīths*, Rabbanite *isnāds* assert the authenticity of received tradition and affirm that it, alone, is valid.²⁵⁹ Some scholars have even hypothesized that the chain of transmission at the outset of Mishnah *Avot* was composed in the Islamic period. While this appears unlikely,²⁶⁰ mAv 1:1 was an important text for Jews living in

ha-Qara'im," *Sinai* 114 (1994): 94-95; and Yehuda Raṣḥabi, "R. Yehuda ha-Levi voha-Qara'im," *Sinai* 114 (1994): 191.

David, "Yedi'at davar ha-El," 140, questioned the extent to which anti-*qiyās* arguments are representative of Rabbanite thought. While he correctly noted that several Andalusian Rabbanites were less sweeping in their rejection of *qiyās* than Sa'adya, this is not especially significant from the perspective of the geonim. Moreover, many of David's sources come from beyond the Islamic world (150-52). He also argued that Sa'adya's "theological rationalism," leading to a "rationalist paradox" of admitting the limited ability of man's mind, motivated Sa'adya's arguments against *qiyās* (126-27, 138). This interpretation ignores the explicitly polemical character of Sa'adya's anti-*qiyās* writings.

²⁵⁹ On these lists, see Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, li-iii. On chains of transmission in *Heikhalot* literature, which exhibit similar features, see Michael Swartz, *Scholastic Magic: Ritual and Revelation in Early Jewish Mysticism* (Princeton: Princeton University Press, 1996), 173-205; and Meir Bar-Ilan, "Shalshet ha-Qabbalah be-Sifrut ha-Heikhalot," *Da'at* 56 (2005): 5-37. Gerald Blidstein wrote that in this period, "the unbroken Chain of Tradition itself becomes a guarantor of the integrity of the Oral Law"; "Mishnah Avot 1:1 and the Nature of Rabbinic Authority," in *Judaism and Education: Essays in Honor of Walter I. Ackerman*, ed. Haim Marantz (Be'er Sheva: Ben Gurion University Press, 1998), 57.

²⁶⁰ For this hypothesis, see Alexander Guttman, "Tractate Avot: Its Place in Rabbinic Literature," *JQR* 41, no. 2 (1950): 181-93; Günter Stemberger, "'Moses received Torah...' (M. Avot 1,1): Rabbinic Conceptions of Revelation," in *Jerusalem, Alexandria, Rome: Studies in Ancient Cultural Interaction in Honour of A. Hilhorst*, eds. Florentino García Martínez and Gerard P. Luttikhuisen (Leiden: Brill, 2003), 285-99; idem, "Mischna Avot: Frühe Weisheitsschrift, pharisäisches Erbe oder spätrabbinische Bildung?" *Zeitschrift für die neutestamentliche Wissenschaft* 96, no. 3-4 (2005): 243-58; and idem, "Die innerrabbinische Überlieferung von Mischna Avot," in *Geschichte—Tradition—Reflexion: Festschrift für Martin Hengel zum 70. Geburtstag*, eds. Hubert Cancik et al. (Tübingen: Mohr Siebeck, 1996), 1:511-27. For responses, see Amram Don Tropper, "Tractate Avot and Early Christian Succession Lists," in *The Ways That Never Parted; Jews and Christians in Late Antiquity and the Early Middle Ages*, eds. Adam H. Becker and Annette Yoshiko Reed (Tübingen: Mohr Siebeck, 2003), 160-61n3; and Peter Schäfer, "Rabbis and Priests, or: How to Do Away with the Glorious Past of the Sons of Aaron," in *Antiquity in Antiquity*:

the Islamic world. During the geonic era, Rabbanites began to recite tractate *Avot* in synagogues.²⁶¹ One pre-modern Yemenite text ascribes the significance of this passage to its description of “the transmitted and the transmitters” (*al-naql wal-nāqlīn*),²⁶² terms familiar from Islamic descriptions of received traditions. *Seder Tana'im ve-Amora'im*, an anonymous work that was probably composed in the ninth century, begins with a lengthy chain of transmission whose chronological scope surpasses anything found in rabbinic literature.²⁶³ This and other Rabbanite *isnāds* confirmed rabbinic tradition in contemporary terms.

As Sklare showed, the geonim stressed that the authority of the rabbis in legal matters rested on the accuracy of their transmission. He also noted that the geonim depicted the rabbis' halakhic dicta as prophetic traditions.²⁶⁴ Samuel ben Ḥofni's insistence that the talmudic rabbis were primarily tradents prompted him to prefer the principle that the law follows later views (*hilkheta ke-batrai*) over the principle that the

Jewish and Christian Past in the Greco-Roman World, eds. Gregg Gardner and Kevin Lee Osterloh (Tübingen: Mohr Siebeck, 2008), 169-70. Compare Adiel Schremer, “*Avot* Reconsidered: Rethinking Rabbinic Judaism,” *JQR* 105, no. 3 (2015): 297-300. Stemberger focused on the denotation of the root *q-b-l* in mAv 1:1; note Cohen's discussion of this verb in Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, lvi-lvii.

²⁶¹ Many scholars (and even one sixteenth-century Qaraite) attributed this to anti-Qaraism; see Wieder, *The Judean Scrolls and Karaism*, 212; and Ya'aqov Gartner, “Lamah Hinhigu ha-Geonim Amirat 'Avot' be-Shabbat?” *Sidra* 4 (1988): 22-23. Brody questioned this; *Teshuvot Hilkhatiyot*, 202n6.

²⁶² See Shimon Sharvit, “Minhag ha-Qeri'ah shel Avot be-Shabbat u-Toldot ha-Baraitot she-Nispaḥu lah be-'Iqvotav,” *Bar Ilan Annual* 13 (1976): 173.

²⁶³ See Kahana, ed., *Seder Tana'im ve-Amora'im*, 1-9. On this work see Shraga Abramson, “Le-Toldot Nusah 'Seder Tana'im ve-Amora'im,' [kolel pirsum qeta'ei genizah ḥadashim shel ha-ṭeqst ve-khen nispaḥim uva-hem tosefet meqorot mi-khitvei yad umi-defusim],” in *Iyunim be-Sifrut Hazal, be-Miqra, uve-Toldot Yisrael: Muqdash li-Prof. 'Ezra Šion Melamed*, eds. Yišḥaq Dov Gilat et al. (Ramat Gan: Bar Ilan University Press, 1982), 215-57; and Brody, *Geonim of Babylonia*, 274-77.

²⁶⁴ This differed from the geonic approach to non-legal (*aggadah*) statements; see Sklare, *Samuel ben Ḥofni Gaon*, 43-44, 159-60; Lifschitz, “‘Minhag' u-Meqomo be-Midrag ha-Normot shel 'Torah shebe-'al Peh',” 193; above, n200, and below, n271. On the geonic approach to *aggadah*, see also idem, “‘Aggadah' u-Meqomah be-Toldot Torah shebe-'al Peh,” *Shenaton ha-Mishpat ha-'Ivri* 22 (2001-2004): 233n4-5.

law does not follow a student in the presence of his teacher (*ein halakhah ke-talmid be-meqom rabbo*). According to Samuel, only the existence of an authentic tradition could motivate a later authority to disagree with an earlier one.²⁶⁵

Rabbanites often used the Arabic word *riwāya*, a technical term in *ḥadīth* literature, to denote the act of transmission and to emphasize the role of the rabbis as transmitters.²⁶⁶ This term is especially prominent in Samuel ben Ḥofni's *al-Madkhal ilā 'ilm al-Mishnah wal-Talmud* (*The Introduction to the Study of the Mishnah and Talmud*), the most extensive geonic-era discussion of rabbinic tradition.²⁶⁷

²⁶⁵ Zvi Stampfer, "'Hilkheta ke-Batrai' – Gishot Shonot be-Tequfat ha-Geonim," *Shenaton ha-Mishpat ha-'Ivri* 22 (2001-2004): 428. See the text in Alexander Marx, "Kelalei ha-Talmud le-R. Bešalel Ashkenazi," in *Festschrift zum siebzigsten Geburtstage David Hoffmann's*, eds. Simon Eppenstein et al. (Berlin: L. Lamm, 1914), 204-205 (§319). On the ascription to Samuel, see Shraga Abramson, "'Al Sefer 'Darkhei ha-Talmud' she-meyuḥas le-Rav Sa'adya Gaon," *Qiryat Sefer* 52 (1977): 381-82; idem, *Inyanot be-Sifrut ha-Geonim*, 165-73; and Eliav Shoḥetman, "Kelalei ha-Talmud le-R. Bešalel Ashkenazi," *Shenaton ha-Mishpat ha-'Ivri* 8 (1981): 254n30.

²⁶⁶ Bloomberg, "Arabic Legal Terms," 37-38.

²⁶⁷ See Samuel ben Ḥofni, *Peraqim min Sefer 'Mavo ha-Talmud'*, ed. and trans. Shraga Abramson (Jerusalem: Meqīsei Nirdamim, 1990), 23-26, 154, 155; Abramson, "Min ha-Pereq ha-Ḥamishi," 210; Sklare, "The Religious and Legal Thought," 2:176; and Ernst Roth, "Qeṭa' le-Shalshet ha-Qabbalah mi-Tequfat ha-Geonim," *Tarbiẓ* 26, no. 4 (1957): 418. On the ascription of Roth's text to Samuel, see Shraga Abramson, "Le-Mavo ha-Talmud le-Rav Shmuel ben Ḥofni," *Tarbiẓ* 26, no. 4 (1957): 421-23; and Sklare, *Samuel ben Ḥofni Gaon*, 18n59.

On the root Hebrew root 't-q to denote transmission, see Abraham Elijah Harkavy, *Zikhron le-Rishonim ve-gam le-Aḥaronim: Zikhron Kamah Geonim uve-yihud Rav Sherira ve-Rav Hayya beno veva-Rav R. Yiṣḥaq Alfasi* (Berlin, 1887), 351; see also Lewin, *Oṣar ha-Geonim, Masekhet Rosh ha-Shanah, Heileq ha-Teshuvot*, 5:62n1. For use in Sa'adya, see Schechter, *Saadyana*, 5. For Israel ben Samuel ben Ḥofni, see T-S Misc. 35.4, printed in Mann, *Texts and Studies*, 1:176 line 4; Ḥayim Hillel Ben-Sasson, *Min ha-Merkaz la-Qehilah ba-Maqom: Igrot u-Shṭarot* (Jerusalem: Zalman Shazar, 1977), 39 line 10; and Gil, *Be-Malkhut Yishmael*, 2:178 line 10. For the translation of Samuel's *al-Madkhal*, see the *Mavo ha-Talmud*, printed in standard editions of the Babylonian Talmud, bBer, chap. 1. On the authorship of this text, see Mordecai Margaliyot, ed., *Hilkhote ha-Nagid: Kolel Seridei Sefer Hilkheta Gavrata u-Seridim shel She'ar Ketavav ha-Hilkhatiyim* (Jerusalem: Qeren Yehuda Leyb u-Mini Epstein, 1962), 68-73; and Shraga Abramson, "Mi-Torato shel Rav Shmuel ha-Nagid mi-Sefard," *Sinai* 100, no. 1 (1987): 22-23. On Qaraite use of 't-q, see Wieder, "Three Terms for 'Tradition,'" 113-17; and Ankori, *Karaites in Byzantium*, 226-30. See also Henshke, "Le-Ṭa'ama shel Halakhah," 47n10; and Neil Danzig, "Mi-Talmud 'al Peh le-Talmud be-Khetav: 'Al Derekh Mesirat ha-Talmud ha-Bavli bi-Yemei ha-Beinayim," *Bar Ilan Annual* 30-31 (2006): 76n93.

Consistent with the characterization of the rabbis as transmitters of tradition, and not as its producers, Sa'adya portrayed rabbinic tradition as prophetic and of great antiquity. He referred to rabbinic tradition as *naql* (tradition),²⁶⁸ *naql al-aslāf* (tradition of the pious forbears), and *āthār al-anbiyā'* (traditions of the prophets).²⁶⁹ Sa'adya also described rabbinic traditions as having “reached” him (using phrases such as *jā'a al-āthār bi-* and *jā'a fi al-fiqh*).²⁷⁰ In his biblical exegesis, these claims were not limited to legal topics, for as Ben-Shammai showed, Sa'adya cited rabbinic tradition in his commentary on non-legal sections of Scripture as well.²⁷¹

Sklare also showed that Sa'adya articulated his understanding of extra-scriptural traditions in the terms of contemporary Mu'tazilites, who divided knowledge into intuitive or “necessary knowledge” (*ilm ḍarūrī*) and “acquired knowledge” (*ilm*

²⁶⁸ See, e.g., Sa'adya's introduction to his Pentateuch translation (*tafsīr*) in Joseph Derenbourg, *Oeuvres complètes de R. Saadia Ben Iosef Al Fayyūmī: 1 Version arabe du Pentateuque de R. Saadia ben Iosef al-Fayyūmī* (Paris, 1893), 4; the introduction to *Kitāb al-Sab'īn Lafẓa* (*Seventy Hapax Legomena*), in Neḥemya Allony, “Haqdamat Rasag le-sifro 'Shiv'im ha-Milim ha-Bodadot' be-Tirgum 'Ivri uve-širuf he'arot u-mavo,” in *Sefer Zaydel: Meḥqarim be-Heiqer ha-Tanakh*, ed. Eliezer Eliner (Jerusalem: ha-Ḥevrah le-Heqer ha-Miqra be-Yisrael, 1962), 241 lines 8-9; the opening of *Kitāb al-Mawārīth* (*Book of Inheritances*), in Robert Brody, *Ḥiburim Hilkhatiyim shel Rav Sa'adya Gaon* (Jerusalem: Yad ha-Rav Nissim, 2015), 12 line 2; and the text cited above, n196. Another translation of Sa'adya's introduction to his *tafsīr* appears in Kafih, *Peirushei Rabbeinu Sa'adya Gaon*, 159-63. On this text see Ḥaggai Ben-Shammai, “Ḥadashim gam Yeshanim: 'ha-Haqdamah ha-Gedolah' ve-'ha-Haqdamat ha-Qeṭanah' le-Targum Rasag la-Torah,” *Tarbiẓ* 69, no. 2 (2000): 199-210; and Yitzhak Avishur, “Some New Sources for the Study of the Text and Language of Saadya's Translation of the Pentateuch into Judaeo-Arabic,” in *Genizah Research after Ninety Years*, 5-13.

²⁶⁹ See, e.g., Derenbourg, *Oeuvres complètes*, 1:3. On *āthār*, see Ben-Shammai, “Ribbuy Mashma'uyot ha-Ketuvim,” 24; on both terms, see idem, “Haqdamat R. Sa'adya Gaon le-Yesh'ayah,” 398n41; and Jospe, “Ha-Haggadah ha-Ne'emenet' shel R. Sa'adya Gaon,” 9-13.

²⁷⁰ See Zucker, “Mi-Peirusho shel Rasag,” 348; and Ben-Shammai, “Ha-Sifrut ha-Midrashit,” 40.

²⁷¹ See, e.g., Sa'adya, *Iyov*, ed. Kafih, 23 (Job 1:1). See Ḥaggai Ben-Shammai, “The Tension Between Literal Interpretation and Exegetical Freedom: Comparative Observations on Saadia's Method,” in *With Reverence for the Word: Medieval Scriptural Exegesis in Judaism, Christianity, and Islam*, eds. Jane Dammen McAuliffe et al. (Oxford: Oxford University Press, 2003), 42. See more generally, idem, “Ha-Sifrut ha-Midrashit,” 37-40; and above, n220. On midrashic literature in Sa'adya's *piyutim*, see Yosef Tobi, “Midreshei Ḥazal be-Piyuṭei Rav Sa'adya Gaon uve-Feirusho la-Miqra,” *Meḥqarei Yerushalayim be-Sifrut 'Ivrit* 21 (2007): 91-131.

muktasab; this was eventually adopted within mainstream Sunni *uṣūl al-fiqh* as well).

The first is acquired through perception, induction, or given by God; the second is the product of reflection and consideration.²⁷² Adopting the position of the Basran

Muʿtazilites, Saʿadya argued that received tradition, which he considered to be rabbinic teachings, possesses the characteristics of *ʿilm ḍarūrī*.²⁷³

The Harmonization of Extra-Scriptural Traditions

According to several geonim and their followers, while the ancient rabbis were largely passive tradents, they did take an active role in shaping the tradition by resolving contradictions between earlier sources. The Talmud, of course, is replete with Amoraic attempts to resolve contradictions between Tannaitic sources.²⁷⁴ Abraham Goldberg demonstrated that the Amoraim were not troubled by the existence of disagreement *per se*, but by contradictions between earlier and later generations and by internal inconsistencies in the Mishnah.²⁷⁵ The presence of disagreements in the Talmud did bother geonic authors, however; their resolutions of contradictions took place against the

²⁷² See Sklare, *Samuel ben Ḥofni Gaon*, 146-47; Peters, *God's Created Speech*, 53-54; and Binyamin Abrahamov, "Necessary Knowledge in Islamic Theology," *BIMES* 20, no. 1 (1993): 20-32.

²⁷³ Sklare, *Samuel ben Ḥofni Gaon*, 163. See also Cohen, *Opening the Gates of Interpretation*, 42, 246. On the question of whether received traditions render *ḍarūrī* or *muktasab* knowledge in *uṣūl al-fiqh* literature, see Zysow, *The Economy of Certainty*, 9-18; and Hallaq, *A History of Islamic Legal Theories*, 37-38. See also Jospe, "'Ha-Haggadah ha-Ne'emenet' shel R. Sa'adya Gaon," 6n4.

²⁷⁴ See J.N. Epstein, *Mavo le-Nusah ha-Mishnah* (Jerusalem, 1948), 154-63; and de Vries, *Toldot ha-Halakhah ha-Talmudit*, 129-41. On the Tannaitic approach to contradictions in the Bible, see Uziel Fuchs, "Darkhei ha-Hakhra'a, Samkhut shel Teqstim u-Muda'ut 'Ašmit," in *Sugyot be-Meḥqar ha-Talmud: Yom 'Iyun le-Šiyun ḥameish shanim li-Feḥirato shel Efrayim E. Urbach* (Jerusalem: Aqademyah ha-Le'umit ha-Yisraelit le-Mada'im, 2001), 104n19, 105n24, and the literature cited there.

²⁷⁵ Abraham Goldberg, "Šimšum Maḥloqet ešel Amorei Bavel," in *Meḥqarei Talmud 1*, eds. Ya'aqov Sussman and David Rosenthal (Jerusalem: Magnes, 1990), 135-53.

background of the Qaraite charge that disagreements in rabbinic literature undermine claims of the Oral Torah's unbroken transmission,²⁷⁶ and of attempts by Muslim jurists to reconcile contradictions between legal *ḥadīth*. Shāfi'ī was perhaps the first to attempt to harmonize *ḥadīth* systematically. While he rejected some *ḥadīth* in favor of others, he also suggested ways to reconcile contradictions.²⁷⁷ For example, he suggested that transmitters took earlier statements out of context or heard earlier statements only partially.²⁷⁸ Abū Bakr Ibn Khuzayma (Khorasan; d. 923), a *ḥadīth* collector and jurist, is reported to have said that he was unaware of any two sound *ḥadīths* that are genuinely contradictory, and he boasted of his ability to reconcile all apparent contradictions.²⁷⁹

Sa'adya appears to have been the first Rabbanite to attempt to harmonize conflicting traditions in the Talmud. Qirqisānī reported that Sa'adya identified three reasons for disagreements among transmitters of the Oral Torah: (i) temporary misunderstanding; (ii) a transmitter heard only one aspect of a prophetic report, and (iii) a transmitter assumed that a statement was of general application (*'āmm*) when it actually

²⁷⁶ See Ankori, *Karaites in Byzantium*, 240n77, writing that this began in the tenth century, based on Qirqisānī's statement that Qaraites had only recently began to call attention to such contradictions (*munāqaḍāt*); *Kitāb al-Anwār*, ed. Nemoy, 1:29. Salmon ben Yeruḥim used this claim to devastating effect in his polemic against Sa'adya; see *Sefer Milḥamot ha-Shem*, ed. Davidson, 12-13. See also above, n155.

²⁷⁷ See Goldziher, *Muslim Studies*, 2:85-87; Schacht, *Origins*, 13-14; Calder, *Studies in Muslim Jurisprudence*, 228-29; Gérard Lecomte, "Un exemple d'évolution de la controverse en Islam: de l'*Iḥtilāf al-Ḥadīṭ* d'al-Šāfi'ī au *Muḥtalif al-Ḥadīṭ* d'Ibn Qutayba," *Studia Islamica* 27 (1967): 26-29; and Musa, *Ḥadīth as Scripture*, 53. On dating of Shāfi'ī's *Ikhtilāf al-Ḥadīth* (*Contradictory Ḥadīth*), see Schacht, *Origins*, 330. For background, see Joseph Lowry, "Al-Shāfi'ī," in *Islamic Legal Thought*, 51-54; and idem, *Early Islamic Legal Theory*, 125-42.

²⁷⁸ See Lowry, *Early Islamic Legal Theory*, 127, 141.

²⁷⁹ Cited in the thirteenth-century 'Uthmān ibn 'Abd al-Raḥmān ibn al-Ṣalāḥ al-Shahrazūrī, *Kitāb Ma'rīfat Anwā' 'Ilm al-Ḥadīth* (Medina: al-Maktaba al-'Ilmiya, 1966), 285. Harmonization of *ḥadīth* was distinct from *isnād* criticism, which identifies sound reports based on their transmitters; Eerik Dickinson, *The Development of Early Sunnite Ḥadīth Criticism: The Taqdima of Ibn Abī Ḥātim Al-Rāzī (240/854-327/938)* (Leiden: Brill, 2001), 5-6. See also Melchert, "The Traditionist-Jurisprudents," 398; and John Burton, *An Introduction to the Ḥadīth* (Edinburgh: Edinburgh University Press, 1994), 113-16.

referred to a narrow set of facts (*khāṣṣ*).²⁸⁰ Zucker noted parallels between these suggestions and those made in Islamic literature,²⁸¹ such as the claim that some transmitters assumed reports to be *‘āmm* when they are actually *khāṣṣ* or vice-versa,²⁸² and that forgetfulness accounts for discrepancies in prophetic reports.²⁸³ More important than the specific parallels, however, is the shared assumption that contradictions and debates are (frequently?) the result of errors in transmission and interpretation.

In addressing contradictions in rabbinic literature, the letter from Sa’adya’s student noted that the Bible, too, contains contradictions. The author pointed out that, according to 2 Sam. 24:9, King David’s army numbered eight hundred thousand, while according to 1 Chron. 21:5, it numbered over one million. This “apparent” contradiction, he wrote, must have a solution.²⁸⁴ He further claimed that the process of harmonization began in the Mishnah. He asserted that when the anonymous sages in mNid 1:1 rejected the positions of both Shammai and Hillel (*lo ke-divrei zeh ve-lo ke-divrei zeh*), they were,

²⁸⁰ Qirqisānī, *Kitāb al-Anwār*, ed. Nemoj, 1:127. See also there, 1:115, reporting that Sa’adya reconciled (*waffaqa*) traditions. Sa’adya’s student reported that Sa’adya referred to this problem in many of his writings, including *Sefer ha-Galuy*: וקד בין אסתאד’נא אידה אללה פי כתב כת’ירה כיף אלתופיק בין מכתלפאת ... ומת’ל להא מת’אלאת מן אלמקרא פי ספר הגלוי אלמקרא ובין מכתלפאת אלמשה; Poznański, “Die Streitschrift eines Schülers Saadja’s,” 48. It is not clear where these claims would fit in *Sefer ha-Galuy*. For outlines of that work, see Samuel Miklós Stern, “Qeṭa’ Ḥadash mi-*Sefer ha-Galuy* le-R. Sa’adya Gaon,” *Melilah* 5 (1955): 135; and Yosef Tobi, “Daf Nosaf mi-*Sefer ha-Galuy* le-Rav Sa’adya Gaon,” in *Mehqarim be-Sifrut ‘Am Yisrael uve-Tarbut Teiman*, eds. Judith Dishon and Ephraim Hazan (Ramat Gan: Bar Ilan University, 1991), 56-58. For similar claims, see Zucker, *Peirushei Rav Sa’adya*, 16.

²⁸¹ Zucker, “Le-Va’ayat ha-Maḥloqet be-Masoret,” 324-25. I do not find all of the suggested parallels between Sa’adya and Shāfi’ī convincing. On *‘āmm* and *khaṣṣ* in geonic literature, see also Zucker, *‘Al Targum Rasag*, 260n.

²⁸² Shāfi’ī, *The Epistle on Legal Theory*, ed. Lowry, 157. On the distinction between *‘āmm* and *khaṣṣ* in that work, see Lowry, *Early Islamic Legal Theory*, 69-86. For background, see there, 69n11.

²⁸³ See Shāfi’ī, *The Epistle on Legal Theory*, ed. Lowry, 158; treated in Lowry, *Early Islamic Legal Theory*, 92. See the similar argument in Muḥammad ibn Idrīs al-Shāfi’ī, *Ikhtilāf al-Ḥadīth*, in *Kitāb al-Umm*, ed. Rif’at Fawzī ‘Abd al-Muṭallib (al-Manṣūra: Dār al-Wafā’), 2001), 10:44-45.

²⁸⁴ Poznański, “Die Streitschrift eines Schülers Saadja’s,” 48.

in fact, harmonizing the disagreement by saying that the law follows neither view on its own (*lo ke-divrei zeh wahda*) but, rather, both (*kal-qawlayn majmū‘ayn*).²⁸⁵ In his view, disagreements began because the students of Shammai and Hillel served their teachers insufficiently (*lo shimshu kol șorkhan*; bSan 88b). For example, one student heard that there are three obligatory prayers each day, another that there are four, and another that there are five, without realizing that each statement referred to a different case: Regular days require three prayers, Sabbaths, four, and the Day of Atonement, five.²⁸⁶

Samuel ben Ḥofni’s *Madkhal* contains the largest surviving discussion of talmudic contradictions in geonic literature.²⁸⁷ Samuel also ascribed disagreements to lackadaisical students who did not exert sufficient effort to understand their teachers (like the trope in bSan 88b).²⁸⁸ Like Sa‘adya, Samuel explained that some transmitters interpreted statements as *khāṣṣ* when they were actually *‘āmm*, and that misunderstandings and forgetfulness accounted for other disagreements.²⁸⁹ Samuel sought support for his theories in talmudic claims about disagreements, and he depicted

²⁸⁵ Poznański, “Die Streitschrift eines Schülers Saadja’s,” 48. On this claim, see Zucker, “Le-Va‘ayat ha-Maḥloqet be-Masoret,” 325-26n27. This is not what this phrase seems to mean in the Mishnah; see Epstein, *Mevo ‘ot le-Sifrut ha-Tana‘im*, 429-30; and E.S. Rosenthal, “Mesoret-Halakhah ve-Ḥidushei-Halakhot be-Mishnat Ḥakhamim,” *Tarbiz* 63, no. 3 (1994): 367-68.

²⁸⁶ Poznański, “Die Streitschrift eines Schülers Saadja’s,” 50. I have not found this example in rabbinic literature.

²⁸⁷ See Abramson, “Min ha-Pereq ha-Ḥamishi,” 197-98; and Samuel ben Ḥofni, *Peraqim min Sefer ‘Mavo ha-Talmud’*, ed. Abramson, 193.

²⁸⁸ See Abramson, “Min ha-Pereq ha-Ḥamishi,” 209-215; and Zucker, “Le-Va‘ayat ha-Maḥloqet be-Masoret,” 320. See also the table of contents of this work in Sklare, “The Religious and Legal Thought,” 2:174.

²⁸⁹ Abramson, “Min ha-Pereq ha-Ḥamishi,” 213; and Zucker, “Le-Va‘ayat ha-Maḥloqet be-Masoret,” 320.

the later talmudic rabbis –the “*ahl al-Talmud*” (lit., people of the Talmud)²⁹⁰ – as figures who reconciled (*waffaqa*) earlier traditions.²⁹¹

Geonic-Era Portrayal of the Origins of Non-Biblical Institutions

Rabbanite claims about the origins of non-biblical institutions are perhaps the most surprising component of their legal epistemology. This section traces their remarks pertaining to the calendar, the Second Day of Festivals observed in the diaspora (*yom tov sheini shel galuyot*), Hanukah, translations of the Bible (*Targumim*; sing., *Targum*), and the geonic academies. As will be seen, Rabbanites resorted to similar arguments to defend each of these institutions.

Many have noted that Sa’adya and others went beyond rabbinic claims when they argued for the biblical origin of the obligation to pray,²⁹² and rooted both the anonymous

²⁹⁰ This phrase may be Samuel’s term for what are known today as the *stamm* or editorial layers of the Babylonian Talmud. For other appearances in Samuel’s writings, see Simḥa Assaf, “Sheloshah Sefarim Niftaḥim le-Rav Shmuel ben Ḥofni,” in *Zikaron le-Nishmat ha-Rav Avraham Yiṣḥaq ha-Kohen Kook*, ed. Judah Leib Maimon (Jerusalem: Mosad ha-Rav Kook, 1945), 151; and Samuel ben Ḥofni, *Sefer ha-Geirushin, Kitāb al-Ṭalāq*, ed. and trans. Y. Zvi Stampfer (Jerusalem: Mekhon Ben-Ṷvi, 2008), 75.

²⁹¹ Samuel ben Ḥofni, *Peraqim min Sefer ‘Mavo ha-Talmud’*, ed. Abramson, 195; see above, n280. See Abramson’s evaluations of Samuel’s efforts in “Min ha-Pereq ha-Ḥamishi,” 210, 212. For Sherira’s use of this idea, see Lewin, *Igeret Rav Sherira Gaon*, 23. Geonic attempts to minimize contradictions appear to relate to the idea that a rejected view is “objectively” wrong, a widely-held position in this period; see Fuchs, “Darkhei ha-Hakhra’a,” 103n16. Blidstein, “Ra’ayon Torah shebe-‘al Peh,” 7, noted the absence of talmudic passages that valorize disagreement in Sherira’s *Epistle*.

Others have treated attempts to harmonize rabbinic disputes as foreign or based on Qaraite premises. Blidstein asked “is halakhah decided by verifying the traditions and their reliability, like in Islam?”; “Masoret ve-Samkhut,” 15n16. Shapiro, *Changing the Immutable*, 249, repeated Blidstein’s conclusion. Faur wrote that attempts to reconcile traditions are based on assumptions that are “the basis of the Qaraite movement”; *Iyunim be-Mishneh Torah*, 38.

²⁹² His sons included the relevant work among Sa’adya’s polemical writings; Allony et al., *Ha-Sifriyah ha-Yehudit bi-Yemei ha-Beinayim*, 313 line 24; see also Moshe Zucker, “Qeṭa’ mi-Kitāb Wujūb al-Ṷalawāt le-Rabbeinu Sa’adya,” *PAAJR* 43 (1976): 29-36; Sa’adya ben Joseph, *Kitāb Jāmi’ al-Ṷalawāt*, eds. Davidson et al., 1-10; and Shraga Abramson, “Qeṭa’ Hadash min ha-sefer ‘*Essa Meshali*’ le-Rav Sa’adya Gaon,” *Tarbiz* 32, no. 2 (1964): 166-67. For other Rabbanite views, see Poznański, “Die Streitschrift eines Schülers Saadja’s,” 51; Abramson, “Min ha-Pereq ha-Ḥamishi,” 216; and Sklare, “The Religious and Legal

ban (*herem stam*) and the court oath (*allah*) in biblical texts.²⁹³ Yet, Sa'adya himself wrote that it was not always appropriate or prudent to cite biblical prooftexts for every practice. He recounted that, when he reached Iraq, he had encountered some non-Rabbanites who demanded a scriptural source for every law. When their Rabbanite interlocutor was unable to produce such sources, they dismissed Rabbanite views. It was this experience, claimed Sa'adya, that led him to warn that one who seeks scriptural proof (*dalil min al-miqra*) for everything in the Mishnah will have, in effect, rendered the Mishnah useless (*abtaltum al-mishnah*) and adopted the Qaraite position (*madhhab*).²⁹⁴ Despite this warning, Rabbanites, Sa'adya among them, routinely appealed to prophetic authority.

The Mathematical Calendar

The Mishnah depicts a calendar governed by sighting of the New Moon, and intercalated in order to fulfill the requirement that Passover occur in the spring, *aviv* (Ex.

Thought," 2:180. Sa'adya asserted the biblical status of prayer times; see Zucker, *Peirushei Rav Sa'adya*, 183n95; idem, "Qeṭa'im Hadashim," 33n17; and Brody, *Sa'adyah Gaon*, 35.

²⁹³ See Libson, *Jewish and Islamic Law*, 229n95; idem, "Gezerta ve-Ḥerem Stam be-Tequmat ha-Geonim uve-Reishit Yemei ha-Beinayim," (PhD diss., Hebrew University, 1979), 293n449; and Berakhyahu Lifschitz, "Gilgulah shel Shevu'at Beit Din be-Allah," *Shenaton ha-Mishpat ha-Ivri* 11-12 (1984-1986): 398. For further background, see Gideon Libson, "Ḥerem Stam be-Tequmat ha-Geonim uve-Reishit Yemei ha-Beinayim," *Shenaton ha-Mishpat ha-Ivri* 22 (2001-2004): 125-28.

²⁹⁴ ENA 2818 43v; Zucker, "Shenei Qeṭa'im," 8-9. Zucker identified this as part of Sa'adya's *Kitāb al-Radd 'alā Ibn Sāqawayh* (*Refutation of Ibn Sāqawayh*). On Ibn Sāqawayh, see Simḥa Assaf, "Divrei Pulmus shel Qara'i Qadmon neged ha-Rabbanim," *Tarbiz* 4, no. 1 (1932): 35-53; no. 2-3 (1933): 193-206; Poznański, *The Karaite Literary Opponents*, 4-8; Simon Eppenstein, *Beiträge zur Geschichte und Literatur im geonäischen Zeitalter* (Berlin: L. Lamm, 1913), 107-109; Malter, *Saadia Gaon*, 265-67, 382-85; Mann, *Texts and Studies*, 2:1469-70; Leon Nemoy, *Karaite Anthology* (New Haven: Yale University Press, 1963), 70; and Gil, *Jews in Islamic Countries*, 346.

12:2, 13:4), i.e., after the vernal equinox.²⁹⁵ The Rabbanite calendar received its final form in the 920s, during the controversy between Sa'adya and the Palestinian, Ben Meir.²⁹⁶ It is based on a nineteen-year cycle that includes seven intercalated years along with the postponements (*deḥiyot*) needed to prevent the first days of Rosh ha-Shanah and Passover from falling on certain days of the week. Sacha Stern demonstrated that this calendar developed throughout the rabbinic period, eventually rendering the Mishnaic system obsolete.²⁹⁷

The two earliest references to a fixed Rabbanite calendar – a *piyut* by the Palestinian *payṭan*, Pinḥas ha-Kohen (8th c.), and the post-talmudic (8th/9th c.?) *Pirquei de-R. Eliezer* – affirm its antiquity. Both texts trace calendrical intercalation and the nineteen-year cycle to God, or to Moses and other prophets.²⁹⁸

²⁹⁵ Sacha Stern, *Calendar and Community: A History of the Jewish Calendar, Second Century BCE – Tenth Century CE*. (Oxford: Oxford University Press, 2001), is the most recent treatment. On the Mishnaic system, see there, 155-64; on the requirement of *aviv*, 47-48.

²⁹⁶ Stern, *Calendar and Community*, 191-210, 264-75. Significant evidence suggests that the Rabbanite calendar was not uniform even in the eleventh century; see Rustow, *Heresy and the Politics of Community*, 58-64, 337-39; and idem, “Rabbanite-Karaite Relations in Fatimid Egypt and Syria,” 69-90. On pre-Sa'adya calendrical diversity, see Stern, *Calendar and Community*, 182-88; idem, “Fictitious Calendars: Early Rabbinic Notions of Time, Astronomy, and Reality,” *JQR* 87, no. 1-2 (1996): 117-29; idem, “A Primitive Rabbinic Calendar Text from the Cairo Genizah,” *JJS* 67, no. 1 (2016): 68-90; Sacha Stern and Piergabriele Mancuso, “An Astronomical Table by Shabbetai Donnolo and the Jewish Calendar in Tenth-Century Italy,” *Aleph* 7 (2007): 13-41; and Marina Rustow and Sacha Stern, “The Jewish Calendar Controversy of 921-22: Reconstructing the Manuscripts and their Transmission History,” in *Time, Astronomy, and Calendars in the Jewish Tradition*, eds. Sacha Stern and Charles Burnett (Leiden: Brill, 2014), 81-82, 91-94.

²⁹⁷ Stern, *Calendar and Community*, 182-90. On the claim that Hillel the Patriarch authorized changes to the calendar in 358/59, see there, 176-79, 193; Friedman, “Minhag Avoteikhem be-Yadeikhem,” 600-601; and, e.g., Abraham bar Ḥiya, *Sefer ha- 'Ibur*, ed. Filipowski, 97 (3:7). Abraham bar Ḥiya attributed this claim to Hayya, but this appears to be an interpolation; Mann, “Gaonic Studies I,” 239-40; and Stern, *Calendar and Community*, 175n82.

²⁹⁸ For Pinḥas, see Shulamit Elişur, *Piyutei Rabbi Pinḥas ha-Kohen* (Jerusalem: World Union of Jewish Studies, 2004), 725-26; and Stern, *Calendar and Community*, 197n164. For *Pirquei de-R. Eliezer*, see Dagmar Börner-Klein, *Pirke de-Rabbi Elieser* (Berlin: W. de Gruyter, 2004), 70-83; and Stern, *Calendar and Community*, 197. Compare the text in Schechter, *Saadyana*, 93-94. For the dating of this work, see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 329. For an early reference to the

Sa'adya argued that the calendar was always determined by calculation and never by observation.²⁹⁹ He wrote: “the intercalation (*al-ibur*) is ancient, from the time (*ahd*) of the first prophets.”³⁰⁰ Two medieval writers reported that Sa'adya had claimed that various elements of the Jewish calendar were given at Sinai or enacted at the time of the Exodus.³⁰¹ Similarly, a fourteenth-century work quoted the tenth-century Ḥananel ben Ḥushiel as arguing, probably under Sa'adya's influence, that Jews had always determined new months by calculation. Ḥananel wondered how the Israelites could have seen the New Moon, given that a pillar of smoke guided them during the day, and a pillar of fire at night (Ex. 13:21). Thus, he asserted, the “primary commandment” (*iqar mišvah*) must prescribe sanctification of the months by calculation.³⁰² Similarly, in his *Kitāb al-*

nineteen-year cycle in non-Jewish literature, see Y. Tzvi Langermann, “Eimatai Nosad ha-Luah ha-ivri? Qadmuto 'al-pi Hiburo shel al-Khwārizmī,” *Asufot* 1 (1987): 164.

²⁹⁹ For background, see Zucker, “Shenei Qeṭa'im,” 16n6; idem, “Qeṭa'im mi-*Kitāb Tahṣīl al-Sharā'i*,” 375; idem, “Helqo shel R. Sa'adya Gaon be-Fulmus mi-Maḥarat ha-Shabbat,” *PAAJR* 20 (1951): 1-26; Richard C. Steiner, “Saadia vs. Rashi on the Shift from Meaning-Maximalism to Meaning-Minimalism in Medieval Biblical Lexicology,” *JQR* 88 no. 3-4 (1998): 220-21; and Stern, *Calendar and Community*, 264-68. Compare Jacob Katz, “Rabbinical Authority and Authorization in the Middle Ages,” in *Studies in Medieval Jewish History and Literature 1*, eds. Isadore Twersky and Jay M. Harris (Cambridge: Harvard University Press, 1979), 43-46. See also Mordecai Halperin, “Lamah Naṭah Rav Sa'adya Gaon meha-Emet?” *Yod 'ei Binah* 5 (2011): 44-57, 64-73; Aryeh Stern, “Shiṭat Rasag be-Qiddush ha-Ḥodesh,” *Teḥumin* 23 (2003): 293-95; idem, “Shiṭat Rasag be-Qiddush ha-Ḥodesh,” *Yod 'ei Binah* 3 (2006): 32-36; and Shai Walter, “Shiṭat Rasag be-Qevi'ut ha-Ḥodesh – ha-Ba'ayah ha-Astronomit u-Pitronah,” *Yod 'ei Binah* 3 (2006): 40-56.

³⁰⁰ אוליא אנה קדים מן עהד אנביאנא אוליא; text from Schechter, *Saadyana*, 32 line 10. See also T.-S. 10 K²; in Poznański, “Addenda and Corrigenda,” 234. Poznański identified this as part of Sa'adya's *Kitāb al-Tamyẓ*. The heading of this fragment, however, states that it is a “polemical work regarding the two months [for which the messengers] violate the Sabbath” (כתאב פיה גדל על שני חדשים מחללין את השבת).

³⁰¹ Abraham bar Ḥiya, *Sefer ha-Ibur*, ed. Filipowski, 59-60 (2:8), 126 (3:5), citing the claim that the calendrical postponements are Sinaitic and that the *tequfot* are from the time of the Exodus; 69 (2:9), and implying that somebody, undoubtedly Sa'adya, held that the mathematical calendar (*heshbon*) was Sinaitic; and Isaac Israeli, *Yesod 'Olam*, ed. Goldberg, 2:9a-9b (4:6), citing the claim that *heshbon*, postponements, and rules found in the *Arba'ah She'arim* (Four Gates; a Babylonian calendrical algorithm) are Sinaitic in origin. On the *Arba'ah She'arim*, see Stern, *Calendar and Community*, 193, 268-70.

³⁰² Baḥya ben Asher ibn Ḥlava, *Bei'ur 'al ha-Torah*, ed. Charles Ber Chavel (Jerusalem: Mosad ha-Rav Kook, 1966-1968), 2:87. In the remainder of this passage, Ḥananel repeated Hayya's approach to the calendar (see below); see Hayim Jehiel Bornstein, “Maḥloqet Rav Sa'adya Gaon u-Ben Me'ir,” in *Sefer*

Sharā`i`, Sa`adya wrote: “we are commanded that we learn something by which we know the new month, and we are warned regarding this ‘*You shall keep this institution* (i.e., Passover) [*at its set time from year to year*]’ (Ex. 13:10).”³⁰³ Yosef Kafih connected this entry on Sa`adya’s list of the commandments with Sa`adya’s attempts to demonstrate the Sinaitic origin of the mathematical calendar.³⁰⁴ (Other early enumerators of the commandments listed a similar commandment.³⁰⁵)

As Sa`adya recognized that this approach diverged from the rabbinic system of observation, he attempted to reinterpret the talmudic evidence.³⁰⁶ He dismissed as theoretical talmudic discussions that suggest that the “postponements” were not in effect in the rabbinic period.³⁰⁷ Though the Mishnah discusses the process of interrogating witnesses regarding the appearance of the New Moon, one medieval work, which may

ha-Yovel li-Khvod Naḥum Sokolov (Warsaw, 1904), 147n1. On Ḥananel’s dependence on Sa`adya, see Zucker, *Al Targum Rasag*, 321; and the notes in Bahya ben Asher, *Bei`ur `al ha-Torah*, ed. Chavel, 2:87.

³⁰³ ואמרנו אן נתעלם מא בה נעריף ראש אלשהר ונהי' פד' כ'ק' ושמת את החקה הזאת British Library OR 5563G.25b, following the transcription on the Friedberg Genizah Project. Sa`adya read the word *keep* to imply a prohibition, in accordance with talmudic understanding of this word (b`Eiruv 96a and parallels).

³⁰⁴ Kafih, *Peirushei Rabbeinu Sa`adya*, 75n2 (Ex. 12:1); see also there, 72n1 (Ex. 12:1), 142-43n1 (Lev. 23:4); Zucker, *Peirushei Rav Sa`adya*, 41-42 (from Sa`adya’s *Commentary on Genesis*); 436-47 (from *Kitāb al-Tamyīz*); and the Maimonidean passages above, n121. I have not been able to locate the final reference in Maimonides, *Mishnah `im Peirush*, ed. Kafih, 2:317n12 (mRH 2:7).

³⁰⁵ See Hildesheimer, ed., “*Haqdamat Halakhot Gedolot*,” 78-79n358.

³⁰⁶ Maimonides was one of the earliest to make this point, which may be based on Isaac al-Balīya (see above, n121); see *Mishnah `im Peirush*, ed. Kafih, 2:317 (mRH 2:7), with the correction in Friedman, “*Minhag Avoteikhem be-Yadeikhem*,” 584-85.

³⁰⁷ See Poznański, “The Anti-Karaite Writings of Saadia Gaon,” 271-73; Zucker, “*Qeṭa`im mi-Kitāb Taḥṣīl al-Sharā`i`*,” 377; and Ezra Fleischer, “*Pisqah Ḥadashah me-Essa Meshali le-Rav Sa`adya Gaon*,” *Tarbiẓ* 49, no. 1-2 (1979-1980): 106-107. Others quoted Sa`adya on this point as well; see Salmon ben Yeruḥim, *Sefer Milḥamot ha-Shem*, ed. Davidson, 62; Abraham bar Ḥiya, *Sefer ha-`Ibur*, ed. Filipowski, 60 (2:8); and Israeli, *Yesod `Olam*, ed. Goldberg, 2:9b (4:6). Saul Lieberman, “*Tiqunei Yerushalmi*,” *Tarbiẓ* 5, no. 1 (1933-1934): 102, claimed that Sa`adya’s approach is found in rabbinic literature. Lieberman repeated his claim in “*Mishnat Rishonim*,” *Talpiyot* 2, no. 3-4 (1945-1946): 375-79; and in a more polemical vein in two letters to Solomon Zeitlin published in Marc Shapiro, *Saul Lieberman and the Orthodox* (Scranton: University of Scranton Press, 2006), 19-20, 22-24, 27-29. Stern, *Calendar and Community*, 166, 175, disagreed with Lieberman’s interpretation of the relevant passages.

quote Sa'adya, claims that the interrogation only concerned the moon's form and its place on the horizon, not its actual appearance.³⁰⁸ According to an eleventh-century author, Sa'adya had also asserted that the court's dispatch of messengers to announce new months was only intended to confirm that the observed New Moon matched the mathematical calculations. This source claims that they did so in order to counter the criticism of Zadok and Boethus, who allegedly disagreed with the sages about how new months are to be determined.³⁰⁹

Several tenth-century Rabbanites repeated Sa'adya's position,³¹⁰ and Qirqisānī reported that a group of people (*qawm*) adopted Sa'adya's view.³¹¹ Mubashshir ha-Levi, a relatively unknown Rabbanite who wrote in Baghdad in 997, seems to have been the first

³⁰⁸ Schechter, *Saadyana*, 34 lines 14-16. In the middle of the manuscript of Sa'adya's work on the months when the messengers violate the Sabbath (see above, n300), a new work appears by an otherwise unknown Nathan bar Isaac of Sicily. Poznański, "Addenda and Corrigenda," 234n1, claimed that this part of Nathan's work quotes a lost part of Sa'adya's *Kitāb al-Tamyīz*. Even if Poznański was incorrect, Nathan's work was written in the spirit of Sa'adya's calendar polemic.

³⁰⁹ Natan Av ha-Yeshiva, *Peirush Shishah Sidrei Mishnah*, ed. and trans. Yosef Kafih (Jerusalem, 1956), 96 (mRH chap. 2). On the authorship of this work, see Simha Assaf, *Tequfat ha-Geonim ve-Sifrutah* (Jerusalem: Mosad ha-Rav Kook, 1967), 294-96; Mordechai Akiva Friedman, "Responsa of R. Abraham Maimonides from the Cairo Geniza: A Preliminary Review," *PAAJR* 56 (1990): 40-45; Neil Danzig, *Qatalog shel Seridei Halakhah u-Midrash mi-Genizat-Qahir* (New York: JTS, 1997), 47n170; and Naḥem Ilan, "Iyunim be-Feirush le-Masekhet Avot ha-Meyuḥas le-Rav Natan Av ha-Yeshiva," in *Ateret Yiṣḥaq: Qoveṣ Mehqarim be-Moreshet Yehudei Teiman*, ed. Yosef Tobi (Netanyah: ha-Agudah le-Tipuaḥ Hēvrah ve-Tarbut, 2003), 11-13. Since Kafih published this text, many more manuscripts have been identified; see Menahem Zvi Fuchs, "Ha-Mishnah be-Teiman: Ketav-Yad mi-Feirush Rav Natan Av ha-Yeshiva," *Asufot* 8 (1994): 161-67; and Ilan, "Iyunim be-Feirush le-Masekhet Avot," 11-13. This claim also appears in the report of Sa'adya's view in Isaac Israeli, *Yesod 'Olam*, ed. Goldberg, 2:9b (4:6).

One opponent of the mathematical calendar challenged Sa'adya by invoking a Mishnaic narrative of the calendar (mRH 2:8-9), in which R. Joshua's disagreement with Rabban Gamliel resulted in different dates for the Day of Atonement, which seems to imply that witnesses were accepted to testify to the moon's appearance. In a partially preserved response, Sa'adya claimed that there was no substantive disagreement between the two rabbis; Schechter, *Saadyana*, 32 line 6.

³¹⁰ See Poznański, "Die Streitschrift eines Schülers Saadja's," 52; and Zucker, "Shenei Qeṭa'im," 19-21.

³¹¹ Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 4:805; noted in Zucker, "Shenei Qeṭa'im," 16n11. Isaac Israeli, *Yesod 'Olam*, ed. Goldberg, 2:9a-9b (4:6), also reported that a number of thinkers accepted Sa'adya's approach.

to criticize Sa'adya, though his comments are not systematic and do not indicate a total rejection of Sa'adya's approach.³¹² Qirqisānī himself sharply criticized Sa'adya's claims; he merely had to quote the Mishnah – which he did at great length – to argue that the “true” calendar is based on observation.³¹³ Sa'adya's responses to critics of the Rabbanite calendar demonstrate that such criticism was a feature of debates before Qirqisānī as well.³¹⁴ It is easy to see why many have regarded Sa'adya's claims about the calendar as ones which feature his weaker arguments,³¹⁵ yet other cases demonstrate that Sa'adya's position on this topic should be seen as part of the larger geonic practice of antedating of non-biblical institutions.

Moreover, even later geonim who found fault with Sa'adya's views upheld the claim of divine authority for the Rabbanite calendar. A 994/95 responsum, presumably jointly authored by Sherira and Hayya,³¹⁶ dismissed some of Sa'adya's views and

³¹² Mubashshir, *Kitāb Istidrāk*, ed. Zucker, 59-60; see there, 108n237; and Ankori, *Karaïtes in Byzantium*, 300-301n22. On Mubashshir, see above, n217.

³¹³ Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 4:804-14. For other Qaraite citations of the relevant passages, see Ofrah Tirosh-Becker, *Ginzei Hazal ba-Sifrut ha-Qara'it bi-Yemei ha-Beinayim* (Jerusalem: Bialik, 2011), 2:517-72. For Qaraite criticism of postponements, see Samuel Poznański, “Remarks on ‘Early Karaite Critics of the Mishnah’,” *JQR* 11, no. 2 (1920): 237-44. On the Qaraite calendar, see Ankori, *Karaïtes in Byzantium*, 292-353; and Judith Olszowy-Schlanger, *Karaite Marriage Documents from the Cairo Geniza: Legal Tradition and Community Life in Mediaeval Egypt and Palestine* (Leiden: Brill, 1998), 248-50.

³¹⁴ See Lewin, “*Essa Meshali le-Rasag*,” 496; Malter, *Saadia Gaon*, 263-65 (from Sa'adya's *Kitāb al-Tamyīz*); and above, n300.

³¹⁵ See above, nn128-129.

³¹⁶ Mann ascribed this responsum to Sherira based on a reference to “Mar Rav Yehuda *zaqeinenu*,” which he interpreted as “grandfather”; “Gaonic Studies I,” 240; accepted in Moshe Gil, “Le-Toldot Geonei Ereš Yisrael,” *Tarbiẓ* 44, no. 1-4 (1975): 145n16. Mann further surmised that this responsum is the basis of Abraham bar Ḥiya's report of Hayya's view (see *Sefer ha-Ibur*, ed. Filipowski, 97-98 [3:7]). Shraga Abramson wrote that this letter is a “responsum of (Rav Sherira and) Rav Hayya” and a “responsum of Rav Sherira (and Rav Hayya)”; *Be-Merkazim uve-Tefuṣot be-Tequfat ha-Geonim* (Jerusalem: Mosad ha-Rav Kook, 1965), 29, 43n2. There are several reasons to assume co-authorship: the Pumbeditan responsa between 984 and 1004 were usually authored by Sherira and Hayya together; there is no reason to assume that Hayya would not have used the word *zaqeinenu* in a joint responsum; and *zaqeinenu* could refer to an illustrious ancestor and not a “grandfather.” On the authorship of these

concluded that his position was designed only to combat heresy, “like dismissing with a reed” (*kmo deḥiya be-qaneh hu*). “He wrote it,” the author(s) proclaimed, “for students and not scholars” (*le-talmidim ḥibro ve-lo le-ḥakhamim*).³¹⁷ A later letter from Hayya to Nissim of Qayrawān repeated that Sa’adya’s arguments were merely “a reed to rebuff heretics” (*qaneh hu she-daḥah et apiqeros*). Hayya, by contrast, would endeavor to explicate “the truth of the matter” (*amitat ha-davar*). Hayya wrote that God had entrusted the court to intercalate the year³¹⁸ and to keep the holidays in their seasons, “unlike those whose months are lunar but have no intercalation,” referring to contemporary Muslims.³¹⁹ In Hayya’s view, the rabbis had the prerogative to intercalate the calendar as necessary, provided that they maintained the framework of the nineteen-year cycle, which, he wrote, “was in Israel’s possession from the days of Moses.”³²⁰ He suggested that if the rabbis deemed it necessary to add a month at variance with the cycle, they would remove a month in subsequent years to ensure that only seven of nineteen years would contain an

Pumbeditan responsa, see Brody, *Geonim of Babylonia*, 60-61n34; and idem, “Groner’s *The Legal Methodology of Hai Gaon*,” *JQR* 76, no. 3 (1986): 239. I thank Robert Brody for his assistance on this matter. For the identification of “Mar Rav Yehuda,” see Lewin, *Igeret Rav Sherira Gaon*, 119.

³¹⁷ Mann, “Gaonic Studies I,” 242-43, 246. The former phrase is based on yBer 9:1.

³¹⁸ Simḥa Emmanuel, *Teshuvot ha-Geonim ha-Ḥadashot: ve-’Iman Teshuvot, Pesaqim u-Feirushim me-et Ḥakhmei Provence ha-Rishonim* (Jerusalem: Ofeq, 1995), 148 (§116). For other printings, see there, 147n1; references follow Emmanuel’s edition. On Hayya’s position, see Bornstein, “Maḥloqet Rav Sa’adya Gaon u-Ben Me’ir,” 146-50.

³¹⁹ כי הכת’ תלה את החגים בזמני השנה כדי שלא יקיפו המועדים מזמן לזמן כדרך שמקיפין [לאשר] חדשיהם חדשי הלבנה; Emmanuel, *Teshuvot ha-Geonim ha-Ḥadashot*, 149-50. For the claim of a Byzantine author that Passover must occur in the spring, “unlike the Ishmaelites,” see Ankori, *Karaites in Byzantium*, 271n54.

³²⁰ והחשבון הזה שבידינו שהוא סוד העיבור היה בידיהם של ישראל מימות משה רבינו; Emmanuel, *Teshuvot ha-Geonim ha-Ḥadashot*, 150. This position is repeated in an anonymous geonic-era responsum, probably from a Palestinian gaon; see Friedman, “Minhag Avoteikhem be-Yadeikhem,” 587; on the authorship of that responsum, see there, 602-603.

extra month. In his view, the rabbis thus integrated the cycle with the rules for intercalation set forth in rabbinic literature.³²¹

Several other Rabbanites followed Sa'adya to varying degrees. Hananel ben Hushiel repeated many of Hayya's claims.³²² The Palestinian gaon Evyatar ha-Kohen (c. 1042 - c. 1112) repeated several assertions found in Sa'adya's writings and in *Pirquei de-R. Eliezer*,³²³ but held that the prerogative to intercalate the calendar was exclusively that of Palestinian Jewry.³²⁴ Judah Ibn Bil'am claimed that since David had said to Jonathan that the New Moon (*hodesh*) would occur on the morrow (1 Sam. 20:5), the calendar

³²¹ Emmanuel, *Teshuvot ha-Geonim ha-Hadashot*, 151. This position also appears in a letter that Hayya sent to Elhanan ben Shemariah of Fustāt; see B.M. Lewin, "Teshuvat Rav Hayya Gaon z"l 'al Davar Shenei Yamim Tovim Shelgaluyot, u-Teshuvat Rabbeinu Yosef," *Ginzei Qedem* 4 (1930): 36; and idem, *Oṣar ha-Geonim, Masekhet Rosh ha-Shanah, Heileq ha-Teshuvot*, 5:41 (§47). On Elhanan, see Elinoar Bareket, *Fustat on the Nile: The Jewish Elite in Medieval Egypt* (Leiden: Brill, 1999), 205-222.

³²² See the lengthy quotation in Baḥya ben Asher, *Bei'ur 'al ha-Torah*, ed. Chavel, 2:85-88 (Ex. 12:2); and the treatment in Bornstein, "Maḥloqet Rav Sa'adya Gaon u-Ben Me'ir," 147n1. This position appears in many places in Hananel's commentary on the Talmud; see Kasher, *Torah Shleimah*, 13:46-48. The same claims appear in Abraham bar Ḥiya's report of Hayya's views, adding that Moses taught the mathematical calculation of the calendar to Israel; *Sefer ha-'Ibur*, ed. Filipowski, 97 (3:7). In this version, Hayya argued that earlier generations adjusted the mathematical calculation of the calendar as necessary and concluded that historical dates (*seder 'olam*) cannot be known with certainty. Mann, "Gaonic Studies I," 239, suggested that this may be a criticism of the account in *Pirquei de-R. Eliezer*. He added that the claim of Mosaic origin of the intercalated calendar is an interpolation; however, it is consistent with Hayya's statement in the letter to Nissim.

³²³ For the claim that the debate between R. Joshua and Rabban Gamliel demonstrates that the head of the court, alone, possesses the "secret of intercalation" (*sod ha-'ibur*); see Schechter, *Saadyana*, 95 line 22; and Moshe Gil, "Megillat Eviyatar – Maqor le-Toldot Ma'aviqah shel Yeshivat Yerushalayim be-meḥṣat ha-sheniya shel ha-me'ah ha-11 (qeri'ah ḥadashah shel ha-Megillah)," in *Peraqim be-Toldot Yerushalayim bi-Yemei-ha-Beinayim*, ed. Benjamin Z. Kedar (Jerusalem: Yad Ben-Zvi, 1979), 94 line 22. (On the shift of meaning of *sod ha-'ibur* from "council of intercalation" to "secret of intercalation," see Stern, *Calendar and Community*, 189-91.) For the claim that the court began accepting witnesses only after the criticism of Zadok and Boethus, see Schechter, *Saadyana*, 97 lines 24-25; and Gil, "Megillat Eviyatar," 96 lines 24-25. Hananel ben Hushiel also repeated this argument; see Baḥya ben Asher, *Bei'ur 'al ha-Torah*, ed. Chavel, 2:88.

³²⁴ See Schechter, *Saadyana*, 102; and Gil, "Megillat Eviyatar," 91. See the claim that the Palestinian Rabbi Judah the Prince had instituted the *Arba'ah She'arim*; Schechter, *Saadyana*, 102; and Gil, "Megillat Eviyatar," 92-93; see also Schechter, *Saadyana*, 84n2. See the treatment in Bornstein, "Maḥloqet Rav Sa'adya Gaon u-Ben Me'ir," 149-51; and Gil, "Megillat Eviyatar," 70. This is similar to a claim made by Ben Meir; see Stern, *Calendar and Community*, 178n91. See also Rustow and Stern, "The Jewish Calendar Controversy of 921-22," 81-82.

must have been based on calculation in their time. How else could David have known when the New Moon would appear?³²⁵ The Byzantine Rabbanite, Tobias ben Eliezer of Kastoria (late 11th c.), wrote that before the exile, months were based on testimony, but afterwards, they were based on the mathematical calculation first employed by Adam.³²⁶ While Abraham Ibn Ezra rejected Sa'adya's approach, he affirmed a tradition of the sages, transmitted from the prophets, according to which the calendar follows the mathematical calculation during the exile.³²⁷ In short, while some Rabbanites rejected certain aspects of Sa'adya's claims about the Rabbanite calendar, they agreed that many of its elements originate with God, Moses, or the ancient prophets.

The Second Day of Festivals in the Diaspora

The practice of observing two days of biblical festivals other than the Day of Atonement, in the diaspora, in order to eliminate any doubt about the dates of festivals,

³²⁵ Shraga Abramson, “*Sefer ha-Tanjīs* (‘ha-Šimud’) le-Rav Yehuda ben Bil’am,” in *Sefer Hanokh Yalon: Qoveš Ma’amarim*, eds. Saul Lieberman et al. (Jerusalem: Qiryat Sefer, 1963), 107-8. On anti-Qaraism in Ibn Bil’am’s biblical commentaries, see there, 60. The reference to Ibn Bil’am’s commentary on Ezek. 18:6 should be to *REJ* vol. 45. See also Neḥemya Allony, “Ibn al-‘Am, Bal’am, ve-Ibn Bal’am ha-Balshan voha-Parshan ve-hu ha-Meshorer voha-Payṭan ve-hu ba’al ha-Halakhah voha-Pulmusim,” in *Studies in Jewish Religious and Intellectual History: Presented to Alexander Altmann on the Occasion of his Seventieth Birthday*, eds. Siegfried Stein and Raphael Loewe (University of Alabama Press, 1979), 45 (Hebrew pagination). Bornstein reported that Poznański identified a manuscript of Ibn Bil’am’s commentary on 1 Sam. 20 that included this argument, but it is possible that this was a manuscript of *Kitāb al-Tanjīs*; “Maḥloqet Rav Sa’adya Gaon u-Ben Me’ir,” 147n1. A nearly identical claim appears in the name of the tenth-century R. Meshulam bar Qalonymos of Lucca in R. Moses ben Jacob of Coucy, *Sefer Mišvot ha-Gadol* (Venice, 1547), 123b, suggesting, perhaps, a shared geonic-era source.

³²⁶ Ankori, *Karaites in Byzantium*, 270n53. See also Stern, *Calendar and Community*, 213, 234-35. On anti-Qaraite polemic in this work, see Israel Ta-Shma, “Midrash Leqaḥ Tov – Reqa’o ve-Ofyo,” in *Keneset Meḥqarim: ‘Iyunim be-Sifrut ha-Rabbanit bi-Yemei ha-Beinayim* (Jerusalem: Bialik Institute, 2004), 3:265-77.

³²⁷ Abraham Ibn Ezra, *Peirushei ha-Torah*, ed. Weiser, 3:79, 3:82 (Lev. 23:4). See also his comments to Ex. 12:2 (2:70-74), and idem, *Sefer ha-Ibur*, ed. Solomon Zalman Ḥayim Halberstam (Lyck: L. Silbermann, 1874), 11b.

arose in a period when Jews outside of Palestine were uncertain that they would learn of the New Moon's arrival in a timely manner. An early talmudic statement linked this practice (*yom tov sheini shel galuyot*) to doubts about the calendar, but a later view suggested it was motivated by concerns about "persecution" (*shemada*) (bBeṣ 4b).³²⁸ In the geonic period, Qaraites criticized the Second Day of Festivals, forcing Rabbanites to justify its continued observance.³²⁹ How, asked Qirqisānī, could divine law admit divergent practices (*ikhtilāf*), in which the Palestinians observe one day and Babylonians two? He argued that, from the Palestinian perspective, Babylonians violate the prohibition of adding to the law, while Babylonians perceive Palestinians as violating it by subtraction ("Neither add to it nor take away from it"; Deut. 13:1)!³³⁰

Nissim of Qayrawān quoted Sa'adya's *Commentary on Exodus* as having dismissed the idea that there had ever been doubt about the dates of the festivals. Rather, Sa'adya asserted, God instructed Moses that Jews in Palestine were to observe one day of festivals and Jews in the diaspora, two.³³¹ Elsewhere, Sa'adya offered the somewhat

³²⁸ Stern proposed that the second defense was offered as the calendar became more predictable, and that "persecution" refers either to breaks in communication between Palestinians who fixed the calendar and Babylonians, or to attacks on local Babylonian experts; "The Second Day of Yom Tov in the Talmudic and Geonic Literature," *World Congress of Jewish Studies* 11, C: Thought and Literature, volume 1: Rabbinic and Talmudic Literature (1993): 49-55; and idem, *Calendar and Community*, 171, 174n79, 245-46. See also Jacob Katz, "The Orthodox Defense of the Second Day of Festivals," in *Divine Law in Human Hands: Case Studies in Halakhic Flexibility* (Jerusalem: Magnes, 1998), 255-60.

³²⁹ Nissim made the anti-Qaraite context explicit; see Emmanuel, *Teshuvot ha-Geonim ha-Hadashot*, 148; and Ben-Sasson, *Ṣemīḥat ha-Qehilah ha-Yehudit*, 173.

³³⁰ Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 1:57, 4:814. This was part of Qaraite exploitation of discrepancies in practice between Palestinian and Babylonian Rabbanites; see Brody, *Geonim of Babylonia*, 110-13; Ze'ev Elkin, "Ha-Nusah ha-Qara'i shel 'Sefer ha-Hiluqim bein benei Ereṣ-Yisrael le-vnei Bavel'," *Tarbiz* 66, no. 1 (1997): 101-11; and Mordechai Akiva Friedman, "'Al Terumat ha-Genizah le-Ḥeiqer ha-Halakhah," *Mada 'ei Yahadut* 38 (1998): 279-80.

³³¹ See Emmanuel, *Teshuvot ha-Geonim ha-Hadashot*, 148. Zucker ("Shenei Qeṭa'im," 16n6; and "Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'i," 403n64a) claimed that he found relevant fragments of Sa'adya's commentary to Ex. 12. In personal communication (Nov. 18, 2014), David Sklare confirmed the existence

circular argument that Moses must have known about the Second Day of Festivals; had he not, its observance would violate the prohibition of adding to the Torah. However, wrote Sa'adya, this requirement was not fully revealed until Jews in exile needed it.³³²

In his *Kitāb al-Tamyīz (Book of Distinction)*, Sa'adya may have gestured toward consensus (*ijmā'*), at least rhetorically, claiming that the entire community (*jamā'a*) had heard from prophets and witnessed the prophetic practice of observing one day of Festivals in Palestine and two in the diaspora. He justified the observance of different practices in different places by pointing out that the requirement to offer the Paschal sacrifice depends on one's location (Num. 9:10).³³³ Sa'adya further emphasized that the prohibition of adding to the law pertains only to “*everything that I command you*” (Deut. 13:1) and not to “*everything that I write for you.*” He maintained that since the Second Day of Festivals is a transmitted tradition, and therefore included in “*everything that I command you,*” its observance does not violate this prohibition.³³⁴

In a letter to the Jews of Qabīs, in the Maghreb, Hayya claimed that the prophets had instituted the Second Day of Festivals,³³⁵ and in a letter to Elḥanan ben Shemiah (d.

of these fragments and that Sa'adya based the Second Day of Festivals on *naql* and *āthār*. On the supposed lack of doubt regarding the calendar, see also Friedman, “Minhag Avoteikhem be-Yadeikhem,” 590.

³³² Zucker, “Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'i,” 403.

³³³ Zucker, “Qeṭa'im mi-Kitāb Taḥṣīl al-Sharā'i,” 407.

³³⁴ Hartwig Hirschfeld, “The Arabic Portion of the Cairo Genizah at Cambridge. (Third Article.): Saadyāh Fragments,” *JQR* 16, no. 1 (o.s.) (1903): 103-104. See also Poznański, “Addenda and Corrigenda,” 233-34; Brody, *Sa'adyah Gaon*, 35, 150-51; and Michael G. Wechsler, *The Book of Conviviality in Exile (Kitāb al-Īnās bi'l-Jalwa): The Judaeo-Arabic Translation and Commentary of Saadia Gaon on the Book of Esther* (Leiden: Brill, 2015), 377-79. Brief discussion of Sa'adya's claims appears in Friedman, “Minhag Avoteikhem be-Yadeikhem,” 574n134, 582-83.

³³⁵ וזאת הגזירה מימות הנביאים הראשונים וכן הנהיגו את ישראל מתחלת הגלויות שעושיין ימים טובים שני ימים; A. Marmorstein, *Teshuvot ha-Geonim, 'im Haqdamah ve-He'arot* (Deva, 1928), 27; and Lewin, *Oṣar ha-Geonim, Masekhet Rosh ha-Shanah, Heileq ha-Teshuvot*, 5:38-39 (§43). For the addressee, see Emmanuel, *Teshuvot ha-Geonim ha-Hadashot*, 148n15. On Qabīs, see Menaḥem Ben-Sasson, “The Jewish Community of Gabes in the 11th Century,” in *Communautés juives des marges sahariennes du Maghreb*, ed. Michel

1026), he identified those prophets as Ezekiel and Daniel (probably because they lived in Babylonia).³³⁶ In a responsum to Nissim of Qayrawān, Hayya reiterated Sa'adya's view about the prohibition of adding to the Torah. The prophets who began this practice, he wrote, would never have dreamed of adding to the Torah. Hayya further argued that the rationale for the Second Day of Festivals is analogous to the case of one lost in a desert. Uncertain whether a given day is Wednesday or Thursday, the traveler would rest on two days in order to avoid violating the Sabbath. Likewise, Jews beyond the borders of the Land of Israel observe the Second Day of Festivals, lest they desecrate the day. Hayya wrote that God commanded Israel to observe the Second Day of Festivals precisely in order to avoid similar situations of doubt, perhaps through the prophet Joshua, for in Joshua's time, Jews first settled Palestine and began to travel from there.³³⁷ Hayya tempered Sa'adya's position about the origins of the Second Day of Festivals, explaining it in a way that better accorded with historical events, but he affirmed both the prophetic origin of this practice and the claim that only divine law is authoritative.³³⁸

Abitbol (Jerusalem: Yad Ben-Zvi, 1982), 265-84. Friedman, "Minhag Avoteikhem be-Yadeikhem," 600n246, argued that this responsum only repeats the claims of the letter to Qabīs but does not preserve the original text.

³³⁶ פלמא כאנת אלגלות ואלאנביא האצ'רין סנו לכל ... ועמלת אלאמה בד'לך פי בבל ואלאנביא האצ'רין פי גמיע אלבלדאן ובה עמל אלאנביא מתל יחזקאל ודניאל; Lewin, "Teshuvat Rav Hayya Gaon," 36; and idem, *Oṣar ha-Geonim, Masekhet Rosh ha-Shanah, Heileq ha-Teshuvot*, 5:42 (§47). See also Assaf, *Teshuvot ha-Geonim*, 214 (§36). For another example of geonic-era use of the term Sunna, see Sklare, *Samuel ben Ḥofni Gaon*, 82n51, 84. On Elhanan, see above, n321.

³³⁷ Emmanuel, *Teshuvot ha-Geonim ha-Ḥadashot*, 153-54; on divine commands in cases of doubt, see further, 155-56.

³³⁸ See similarly Lewin, "Teshuvat Rav Hayya Gaon," 37. Lewin ascribed this responsum to R. Joseph *rosh ha-seder* (Egypt; 12th / 13th c.); see however, Friedman, "Minhag Avoteikhem be-Yadeikhem," 560n8. Further treatment of Hayya's position appears there, 580n178, 585-86, 600. See also, Ben-Sasson, *Ṣemihāt ha-Qehilah ha-Yehudit*, 49-50n109. Note the claims of Jacob ben Ephraim al-Shāmī, cited in Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 1:136-37, treated briefly in Friedman, "Minhag Avoteikhem be-Yadeikhem," 594-95. Compare also Gerald Blidstein, "Ha-Qesher bein Samkhut Taqqanot Ḥazal u-Veit Midrash be-Maqor Ashkenazi Qadum," *Sinai* 112 (1993): 163-65.

Hanukah

The earliest geonic source that mentions the legal basis of Hanukah of which I am aware, evinces no qualms about admitting its rabbinic status. It is by Ṣemaḥ ben Paltoy Gaon (Pumbedita; 872-90), who was active prior to most geonic anti-Qaraite polemic.³³⁹ In response to the Qaraite charge that this holiday was a rabbinic innovation,³⁴⁰ however, many Rabbanites either argued that Hanukah was divinely ordained, or that it was based on Mosaic prophecy.

One early occurrence of this theme appears in *Megillat Antiochus* (*Scroll of Antiochus*), a work whose date has been subject to dispute since the nineteenth century.³⁴¹

³³⁹ מאי טעמ' דאתיא בקל וחומר מנר של חנוכה ומה התם דמצוה דרבנן אסור להרצות מעות כנגד נר של חנוכה סוכה דאוריית' לא כל שכן וכי תימ' מאי טעמ' לא פרטי רבנן לא צריכה פרט ליה בנר של חנוכה דרבנן וכל שכן מצוה דאוריית' דאוריית'; Emmanuel, *Teshuvot ha-Geonim ha-Hadashot*, 69 (§61). The beginning of this responsum appears in Marmorstein, *Teshuvot ha-Geonim*, 49 (§12; not §1, as Emanuel has), and Lewin, *Oṣar ha-Geonim, Masekhet Sukkah, Heileq ha-Teshuvot*, 6:16 (§28). Emmanuel pointed out that R. Elijah Menahem ben Moses of London (c. 1220-84) cited this material in the name of the *She'iltot*; see Elijah Menahem ben Moses, *Peirushei Rabbeinu Eliyahu mi-Londres u-Fesaqav*, ed. Mordecai Yehuda Leib Sacks (Jerusalem: Mosad ha-Rav Kook, 1956) 34 (Hebrew pagination). See also J.N. Epstein, "Prishat Rabbeinu Eliyahu Menahem b-R. Moshe me-Londres," *Mada'ei ha-Yahadut* 1 (1926): 65.

³⁴⁰ See *Hilluq ha-Qara'im ve-ha-Rabbanim* ascribed to Elijah ben Abraham (11th / 12th c.) in Pinsker, *Liquṭei Qadmoniyot*, 102 (appendices, English pagination); this text is treated in Leon Nemoy, "Elijah Ben Abraham and his Tract against the Rabbanites," *HUCA* 51 (1980): 63-87; and Astren, *Karaite Judaism and Historical Understanding*, 141-57. "What is more strange," wrote Qirqisānī, "than a person pronouncing a blessing over the Sabbath-eve lamp and saying in the blessing that God commanded it? Likewise, over the lamp of Hanukah?"; *Kitāb al-Anwār*, ed. Nemoy, 1:30; trans. in Leon Nemoy, "Al-Qirqisānī's Account of the Jewish Sects and Christianity," *HUCA* 7 (1930): 349. On Qaraite anti-Hanukah claims, see Baron, *SRHJ*², 5:226, 5:407; Ankori, *Karaites in Byzantium*, 282; Nemoy, *Karaite Anthology*, xxiv; and Astren, *Karaite Judaism and Historical Understanding*, 73-74. Sa'd Ibn Kammūna listed Hanukah among the differences between Qaraites and Rabbanites; see Leon Nemoy, "Ibn Kammūnah's Treatise on the Differences between the Rabbanites and the Karaites," *PAAJR* 36 (1968): 110; *JQR* 63, no. 2 (1972): 115-16.

³⁴¹ Also known as *Megillat* (or *Sefer*) *Beit Ḥashmonai*. For bibliography, see Meir Rafeld, "Megillat Antiochus – Bibliografiya Nivḥeret," in *Minhagei Yisrael – Meqorot ve-Toldot*, ed. Daniel Sperber (Jerusalem: Mosad ha-Rav Kook, 1995), 5:117-20. For a list of editions, see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 331-32; and Ze'ev Safrai, "Appendix: The Scroll of Antiochus and the Scroll of the Fasts," in *The Literature of the Sages*, 2:238n2-3. For dating, see Aryeh Kasher, "The Historical Background of *Megillath Antiochus*," *PAAJR* 48 (1981): 208-210; add Emil

This work's closing verses assert that the Hasmoneans and the entire people of Israel vowed to observe Hanukah in order "to inform the Children of Israel to make these eight days of happiness and joy, like the holidays that are written in the Torah (*ke-yomei mod'aya de-khtivin be-orayta*)."³⁴² As the rhetoric of this claim suggests that *Megillat Antiochus* was written when the observance of Hanukah was contested, several scholars date this text to a time after the rise of Qaraism.³⁴³ Similarly, the geonic-era *Midrash le-Hanukah* asserts, "God arose and established eight days of Hanukah for them, which was

Schrürer, *A History of the Jewish People in the Time of Jesus Christ* (Edinburgh: T & T Clark, 1897-1898), 165. Menaḥem Zvi Kadari showed that the Aramaic of *Megillat Antiochus* is similar to the Aramaic of *Onqelos*; "Be-Ezo Aramit Nikhtavah *Megillat Antiochus*?" *Lěšonénu* 23 (1959): 143-45; and idem, "*Megillat Antiochus* ha-Aramit," *Bar Ilan* 2 (1964): 210-13. *Onqelos* as it is known today was probably compiled between the sixth and ninth centuries; see Safrai "Appendix: The Scroll of Antiochus and the Scroll of the Fasts," 239n15; Strack and Stemberger, *Introduction to the Talmud and Midrash*, 331; and the views cited in Raphael Binyamin Posen, "Targum mi-Sinai," *Sidra* 15 (1999): 96n2. Sa'adya was the first to mention *Megillat Antiochus*; a reference in *Halakhot Gedolot* is suspect; Louis Ginzberg, "Antiochus, Scroll of (*Megillat Antiochus*)," *The Jewish Encyclopedia* (New York, 1901), 1:637. The *editio princeps* of *Halakhot Gedolot* ([Venice, 1548], 141b, repr. [Vienna, 1811], 104b) refers to *Megillat Beit Ḥashmonai*, but the Rome manuscript (Ezriel Hildesheimer, ed. *Halakhot Gedolot: 'al pi Ketav-yad Romi* [Berlin: H. Itzkowski, 1888], 615) has *Megillat Ta'anit*. Hildesheimer preferred the latter reading in his *vivarium* edition (3:335-36). Sa'adya referred to *Megillat Antiochus* in the Arabic version of his *Sefer ha-Galuy*; see Harkavy, *Zikhron la-Rishonim, Ha-Sarid voha-Palit mi-Sefer ha-Egron ve-Sefer ha-Galuy*, 151 lines 15-18, 163 lines 6-8, 181 lines 4-10 (citing verse 25). For another early reference, see Julian Obermann, *The Arabic Original of ibn Shāhīn's Book of Comfort, Known as the Ḥibbūr Yaphē of R. Nissīm b. Ya'aqobh* (New Haven: Yale University Press, 1933), 2; and Nissim ben Jacob, *An Elegant Composition Concerning Relief after Adversity*, trans. William M. Brinner (New Haven: Yale University Press, 1977), 6.

³⁴² להודיעא לבני ישראל למעבד הדין תמניא יומין חדוא ויקר כיומי מודיעיא דכתיבין באורייתא; Menaḥem Zvi Kadari, "*Megillat Antiochus* ha-Aramit," *Bar Ilan* 1 (1962): 101; see variants there. On the resemblances with Est. 9:18-32, which promotes the observance of Purim, see Kasher, "The Historical Background," 218-19n32.

³⁴³ Adolf Neubauer, "Two Monographs by Dr. M. Gaster," *JQR* 6, no. 3 (o.s.) (1894): 575, followed by Strack and Stemberger, *Introduction to the Talmud and Midrash*, 331; Atlas and Perlmann, "Saadia on the *Scroll of the Hasmoneans*," 22; and Kasher, "The Historical Background," 217, 229. Alternatively, Robert Brody suggested to me that the comparison between Hanukah and the biblical festivals may accept that Hanukah is a later creation which is to be observed *as if* it were of biblical origin.

not a holiday until now.”³⁴⁴ Inclusion of Hanukah in enumerations of the 613

commandments also affirms its divine origin.³⁴⁵

Sa’adya was among those who counted Hanukah among the 613 commandments, both in his liturgical enumerations³⁴⁶ and in his *Kitāb al-Sharā’i*.³⁴⁷ In his Introduction to *Megillat Antiochus*, Sa’adya explained that he was inspired to defend Hanukah because some Jews (i.e., Qaraites) rejected it.³⁴⁸ He claimed that the pious ancestors (*aslāf*)

³⁴⁴ ועמד הק”ב וקבע להם שמונה ימי חנוכה שלא היה מועד עד עשכיו Adolf Jellinek, *Bet ha-Midrash: Sammlung kleiner Midraschim und vermischter Abhandlungen aus der ältern jüdischen Literatur* (Leipzig, 1853), 1:135. Mirky’s edition of the *She’iltot* (1:185) contains a homily that claims that God established Hanukah and that King David prophesied about it. On this text, see Moshe Hayim Leiter, “She’ilta de-Rav Aḥai be-‘Inyanei Hanukah,” *Yeshurun* 19 (2007): 25-26. Robert Brody suggested that it is unlikely that this passage is original to Aḥai’s *She’iltot*, as it is only preserved in one manuscript; see his *Le-Toldot Nusah ha-She’iltot* (Jerusalem: ha-Aqademyah ha-Ameriqa’it le-Mada’ei ha-Yahadut, 1992), 92n106. On the *she’ilta* genre, see Brody, *Geonim of Babylonia*, 202-207.

³⁴⁵ See above, n191. Note the comments of Eliezar of Metz, *Sefer Yirei’im*, 496 (§429 [§100]); and Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 85n378. See also Perla, *Sefer ha-Miṣvot la-Rasag*, 1:507-508.

³⁴⁶ Sa’adya, *Kitāb Jāmi’ al-Ṣalawāt*, eds. Davidson et al., 158 line 20 (*piyut*), 202 line 245 (*azharot*). Perla, *Sefer ha-Miṣvot la-Rasag*, 1:507, argued that Sa’adya counted a commandment to observe Hanukah, not a commandment to light the Hanukkah candles. See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9n58.

³⁴⁷ וצמן אלא תאר אן כון יום פריג לנו מן ולד עמלק יתכד’ונה עידא וכתב זאת זכרון בספר ואד’א נצר אללה אלבני לוי Oxford MS Heb. e.45.65a, following the Friedberg Genizah Project transcription; published by Zucker, “‘Iyunim ve-He’arot,” 98. Zucker offered the shelfmark 21.165 from the Cambridge collection, which does not exist. Zucker’s text did not include the last sentence; it is published in translation in Sabbato, “Ha-Im hekir ha-Rambam,” 760; and Y. Zvi Stampfer, “Ha-Ništaveinu ba-Torah la-Ḥug et ha-Ḥanukkah? ‘Iyun be-Kivtei Rav Sa’adya Gaon uve-Pulmosav,” in *Nero Ya’ir: Qoveṣ Ma’amarim le-Ḥanukah le-Zikhro shel Oded Ḥamadi*, eds. Ariel David and Yosef Parḥi (Qiryat Ono: Mekhon Mishnat ha-Rambam, 2013), 418-19.

Sa’adya wrote that “tradition obligated” (*wa-ḏammāna al-āthār*) the observance of Purim. Sabbato, “Ha-Im hekir ha-Rambam,” 760, translated *ḏammāna* as “guaranteed,” reading *ḏamāna* (form I); Stampfer, “Ha-Ništaveinu ba-Torah la-Ḥug et ha-Ḥanukkah,” 419n34, preferred the form II meaning of “included.” Zucker, “‘Iyunim ve-He’arot,” 98, agreed with Stampfer. Blau preferred “obligated”; *Dictionary*, 388, s.v. ضَمَّنَ. Note Sa’adya’s use of the fifth form of *ḏ-m-n* to state “tradition included” (*taḏammanat al-āthār*) that the weekday prayer is comprised of 18 blessings, based on the number of verses in the Song at the Sea (Ex. 15:2-19); Ben-Shammai, “Meṣi’ah aḥat she-Hi shetayim,” 325. On this root, see Adrian Gully, “Taḏmīn, ‘Implication of Meaning,’ in Medieval Arabic,” *JAOS* 117, no. 3 (1997): 466-80.

³⁴⁸ Atlas and Perlmann, “Saadia on the *Scroll of the Hasmoneans*,” 6 lines 9-11. See Franz Rosenthal, “Saadyah’s ‘Introduction to the *Scroll of the Hasmoneans*,” *JQR* 36, no. 3 (1946): 299. This Introduction is preserved in two recensions. (1) Atlas and Perlmann, “Saadia on the *Scroll of the Hasmoneans*,” 6-21; repr. in Yosef Kafih, *Daniel ‘im Targum u-Feirush Sa’adya ben Yosef Fayyūmī u-*

transmitted Hanukah through a concurrent tradition (*naqalahu naqlan mutawāṭiran*),³⁴⁹ but wondered if the prophets had also announced (*bashshara*) it. Unsurprisingly, he identified several prophecies for the Maccabean victory (Deut. 33:11, Joel 4:7-8, and Zekh. 9:13-16) and endeavored to prove the relevance of these verses.

According to Sa'adya, a phrase in Moses' final blessing to the tribe of Levi (Deut. 33:11), "*Smite the loins of his foes, and let his enemies rise no more*," concerns a future victory of the Levites over their enemies. Sa'adya engaged in the following excursus in order to demonstrate that these "*enemies*" are the Greeks. Noting that the usual object of the verb "smite" is the head (e.g., Hab. 3:13, Ps. 110:6), Sa'adya focused on the verse's specification of "loins," and linked it to Nebuchadnezzar's vision of the Four Kingdoms (Dan. 2:37-45). According to Sa'adya, Moses highlighted the loins because they are the "most solid" (*mu'tamad*) part of the leg,³⁵⁰ and the legs and thighs in Nebuchadnezzar's vision represent the third kingdom, namely the Greeks.³⁵¹ Furthermore, wrote Sa'adya, "*let his enemies rise no more*" must refer to the Greeks because *Megillat Antiochus*

Feirush Tanḥum ha-Yerushalmi (Jerusalem: Mekhon Mishnat ha-Rambam, 1994), 221-25. See Rosenthal's comments on this text; "Saadyah's 'Introduction to the *Scroll of the Hasmoneans*,'" 297-302. (2) T-S A45.15, in Simon Hopkins, *A Miscellany of Literary Pieces from the Cambridge Genizah Collections: A Catalogue and Selection of Texts in the Taylor-Schechter Collection, Old Series, box A45* (Cambridge: Cambridge University Library, 1978), 50-53; and Stampfer, "Ha-Ništaveinu ba-Torah la-Hug et ha-Ḥanukkah," 424-26; see there, 410n1, for publication history. Zucker claimed to have found a fragment of Sa'adya's commentary to Daniel that makes similar arguments, which he listed under shelfmark T.S. 6.121 ("Iyunim ve-He'arot," 98). This shelfmark does not exist. Zucker's transcription largely matches Atlas and Perlmann, "Saadia on the *Scroll of the Hasmoneans*," 8-12.

³⁴⁹ See Cohen's comments in Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, lii.

³⁵⁰ Translation based on Hopkins, *A Miscellany of Literary Pieces*, 53.

³⁵¹ "The messenger [i.e., Moses] specifically referred to them [i.e., the Greeks]" (ארסול אליהם) (אשאר כ'אצה); Hopkins, *A Miscellany of Literary Pieces*, 52, fol. 3r lines 11-12.

reports that the Greek kingdom ceased after the revolt of the Maccabees, who were themselves Levites.³⁵²

Later Rabbanites asserted Hanukah's divine origins. Hefes ben Yaṣṣīah included Hanukah in his enumeration of the 613 commandments.³⁵³ A passage from Nissim of Qayrawān's *Megillat Setarim*, preserved in Naḥmanides' *Commentary on the Torah*, quotes a *midrash* which asserts that God promised Aaron that his descendents, the Hasmoneans, would "make for Israel miracles, salvations, and a dedication (*ḥanukah*) that is called by their names."³⁵⁴

³⁵² See the variant readings to verse 65 in Kadari, "Megillat Antiochus ha-Aramit," 101. I have reconstructed Sa'adya's argument from both recensions of this text. Stampfer noted that part of Sa'adya's interpretation appears in Julius Theodor and Hanokh Albeck, eds., *Midrash Bereishit Rabbah* (Jerusalem: Wahrman Books, 1965), 3:1274 (§99). Citing unpublished Genizah fragments, Stampfer also explained that Qirḳisānī, Yefet ben Eli, and Jeshua ben Judah read Deut. 33:11 to refer to Korah, Uzziah, or Jeroboam ("Ha-Ništaveinu ba-Torah la-Ḥug et ha-Ḥanukkah," 411-12). Jeshua ben Judah even quoted *Sifrei 'al Devarim*, ed. Louis Finkelstein (New York: Beit ha-Midrash ha-Rabbanim be-America, 1969), 409 (§352), for support.

³⁵³ See above, n194 and n197.

³⁵⁴ אמר לו הקדוש ברוך הוא למשה דבר אל אהרן ואמרת אליו יש חנוכה אחרת שיש בה הדלקת הנרות ואני עושה בה
לישראל על ידי בניך נסים ותשועה וחנוכה שקרויה על שמם והיא חנוכת בני חשמונאי
Yosef Ofer and Jonathan Jacobs, *Tosafot Ramban le-Feirusho la-Torah: she-Nikhtevu be-Ereṣ Yisrael* (Jerusalem: ha-Mikhlalah ha-Aqademit Herzog, 2013), 428; see also Naḥmanides, *Peirush ha-Ramban 'al ha-Torah*, ed. Charles Ber Chavel (Jerusalem: Mosad ha-Rav Kook, 1962), 2:220 (Num. 8:2). Naḥmanides only had access to this text after arriving in Palestine, and this comment was a later addition to his *Commentary*; Ofer and Jacobs, *Tosafot Ramban le-Feirusho la-Torah*, 429-30; and Jonathan Jacobs, "Sefarim Ḥadashim she-Hitagalu la-Ramban be-Hagi' o le-Ereṣ Yisrael," *JSIJ* 11 (2012): 111-12. This text was first noticed by Samuel Poznański, *Liquṭim min Sefer Megillat Setarim le-Rabbeinu Nissim be-Rav Ya' aqov mi-Qayrawān* (Budapest, 1922), 49-50, who noted that Nissim's *midrash* is not found elsewhere. Simḥa Assaf published an index to this work by one of Nissim's contemporaries. Under chapter 139, that text reads: "the fact that the Torah placed the section of *be-ha' alotekha* [Num. 8:1] next to *zot ḥanukat ha-mizbeaḥ* [Num. 7:88] is for a reason (*yesh lo ta'am*)" (וזה שהסמך הכת' פרשת בהעלותך לזאת חנוכת המזבח יש לו טעם); "Sefer Megillat Setarim le-Rav Nissim bar Ya' aqov mi-Qayrawān," *Tarbiz* 11, no. 3 (1940): 254 line 139; repr. in Nissim ben Jacob, *Hamishah Sefarim*, ed. Abramson, 280.

Aramaic Bible Translations (Targumim)

The claim that God authorized all non-scriptural practices is also found in geonic-era ascriptions of prophetic authority to the Aramaic translations of the Bible, known as *Targumim*. These claims may have been triggered by the decline in the use of *Targumim*, as they were rendered obsolete by the rise of Arabic,³⁵⁵ or by Qaraite criticisms of *Targum Onqelos*, the Aramaic translation of the Pentateuch.³⁵⁶

Naṭronai bar Hilay (Sura; mid. 9th c.) penned an early defense of *Targum Onqelos*, writing that the “rabbis linked it to verses” (*‘al qra’i asmakhuhu rabannan*), and that “the sages were meticulous in the *Targum*” (*diqdequ ḥakhamim be-targum*).³⁵⁷ References to prophetic authority appear later in the geonic period. Qirqisānī reported that unnamed Rabbanites viewed Jonathan ben ‘Uzziel, the presumed author of the *Targum of the Prophets*, as occupying the same “rank” (*tabaqa*) as Moses,³⁵⁸ and Hayya

³⁵⁵ See Phillip Alexander, “Notes on some Targums of the Targum of the Song of Songs,” in *Targum and Scripture: Studies in Aramaic Translations and Interpretation in Memory of Ernest G. Clarke*, ed. Paul V.M. Flesher (Leiden: Brill, 2002), 159; Avigdor Shinan, *Targum va-Aggadah bo: ha-Aggadah be-Targum ha-Torah ha-Arami ha-Meyuḥas le-Yonatan Ben ‘Uzziel* (Jerusalem: Magnes, 1992), 198; Brody, *Teshuvot Hilkhatiyot*, 154n7; Leeor Gottlieb, “Composition of Targums after the Decline of Aramaic as a Spoken Language,” *Aramaic Studies* 12, no. 1 (2014): 1-2; and below, n359. On continued use of the *Targumim* in Arabic-speaking communities, see Stefan Reif, “The Cairo Genizah and its Treasures with Special Reference to Biblical Studies,” in *The Aramaic Bible: Targums in Their Historical Context*, eds. D.R.G. Beattie and M.J. McNamara (Sheffield: Sheffield Academic Press, 1994), 42-43.

³⁵⁶ See Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 1:39-40, 1:121-22; treated in Meira Polliack, *The Karaite Tradition of Arabic Bible Translation: A Linguistic and Exegetical Study of Karaite Translations of the Pentateuch from the Tenth and Eleventh Centuries C.E.* (Leiden: E.J. Brill, 1997), 67-69. See also Posen, “‘Targum mi-Sinai,’” 102-105. On the use of the *Targumim* in the synagogue, see Ze’ev Safrai, “The Targums as Part of Rabbinic Literature,” in *The Literature of the Sages*, 2:245-47.

³⁵⁷ Lewin, *Oṣar ha-Geonim, Masekhet Megillah, Heileq ha-Teshuvot*, 5:30-31 (§107); Daniel Goldschmidt, *Seder Rav ‘Amram Gaon* (Jerusalem: Mosad ha-Rav Kook, 1971), 76-77; Brody, *Teshuvot Hilkhatiyot*, 152-53 (§45). On this passage, see also Posen, “‘Targum mi-Sinai,’” 100-102. On the similar phrase *ḥakhamim dayqanim*, see Fuchs, “Meqomam shel ha-Geonim,” 79-81. For an example of Naṭronai locating liturgical practices in prophetic antiquity, see Brody, *Teshuvot Hilkhatiyot*, 130 (§24).

³⁵⁸ Qirqisānī, *Kitāb al-Anwār*, ed. Nemoy, 1:121.

Gaon claimed that the *Targumim* are “an inherited *halakahah* from the days of the prophets.”³⁵⁹

The Origin of the Geonic Academies

The claim that divine input accompanied the establishment of the geonic academies appears in some of the earliest post-talmudic texts. The *Tanḥuma*, *Mishnat R. Eliezer*, and Pirqoy’s *Epistle* repeat the claim that God founded the two academies.³⁶⁰ A responsum ascribed to Ṣemaḥ ben Ḥayim Gaon concerning Eldad ha-Dani, a ninth-century pseudo-messianic figure, also asserts that the “the most essential (*iqar*) of the sages and prophets were exiled to Babylonia and they established the Torah and instituted the academy at the Euphrates. ... They constituted the chain of wisdom and of prophecy.”³⁶¹

³⁵⁹ הלכה ירושה מימות הנביאים; Ginzberg, *Ginzei Schechter*, 2:87; see there, 2:74-75. *Halakahah* here could mean “tradition” or “norm.” Mann assumed that the questioner in this responsum was from Qayrawān; “Addenda to ‘The Responsa of the Babylonian Geonim as a Source of Jewish History’ (*JQR* N. S., Vols. VII-X),” *JQR* 11, no. 4 (1921): 467. For similar claims, see Lewin, *Oṣar ha-Geonim*, *Masekhet Berakhot*, *Heileq ha-Teshuvot*, 1:18-20 (§33), 1:29 (§54); *Masekhet Megillah*, *Heileq ha-Teshuvot*, 5:5 (§8); *Masekhet Qiddushin*, 9:129-31 (§295-96); Louis Ginzberg, *Geonica* (New York: Jewish Theological Seminary of America, 1909), 2:61-62; Emmanuel, *Teshuvot ha-Geonim ha-Ḥadashot*, 63-64 (§55); and the sources in Kasher, *Torah Shleimah*, 17:315-19. Several of these sources are treated from a different perspective in Posen, “‘Targum mi-Sinai,’” 100-106. Note also Samuel ibn Naghrella ha-Nagid’s ascription of heretical motives to those who did not recite *Targum Onqelos*; Margaliyot, *Hilkhot ha-Nagid*, 92-94. However, Judah Ibn Quraysh identified lack of familiarity with Aramaic as the cause for decline of use of the *Targums*; Dan Becker, *Ha-‘Risāla’ shel Yehuda Ben Quraysh: Mahadurah Biqortit* (Tel Aviv: Tel Aviv University Press, 1984), 117.

³⁶⁰ See above, n159; and Lewin, “Mi-Shiyarei ha-Genizah,” 395-96.

³⁶¹ שעיקר החכמים והנביאים לבבל גלו והם יסדו את התורה וקבעו ישיבה בנהר פרת מימי יהויכין מלך יהודה ועד היום; Abraham Epstein, *Eldad ha-Dani: Sipurav ve-Hilkhotav* (Pressburg: Adolf Alkalay, 1891), 8. On the authorship of this responsum, see Gil, *Jews in Islamic Countries*, 336n203; and David J. Wasserstein, “Eldad ha-Dani and Prester John,” in *Prester John, the Mongols and the Ten Lost Tribes*, eds. C.F. Beckingham and B. Hamilton (Aldershot: Variorum, 1996), 223-24n17. On this line, see also Mann, “Gaonic Studies I,” 257; and Adiel Kadari, “‘All Drink from the Same Fountain’: The Initial Acceptance of the Halakhot of Eldad Ha-Dani into the Halakhic Discourse,” *Review of Rabbinic Judaism* 13, no. 2 (2010): 224-25.

Somewhat later, Sherira Gaon recounted that exiles to Babylon built the academies from bricks and dirt of the destroyed First Temple, and presented this as evidence that God moved from the Temple to the academies.³⁶² Writing from Spain, Judah ben Barzillay declared that the heads of the academies who (orally) transmit the Talmud in each generation received their traditions from Ezekiel, who had accompanied them in exile.³⁶³ The claims of divine guidance certainly aided in fundraising for the academies,³⁶⁴ and they were neither as expansive, nor as consequential, as claims about the origins of the Oral Torah. Common to both geonic-era claims however, was the legitimation of non-biblical institutions by claiming for them prophetic authority.³⁶⁵

Conclusion

Despite the fact that Sherira and Hayya occasionally criticized Sa'adya's portrait of rabbinic tradition, and reached somewhat different conclusions, the "maximalist"³⁶⁶ attempts of geonic-era Rabbanites to ascribe divine authority to the entire body of Jewish law left little room for forms of legislation that are of undeniably human origins, such as rabbinic decrees and ordinances (*gezeirot* and *taqqanot*).³⁶⁷ Ibn Dā'ūd seems to have

³⁶² Lewin, *Igeret Rav Sherira Gaon*, 72-73. Sherira claimed that even after Jews returned to Palestine, Exilarchs from the Davidic line continued to guide the Babylonian academies. On Exilarchic claims of Davidic descent, see Arnold Franklin, *The Noble House: Jewish Descendants of King David in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 2013), 41-43.

³⁶³ Judah ben Barzillay, *Peirush Sefer Yeşirah*, ed. Halberstam, 187.

³⁶⁴ This was Mann's approach; "Gaonic Studies I," 257.

³⁶⁵ See similarly Joseph David, "'Kede-Mefarsh be-Sifro shel Adam ha-Rishon': Toldot ha-Halakhah v'ha-Tefisah ha-Mitit shel ha-Historiyah ešel Aḥaronei Geonei Pumbetida," *Tarbiz* 74, no. 4 (2005): 582n18.

³⁶⁶ Sklare, *Samuel ben Hofni Gaon*, 206n98.

³⁶⁷ Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, lviii; and Blidstein, "Ra'ayon Torah shebe-'al Peh," 15-16. See also Harris, *How Do We Know This*, 78. Compare above, n215.

noted the omission of rabbinic enactments from legal epistemological thought of the geonic era. In the prologue to his *Sefer ha-Qabbalah (The Book of Tradition)*, he explained rabbinic decrees gesturing toward *ijmā'*: “The sages ... never taught anything ... of their own invention, except for the enactments (*taqqanot*) that were made by universal agreement (*haskamat kulam*).”³⁶⁸

Ibn Dā'ūd's perspective sheds little light on Rabbanite understandings of the talmudic distinction between *de-orayta* (biblical) and *de-rabbanan* (rabbinic) laws, terms that are widespread in geonic halakhic writings and responsa.³⁶⁹ Despite the fact that the geonim rarely enacted formal ordinances (*taqqanot*), and despite their depiction of themselves as passive transmitters of tradition, geonic authors clearly used their intellects when they applied received tradition to new cases, as authors of responsa and interpreters of the Talmud.³⁷⁰

Reading geonic-era legal epistemology in concert with contemporaneous Islamic thinking about oral tradition helps account for the central Rabbanite theses that revelation was all-encompassing, covering (almost) all subsequent legal innovations, and that specific non-biblical institutions are grounded in divine authority. The ideas that

³⁶⁸ וּלְעוֹלָם חֻמֵי תַלְמוּד וְכָל שֶׁכֵּן חֻמֵי מִשְׁנֵה אֲפִילוֹ דְּבַר קָטָן לֹא אָמְרוּ מִלְּבָם חוּץ מִן הַתְּקִנּוֹת שֶׁתִּיקְנוּ בְּהַסְכַּמַת כָּלָם; Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, 3 (English), 1 (Hebrew pagination). Translation follows Cohen, with slight changes. See Sklare, *Samuel ben Hofni Gaon*, 159-60n65.

³⁶⁹ Halbertal suggested that for the geonim, the terms “biblical and rabbinic [do] not set boundaries on the revelation, but merely [make] internal legal differentiations”; *Maimonides*, 113.

³⁷⁰ On geonic enactment of *taqqanot*, see Brody, “Kelum hayu ha-Geonim Mehoqeqim?”; idem, *Geonim of Babylonia*, 39, 62-64; Shošetman, “Le-Derekh Qevi'atan shel Taqqanot ha-Geonim,” 655-67; and Fishman, *Becoming the People of the Talmud*, 58-60; see however Lifschitz, “Minhag' u-Meqomo be-Midrag ha-Normot shel 'Torah shebe-'al Peh',” 242n351. On geonic innovations and interpretations that were not based on legislative authority, see Brody, “Kelum hayu ha-Geonim Mehoqeqim?” 279-90, 315n79; and idem, *Geonim of Babylonia*, 163-66.

Rabbanites used any means necessary to battle Qaraites, and that they only deployed Islamic terms and concepts under polemical pressures is problematic for a number of reasons. It assumes, among other things, that defenses of the Oral Torah were insincere, and fails to account for the fact that later geonim adopted a different attitude towards Qaraites than Sa'adya did.³⁷¹ The examination of Rabbanite approaches to tradition from a broader perspective demonstrates that Rabbanites and Muslim jurists appealed to the same kind of authority and proposed similar defenses of post-scriptural traditions. In other words, the geonic-era portrayal of the Oral Torah was coherent in the tenth and eleventh centuries, given broader societal assumptions.³⁷² The Rabbanite encounter with the Jewish and non-Jewish “other,” in polemical and non-polemical settings, provided geonic-era authors with a new vocabulary for systematizing rabbinic tradition and reconsidering it. Nevertheless, this study leaves open the question of the extent to which Sa'adya and others “genuinely believed”³⁷³ their own claims. Rabbanite authors clearly benefited from rabbinic assertions that denied or downplayed human contributions to Jewish law, but surviving sources do not indicate to which extent, if any, they recognized any dissonance between their own rhetoric and that of the tradition that they sought to defend.³⁷⁴

³⁷¹ Compare Marina Rustow, “The Qaraites as Sect: The Tyranny of a Construct,” in *Sects and Sectarianism in Jewish History*, ed. Sacha Stern (Leiden: Brill, 2011), 149-86.

³⁷² See Wansbrough, *Quranic Studies*, 177: “the significant parallel between the Judaic and Muslim traditions was insistence upon a single source of legislation, which was divine.” Ben-Shammai explained that although Qaraites and Rabbanites argued about the authority of the rabbinic tradition, all “agree[d] on the general principle that transmitted knowledge ... is a valid source of knowledge”; “Jewish Thought in Iraq in the 10th Century,” 27.

³⁷³ See above, n136.

³⁷⁴ This could equally apply to the rabbinic tradition itself: to what extent did rabbinic rhetoric about the scope of revelation reflect what the rabbis “really” thought about their legal activity?

This study of the Rabbanite conceptualization of the Oral Torah in Islamic terms should complicate another longstanding historiographic emphasis on Qaraism's supposedly Islamic origins. Sa'adya was probably the first to claim that Islamic thought influenced 'Anan³⁷⁵ – a polemical jab, though perhaps with some basis in reality – and critical scholars since Graetz have tried to identify Islamic influences on Qaraism.³⁷⁶ This line of inquiry, however, obscures the impact that Islamic thought, and other developments in the Islamic world, had on all Jews.³⁷⁷ Rabbanite legal epistemology in the tenth and eleventh centuries is a prime example of how all medieval Jews, Rabbanites as well as Karaites, reshaped Judaism in the Islamic world.

³⁷⁵ See Zucker, 'Al Targum Rasag, 145-46.

³⁷⁶ For a review, see Meira Polliack, "Rethinking Karaism: Between Judaism and Islam," *AJS Review* 30, no. 1 (2006): 67-69. See also Haggai Ben-Shammai, "The Attitude of Some Early Karaites Towards Islam," in *Studies in Medieval Jewish History and Literature*, ed. Isadore Twersky (Cambridge: Harvard University Center for Jewish Studies, 1984), 2:4-5; Daniel Lasker, "Islamic Influences on Karaite Origins," in *Studies in Islamic and Judaic Traditions II*, eds. William M. Brinner and Stephen D. Ricks (Atlanta: Scholars Press, 1989), 23-47; and Fred Astren, "Islamic Contexts of Medieval Karaism," in *Karaite Judaism*, 145-77.

³⁷⁷ Compare Ben-Shammai, "Karaite Controversy," 15: "As to the question of a relationship between the beginnings of Karaism and Islam, it should be noted that since the majority of Jewish communities, and the major centers of Jewish autonomy and learning in the eighth century found themselves within the boundaries of Islam, one would expect that most of the important events in the history of Judaism at the time would have taken place within those boundaries."

Chapter Two: Maimonides on the Scope of Revelation and the Role of the Rabbis

Introduction

Moses Maimonides addressed the origins and workings of the Oral Torah throughout his writings, and, for more than eight centuries, readers have explicated and challenged his system. This chapter engages Maimonides' earlier discussions, focusing particularly on his *Commentary on the Mishnah* and *Sefer ha-Miṣvot*, two Judeo-Arabic works that have not received as much attention as has the Hebrew, *Mishneh Torah*. This more inclusive analysis of Maimonides' halakhic oeuvre facilitates a reevaluation of his legal theory and underscores the importance of situating his ideas in their Islamic context.

In the words of Gerald Blidstein, "Maimonides, far more than any predecessor or contemporary, was keenly (perhaps obsessively?) interested in the status of the different sources of Law and their interrelationship." According to Blidstein, this fascination motivated Maimonides' lengthy analyses of the content and nature of revelation, his consideration of the role of the rabbis in developing Jewish law, and his ongoing concern with the classification of particular laws.³⁷⁸ One could add that Maimonides was dogged in his attempts to defend his views on the Oral Torah; these defenses hold pride of place at the outset of his three main halakhic treatises.

In marked contrast with geonic-era presentations of rabbinic tradition as wholly divine, Maimonides narrowed the corpus of Jewish law that was known through

³⁷⁸ Blidstein, "Where Do We Stand," 13. See also idem, "Maimonides on 'Oral Law,'" 108; and idem, "Halakhic Authority in Maimonides," 31-32. Haym Soloveitchik argued that Maimonides' interest in distinguishing between biblical and rabbinic law and anti-Qaraite polemic motivated what Soloveitchik considered the odd structure of *Hilkhot Shabbat*; "Mishneh Torah: Polemic and Art," in *Maimonides After 800 Years*, 327-32; repr. in idem, *Collected Essays* (Oxford: Litmann, 2014), 2:378-84. Note also Stroumsa's categorization of Maimonides as a "fundamentalist"; *Maimonides in His World*, 83.

revelation and spoke proudly of rabbinic expansions of divine law. These claims met with protest in the twelfth and thirteenth centuries. One critic, Abraham ben David of Posquières (Rabad; c. 1128-95) wrote with exasperation, “I have seen [that for] this man [i.e., Maimonides], [regarding] everything that is difficult for him in the words of our rabbis, he says that it is rabbinic (*mi-divreihem*) and not biblical (*din torah*).”³⁷⁹ Daniel ben Sa’adya ha-Bavli also attacked Maimonides’ claims, and Naḥmanides (Catalonia; 1194-1270) described Maimonides’ perspective as “nasty and bitter” (*ra’ u-mar*).³⁸⁰ By the fourteenth century, however, an apologetic tradition had emerged, one that attempted to bring Maimonides’ views in line with those of his critics.³⁸¹ Despite differences among these apologists, and despite the fact that some late medieval and early modern readers upheld the earlier, more “radical” reading of Maimonides,³⁸² Jay Harris identified “a

³⁷⁹ ראייתי זה האיש כל מה שיקשה עליו בדברי רבותינו יאמר מדבריהם הוא זה ואינו דין תורה *Hilkhot Tumat Meit*, 5:5. See Urbach, “Halakhah u-Nevu’ah,” 21n177; Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 27n31; and Blidstein, “Where Do We Stand,” 13. See also Rabad’s comments to *Hilkhot Ishut*, 1:2, and 3:20; treated in Twersky, *Rabad of Posquières*, 136n16. Moses ha-Kohen, another Provençal critic of the *Mishnah Torah* who probably lived after Rabad, wrote similar challenges; see his comments to *Hilkhot Ishut* there. See also Ya’aqov Sussman, “Shenei Quntresim be-Halakhah me-et R. Moshe Boṭarel,” *Qoveṣ ‘al Yad* 16 (1966): 299-300, esp. n21-22.

The relationship of Rabad and Moses ha-Kohen is unclear; as Twersky wrote in the revised edition of *Rabad of Posquières* (348), “the relation of the hassagot of R. Moses ha-Kohen to those to Rabad needs to be studied carefully”; see Silver, *Maimonidean Criticism*, 76-79; Twersky, *Rabad of Posquières*, 128, 179, 239; idem, *Introduction to the Code of Maimonides*, 37, 103; and Shalem Yahalom, *Bein Gironah le-Narbonah: Avnei Binyan le-Yeṣirat ha-Ramban* (Jerusalem: Yad Ben-Zvi, 2012), 102-103. Sources about Moses ha-Kohen’s life are collected in J. Kohn, *Hagahot ha-Ramakh: Hagahot she-Hegiyah ‘al Sefer Mishneh Torah leha-Rambam* (Jerusalem, 1970), 201-208.

³⁸⁰ Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 51 (Prin. Two).

³⁸¹ The beginning of this tradition is usually associated with Simeon ben Ṣemaḥ Duran; Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 33; Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit shel ha-Rambam*, 47n50; and Yosef Kafih, “Mi-Divrei Sofrim,” in *Iyunim be-Sifrut Hazal*, 251. I am not convinced by Levinger’s attempt to attribute this tradition to Solomon ben Abraham Ibn Adret. For interpretations of Ibn Adret’s view, see the standard commentaries to *Hilkhot Ma’akhalot Asurot*, 17:5. For the suggestion that there are textual problems in the relevant responsum, see Ibn Adret, *She’elot u-Teshuvot* (Jerusalem: Mekhon Yerushalayim, 1997), 3:146n2 (§255). On the role of Vidal Yom Tov of Tolosa in reinterpreting Maimonides, who predated Duran by several decades, see Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 30-31.

³⁸² See below, n640.

veritable industry” that deflected criticism of Maimonides and minimized his disagreements with Nahmanides, whose own perspectives on the Oral Torah largely prevailed.³⁸³ The arguments in this chapter are mostly aligned with academic studies that read Maimonides on his own terms, that is, according to the earlier, “radical” interpretation, and that ignore later “harmonizing” apologetics.³⁸⁴

This chapter begins with a review of the historiography of Maimonides’ approach to the Oral Torah, with particular focus on the various explanations that have been offered for his terminology. It then assesses what can be recovered from pre-Maimonidean Andalusian Rabbanite jurisprudence. It next turns to the two topical pivots of Maimonides’ theories: the scope of revelation, i.e., what material was given to Moses, and the role of post-Mosaic jurists. Its final section examines the relevant statements in *Sefer ha-Miṣvot*; they are ambiguous, problematic, and controversial. Throughout this chapter, I make use of all of Maimonides’ halakhic writings in an attempt to shed light on his classification of specific laws. For the most part, this method reveals that Maimonides’ presentations throughout his life were consistent.³⁸⁵

³⁸³ Harris, *How Do We Know This*, 92-94. The most thorough treatment remains Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 21-79. For brief critique, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 45n44.

³⁸⁴ As Neubauer noted, Maimonides’ adversaries usually understood him better than his supporters did. Neubauer also suggested that as Joseph Karo’s *Shulḥan ‘Arukh* overtook the *Mishneh Torah* as the definitive guide for halakhic practice, readers felt more liberty to reject Maimonides’ views; *Ha-Rambam ‘al Divrei Sofrim*, 72, 46-47.

³⁸⁵ On the relationship of the *Commentary on the Mishnah* and the *Mishneh Torah*, see Yuval Sinai, “*Peirush ha-Mishnah* le-Rambam ke-Kli le-Vi’ur Halakhot be-Mishneh Torah,” *Shenaton ha-Mishpat ha-‘Ivri* 23 (2005): 225-51; idem, “Bein *Peirush ha-Mishnah* le-Rambam le-vein *Mishneh Torah*: Heqef ha-Homer ha-Hilkhati, Shiṭat ha-Miyun veba-Fiṣul ha-Musagi,” *HUCA* 80 (2009): 21-37 (Hebrew pagination); idem, “‘Haqiroṭ’, ‘Derishot’ u-‘Bediqot’ – Pereq be-Gibush Hilkhot ha-Rambam,” *Sidra* 21 (2006): 35-51; idem, “*Peirush ha-Mishnah* le-Rambam,” in *Mi-Birkat Moshe*, 203, 205-208, 243-45 esp. n158, 245-50; and Dror Fixler, “Hilkhot Miqva’ot – ‘al Ḥazarah aḥat be-*Feirush ha-Mishnah* le-Rambam,” *Ma‘aliyot* 12 (1992): 65-78.

Historiography and Background

Interpreters of Maimonides' approach to the Oral Torah have largely focused on the Hebrew translation of Principles One and Two in his Introduction to *Sefer ha-Miṣvot*, and on a series of technical terms in the *Mishneh Torah* that classify non-scriptural laws. Less attention has been paid to the Judeo-Arabic *Commentary on the Mishnah* and to the Judeo-Arabic original of *Sefer ha-Miṣvot*. Below, I review technical terminology used by Maimonides in his Hebrew and Judeo-Arabic writings, his so-called "model" of the Oral Torah, and the view of Jacob Levinger, who claimed that Maimonides held esoteric beliefs about the Oral Torah.

The Classification of Laws in the Mishneh Torah and Problems of Terminology

The *Mishneh Torah*'s classificatory lexicon is diverse and novel. Technical terms include: (*mi-*)*divrei sofrim*, i.e., (from) words (or: matters) of the scribes; (*mi-*)*divrei qabbalah*, i.e., (from) words (or: matters) of tradition; *ba ba-qabbalah* and *mi-pi ha-qabbalah*, i.e., comes from tradition and "from the mouth of tradition"; *mi-pi ha-shemu'ah*, i.e., from aural tradition; and *halakhah le-Moshe mi-Sinai*, i.e., law given to Moses at Sinai. As criticism of these usages first arose in Maimonides' lifetime,³⁸⁶ Maimonides himself addressed these terms, particularly in his correspondences with two figures, Pinḥas ben Meshulam *ha-dayan* (fl. late 12th c.), a Provençal émigré and judge

³⁸⁶ Noted in Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 45.

active in Alexandria, probably in the mid-1180s or early 1190s,³⁸⁷ and Samuel ben ‘Eli, with whom he exchanged a series of epistles.³⁸⁸

The difficulty of mapping these terms onto the categories of “biblical” and “rabbinic” law is borne out in the array of interpretations proposed. One approach to determining the meaning of these terms has highlighted “classic” cases in the *Mishneh Torah*, but, as Jacob Neubauer showed, discussions of the term *divrei sofrim* that address only a handful of cases led to the (dubious) claim that *divrei sofrim* (sometimes) denotes biblical law.³⁸⁹ A more philologically sound investigation would examine all appearances

³⁸⁷ Text appears in Maimonides, *Igrot*, ed. Shailat, 2:451-54; dating is Shailat’s; 2:434. This letter considers the *Mishneh Torah* a finished work, so it must be after 1178; see Solomon Gandz, “Date of the Composition of Maimonides’ Code,” *PAAJR* 17 (1947-1948): 1-7; accepted in Twersky, “The Beginnings of *Mishneh Torah* Criticism,” 167n29; and Davidson, *Maimonides*, 203-206. For treatment, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 45n46; and Henshke, “Le-Yesodei,” 105. Maimonides wrote several letters to Pinḥas; see the references in Maimonides, *Teshuvot*, ed. Blau, 3:217, with the correction in idem, *Igrot*, ed. Shailat, 2:433n8. On Pinḥas, see idem, *Teshuvot*, ed. Blau, 3:45, with references to earlier literature; idem, *Igrot*, ed. Shailat, 2:433-34; Joel Kraemer, *Maimonides: The Life and World of One of Civilization’s Greatest Minds* (New York: Doubleday, 2008), 266-67, 280-83; Davidson, *Maimonides*, 72n311; and Miriam Frenkel, *‘Ha-Ohavim veba-Nedivim’: ‘Ilit Manhigah be-Qerev Yehudei Aleqsandriyah bi-Yemei ha-Beinayim* (Jerusalem: Yad Ben-Zvi, 2007), 121-27; see also Mordechai Akiva Friedman, “Ha-Rambam u-Minuyav shel R. Anaṭoli le-Muqaddam Aleqsandriyah,” *Tarbiz* 83, no. 1-2 (2015): 142. On Maimonides and Pinḥas, see Menaḥem Ben-Sasson, “Maimonides in Egypt: the First Stage,” *Maimonidean Studies* 2 (1992): 25; and Stefan Reif, *Problems with Prayers: Studies in the Textual History of Early Rabbinic Liturgy* (Berlin: W. de Gruyter, 2006), 217; repr. in “Problems with Prayers,” in *Traditions of Maimonideanism*, 84.

³⁸⁸ See Maimonides, *Igrot*, ed. Shailat, 1:275-76, 1:378-79. For treatment, see Jacob Katz, *The “Shabbes Goy”: A Study in Halakhic Flexibility*, trans. Yoel Lerner (Philadelphia: JPS, 1989), 25-26, 38, idem, “Plugta be-Davar ha-Haflagah be-Yam uve-Naharot,” *Tarbiz* 60, no. 4 (1991): 667-72; Israel Ta-Shma, “Teshuvat ha-Rambam be-‘Inyan ha-Haflagah be-Naharot be-Shabbat,” *Maimonidean Studies* 1 (1990): 23-42; idem, “‘Al ha-‘Plugta’ be-Davar ha-Haflagah be-Yam uve-Naharot,” *Tarbiz* 60, no. 4 (1991): 673-76; Dror Fixler, “Isur Tehumin be-Rambam: Shamranut Hilkhatit ke-fi she-ba’ ah le-yedei biṭuy be-Dimaniyut Penimit,” *Sinai* 138 (2006): 52-54; Shlomo Zalman Havlin, “Bein Rishonim le-Aḥaronim be-‘Inyanei Nusah,” *Mehqarei Moreshetenu* 1 (2009): 127-41; David Henshke, “Kelum Ne’ eman ha-Rambam le-Ha’id al Nusah Sifro?” *Sinai* 104 (1999): 76-80; and idem, “Ha-Rambam ke-Mefaresh Divrei ‘Aṣmo,” *Sefunot* 8 (23) (2003): 119-46, 159-62. See also Maimonides, *Teshuvot*, ed. Blau, 3:171-77.

³⁸⁹ Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 2-3; see also Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 47-48.

in the *Mishneh Torah*.³⁹⁰ However, Maimonides' frequent use of this term and related ones poses a considerable challenge. According to the Bar Ilan Responsa Project, the phrase *divrei sofrim* appears more than 230 times in the *Mishneh Torah*, *mi-pi ha-shemu 'ah*, 190 times, *mi-pi ha-qabbalah*, 30 times, and *mi-divrei qabbalah*, 20 times.³⁹¹

Many of Maimonides' programmatic statements about these terms are ambiguous. In the *Commentary on the Mishnah*, he wrote: "The phrase '*mi-divrei sofrim*' denotes (*yaqtaḏī*)³⁹² all matters that are transmissions of the scribes (*riwāyat al-sofrim*), like these interpretations (*al-tafāsīr*) and the transmitted laws (*al-halakhah al-manqūla*) from Moses, or ordinances of the scribes."³⁹³ He also asserted that even laws designated as *halakhah le-Moshe mi-Sinai* are *mi-divrei sofrim* because "everything that is not a verse (or: clear text; *naṣṣ*)³⁹⁴ is termed '*divrei sofrim*'."³⁹⁵ In *Sefer ha-Miṣvot*, he wrote in a more constrained manner, that "anything that was not explicitly (*bi-bayān*) heard at Sinai

³⁹⁰ Neubauer wrote: "The idea of interpreting Maimonides according to Maimonides himself remained strange" to most pre-modern readers (*Ha-Rambam 'al Divrei Sofrim*, 79, with the notable exception of Allegri and some of his followers). See also Faur, *Iyunim be-Mishneh Torah*, 1n1; and Marc Shapiro, *Studies in Maimonides and his Interpreters* (University of Scranton Press, 2008), 74.

³⁹¹ This text combines the 1881 Warsaw edition and more recent edition of Shabtai Frankel. Kafiḥ wrote that there are 170 appearances of *mi-pi ha-shemu 'ah* and 80 appearances of the word *qabbalah* with and without the modifiers *mi-pi* and (*mi-*)*divrei*; Maimonides, *Sefer Mishneh Torah: Yoṣei la-Or Pa'am Rishonah 'al-pi Kitvei Yad Teiman 'im Peirush Maqif*, ed. Yosef Kafiḥ (Qiryat Ono: Mekhon Mishnat ha-Rambam, 1983-1997), 21:251. I did not count the word *qabbalah* without a modifier because of the variety of possible meanings; see n400.

³⁹² See Blau, *Dictionary*, 551, s.v. قضي.

³⁹³ קולה מדברי סופרים יקצ'י אן יכון אלשי רואיה אלסופרים מת'ל אלתפאסיר ואלהלכות אלמנקולה ען משה או תקון; Maimonides, *Mishnah 'im Peirush*, ed. Kafiḥ, 6:162 (mKel 17:2).

³⁹⁴ The term *naṣṣ* in Judeo-Arabic can mean "verse," "Scripture," or "clear text." Translations of this term will therefore vary. On this term as "texts that do not require interpretive intervention," see Lowry, *Early Islamic Legal Theory*, 105; and Hallaq, *A History of Islamic Legal Theories*, 45.

³⁹⁵ כל מא ליש הו נץ יסמונה דברי סופרים; Maimonides, *Mishnah 'im Peirush*, ed. Kafiḥ, 6:563 (mMik 6:7). This relies on the comment in the Introduction to the *Commentary* that *halakhah le-Moshe mi-Sinai* laws have no connection to Scripture; *Mishnah 'im Peirush*, ed. Kafiḥ, 1:18; *Haqdamot ha-Rambam*, ed. Shailat, 338. See the letter to Pinḥas: ליה קרינן ליה; idem, *Igrot*, ed. Shailat, 2:453.

is *mi-divrei sofrim*.³⁹⁶ These definitions raise many questions. Does the perspective expressed in *Sefer ha-Miṣvot* contradict earlier Maimonidean claims by implying that no Sinaitic laws are *mi-divrei sofrim*? Or is it consistent with them, acknowledging that even some Sinaitic laws are *mi-divrei sofrim*? Why are rabbinic ordinances and Sinaitic laws in the same category? To complicate matters, several scholars have contended that the *Commentary* addresses mishnaic terminology, and that Maimonides did not rely on these definitions in his own works;³⁹⁷ other scholars have rejected this theory, implicitly and explicitly.³⁹⁸ It would have been surprising for Maimonides, who relied on the Mishnah as a linguistic and structural model,³⁹⁹ to have refashioned (his understanding of) the mishnaic term *divrei sofrim* in his *Mishneh Torah*.

³⁹⁶ כל מא למ יסמעה בסיני בביאן פהו מדברי סופרים; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 15 (Prin. Two). “Explicit,” however, may denote “written in the Pentateuch.”

³⁹⁷ Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 48; David Henshke, “‘Al ha-Meṣi’ ut ha-Mishpaṭit be-Mishnat ha-Rambam: le-Va’ayat ha-Yahas bein Divrei Sofrim le-Dinei Torah,” *Sinai* 92 (1983): 229n5; idem, “Le-Havḥanat ha-Rambam bein ‘De-Orayta’ le-‘de-Rabbanan’,” *Sinai* 102 (1988): 206n2; idem, “Le-Yesodei,” 104; and Dror Fixler, “Ha-Munaḥim ha-Hilkhatiyim be-Mishnat ha-Rambam,” in *Mi-Birkat Moshe*, 1:304n49.

³⁹⁸ Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 83; Samuel Atlas, *Netivim be-Mishpaṭ ha-‘Ivri* (New York: Sepher-Hermon Press, 1978), 254; Naḥum Eliezer Rabinovitch, *Iyunim be-Mishnato shel ha-Rambam*, 2nd ed. (Jerusalem: Ma’aliyot, 1998), 105; and Eliav Shoḥetman, “‘Halakhah mi-Pi ha-Qabbalah’ ve-‘Halakhah le-Moshe mi-Sinai’: ‘Iyun be-Leshonot ha-Rambam,’” *Shenaton ha-Mishpaṭ ha-‘Ivri* 22 (2001-2004): 379-80, 382. See also Isaac Bekhor David of Constantinople, *Divrei Emet* (Constantinople, 1760), 83a.

³⁹⁹ See Twersky, *Introduction to the Code of Maimonides*, 238-45; idem, “Maimonides and Eretz Yisrael: Halakhic, Philosophic, and Historical Perspectives,” in *Perspectives on Maimonides; Philosophical and Historical Studies*, ed. Joel L. Kraemer (Oxford: Oxford University Press, 1991), 268-69; Shamma Friedman, “The Organizational Pattern of the *Mishneh Torah*,” *Jewish Law Annual* 1 (1978): 37-41; Davidson, *Maimonides*, 211-17; Moshe Halbertal, “What is the *Mishneh Torah*? On Codification and Ambivalence,” in *Maimonides After 800 Years*, 83-94; and Yiṣḥaq Hershkowitz, “*Mishneh Torah* voha-Mishnah – Hashlamah Tokhnit u-Mavnit,” *Ma’aliyot* 25 (2005): 355-74. See the praises of R. Judah the Prince collected in Maimonides, *Haqdamot ha-Rambam*, ed. Shailat, 88; and Dror Fixler, “Pesiqt Halakhah be-Feirush ha-Rambam la-mishnah,” *Mesorah le-Yosef* 8 (2014): 363n2. See also Twersky, *Introduction to the Code of Maimonides*, 238-39 and n2, 242-44.

The phrase (*mi-*)*divrei qabbalah* usually denotes a Sinaitic tradition, but it can also refer to the Prophets and Writings.⁴⁰⁰ In at least one instance, Maimonides referred to both *divrei qabbalah* and to decrees and preventative measures (*gezeirot ve-harḥaqot*) as “*divrei sofrim*” (*Hilkhot Tumat Meit*, 19:6). This apparent blurring of boundaries prompts further questions. Does each term denote a unique type of knowledge, or does Maimonides have stylistic reasons for choosing one over another? If each phrase does have a unique denotation, any attempt to correlate Maimonides’ lexicon with the categories of biblical law and rabbinic law must account for the variety of terms he used.

These issues point to a larger methodological quandary. Jacob Levinger and Marc Shapiro have challenged the traditionalist assumption that the *Mishneh Torah* is exceedingly exact in its language,⁴⁰¹ while Isadore Twersky emphasized “Maimonides’ relentless quest for exact conceptual classification, ... repeated insistence that he wrote with great care and ... statements about sustained and relentless review of difficult matters.”⁴⁰² Support for this latter perspective – especially regarding issues related to the

⁴⁰⁰ E.g., *Hilkhot Talmud Torah*, 1:13, *Hilkhot Ta’anivot*, 4:7; see Rabinovitch, ‘*Iyunim be-Mishnato shel ha-Rambam*, 106. Kafih also noted this; see Maimonides, *Mishneh Torah*, ed. Kafih, 21:276-84 passim.

⁴⁰¹ Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 13-33; and Shapiro, *Studies in Maimonides*, 57-68. Both Levinger (21) and Shapiro (67) called attention to the claim that the *Mishneh Torah* is intended for “young and old”; Maimonides, *Mishneh Torah: hu ha-Yad ha-Hazaqah le-Rabbeinu Moshe ben Maimon*, ‘*al pi Defus Kushṭa 269*, eds. Jacob ben Eliezer Cohen et al. (Jerusalem: Mosad ha-Rav Kook, 1964), 14 line 163. Text and references to the Introduction to the *Mishneh Torah* and *Sefer ha-Madda* follow this edition. For an opposing view, see Yuval Sinai, “Rimzei Leshono shel ha-Rambam [ḥeileq 2],” *Sinai* 128 (2001): 111; and idem, “Setirot Penimiyot Medumot be-Divrei ha-Rambam,” in *Rambam: Shamranut, Meqoriyut, Mahapḥanut*, 174-76. See also Rabinovitch, ‘*Iyunim be-Mishnato shel ha-Rambam*, 52-69.

⁴⁰² Twersky, *Introduction to the Code of Maimonides*, 311; see further, 311-20.

sources of the law – may be found in the fact that particular cases that troubled Maimonides his whole life.⁴⁰³

The *Mishneh Torah* also leaves unclear important distinctions between biblical law and rabbinic law. As Levinger noted, Maimonides mentioned the principle that where there is some element of doubt in contested cases of biblical law, the ruling follows the more stringent perspective (*Hilkhot Mamrim*, 1:5), but he did not explicitly generalize this rule to all cases of doubt.⁴⁰⁴ Two other assumptions, frequently adopted by Maimonides' readers, have complicated the interpretation of Maimonides' positions: (1) biblical sins are the only ones that incur biblically-mandated punishments;⁴⁰⁵ and (2) marriage and divorce can only be effectuated through biblically-authorized means. These principles led Maimonides' commentators to pose many questions, including the following three: If a woman who married through the exchange of money, a method of acquisition which Maimonides regarded as *mi-divrei sofrim* (*Hilkhot Ishut*, 1:2, 3:20), subsequently committed adultery, why should she incur capital punishment? A similar problem concerns the priest whose wife has died. Since the biblical prohibition of priestly

⁴⁰³ On *Hilkhot Ishut* 1:2, see Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 153-54; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 14 (introductory pagination), 167-68n17; idem, *Mishnah 'im Peirush*, ed. Kafih, 3:280-81n15 (mQid 1:1); idem, *Mishneh Torah*, ed. Kafih, 7:13-15, 17-21; and Kafih, "Mi-Divrei Sofrim," 250-52. On *Hilkhot Shehitah*, 5:3, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 31-32; Henshke, "Le-Yesodei," 114-23, 144-45; and Shoḥetman, "Halakhah mi-Pi ha-Qabbalah," 404n117. See further Cohen, *Opening the Gates of Interpretation*, 412-25; and below, nn602, 695.

⁴⁰⁴ Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 35n1. Levinger noted that Maimonides did hint to this principle elsewhere in the *Mishneh Torah* and in his responsa. Maimonides also ruled that the prohibition of doubtful cases is rabbinic in status; see, e.g., *Hilkhot Isurei Bi'ah*, 18:17; *Hilkhot Tumat Meit*, 9:12. Note that in the *Commentary on the Mishnah*, Maimonides explained that doubtful cases of *divrei sofrim* impurity are treated leniently, except an impurity from an overarching category of impurity (*avot ha-tumot*) whose status is *divrei sofrim*; *Mishnah 'im Peirush*, ed. Kafih, 6:507 (mToh 4:11). He repeated this there, 6:543-44 (mMik 2:2), 6:510 (mToh 5:6). In the *Mishneh Torah*, he seems to have changed his mind about exceptions to this rule; see *Hilkhot Shar Avot ha-Tumah*, 13:10-13.

⁴⁰⁵ See below, nn689-697.

contact with a corpse applies to all those who are not blood relatives (an obligation that remains operative even in the absence of the Temple), how can the widowed priest be obligated to engage in the burial of his dead wife, a requirement which Maimonides considered merely *mi-divrei sofrim*. (*Hilkhot Aveil*, 2:7)? A third problem concerns the validity of a marriage if it is effectuated in the presence of witnesses who are disqualified by dint of family relationships. Could such a marriage be “biblically” valid if the witnesses are maternal relatives, whose disqualification Maimonides regarded as rooted “in their words” (*mi-divreihem*; *Hilkhot ‘Edut*, 13:1; as opposed to paternal relatives, a biblical law [*din torah*])?⁴⁰⁶

Problems like these prompted claims that *divrei sofrim* denotes, or may denote, biblical law.⁴⁰⁷ Yet most academic interpreters, along with Yosef Kafih, perceive the

⁴⁰⁶ See Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 34-35. The first issue may be complicated by the suggestion that rabbinically ordained transactions affect biblical status (*qinyan de-rabbanan mo‘il de-orayta*); see the next note. Naḥmanides was the first to systematically note many of these problems; see *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 34-40 (Prin. Two). See the list of distinctions between biblical and rabbinic law in Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot le-Rabbeinu Moshe ben Maimon z”l*, ed. David Zvi Hellman (Jerusalem: Hoṣa’ at Shabtai Frankel, 2002), 29-31 (Prin. One).

⁴⁰⁷ See Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 30-45. Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 85-86, argued that marriages effectuated through money are a rabbinic “detail” rooted in biblical law; see also there, 44. Henshke resorted to the principle that rabbinically ordained transactions affect biblical status; see his “‘Al ha-Meṣi’ut ha-Mishpaṭit,” 229-31; idem, “Lavin she-Ein Loqin ‘alehem le-Shiṭat ha-Rambam,” *Ha-Ma‘ayan* 24, no. 2 (1984): 34n6; and idem, “Sheniyot le-‘Divrei Sofrim,” *Sinai* 108 (1991): 59. For responses, see Shimshon Ettinger, “Shetei He‘arot le-Darkho shel ha-Rambam be-Mishneh Torah,” *Sinai* 106 (1990): 234-37; and Rabinovitch, *Iyunim be-Mishnato shel ha-Rambam*, 93-94. As Rabinovitch noted, Henshke’s solution is similar to the one proposed by Isaac Halevy, *Dorot ha-Rishonim: Divrei ha-Yamim le-Vnei Yisrael*, ed. Salomon Bamberger (Jerusalem, 1967), 4:530.

term *divrei sofrim* as one that denotes rabbinic law.⁴⁰⁸ Others maintain that *divrei sofrim* may, at times, denote biblical law, and, at other times, rabbinic law.⁴⁰⁹

Similar debates concern Maimonides' use of the terms, *mi-pi ha-shemu 'ah*, *mi-pi ha-qabbalah*, and *divrei qabbalah*.⁴¹⁰ Kafih argued that *shemu 'ah* denotes widely accepted post-Sinaitic scriptural interpretations, while *qabbalah* usually denotes Sinaitic

⁴⁰⁸ Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 81-89; Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 46-50; Moshe Halbertal, "Sefer ha-Miṣvot le-Rambam," 464n12; Henshke, "Al ha-Meṣi' ut ha-Mishpaṭit," 229-31; idem, "Le-Darkhei Pitronan shel Setirot be-'Mishneh Torah' le-Rambam," *Sinai* 112 (1993): 61; Shoḥetman, "Halakhah mi-Pi ha-Qabbalah," 383n53, 388; Ettinger, "Shetei He'arot," 234-37; and Kafih, "Mi-Divrei Sofrim." See also Maimonides, *Mishneh Torah*, ed. Kafih, 5:13-15, 5:17-21.

⁴⁰⁹ Rabinovitch, *Iyunim be-Mishnato shel ha-Rambam*, 91-105; Fixler, "Ha-Munaḥim ha-Hilkhatiyim," 291-303; Moshe Koppel, "Al ha-Munaḥim 'Divrei Sofrim' ve-'Divrei Qabbalah' be-Rambam," *Higayon: Meḥqarim be-Darkhei Hashivah shel Hazal* 5 (2001): 63-64; and Shailat's comments in Maimonides, *Igrot*, ed. Shailat, 2:451-52. See also Faur, *Iyunim be-Mishneh Torah*, 25-32. Compare David Weiss Halivni, *Peshat and Derash: Plain and Applied Meaning in Rabbinic Exegesis* (New York: Oxford, 1991), 83-88: "What exactly (*divrei sofrim*) is, is not clear. In terms of its binding nature, it is less binding than a biblical law but more binding than a rabbinic ordinance. It is neither biblical nor rabbinic. ... The concept remains elusive" (83).

⁴¹⁰ Adolf Schwarz, *Der Mischneh Thorah: Ein System der mosaisch-talmudischen Gesetzeslehre* (Vienna, 1905), 142-229, argued that *mi-pi ha-shemu 'ah* and *mi-pi qabbalah* are different types of knowledge, but Wilhelm Bacher, "Zum sprachlichen Charakter des Mischne Thora," in *Moses ben Maimon*, 2:280-305, demonstrated that Schwarz overplayed the distinction. Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 16n11, agreed with Bacher. See also Michael Guttman, "Die Bedeutung der Tradition für die halachische Bibelexegese bei Maimonides," *MGWJ* 80, no. 3 (1936): 211-12. Several recent writers have argued that *shemu 'ah* denotes biblical law, while *qabbalah* denotes biblical or rabbinic law; see Dror Fixler, "Halakhah le-Moshe mi-Sinai' be-Feirush ha-Mishnah le-Rambam," *Sinai* 118 (1996): 257; idem, "Ha-Munaḥim ha-Hilkhatiyim," 324-32; Shoḥetman, "Halakhah mi-Pi ha-Qabbalah," 371-74, 407-408; and Henshke, "Le-Yesodei," 140-44. For the claim that *qabbalah* has a broad meaning, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 21; Henshke, "Le-Havḥanat ha-Rambam," 206n2; and Koppel, "Al ha-Munaḥim," 63. See also David Henshke, "Ein Neharagin min ha-Din': Perek be-Tefisat ha-Halakhah shel ha-Rambam," in *Tiferet le-Yisrael: Jubilee Volume in Honor of Israel Francus*, eds. Joel Roth et al. (New York: Jewish Theological Seminary, 2010), 243n37. Halivni, *Peshat and Derash*, 200n68, wrote that the categories are indistinguishable; Rabinovitch, *Iyunim be-Mishnato shel ha-Rambam*, 110-12, that *shemu 'ah* and *qabbalah* refer to traditional laws whose origin is unclear; Shimshon Ettinger, "Al Meqomah shel ha-Sevarah be-Mishneh Torah le-Rambam," *Shenaton ha-Mishpaṭ ha-Ivri* 14-15 (1988-1989): 21n86, that both can denote biblical or rabbinic law; and Friedberg that he is "less confident" that *shemu 'ah* denotes biblical law; *Crafting the 613 Commandments*, 231; see there, 228-40, for treatment of the use of the term *shemu 'ah* regarding the Positive Commandments.

laws.⁴¹¹ Others have argued – convincingly, in my view – that the term *shemu 'ah* denotes Sinaitic interpretations of biblical verses that control Scripture's meaning.⁴¹²

The term *halakhah le-Moshe mi-Sinai* deserves special consideration. As noted, Maimonides explained in *Sefer ha-Miṣvot* that *divrei sofrim* includes anything that was not explicitly heard at Sinai. On the other hand, he wrote in his *Commentary on the Mishnah* that the term *divrei sofrim* covers laws designated as *halakhah le-Moshe mi-Sinai*.⁴¹³ Maimonides' programmatic statements about the term *halakhah le-Moshe mi-Sinai* are also controversial. In the longest discussion, which appears in his Introduction to the *Commentary on the Mishnah*, he asserted that these laws admit no disagreement (*khilāf*) and that one cannot find “true” scriptural inferences (*istidlāl*) for them.⁴¹⁴ When rabbinic literature provides a link to Scripture, he wrote, this is merely a “sign” (*siman*) or an *asmakhta*, that is, an *aide-mémoire* or justification after the fact. Moreover, no laws in this category can be derived through reasoning (here: *qiyās*) and the rabbis did not

⁴¹¹ See Kafih's case-by-case discussion in Maimonides, *Mishneh Torah*, ed. Kafih, 21:251-84. Elsewhere, Kafih wavered on this definition of *shemu 'ah*; see there, 3:749, §13 (*Hilkhot Shevitat 'Esor*, 1:4).

⁴¹² Henshke, “Lavin she-Ein Loqin 'alehem,” 33; idem, “Le-Yesodei,” 140; Shoḥetman, “‘Halakhah mi-Pi ha-Qabbalah’,” 410-15, 435; and Cohen, *Opening the Gates of Interpretation*, 392-94. See Friedberg, *Crafting the 613 Commandments*, 240: “Maimonides relies on certain interpretive traditions ... even when these interpretations fail to offer the most contextual, and therefore plainest, readings.” Note Blidstein's comments in “Masoret ve-Samkhut Mosdit,” 17; and idem, “Oral Law as Institution,” 170.

⁴¹³ Above, nn393-396. For rabbinic background, see Christine Hayes, “‘Halakhah le-Moshe mi-Sinai’ in Rabbinic Sources: A Methodological Case Study,” in *The Synoptic Problem in Rabbinic Literature*, ed. Shaye J.D. Cohen (Providence: Brown University, 2000), 61-117; idem, “Rabbinic Contestations of Authority,” *Cardozo Law Review* 28, no. 1 (2006): 131-32; Shmuel Safrai, “Halakhah le-Moshe mi-Sinai – Histōriyah o Te'ologiyah?” in *Mehqarei Talmud 1*, eds. Ya'aqov Sussman and David Rosenthal (Jerusalem: Magnes, 1990), 11-38 (for views of medieval jurists, see there, 15-16); and idem, “Halakha,” in *The Literature of the Sages*, 1:180-85.

⁴¹⁴ אֲלֶחֶכָּאֵם אֲלֹתֵי קִיל פִּיהָ אִנְהָא הִלְכָּה לְמִשְׁנֵי מִינֵי וְלֹא אִסְתַּדְלָל עֲלֶיהָ ... וְהִדְהָ אִצְרָא מִמָּא לֹא כִּלְאֵף פִּיהָ; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:19; *Haqdamot ha-Rambam*, ed. Shailat, 339. See the similar statement about interpretations transmitted from Moses (*tafāsir marwīya 'an Moshe*) in idem, *Sefer ha-Miṣvot*, ed. Kafih, 28 (Prin. Eight).

develop other laws (*tafaqqahū*) from them.⁴¹⁵ Maimonides also claimed to list “most ... or perhaps all” of these laws.⁴¹⁶ In the *Mishneh Torah*, he wrote that “debate never occurred regarding matters of tradition (*divrei ha-qabbalah*)” (*Hilkhot Mamrim*, 1:4).⁴¹⁷ Later writers, R. Yair Ḥayim Bacharach (Worms and Metz; 1639-1702) most thoroughly, showed that it is difficult to square the claim that laws designated by Maimonides as *halakhah le-Moshe mi-Sinai* laws were never subject to debate within rabbinic literature.⁴¹⁸

Scholars attempting to determine whether laws designated as *halakhah le-Moshe mi-Sinai* have the status of biblical or rabbinic law have approached the question in different ways, and the debate about their status continues.⁴¹⁹ Some interpreters of Maimonides have wondered whether biblical punishment is incurred for violation of

⁴¹⁵ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:18; *Haqdamot ha-Rambam*, ed. Shailat, 338. On the use of this form of the verb *f-q-h*, see below nn488, 569-570, 921-944.

⁴¹⁶ מעט'ם אלא חכאם אלהי קאלוא פיהא הלכה למשה מסיניי בל קד רבמא אנהא כלהא; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:18; *Haqdamot ha-Rambam*, ed. Shailat, 338. Levinger highlighted differences between the lists of *halakhah le-Moshe mi-Sinai* laws in the *Commentary* and the *Mishneh Torah*, and argued that Maimonides distinguished between the phrase *halakhah le-Moshe mi-Sinai* and other modifiers of the word *halakhah*, such as *halakhah mi-pi ha-qabbalah* or *halakhah ish mi-pi ish*; *Darkhei ha-Maḥshavah ha-Hilkhatit*, 51-54, 206-209. For criticism, see Shoḥetman, “Halakhah mi-Pi ha-Qabbalah’,” 400-404. It is unclear how to align Levinger’s careful – or hairsplitting – argument with his caution (see above, n401) not to make too much of slight changes in Maimonides’ language.

⁴¹⁷ דברי הקבלה אין בהם מחלוקת לעולם; this broad statement refers to *halakhah le-Moshe mi-Sinai* laws and other matters. Gerald Blidstein noted that Maimonides admitted doubt in two issues: how to blow the *shofar* and astronomical knowledge required to calculate the calendar; *Samkhut u-Meri*, 49-53.

⁴¹⁸ Yair Bacharach, *She'elot u-Teshuvot Ḥavvat Yair* (Frankfurt, 1699), 175a-187a (§192). For discussion, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 50-51; and Halbertal, *People of the Book*, 67-72. I have not found any satisfactory ways to align Maimonides’ views with rabbinic literature. For recent discussion, see Rabinovitch, *Tyunim be-Mishnato shel ha-Rambam*, 126-41; Fixler, “Halakhah le-Moshe mi-Sinai’,” 258-61; and idem, “Ha-Munaḥim ha-Hilkhatiyim,” 317-20; see also Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 190-205. Kalman Kahana, *Ḥeḡer ve-‘Iyun: Qoveṣ Ma’amarim* (Tel Aviv, 1960), 1:7-57, remains useful. I do not find the argument in Koppel, “Al ha-Munaḥim,” 66-68, compelling. On Shailat’s interpretation in Maimonides, *Haqdamot ha-Rambam*, ed. Shailat, 90, see Blidstein, *Samkhut u-Meri*, 47n3.

⁴¹⁹ Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 50-61, felt that Maimonides was unsure about their status. See the reaction in Shoḥetman, “Halakhah mi-Pi ha-Qabbalah’,” 376; and Dror Fixler, “Ha-Biṭuy ‘Ḥakhamim/Ḥasidim Rishonim’ be-‘Mishneh Torah’ le-Rambam,” *Sinai* 109 (1992): 82n43.

these laws.⁴²⁰ According to one view, the fact that they are of divine origin and termed *divrei sofrim* means that this term cannot refer to rabbinic laws. Others have argued that laws designated *halakhah le-Moshe mi-Sinai* are of rabbinic status, and that only laws directly connected to Scripture are of biblical status.⁴²¹

As with the Hebrew terminology in his Hebrew writings, Maimonides employed a set of Judeo-Arabic terms to classify the sources of the law. Study of Maimonides' Judeo-Arabic halakhic writings has lagged behind research on the *Mishneh Torah*,⁴²² and the meaning of the technical Judeo-Arabic terms has been obfuscated by the fact that some scholars have only read these works in Hebrew translation. Mordechai Cohen recently reiterated Simon Rawidowicz's warning that "the distinctiveness of [Maimonides' terminology...] is unfortunately lost in most if not all Hebrew

⁴²⁰ Nahmanides also raised this point; *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 32 (Prin. Two). Note the claim that God gave these laws; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:17-18; *Haqdamot ha-Rambam*, ed. Shailat, 338.

⁴²¹ For the view that *halakhah le-Moshe mi-Sinai* laws are biblical in status, see Fixler, "Halakhah le-Moshe mi-Sinai," 252-57; and idem, "Ha-Munaḥim ha-Hilkhatiyim," 304-340. For the view that they are rabbinic in status, see Henshke, "Le-Yesodei," 105-123; Shoḥetman, "Halakhah mi-Pi ha-Qabbalah," 375-88; and earlier, Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 63 (Prin. Two). Halbertal, "Sefer ha-Miṣvot le-Rambam," 465n14, described Maimonides' position as "problematic."

⁴²² Blidstein wrote: "Deficiency in the study of Maimonidean law lies in the relative neglect of works other than the *Mishneh Torah*"; "Where Do We Stand," 19. Shapiro explained that traditional commentators placed the *Mishneh Torah* "on a much higher pedestal than any of Maimonides' other works" (*Studies in Maimonides*, 4). On neglect of the *Commentary on the Mishnah*, see Michael Guttmann, "The Decisions of Maimonides in his Commentary on the Mishna," *HUCA* 2 (1925): 229; Aaron Adler, "Yaḥaso shel ha-Rambam le-Talmud ha-Yerushalmi (Pereq be-Ḥeiqer *Peirush ha-Mishnah* leha-Rambam)," in *Sefer Zikaron le-Rav Yosef ben David Kafih*, eds. Zohar Amel and Hananel Sari (Ramat Gan: Bar Ilan University Press, 2001), 205 and n20; Neryah Goṭel, "Derekh ha-Melekh be-Mishnah: Le-Veirur Darkho shel ha-Rambam be-Feirusho la-mishnah," *Sinai* 135-136 (2005): 89-91; and Sinai, "Setirot Penimiyot," 159n16. Some have blamed the neglect of the *Commentary* on the fact that Maimonides wrote it in Arabic; Twersky, *Introduction to the Code of Maimonides*, 19; and Judah Leib Maimon, *Rabbi Moshe ben Maimon: Toldot Ḥayav ve-Yesirato ha-Sifrutit* (Jerusalem: Mosad ha-Rav Kook, 1960), 66. Menaḥem Azariah da Fano claimed that the *Commentary* contains errors because Maimonides wrote it in his youth; *Sefer Teshuvot u-Feirush Sugyot* (Venice, 1600), §117. Joseph Korkos explained that Maimonides was "not careful" (*lo diqdeq*) in this work; see his comments to *Hilkhot Terumot*, 11:11, in Maimonides, *Sefer Mishneh Torah*, ed. Shabbtai Frankel (Jerusalem: Hoṣa' at Shabbtai Frankel, 1975-2007), 6:219; see also below, nn597, 639.

translations.⁴²³ Long ago, Wilhelm Bacher showed that the term *tafsīr marwī*, i.e., a transmitted interpretation, denotes a Sinaitic interpretation of Scripture,⁴²⁴ and several other scholars, from Bacher's time onward, have discussed Maimonides' use of the concept of *ijmā'* (consensus).⁴²⁵

Another important term used by Maimonides is *qiyās*. Recognizing the broad meanings of this word, Joshua Blau's Judeo-Arabic dictionary offers as viable definitions *analogy, deduction by analogy, correct reasoning, authentic explanation, and proper inference*.⁴²⁶ In their Hebrew translations of *Sefer ha-Miṣvot*, Moses Ibn Tibbon consistently translated *qiyās* as *heqqesh* (analogy; a cognate word), and Solomon ibn Ayyūb (fl. mid. 13th c.) usually translated it as *sevarah* (logic or reasoning).⁴²⁷ Kafih insisted that Maimonides only used the word *qiyās* with regard to employment of the thirteen *middot* (hermeneutical rules) of R. Ishmael;⁴²⁸ he connected the translation

⁴²³ Simon Rawidowicz, "On Interpretation," *PAAJR* 26 (1957): 102n38. Cohen cited this in *Opening the Gates of Interpretation*, xv; and "Ha-Biṭuy 'Bāb/Abwāb al-Ta'wīl' be-Torato ha-Parshanut shel ha-Rambam," in *Iyunim be-Tarbut ha-'Aravit-ha-Yehudit*, eds. Yoram Erder et al. (Tel Aviv: Tel Aviv University, 2014), 156.

⁴²⁴ Wilhelm Bacher, *Die Bibelexegese Moses Maimūni's* (Strassburg: K. J. Trübner, 1897), 27-28; *Ha-Rambam Parshan ha-Miqra*, trans. Alexander Siskind Rabinovitz (Tel Aviv: Defus Aḥdut, 1931), 31-32. Bloomberg, "Arabic Legal Terms in Maimonides," 33, 38-41, reached the same conclusion.

⁴²⁵ See Ludwig Blau, "Das Gesetzbuch des Maimonides historisch betrachtet," in *Moses ben Maimon*, 1:351-54; Daniel Lasker, "Hashpa'at ha-Qara'ut 'al ha-Rambam," *Sefunot* 5 [20] (1991): 154, 158n73; Blidstein, *Samkhut u-Meri*, 23n21, 145-49; Gideon Libson, "Zikat ha-Rambam la-Halakhah ha-Muslemit 'al Reqa' Tequfato," in *Ha-Rambam: Shamranut, Meqoriyut, Mahapkhanut*, 1:278-83; and David, "Kede-Mefaresh be-Sifro shel Adam ha-Rishon," 598n83.

⁴²⁶ Blau, *Dictionary*, 579, s.v. قياس; Hallaq wrote that portraying *qiyās* as analogy "has been so predominant that the great majority of modern scholars conceive of *qiyās* as a term which exclusively denotes analogy" ("Non-Analogical Arguments," 289), and dismissed the "misconception ... that *qiyās* amounts to no more than analogy" (*A History of Islamic Legal Theories*, 101).

⁴²⁷ See Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 5 (introductory pagination); and Cohen, *Opening the Gates of Interpretation*, 468n31.

⁴²⁸ E.g., Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 10 (Prin. One), 13, 15 (Prin. Two), 55 (supplemental introduction), 147 (Pos. 174), 211 (Neg. 60); and idem, *Mishnah 'im Peirush*, ed. Kafih, 1:33n71, 3:11n28 (mYeb 1:4), 4:7-8n5 (mBQ 1:1), 5:109n23 (mMen 2:2), 6:54n1 (mKel 2:1). See also idem, *Mishneh Torah*, ed. Kafih, 21:251-52. The *middot* appear at the outset of the *Sifra*; for background,

heqqesh with Qaraites.⁴²⁹ Yet Kafih himself often used *din* (argument) or a similar term as a translation for *qiyās*;⁴³⁰ in one place, he admitted that Maimonides used the term to denote all sorts of reasoning.⁴³¹ Most scholars agree with this latter conclusion.⁴³² In his recent discussion of the specific terms from logic that relate to the late antique rabbis' use of "*qiyās*," Aviram Ravitsky noted that Maimonides compared rabbinic *qiyās* to dialectical syllogisms, and not to apodictic ones.⁴³³ I would add that any translation of the term *qiyās* runs the risk of masking Maimonides' positive understanding of this term. In this sense, Maimonides thought very differently from Sa'adya.⁴³⁴

Study of Maimonides' Judeo-Arabic terminology is also important for understanding his scriptural exegesis. It has long been clear that Maimonides read

see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 15-30. The authors noted (20) that thirteen is the traditional count; others have counted more (see above, n52).

⁴²⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12-13n91; see also there, 261n45.

⁴³⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 41 (Prin. Nine), 44 (Prin. Nine), 102 (Pos. 62), 261 (Neg. 170), 269 (Neg. 179), 292 (Neg. 236).

⁴³¹ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:14n27; see similarly 1:19-20n85, 1:342n32 (mMa'asS 2:5), 2:10-11n35 (mSab 1:1),

⁴³² Bloomberg, "Arabic Legal Terms in Maimonides," 25-31, 56n144; Henshke, "Le-Yesodei," 145; idem, "Ein Neharagin min ha-Din," 250n67; and Aviram Ravitsky, "Ha-Rambam ve-al-Fārābi 'al Hitpathut ha-Halakhah," in *Iyunim Ḥadashim be-Filosofia shel ha-Halakhah*, eds. Aviezer Ravitsky and Avinoam Rozenak (Jerusalem: Magnes, 2008), 212n6; see below, n581. Maimonides wrote that it is difficult to assert that a post-talmudic judge erred regarding "legal *qiyās*" (*al-qiyāsāt al-sharī'a*); ואן לם יגיד כלאפה וכאן קיאסה פיה סאיג בחסב אלקיאסאת אלשרעיה ואן כאן יתוג'ה כלאף מא אפתי בה פליס יקדר אן ית'בת עליה אלגלט אד' קיאסה ממכן; *Mishnah 'im Peirush*, ed. Kafih, 5:242 (mBek 4:4). *Qiyās* here cannot mean "laws derived by the *middot*"; Bloomberg, "Arabic Legal Terms in Maimonides," 27. Shailat followed Kafih's translation; see Maimonides, *Haqdamot ha-Rambam*, ed. Shailat, 28-29n14.

⁴³³ Aviram Ravitsky, "Ha-Heqqeshim ha-Hilkhatiyim ke-Heqqeshim Diyaleqtiyim be-Mishnat ha-Rambam veva-Middot sheha-Torah Nidreshet ba-hen ke-rōpoi Aristōtilyim," *Tarbiz* 73, no. 2 (2004): 197-213. See also Joel Kraemer, "Maimonides' Use of (Aristotelian) Dialectic," in *Maimonides and the Sciences*, eds. Robert S. Cohen and Hillel Levine (Dordrecht: Kluwer, 2000), 115-16. On dialectical and apodictic syllogisms, see below, n582. On the authorship of the *Treatise on Logic*, see below, n930. *Ijtihād* also deserves detailed treatment; see Lasker, "Hashpa 'at ha-Qara'ut 'al ha-Rambam," 158n73; and Cohen, *Opening the Gates of Interpretation*, 460, 470-72.

⁴³⁴ Bloomberg, "Arabic Legal Terms," 31, wrote: "Maimonides' constant use of the term *qiyās* shows him to be unhesitating in affirming and emphasizing the role of human reason in *halakhah* despite the Karaite challenge."

biblical verses differently than did the rabbis of late antiquity; one sixteenth-century writer exclaimed, “[Maimonides] is not careful with [scriptural] proofs and *derashot* of verses; even though a [scriptural] proof was rejected [by the rabbis], he will write it (in the *Mishneh Torah*).”⁴³⁵ In other words, if the rabbis derived a law from one verse, what license did Maimonides have to identify a different scriptural source? This problem is closely connected to Maimonides’ understanding of revelation and the role of the rabbis.⁴³⁶

Several scholars have noted the problematic uses of the phrase *peshateh di-qera* in *Sefer ha-Miṣvot*, which impinge directly on Maimonides’ understanding of rabbinic scriptural exegesis.⁴³⁷ Mordechai Cohen devoted a lengthy monograph to Maimonidean terms which have been understood to refer to Scripture’s apparent, literal, or “plain”

⁴³⁵ שאין רבינו מדקדק בראיות ובדרשות הפסוקים ואעפ”י שנדחית הראיה כותב אותה רבינו; Joseph Korkos, *Hilkhot Shemīṭah ve-Yovel*, 1:1, in *Mishneh Torah*, ed. Frankel, 6:495. For a list of Korkos’ similar comments, see there, 7*:67 (*Hilkhot Kelei ha-Miqdash*, 6:3).

⁴³⁶ For treatment, see David Sykes, “‘Seṭiyotav’ shel ha-Rambam mi-Meqorotav be-Halakhah,” *Dine Israel* 13-14 (1988): 115-22, 140; Shapiro, *Studies in Maimonides*, 79-80n324 (with reference to earlier studies); Eliav Shoḥetman, “Le-She’elat ha-Yaḥas bein ha-Halakhah u-vein Peshuṭo shel Miqra,” *Sinai* 139 (2008): 45-46; idem, “Le-Shimusho shel ha-Rambam be-Meqorot shebe-Miqra,” in *Mi-Birkat Moshe*, 1:428-34; and Cohen, *Opening the Gates of Interpretation*, 317. For a different approach, see Binyamin Ze’ev Benedikt, *Asupat Ma’amarim* (Jerusalem: Mosad ha-Rav Kook, 1994), 184-90. Noting Maimonides’ “creative attainments in exegesis” and his “original explication and application” of Scripture, Twersky wrote that “the study of Scripture and its relation to the Oral Law is a leitmotif of the *Mishneh Torah*”; *Introduction to the Code of Maimonides*, 57, 150; see there, 145-50. Subsequent scholars have taken up Twersky’s call “to identify and appraise Maimonides’ original exegesis” (150n172). For a review, see Cohen, *Opening the Gates of Interpretation*, 2-14; add Moshe Greenberg, “The Uses of Scripture in Classical Medieval Judaism: Prooftexts in Maimonides’ Code,” in *Return to Scripture in Judaism and Christianity: Essays in Postcritical Scriptural Interpretation*, ed. Peter Ochs (New York: Paulist Press, 1993), 197-219, 224-32; Sykes, “‘Seṭiyotav’ shel ha-Rambam”; Goṭel, “Derekh ha-Melekh be-Mishnah,” 102n36, 127-28n86 (on the *Commentary* in particular); and David Henshke, “Le-Ofyah shel Parshanut ha-Rambam le-Parshiyot ha-Halakhah shebe-Torah: Bein Ne’emanut le-Talmud le-vein Şorekh Haganah ‘Alav,” *Maimonidean Studies* 5 (2008): 1-21; other references appear there, 1n1-2.

⁴³⁷ See the foundational comments in Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 31-32, 40-45 (Prin. Two). For recent discussion, see Halbertal, “*Sefer ha-Miṣvot* le-Rambam,” 462-78; Ettinger, “‘Al Meqomah shel ha-Sevarah,” 19-25; and Feintuch, *Sefer Piqudei Yesharim*, 28-32; see below, n445.

sense: the Arabic *zāhir al-naṣṣ* and the Aramaic, *peshateh di-qera* (or Hebrew, *peshuto shel miqra*). Cohen argued that Maimonides distinguished between Scripture's *zāhir* (Arabic) and its *peshat* (Hebrew). Cohen noted that the geonim used the term *zāhir* to denote Scripture's "elementary" or "basic" sense, and that Andalusian exegetes were the first to endow the term *peshat* with special significance.⁴³⁸ Because there is no objective "*peshat*," argued Cohen, scholarly notions of *peshat*, largely developed in connection with the oeuvre of northern French exegetes, may not be fully congruent with Maimonides' use of this term.⁴³⁹

According to Cohen, it was only in *Sefer ha-Miṣvot* that Maimonides used *peshat* as a "technical term."⁴⁴⁰ Maimonides' invocation of the talmudic statement, "a biblical verse does not leave the realm of (*yoṣei mi-yedei*) its *peshat*" (bSab 63a etc.), in Principle Two led Cohen to label this Principle "the rule of *peshat*."⁴⁴¹ Cohen also argued that Maimonides understood Scripture's *zāhir* to be its "straightforward" or "plain" sense (one use of the term *peshat*).⁴⁴² Seeking to account for the fact that Maimonides interpreted many verses according to their "plain" sense, and not according to their rabbinic readings, Cohen claimed that, for Maimonides, the *zāhir* sense of Scripture may

⁴³⁸ For earlier usage, see Cohen, *Opening the Gates of Interpretation*, 31-85. For the range of the meanings of *zāhir al-naṣṣ*, see 87-105; and for the history of the "*peshat* principle," see 347-81. Cohen's depiction of geonic exegesis relies on the work of Ḥaggai Ben-Shammai; see his "Ha-Sifrut ha-Midrashit-ha-Rabbanit," 35-69; idem, "The Tension Between Literal Interpretation and Exegetical Freedom," 33-50; and idem, "Ribbuy Mashma'uyot ha-Ketuvim," 21-44.

⁴³⁹ Cohen, *Opening the Gates of Interpretation*, 3-4, 15-17.

⁴⁴⁰ Cohen, *Opening the Gates of Interpretation*, 18; see also 304n71: "as a rule, Maimonides does not invoke the rule of *peshat* explicitly with this terminology in his other major writings." For treatment of those writings; see there, 291, 296n50, 386-89, 500-509.

⁴⁴¹ אין מקרא יוצא מידי פשוטו; translation follows Cohen, *Opening the Gates of Interpretation*, 495-99. On Principle Two as "the rule of *peshat*," see there, 293-94n41. Add Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 91-92 (Prin. Two). See below, n445.

⁴⁴² See Cohen, *Opening the Gates of Interpretation*, 294.

have halakhic import even if it conflicts with rabbinic interpretations.⁴⁴³ Cohen concluded that Maimonides understood *peshat* to be the meaning of Scripture as rendered by the *tafsir marwi* (transmitted interpretation). In Cohen’s words, *peshat* denotes “what is known . . . to be the meaning of the text, either because the text is explicit or because it is an interpretation from Sinai.”⁴⁴⁴ Using the language of Islamic law, Cohen wrote that *peshat* combines all *manṣūṣ* (explicitly stated) sources, i.e., written and oral revelations.⁴⁴⁵

⁴⁴³ For the term *zāhir* in *Sefer ha-Miṣvot*, see Cohen, *Opening the Gates of Interpretation*, 117-27.

⁴⁴⁴ Cohen, *Opening the Gates of Interpretation*, 297; or *peshat* is the “text of Scripture itself, the meaning of which is self-evident in some cases, but in others is determined by the original Sinaitic interpretation” (334-35). Elsewhere, *peshat* is “the object of interpretation, not its result” (296), i.e., the interpreter interprets the *zāhir* of Scripture as rendered by the *tafsir marwi*.

⁴⁴⁵ Cohen, *Opening the Gates of Interpretation*, 489; and idem, “Ha-Biṭuy ‘Bāb/Abwāb al-Ta’wīl’,” 169n53. Cohen further underscored Maimonides’ distinction between revealed texts and matters subsequently derived from them. He noted that this “two-tiered legal system” (*Opening the Gates of Interpretation*, 260) parallels Islamic legal theory, which makes a distinction between revealed texts and laws derived from those texts. The former are often termed *uṣūl* (roots) and the latter *furū’* (branches). Maimonides used these and other terms from *uṣūl al-fiqh* to frame both revelation and the work of the rabbis (254-76, 488-89). However, Cohen insisted that the “most natural and immediate impetus” for Maimonides’ use of *peshat* was not Islamic legal theory but Andalusian exegesis” (489, see also 267n93). This contention is surprising because Cohen claimed that, for Maimonides, *peshat* is “jurisprudential,” not “fundamentally exegetical” (335). Several of Cohen’s conclusions are summarized in his “Hirhurim ‘al Heiqer ha-Munaḥ ‘Peshuṭo shel Miqra’,” 40-56; and idem, “Emergence of the Rule of Peshat in Medieval Jewish Bible Exegesis,” in *Interpreting Scriptures in Judaism, Christianity, and Islam: Overlapping Inquiries*, eds. Mordechai Z. Cohen and Adele Berlin (New York: Cambridge University Press, 2015), 219-22.

I often find Cohen’s argument compelling, but am unsure that Principle Two is “the rule of *peshat*.” As Cohen noted, the term *peshat* appears only late in this Principle (see above, n441). I understand Principle Two to address instances in which the *tafsir marwi* creates distinct commandments; see below. I am also not convinced that the term *peshat* in *Sefer ha-Miṣvot* always adheres to Cohen’s definition. As he noted, three of the nine appearances of this term outside of Principle Two are not based on rabbinic texts and probably should not be equated with the *tafsir marwi*, and another three could easily be called the *zāhir al-naṣṣ* (307). See also below, n1173. Friedberg has offered other criticisms of Cohen’s approach and another interpretation of Maimonides’ use of *peshat*; *Crafting the 613 Commandments*, 339-45.

Maimonides' "Model" of the Oral Torah

According to the early modern English rabbi David Nieto (1654-1728), Maimonides' views on the Oral Torah were in agreement with those of the geonim.⁴⁴⁶ Several recent studies uphold this view,⁴⁴⁷ yet most contemporary scholars perceive Maimonides as having rejected the geonic "model"⁴⁴⁸ of the Oral Torah, which emphasized the revealed nature of Jewish law.⁴⁴⁹ Moshe Halbertal described Maimonides as having adopted a "cumulative view" of the Oral Torah in which "each generation add[s] substantive norms ... to the given, revealed body of knowledge."⁴⁵⁰ Echoing Maimonides' Introduction to the *Commentary on the Mishnah*, Halbertal wrote that, for Maimonides, "interpretation is not meant to retrieve but to derive" and that "controversy arises out of the process of derivation rather than through a crisis in transmission."⁴⁵¹ Blidstein, who focused on the "institutional" roles of the Sanhedrin and of elite

⁴⁴⁶ Noted in Twersky, *Introduction to the Code of Maimonides*, 100n5; Blidstein, "Oral Law as Institution," 170; and idem, "Masoret ve-Samkhut Mosdit," 15-16. On Nieto's defense of the Oral Torah, see Jakob Petuchowski, *The Theology of Haham David Nieto: An Eighteenth Century Defense of the Jewish Tradition* (New York: Ktav, 1970), 69-98.

⁴⁴⁷ See José Faur, "Law and Hermeneutics in Rabbinic Jurisprudence: A Maimonidean Perspective," *Cardozo Law Review* 14 (1993): 1660; idem, "Monolingualism and Judaism," 1729-31 (though here Faur adopted a rather idiosyncratic interpretation of the geonim); the somewhat ambiguous statements of David Weiss Halivni, "The Breaking of the Tablets and the Begetting of the Oral Laws: A History of 'Torah Shebe'al Peh'," in *Gershom Scholem (1897-1982) – in Memoriam*, ed. Joseph Dan (Jerusalem: Hebrew University of Jerusalem, 2007), 2:140-41; and Silman, *Qol Gadol ve-lo Yasaf*, 28, 44n11.

⁴⁴⁸ A number of writers use this term; Blidstein, "Maimonides on 'Oral Law,'" 113; idem, "Halakhic Authority in Maimonides," 32-33; Halbertal, *People of the Book*, 52-72; idem, *Maimonides*, 105; Sagi, "Halakhic Praxis and the Word of God," 319; and Cohen, *Opening the Gates of Interpretation*, 20, 261, 264, 267n95, 389.

⁴⁴⁹ Blidstein credited Abraham Joshua Heschel as one of the earliest to point this out; *Torah min ha-Shamayim*, 2:321. This position is affirmed in Blidstein, "Oral Law as Institution," 167-70; idem, "Masoret ve-Samkhut Mosdit," 15-16; Halbertal, *People of the Book*, 59-63; Harris, *How Do We Know This*, 86-90; and Lasker, "Hashpa'at ha-Qara'ut 'al ha-Rambam," 150. See also Cohen, *Opening the Gates of Interpretation*, 257-60.

⁴⁵⁰ Halbertal, *People of the Book*, 59.

⁴⁵¹ Halbertal, *People of the Book*, 61.

interpreters of the law in Maimonidean jurisprudence (esp. in *Hilkhot Mamrim*, chaps. 1-4⁴⁵²), emphasized that for Maimonides, only the elite may interpret revelation. He explained that these “men of knowledge” prevent communal debate,⁴⁵³ transmit the Oral Torah,⁴⁵⁴ and preclude post-Mosaic prophecy as a possible source of legal norms.⁴⁵⁵ Blidstein added that, for Maimonides, the Sanhedrin had a monopoly on legal rulings, tolerated little deviance, and issued enactments that were difficult to revoke because they ensured “social stability and order.”⁴⁵⁶ As Blidstein noted, Maimonides’ “institutional” emphasis may have served his own need to rebuff contemporary claimants to have inherited the authority of the Sanhedrin, such as the Baghdadi Gaon, Samuel ben ‘Eli.⁴⁵⁷

Jacob Levinger’s Straussian claims about Maimonides’ approach to the Oral Torah lie beyond the scope of this chapter, but will be briefly mentioned. According to Levinger, inconsistencies in Maimonides’ presentation of laws designated *halakhah le-Moshe mi-Sinai* indicate Maimonides’ need to present a “dogmatic,” “necessary belief,”

⁴⁵² Which Blidstein treated in an extensive commentary; *Samkhut u-Meri*.

⁴⁵³ Blidstein, “Maimonides on ‘Oral Law’,” 120.

⁴⁵⁴ Blidstein, “Oral Law as Institution,” 177.

⁴⁵⁵ Gerald Blidstein, “Mi-Yesod ha-Nevu’ah be-Mishnato ha-Hilkhatit shel ha-Rambam,” *Da’at* 43 (1999): 25.

⁴⁵⁶ Blidstein, “Halakhic Authority in Maimonides,” 31-37. See also idem, “‘Afilu Omer lekha ‘al Yamin she-hu Smol’: le-‘Oshmat ha-Samkhut ha-Mosdit be-Halakhah u-Gevolteha,” in *Iyunim be-Mahshevet ha-Halakhah voha-Aggadah* (Be’er Sheva’: Ben Gurion University, 2004), 332; and Kassierer and Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit*, 117-18. Lawrence Kaplan argued that the “institutional model” was more prominent in Maimonides’ later writings; “*Daas Torah: A Modern Conception of Rabbinic Authority*,” in *Rabbinic Authority and Personal Autonomy*, ed. Moshe Sokol (Northvale, NJ: Aronson, 1992), 39n61; and idem, “Maimonides and Mendelssohn on the Origins of Idolatry, the Election of Israel, and the Oral Law,” *Perspectives on Jewish Thought and Mysticism*, eds. Alfred L. Ivry et al. (Amsterdam: Harwood Academic Publishers, 1998), 442-43. Note that Maimonides’ anti-Qaraite polemic in the *Commentary* to mAv 1:3 is based on Deut. 17:11, the central verse for the “institutional model”; *Mishnah ‘im Peirush*, ed. Kafih, 4:408-410.

⁴⁵⁷ Blidstein, “Masoret ve-Samkhut Mosdit,” 27; idem, “Maimonides on the Renewal of *Semikha*,” 29-34; and idem, “Halakhic Authority in Maimonides,” 32. On anti-Qaraite aspects, see idem, “Oral Law as Institution,” 179. On tension between this model and Maimonides’ historical situation, see Halbertal, “What is the *Mishneh Torah*,” 110.

rather than one that reflected his true position.⁴⁵⁸ Levinger also claimed that Maimonides' *Guide* purveyed an esoteric view of the Oral Torah, because of its attempt to base its explanations of the commandments on "the verses (*al-nuṣūṣ*) and not the pronouncements of the law (*ta' līl al-fiqh*)."⁴⁵⁹ The fact that Maimonides read the *lex talionis* "literally," when the rabbis did not, was particularly problematic. Levinger asked: If Maimonides considered rabbinic interpretations of the *lex talionis* to be Sinaitic (as Maimonides wrote elsewhere), what authority did he have to read it literally, divorced from the divinely-granted interpretation? Levinger noted other contradictions between the *Guide*'s declarations of the immutability of divine law and assertions that it can change, and concluded that Maimonides must have secretly held that the Oral Torah was post-Sinaitic and devoid of divine authority.⁴⁶⁰

⁴⁵⁸ Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 65.

⁴⁵⁹ לאן אלקצד אלן תעליל אלנצוץ לא תעליל אלפקה; *Guide* III:41; Maimonides, *Dalālat al-Hā'irīn*, eds. Munk and Joel, 409. Translations generally follow idem, *The Guide of the Perplexed*, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963). Pines (2:558) has "legal science" for *al-fiqh*; Salomon Munk has "l'explication traditionnelle"; *Le guide des egares: traite de Theologie et de Philosophie par Moise Ben Maimon, die Maimonide* (Paris: Franck, 1856-1866), 3:313; and Schwarz has *halakhah*; Maimonides, *Moreh Nevukhim: Tirgem me-'Arvit ve-hosif he'arot, nispahim u-maftehot*, ed. and trans. Michael Schwarz (Tel Aviv: Tel Aviv University, 2002), 2:578.

⁴⁶⁰ See Jacob Levinger, "'Al Torah shebe-'al-Peh be-Haguto shel ha-Rambam," *Tarbiẓ* 37, no. 3 (1968): 282-93; repr. as "Ma'amadah shel ha-Torah shebe-Khtav be-Maḥshevet ha-Rambam," in *Ha-Miqra ve-Anaḥnu*, ed. Uriel Simon (Tel Aviv: Devir, 1979), 120-32. See also idem, *Ha-Rambam ke-Filosof ukhe-Foseq* (Jerusalem: Bialik, 1989), 56-66. Schwarz noted that Munk offered a similar interpretation; see Munk, *Le guide des egares*, 3:313-14n1, 3:334-35n4; and Maimonides, *Moreh Nevukhim*, ed. Schwarz, 2:578n4, 2:590n102.

Although many have accepted Levinger's claims,⁴⁶¹ others have argued that Maimonides only admitted temporary changes to the law.⁴⁶² Halbertal accounted for Maimonides' divergent readings of Scripture by claiming that the *Guide* offers a "philosophical" reading of the law, while Maimonides' other writings are "halakhic" in nature.⁴⁶³ Mordechai Cohen argued that the *Guide* follows Scripture's *zāhir*, rather than the divinely authorized *peshat* (which includes the *tafsīr marwī*).⁴⁶⁴ Blidstein demonstrated that presentations of the law as static and dynamic are interwoven in Maimonides' writings,⁴⁶⁵ and he observed that the *Mishneh Torah* incorporates the straightforward meaning of Scripture, even when it is not the halakhic meaning. Regarding the *lex talionis* in particular, Blidstein noted that the *Mishneh Torah* understands "the injury he inflicted on another shall be inflicted on him" (Lev. 24:20) to mean, "the injurer deserves (*ra'uy*) to be deprived of a limb or to be wounded to the same

⁴⁶¹ See the list in Gerald Blidstein, "'Maṭarati 'Akhshav Latet Ṭa'amim le-Ketuvim ve-Lo Latet Ṭa'amim le-Halakhah' – ha-Omnām?" in *Karmi Sheli: Meḥqarim be-Aggadah uve-Farshanuteha Mugashim le-Prof. Karim Horowitz*, eds. Naḥem Ilan et al. (Jerusalem: Lander, 2012), 48n5, esp. Yair Lorberbaum, "Ha-Rambam 'al ha-Aggadah, Halakhah ve-'Hoq Elohi,'" *Dine Israel* 26-27 (2009-2010): 253-97; add Kreisel, *Prophecy*, 261-62. Against Lorberbaum, see also Shimshon Ettinger, "'Od le-She'elat ha-Halakhah ve-'Hoq ha-Elohi' be-Mishnat ha-Rambam," *Dine Israel* 28 (2011): 251-63; see also Halivni, *Peshat and Derash*, 85-88; and Lasker, "Hashpa'at ha-Qara'ut 'al ha-Rambam," 150.

⁴⁶² Eliezer Shimson Rosenthal, "'Al 'Derekh ha-Rov,'" *Peraqim: Sefer ha-Shanah shel Mahkon Shoken le-Meḥqar ha-Yahadut* 1 (1967-1968): 199n62; and Izhak England, "'Al Derekh ha-Rov' u-Va'ayat ha-Yosher be-Mishnato shel ha-Rambam," *Shenaton ha-Mishpat ha-'Ivri* 14-15 (1988-1989): 43-44; trans. in idem, "The Problem of Equity in Maimonides," *Israel Law Review* 21 (1986): 311-12. See the similar suggestion in Shalom Rosenberg, "Ve-Shuv 'al 'Derekh ha-Rov,'" in *Manhigut Ruḥanit be-Yisrael, Morashah ve-Ya'ad*, ed. Ella Belfer (Ramat Gan: Mekhon le-Yahadut ule-Maḥshavah bat-Zemaneinu, 1982), 302-303n30.

⁴⁶³ Halbertal, "*Sefer ha-Miṣvot* le-Rambam," 478-80; similarly, Shoḥetman, "Le-She'elat ha-Yahas," 51-65.

⁴⁶⁴ Cohen, *Opening the Gates of Interpretation*, 130-37, 449-52.

⁴⁶⁵ Blidstein, "Maimonides on 'Oral Law,'" 120n33; and idem, *Samkhut u-Meri*, 53-54; see also there, 48.

extent” (*Hilkhot Hovel u-Maziq*, 1:3)⁴⁶⁶ – thereby integrating the verse’s apparent (or *zāhir*) meaning. Blidstein also showed that Maimonides assimilated rabbinic tradition into the *Guide*’s discussion of reasons for the commandments.⁴⁶⁷

Maimonides’ Andalusian Predecessors

Recent scholars have demonstrated that several eleventh- and twelfth-century Andalusian rabbis broke from Sa’adya’s depiction of the Oral Torah, and portrayed *qiyās* and other human contributions to divine law in positive terms. This widespread Andalusian tradition anticipated and contributed to Maimonides’ rejection of geonic legal epistemology and to his perspective on the Oral Torah.⁴⁶⁸

Qaraite activity is far more difficult to document in Andalusia than in Iraq and Palestine; only one name, (Sayyid?) Abū al-Ṭarās (or al-Aṭrās) survives, and there are no known texts. Nevertheless, Qaraism loomed large in Andalusian Rabbanite writings and several local Rabbanites proudly recounted having persecuted Qaraites in their region.⁴⁶⁹

⁴⁶⁶ אִינוּ לַחְבּוּל בְּזֶה כִּמוֹ שְׁחַבַּל בַּחֲבֵרוֹ אֲלֵא שֶׁהוּא רֵאוּי לַחֲסֵרוֹ אֲבֵר אוֹ לַחְבּוּל בּוֹ כִּמוֹ שֶׁעָשָׂה וּלְפִי־כֵן מִשְׁלֵם נֹזֶק unless otherwise noted, texts of the *Mishneh Torah* follow Kafih’s edition. Translation follows Maimonides, *The Code of Maimonides, Book 11: The Book of Torts*, trans. Hyman Klein (New Haven: Yale University Press, 1954), 160.

⁴⁶⁷ Blidstein, “Maṭarati ‘Akshav Latet Ṭa’amim le-Ketuvim.” Blidstein noted his debt to Lorberbaum, “Ha-Rambam ‘al ha-Aggadah, Halakhah ve-‘Hoq Elohi,” 263n35, for some examples. For an alternative suggestion, see Benedikt, *Asupat Ma’amarim*, 186-90; followed by Yiṣḥaq Isaac and Alexander Klein, “Torah shebe-‘al Peh: Gidrah, Meqorah ve-Goralah ‘al pi ha-Rambam,” *BDD* 25 (2001): 126-27. See also Sykes, “Seṭiyotav’ shel ha-Rambam,” 121-22. For an alternative reading of this passage, see Halivni, *Peshat and Derash*, 200-201n75.

⁴⁶⁸ Unfortunately, other than one brief comment (see below), I have found little indication that Maimonides’ Andalusian heroes in the realm of halakhah – Isaac ben Jacob Alfasi and Joseph ben Meir ha-Levi Ibn Migash – reflected on the sources of the law.

⁴⁶⁹ For background, see Daniel Lasker, “Karaism in Twelfth-Century Spain,” *Journal of Jewish Thought and Philosophy* 1 (1992): 179-195; see there, 179n2 for earlier studies; repr. in idem, *From Judah Hadassi to Elijah Bashyatchi: Studies in Late Medieval Karaite Philosophy* (Leiden: Brill, 2008), 125-40. Add Judah Rosenthal, “The Talmud on Trial: The Disputation at Paris in the Year 1240,” *JQR* 47, no. 1 (1956): 65-67. Subsequently, see Ben-Shammai, “Between Ananites and Karaites,” 25; Camilla Adang

Given the paltry knowledge of Andalusian Qaraism, little can be said about its impact on Andalusian Rabbanite presentations of the Oral Torah. Yet other features of the Andalusian milieu can be reconstructed. Mordechai Cohen's above-mentioned study of *peshat*, the "philological-contextual" understanding of Scripture, traces the influence of Andalusian writers on Maimonidean biblical exegesis.⁴⁷⁰ The examination of jurisprudential comments that follows draws attention to a unique Andalusian perspective on rabbinic tradition.

To the best of my knowledge, the earliest Andalusian Rabbanite reflection on the human expansion of divine law appears in the Introduction to *Kitāb al-Zuhd* (*The Book of Contenance*), a commentary on Ecclesiastes by Isaac Ibn Ghiyāth.⁴⁷¹ The author began by repeating geonic assertions about the Oral Torah. He explained that Deut. 17:8-9, which commands Israel to bring doubtful cases to the "*Levitical priests and judge in charge at the time*," demonstrates that "the obligated servants" (*al-mukallaḥfīn al-muta'abbidīn*) must turn to the "sages of the tradition" (*a'immat al-talqīn*). Noting that these verses

"Éléments karaïtes dans la polémique anti-judaïque d'Ibn Ḥazm," in *Diálogo filosófico-religioso entre cristianismo, judaísmo e islamismo durante la edad media en la Península Iberica*, ed. Horacio Santiago-Otero (Turnhout: Brepols, 1994), 419-41; idem, "The Karaites as Portrayed in Medieval Islamic Sources," in *Karaite Judaism*, 187-90; Daniel Lasker, "Maimonides and the Karaites: From Critic to Cultural Hero," in *Maimonides y su época*, eds. Carlos del Valle et al. (Madrid: Sociedad Estatal de Conmemoraciones Culturales, 2007), 313-14; Friedman, "Judah Ha-Levi on Writing the *Kuzari*," 162-64; Rustow, "The Karaites as Sect," 152-56; Bernard Septimus, "'Nevarekh (le-)Eloheinu': Ṭaharanut Leshonit ve-Hiṣṭorīyah Hilkhatit," in *Ta Shma: Meḥqarim be-Mada'ei ha-Yahadut le-Zikhro shel Yisrael Ta-Shma*, eds. Avraham Reiner et al. (Alon Shvut: Tevunot, 2012), 2:578-79 and Sarah Stroumsa, "The Mu'tazila in al-Andalus: The Footprints of a Phantom," *Intellectual History of the Islamicate World* 2 (2014): 93-96. On Abū al-Ṭarās, see Ibn Dā'ūd, *The Book of Tradition*, ed. Cohen, 94-95. On Karaite persecution in Andalusia, see Lasker, "Hashpa'at ha-Qara'ut 'al ha-Rambam," 148n19.

⁴⁷⁰ Cohen, *Opening the Gates of Interpretation*, 54-85, 359-62, 365-75. See the summary, 83-85.

⁴⁷¹ Yosef Kafih ascribed this work to Sa'adya; see his *Hameish Megillot: Shir ha-Shirim, Rut, Qohelet, Esther, Eikhah 'im Peirushim 'Atiqim* (Jerusalem, 1962), 147-48. On the ascription to Ibn Ghiyāth, see Hagit Mittelman, "Peirush le-Sefer 'Qohelet' be-'Aravit-Yehudit ha-Meyuḥas le-R. Yiṣṣaq Ibn Ghiyāth: Hebe'itim Filosofiyim u-Farshaniyim," (PhD diss., Hebrew University, 1999), 43-80.

command that a judge be consulted, but make no mention of a prophet, Ibn Ghiyāth argued that, since prophecy's cessation, Israel has fulfilled this requirement by relying on "the students of the prophets, who fill their place."⁴⁷² As evidence, he cited "the authentic tradition" (*al-naql al-ṣaḥīḥ*) that understands "Incline your ear and listen to the words of the sages" (Prov. 22:17) as a verse that refers to the period after prophecy's end.⁴⁷³

Ibn Ghiyāth, however, presented the role of "obligated servants" differently than did the geonim. He explained: "An obligated individual is only commanded if he possesses intellect and understanding, [and is capable of] extracting branch and deduction (*far' wa-natīja*)." "Through sound reflection," he continued, "I have found that the masters of the tradition (*shuyūkh al-talqīn*) are preferred over those who convey prophecy," in keeping with the talmudic claim, "a sage is greater than a prophet" (bBB 12a).⁴⁷⁴ In Ibn Ghiyāth's view, the sages are superior to prophets because they use their natural abilities (*gharā'iz wa-qarā'ih*) to "extract deductions from its [i.e., the tradition's]

⁴⁷² תלמוד'ת אלאנביא אלקאימין מכאנהם; Kafih, *Hameish Megillot*, 162.

⁴⁷³ ומשמת חגי זכריה ומלאכי נסתלקה שכינה מישראל מכאן ואילך הט אזנך ושמע דברי חכמים; Kafih, *Hameish Megillot*, 162. I could not find this exact language in any rabbinic text; the closest parallel is Chaim Milikowsky, *Seder 'Olam: Mahadurah Mada'it, Peirush u-Mavo* (Jerusalem: Yad Ben-Zvi, 2013) 1:322 lines 21-22 (chap. 30); see there, 2:522-23. On this passage, see Nehemia Polen, "The Spirit Among the Sages: *Seder Olam*, the End of Prophecy, and Sagely Illumination," in "It's Better to Hear the Rebuke of the Wise than the Song of Fools" (*Qoh 7:5*): *Proceedings of the Midrash Section, Society of Biblical Literature, volume 6*, eds. W. David Nelson and Rivka Ulmer (Piscataway, N.J.: Gorgias Press, 2015), 83-94. Translation of *talqīn* follows Blau, *Dictionary*, 638, s.v. تلقين. Blau also offered *oral torah*.

⁴⁷⁴ לא מכלף מאמור אלא ד' עקל ופהם מתחצל מן פרע ונתיגה ... וענד אלאעתבאר אלצחיה וגדת לשיוך' אלתלקין את'רה; Kafih, *Hameish Megillot*, 162-63; first noted in Moses Ibn Ezra, *Sefer ha-'Iyunim vaha-Diyunim*, ed. Halkin, 36-37n29. Kafih's text differs slightly from Halkin's, which is from JTS MS. L1011 (EMC 203), fol. 148b. Halkin's text should read מזידה, instead of זידה. On "a sage is greater than a prophet," see Alon Goshen-Gottstein, "Ḥakham 'Adif mi-Navi': Tefisat ha-Torah be-Re'i Parshanut ha-Pitgam le-Doroteha," in *Limud ve-Da'at be-Maḥshava Yehudit*, ed. Howard Kreisel (Be'er Sheva: Ben Gurion University Press, 2006), 37-42; and Elliot Wolfson, "'Sage is Preferable to Prophet': Revisioning Midrashic Imagination," in *Scriptural Exegesis: The Shapes of Culture and the Religious Imagination, Essays in Honour of Michael Fishbane*, eds. Deborah A. Green and Laura S. Lieber (Oxford: Oxford University Press, 2009), 188-90.

principles, and extend branches from its roots” (*yastanbiṭūn al-natā’ij min ummātihā*⁴⁷⁵ *wa-yastamiddūn al-furū’ min uṣūlihā*). By comparison, the knowledge of Prophets is deficient because it is “external”; prophets are unable to generate it themselves. To illustrate this, Ibn Ghiyāth contrasted King David with King Solomon: Notwithstanding prophetic assurances of divine guidance (2 Sam. 7), David failed to build the Temple. It was built instead by Solomon, the archetypal “sage,” who relied on internal wisdom to correctly adjudicate a case of disputed motherhood (1 Kings 3).⁴⁷⁶

When viewed in the light of earlier Jewish discussions of the talmudic aphorism “a sage is greater than a prophet,” Ibn Ghiyāth’s arguments are striking. The tenth-century Qaraite polymath Ya’qūb al-Qirqisānī had cited this phrase to challenge Sa’adya’s claim that Moses had received “explanations and meanings” of Scripture at Sinai.⁴⁷⁷ In Qirqisānī’s view, this dictum testifies to Sa’adya’s distance from the self-understanding of the rabbis, in that it expresses a preference for sages over prophets. According to the Talmud, Qirqisānī claimed, sages produced (*mustanbiṭīn*) knowledge through the intellect, yet Sa’adya claimed that sages (merely) transmitted received

⁴⁷⁵ Following Kafih’s text; Halkin (above, n474) has אמתחתה, an alternative plural.

⁴⁷⁶ Kafih, *Hameish Megillot*, 162-63. Abraham bar Solomon, a fifteenth-century Yemenite, quoted this passage and added further comments that may also be from Ibn Ghiyāth. According to his report, Ibn Ghiyāth explained that a prophet cannot add even a single word to what God revealed, but a sage “innovates over and over” (ובדברי חכמה הרבה והרבה הוא מחדש) (*Peirush Nevi’im Rishonim*, ed. and trans. Yosef Kafih (Qiryat Ono: Mekhon Mishnat ha-Rambam, 1999), 3:59. The wording of Abraham’s report differs slightly from the text of Ibn Ghiyāth that Kafih published. On Abraham bar Solomon, see Eliezer Schlossberg, “Peirusho shel R. Avraham ben Shlomo le-Sefer Yoel,” in *Mehqarim ba-Lashon ha-Ivrit uve-Mada’ei ha-Yahadut*, eds. Aharon Ben-David and Isaac Gluska (Jerusalem: ha-Agudah le-Tipuah Hēvrah ve-Tarbut, 2001), 209-210.

⁴⁷⁷ زعموا ان البارئ جلّ وعزّ لما دفع التوراة الى موسى عليه السلام في سينى عرفه تفاسيرها ومعانيها Qirqisānī, *Kitāb al-Anwār wal-Marāqib*, 1:111 (I.13.1).

knowledge.⁴⁷⁸ Though I have not found a response to this assertion in geonic texts, Nissim ben Jacob attempted to limit the import of the talmudic saying. Addressing those who, he reported, took umbrage at the rabbis' devaluation of the status of biblical prophets, i.e., Qaraites, Nissim offered a rejoinder to those “*who rejoice in doing evil*” (Prov. 2:15). Nissim explained that this talmudic dictum refers only to prophets who are not sages. By contrast, he wrote, biblical prophets, who were *also* sages, are “the most preferred and honored” (*al-afḍal wal-ashraf*). A sage is only greater than “a temporary prophet,” that is, one whose prophecy is not preserved in Scripture.⁴⁷⁹ Knowingly or not, Ibn Ghiyāth read the saying “a sage is greater than a prophet” in the manner of Qirqisānī. In using Islamic legal theory's image of extracting “branches” from “roots,”⁴⁸⁰ he defended the rabbis and rejected Sa'adya's claims.

Baḥya ben Joseph ibn Paqūda (Saragossa; fl. c. 1050-90)⁴⁸¹ cited the dictum “a sage is greater than a prophet” with approval and he applied it to all intellectual endeavors. He claimed that God guides all who undertake to learn a new discipline

⁴⁷⁸ فان كان الحكماء هم هؤلاء الذين زعموا انهم الربانيون فليسوا بحكماء اذ كان انما أخبروا بما قيل لهم وما علموا وان كانوا حكماء مستنبطين لجميع مقالوه فما الذي نقلوا

⁴⁷⁹ Hirschfeld, “Be-Sefer *Megillat Setarim*,” 47-48. For background, see Nissim ben Jacob, *Ḥamishah Sefarim*, ed. Abramson, 282n237; and Ben-Sasson, *Ṣemiḥat ha-Qehilah ha-Yehudit*, 51. On the ascription to Nissim, see Abraham Maimonides, *Teshuvot*, ed. Freimann, xii, with reference to earlier scholarship. For a slightly different treatment, see Goshen-Gottstein, “Ḥakham ‘Adif mi-Navi’,” 52-54. See also Shraga Abramson, *Bava Batra ‘im Targum ‘Ivri u-Feirush Ḥadash, Hilufeī Girsā’ot u-Mar’ei Meqomot*, ed. Jacob N. Epstein (Tel Aviv: Devir, 1953), 209.

⁴⁸⁰ See Bernard Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press, 1998), 22-23; and Hallaq, *A History of Islamic Legal Theories*, 153. See al-Ghazālī's expansion of this metaphor in *al-Mustasfā min ‘Ilm al-Uṣūl* (Beirut, 1948), 1:8, trans. in Ahmad Zaki Mansur Hammad, “Abū Ḥāmid al-Ghazālī's Juristic Doctrine in *al-Mustasfā min ‘Ilm al-Uṣūl*, With a Translation of Volume One of *al-Mustasfā min ‘Ilm al-Uṣūl*,” (PhD diss., University of Chicago, 1987), 2:315. Hallaq discussed this passage there, 117.

⁴⁸¹ See Lobel, *A Sufi-Jewish Dialogue*, 1-2.

beyond what a human teacher offers.⁴⁸² Bahya's analysis of rabbinic legal activity also aligns with Ibn Ghiyāth's depiction of the rabbis. In his view, whenever possible, the rabbis applied (*anfadhū*) principles that were transmitted from the prophets (*uṣūlihīm al-manqūla 'an al-anbiyā'*). However, when a new question arose about the details (*furū'*) of the law, the rabbis resorted to *qiyās* and *ra'y* (subjective reasoning) – controversial terms that Bahya apparently used synonymously;⁴⁸³ along with *naẓar* (speculation), these enabled them to extract (*istanbatū*) rulings from received *uṣūl*.⁴⁸⁴

Several other Andalusian Rabbanites explained this talmudic dictum in the same manner as Ibn Ghiyāth. Moses Ibn Ezra (Grenada and Lucena; c. 1055 - d. after 1138) explained that God graced (*laṭafa*) the Jews with sages to replace the prophets. The assertion, “a sage is greater than a prophet,” he wrote, indicates that the sages' knowledge is double that of the prophets, because a prophet simply fulfills his mission, but a sage derives (*yufarri'u*) new laws, extends (*yastamiddu*) that which is known, and deduces

⁴⁸² Bahya ibn Paqudah, *Sefer Torat Ḥovot ha-Levavot: Maqor ve-Targum*, ed. and trans. Yosef Kafih (Jerusalem, 1973), 363 (8:3); see Lobel, *A Sufi-Jewish Dialogue*, 185.

⁴⁸³ Noted by Cohen, *Opening the Gates of Interpretation*, 253n43. On these terms, see Goldziher, *Muslim Studies*, 2:78-83, 2:201-202; Schacht, *Origins*, 98-132; Hallaq, *A History of Islamic Legal Theories*, 15, 18-19; and idem, *Origins*, 113-18. On *ra'y*, compare above, n250.

⁴⁸⁴ Bahya, *Ḥovot ha-Levavot*, ed. Kafih, 28-29 (introduction). See Sklare, *Samuel ben Hofni*, 161n67, noting Bahya's claim that Torah study examines both written and logical (*al-maktūb wal-ma'qūl*) components of tradition (ed. Kafih, 150 [3:4]); see also Cohen, *Opening the Gates of Interpretation*, 252-53. Cohen's suggestions that “it is reasonable to assume that Bahya did not depart from Saadia's model on his own authority, since he was not known as a particularly distinguished or innovative Talmudist” and that “it is also possible to explain Bahya's positive attitude toward *qiyās* simply as a reflection of what seems to occur in the Talmud itself” (253 and n44) rely on arguments from silence. Bahya acted as a judge (as Cohen noted), and must have had more than passing familiarity with legal texts.

(*yuntiju*) from known intellectual premises.⁴⁸⁵ Joseph ben Meir ha-Levi Ibn Migash⁴⁸⁶ (Seville and Lucena; 1077-1141), offered a similar explanation; sages, he wrote, understand divine dicta that they have not heard, but prophets merely repeat what God has told them.⁴⁸⁷ Maimonides' fellow Andalusian refugee, Joseph ibn 'Aqnīn (Barcelona and Fez; 12th c.), similarly affirmed that a prophet merely conveys a message (*yu'addī al-risāla*), while a sage expands (*yatafaqqahu*) revelation.⁴⁸⁸

Andalusian Jewish uses of the distinction between *uṣūl* and *furū'* to explain rabbinic activity sheds new light on a well-known comment of Abraham Ibn Dā'ūd. In the prologue to his *Sefer ha-Qabbalah*, Ibn Dā'ūd wrote that the rabbis always agreed about the “principle” (*iqar*) of a commandment; their debates concerned only “its

⁴⁸⁵ ואלתעוין' מן אלאנביא במא יכון עלמהם אצ'עאפא מן אלאנביא כמה קאלו חכם עדיף מנביא פאן אלנבי יודי אלרסאלה חסב מא חמל איאהא אן אלנבוה עלי מא נבי בהא ואלחכם יקול ען אלאנביא ויפרע מא אבאח לה אלשרע תפריעה פיסתמד מן פכרתה מוסע אלאבדאע וינתג' מן מקדמאתה אלעקליה פלה פצ'ל אלאבדאע; Moses Ibn Ezra, *Sefer ha-Iyunim veha-Diyunim*, ed. Halkin, 36. For treatment see Abraham Halkin, “Hashqafat R. Moshe Ibn Ezra 'al ha-Mišvot,” in *Mehqarim be-'Aravit uva-Islam*, ed. Ya'aqov Maṣṣur (Ramat Gan: Bar Ilan University Press, 1973), 2:29-32; and David, “Yedi'at davar ha-El,” 143-44. Moses Ibn Ezra cited Sa'adya's criticism of *qiyās*; *Sefer ha-Iyunim veha-Diyunim*, ed. Halkin, 204. Moses Ibn Ezra even characterized rabbinic contributions as *ibda'*, a term that usually describes improper religious innovations; on *bid'a*, see Goldziher, *Muslim Studies*, 2:33-37.

⁴⁸⁶ On the spelling of Migash, see Israel Ta-Shma, “Yeṣirato ha-Sifrutit shel Rabbeinu Yosef ha-Levi Ibn Migash,” in *Keneset Mehqarim*, 2:16n1.

⁴⁸⁷ ואע"ג דהך גברא לא שמעה להך מילתא מעולם הרי חכם עדיף מנביא דאלו נביא לא אמר אלא מה דשמע ויהבי בפומיה; this appears in the *Shiṭta Mequbbešet* on tractate *Bava Batra* by Beṣalel ben Abraham Ashkenazi, which preserves a significant number of Ibn Migash's comments. Text follows the first edition (*Sefer Asifat Zeqenim* [Livorno, 1774], 8b). On Ibn Migash and Ashkenazi's *Shiṭta Mequbbešet*, see Ta-Shma, “Yeṣirato ha-Safrutit shel Rabbeinu Yosef ha-Levi Ibn Migash,” 2:23n21; and Louis Ginzberg, “Post Scriptum,” *REJ* 67 (1914): 150-51 (referenced by Ta-Shma). Without any evidence, Faur repeatedly insisted Ibn Migash was the source of many ideas of later Andalusian Rabbanites. See Faur, *Iyunim be-Mishneh Torah*, 4, 33, 38. On Judah ha-Levi's opposition to *qiyās*, see above, n258.

⁴⁸⁸ וכמה קאלוא רבותינו ז"ל חכם עדיף מנביא לאן אלנבי יודי אלרסאלה חסב מא תלית עליה ואלחכם יתפקה כלאם אלנבי פלאג'ל הדא אלוג'ה פצ'לה; Joseph ibn 'Aqnīn, *Inkishāf al-Asrār wa-Zuhūr al-Anwār*, ed. and trans. Abraham S. Halkin (Jerusalem: Meqīṣei Nirdamim, 1964), 458. As far as I know, other than Maimonides, ibn 'Aqnīn is the only writer to use the fifth form of the verb *f-q-h* to denote detailing or expanding the law; see below. On ibn 'Aqnīn and Maimonides, see Abraham S. Halkin, “Ibn 'Aqnīn's Commentary on the Song of Songs,” in *Alexander Marx Jubilee Volume: On the Occasion of his Seventieth Birthday*, ed. Saul Lieberman (New York: JTS, 1950), 396-401; and idem, “Le-Demuto shel R. Yosef ben Yehuda ibn 'Aqnīn,” in *Sefer ha-Yovel li-khvod Zvi Wolfson*, ed. Saul Lieberman (Jerusalem: American Academy for Jewish Research, 1965), 103-105.

offshoots” (*toldoteha*; or as Gerson Cohen translated the term in this context, “its details,”) and debates arose only due to inattentive students.⁴⁸⁹ Though some scholars have regarded Ibn Dā’ūd’s claim as a restatement of geonic-era explanations of rabbinic disputes,⁴⁹⁰ earlier texts did not connect the trope of lackadaisical students with the distinction between *uṣūl* and *furū’*.⁴⁹¹

The discovery of David ben Sa’adya al-Ger’s *Kitāb al-Hāwī* (*The Comprehensive Book*) has transformed scholarly understanding of eleventh-century Andalusian Rabbanite legal theory. Little is known about the author of this enormous, well-organized judges’ manual.⁴⁹² David Sklare suggested that David ben Sa’adya’s father may have emigrated from northern (Christian) Spain or southern France after embracing Judaism, a relocation made by contemporaneous converts.⁴⁹³ David ben Sa’adya appears to have been the first Andalusian Rabbanite to engage the discipline of *uṣūl al-fiqh* at length.⁴⁹⁴ Echoing geonic claims, he affirmed that Moses “soundly related” (*ḥadīthan ṣaḥīḥan*) “the

⁴⁸⁹ Ibn Dā’ūd, *The Book of Tradition*, ed. Cohen, 1 (English), 3 (Hebrew). This distinction clearly relies on the division between *uṣūl* and *furū’*, as noted in Faur, *Iyunim be-Mishneh Torah*, 20n6; and Ravitsky, “Ha-Rambam ve-al-Fārābi,” 214. See, however, Cohen’s comments in Ibn Dā’ūd, *The Book of Tradition*, ed. Cohen, 107.

⁴⁹⁰ Halbertal, *People of the Book*, 54-56; idem, *Maimonides*, 100-102; and Ravitsky, “Ha-Rambam ve-al-Fārābi,” 214-15.

⁴⁹¹ See above, nn286, 288.

⁴⁹² On the scope of this work, see Sklare, “R. David ben Sa’adya al-Ger,” 103-109; on the identity of the author, see there, 109-116, with reference to earlier scholarship. See also Israel Ta-Shma, *Ha-Sifrut ha-Parshanit la-Talmud be-Eiropah uve-Ṣfon Afriqah: Qorot, Ishim ve-Shiṭot* (Jerusalem: Magnes, 2004), 1:170-73; Friedman, “Responsa of R. Abraham Maimonides,” 40-42; Y. Zvi Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 217-20; and idem, “On the Spanish Source of Short Halakhic Works Attributed to Hayya Gaon,” in *Judæo-Arabic Culture in al-Andalus*, ed. Amir Ashur (Cordoba: Cordoba Near Eastern Research Unit, 2013), 245-53. On the *Kitāb al-Hāwī* as a judges’ manual, see Sklare, “R. David ben Sa’adya al-Ger,” 104; and Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 220; for the structure of this work, see Sklare, “R. David ben Sa’adya al-Ger,” 109n19.

⁴⁹³ Sklare, “R. David ben Sa’adya al-Ger,” 119-20. On the possibility of Provençal influence on the *Kitāb al-Hāwī*, see Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 226-27n40.

⁴⁹⁴ Sklare, “R. David ben Sa’adya al-Ger,” 104-105; and Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 221.

authentic transmission” (*al-naql al-ṣaḥīḥ*), including the principles of the laws (*al-uṣūl al-fiqhīyāt*) and the “meanings of aspects of the commandments” (*ma‘ānī fuṣūl al-shar‘iyāt*).⁴⁹⁵ Nonetheless, David presented a more nuanced picture of the sources of Jewish law than had the geonim⁴⁹⁶ by identifying three sources: revealed Scripture (*naṣṣ al-kitāb al-manzūl [sic]*), transmitted traditions (*al-ḥadīth al-manqūl*), and explanations of the “people of the Talmud” (*sharḥ al-ma‘ānī li-ahl al-talmud*).⁴⁹⁷ He similarly differentiated between transmitted explanations (*sharḥ manqūl*) and explanations inferred (*al-mustadall*; or elsewhere, *al-mustakhraj*, derived) by means of *qiyās* and *ra’y*. The author even explained that the talmudic phrase “his view is more logical” (*mistaber ta‘amei*) refers to laws created by logic.⁴⁹⁸ Like Baḥya, David’s failure to distinguish between the terms *ra’y* and *qiyās* underscores his positive portrayal of human reasoning and his break with the geonim. Moreover, as Sklare noted, David often cited rabbinic works to prove his arguments, while his geonic predecessors seem to have preferred Scriptural proofs.⁴⁹⁹

The writings of Abraham Ibn Ezra provide further insight into Andalusian thinking about rabbinic tradition. Mordechai Cohen has detailed similarities between the approaches to *peshat* in the writings of Abraham Ibn Ezra and Maimonides,⁵⁰⁰ but it is

⁴⁹⁵ Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 222.

⁴⁹⁶ Sklare, “R. David ben Sa‘adya al-Ger,” 105-106; and Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 221-24. See also Cohen, *Opening the Gates of Interpretation*, 253-54.

⁴⁹⁷ Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 221. On the meaning of “Talmud,” see there, n17. For one possible meaning of *ahl al-Talmud*, see above, n290.

⁴⁹⁸ Stampfer, “Ha-Mishpaṭ ha-‘Ivri be-Sefarad,” 223, 224.

⁴⁹⁹ Sklare, “R. David ben Sa‘adya al-Ger,” 105. On Sa‘adya’s citations, see however Abramson, *Inyanot be-Sifrut ha-Geonim*, 231-32; Brody, *Hiburim Hilkhatiyim*, 15-16 (Hebrew pagination), 3-4 (English pagination).

⁵⁰⁰ Cohen, *Opening the Gates of Interpretation*, 74-83, 365-75. On Ibn Ezra’s approach to *peshat*, see also Uriel Simon, “Le-Darkho ha-Parshanit shel Rabi‘ ‘al-pi Sheloset Bei‘urav le-Pasuq Eḥad,” *Bar*

difficult to discern if Abraham influenced Maimonides or if they shared a common body of knowledge.⁵⁰¹ Abraham Ibn Ezra divided law into three categories: written, received, and ordained by the ancestors.⁵⁰² The last designation suggests that Abraham was willing to acknowledge post-Sinaitic legal innovations.

In over thirty places in his scriptural commentaries, Abraham Ibn Ezra labeled a rabbinic interpretation that he rejected “a lone opinion” (*divrei yahid*) or claimed that it was subject to debate.⁵⁰³ In one instance, he contrasted a minority view or a debated interpretation with “tradition” (*qabbalah*), implying that most sages were privy to the

Ilan Annual 3 (1965): 92-138; and Sarah Japhet, “Ha-Meitaḥ bein Peshuṭo shel Miqra u-vein Midrash ha-Halakhah: Ba‘ayah le-lo Pitron,” in *Dor va-Dor u-Farshanav: Asupat Meḥqarim be-Farshanut ha-Miqra* (Jerusalem: Mosad Bialik, 2008), 37-47.

⁵⁰¹ Isadore Twersky wrote that Abraham Ibn Ezra “exerted considerable influence on Maimonides,” a position he later modified; see “Review of Moses Maimonides, *The Guide of the Perplexed by Moses Maimonides*, Translated with an Introduction and Notes by Shlomo Pines. With an Introductory Essay by Leo Strauss,” *Speculum* 41, no. 3 (1966): 558; and idem, “Ha-Hishpi‘a Rabi‘ ‘al ha-Rambam?” in *Rabbi Abraham Ibn Ezra: Studies in the Writings of a Twelfth-Century Jewish Polymath*, eds. Isadore Twersky and Jay M. Harris (Cambridge, MA: Harvard University Press, 1993), 21-48. In his *Introduction to the Code of Maimonides*, 252n33, Twersky appears to have accepted a “link” between Ibn Ezra and Maimonides, “especially in connection with philosophy.” Blidstein, “Where do We Stand,” 26, rejected the possibility of influence. Others adopted Twersky’s early view; see Saul Lieberman, “Mishnat Shir ha-Shirim,” in *Jewish Gnosticism, Merkabah Mysticism, and Talmudic Tradition*, by Gershom Scholem (New York: Jewish Theological Seminary of America, 1965), 124; Ḥanina Ben-Menaḥem, “Ha-Sod shel *Yesod Mora ve-Sod Torah*: ha-Shorashim le-Minyan ha-Miṣvot shel Rabbi Avraham Ibn Ezra,” *Dine Israel* 22 (2003): 177-78; Davidson, *Maimonides*, 175n214; Cohen, *Opening the Gates of Interpretation*, 26n88, 368-69, 510-13; and Norman Roth, “Abraham Ibn Ezra and Mysticism,” *Iberia Judaica* 4 (2012): 141 (writing “Maimonides ... was very much influenced by Ibn Ezra”). Twersky, “Ha-Hishpi‘a Rabi‘ ‘al ha-Rambam?” 39, suggested that the *Yesod Mora ve-Sod Torah* may not have reached Maimonides in time to impact *Sefer ha-Miṣvot*, because Abraham composed that work in London. Norman Roth, “Abraham Ibn Ezra – Highlights of his Life,” *Iberia Judaica* 4 (2012): 33n39, however, placed the composition of *Yesod Mora* in Provence. See also Howard Kreisel, “Judah Halevi’s Influence on Maimonides,” *Maimonidean Studies* 2 (1991): 97-98; and Tamás Visi, “Ibn Ezra, A Maimonidean Authority: The Evidence of the Early Ibn Ezra Supercommentaries,” in *The Cultures of Maimonideanism: New Approaches to the History of Jewish Thought*, ed. James Robinson (Leiden: Brill, 2009), 90-93.

⁵⁰² כי כל המצות הכתובות בתורה או המקובלות או התקונים שתקנו האבות; Abraham Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 140 (7:7). See the editors’ introduction, 35-37; and Cohen, *Opening the Gates of Interpretation*, 510-13. Compare, however, above, n192.

⁵⁰³ Yeshayahu Maori, “‘Al Mashma‘ut ha-Munaḥ ‘Divrei Yahid’ be-Feirush Rabi‘ la-Miqra: le-Yaḥaso shel Rabi‘ le-Midreshei Ḥazal,” *Shenaton le-Heiqer ha-Miqra veva-Mizraḥ ha-Qadum* 13 (2002): 201-246. For examples, see there, 231-46. Surviving evidence does not always support this claim; see there, 217-22.

latter.⁵⁰⁴ Uriel Simon suggested that this approach relates to Maimonides' claim that there are no debates about received traditions.⁵⁰⁵ When taken together, these discussions establish a long Andalusian tradition that anticipated many Maimonidean claims about the Oral Torah.

The Scope of Revelation

Maimonides began both the *Commentary on the Mishnah* and the *Mishneh Torah* with lengthy discussions of revelation and its transmission that describe the compilation of the Written Torah and the characteristics and scope of its accompanying oral traditions, the Oral Torah.⁵⁰⁶ Affirming the divine source of both Torahs, Maimonides defined the latter, quite significantly, as a circumscribed set of revealed traditions.

At the outset of the *Commentary*, Maimonides focused on the commandments and neglected the non-legal parts of Scripture, stating: “God revealed every commandment (*sharī‘a*) ... with its explanation (*tafsīrihā*).”⁵⁰⁷ In the subsequent discussion, he wrote that God told Moses a verse (*naṣṣ*), its *tafsīr* and *ta‘wīl* (two terms for commentary or explanation that are sometimes considered to be equivalent, and at other times, placed in

⁵⁰⁴ Abraham Ibn Ezra, *Peirushei ha-Torah*, ed. Weiser, 2:265 (Short Commentary to Ex. 13:18); see Maori, “‘Al Mashma‘ut ha-Munah ‘Divrei Yahid’,” 212-13n40.

⁵⁰⁵ Abraham Ibn Ezra, *Shenei Peirushei R. Avraham Ibn Ezra le-Trei-‘Asar*, ed. Uriel Simon (Ramat Gan: Bar Ilan University, 1989), 178. See above, n417.

⁵⁰⁶ The Prophets and Writings are conspicuously absent; see below, esp. n568.

⁵⁰⁷ [אעלם אן] כל שריעה אנזל אללה עלי משה רבינו אנהא אנזלת מע [תפסירהא]; Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:1; *Haqdamot ha-Rambam*, ed. Shailat, 327. On *sharī‘a*, which here means commandment, see Joel Kraemer, “Nomos ve-Sharī‘a be-Mishnat ha-Rambam,” *Te‘udah* 4 (1986): 185-202.

opposition), and what “the unambiguous (or: clear) verse” (*al-naṣṣ al-muḥkam*) covers.⁵⁰⁸

The distinction between unambiguous and ambiguous verses is qur’ānic (3:7); these terms figured prominently in medieval Muslim and Jewish exegesis.⁵⁰⁹ The insistence that revealed commentary accompanied even “unambiguous” verses underscores the omnipresent need for tradition.

In the Introduction to the *Commentary on the Mishnah*, Maimonides elaborated on a talmudic legend (b’Eiruv 54b) stating that, after each experience of revelation, Moses returned to his tent and transmitted his knowledge to Aaron, then to Aaron’s sons, then to the Seventy Elders, and finally to what Maimonides termed “the multitude of people” (*jumhūr al-nās*) who “sought God” (Ex. 33:7). In his telling, Moses would then depart, and each participant would repeat the verse and depart, until each had heard the revelation four times. After this procedure, wrote Maimonides, the people wrote the verses in scrolls and memorized the tradition (*al-naql*).⁵¹⁰ Before his death, wrote Maimonides, Moses composed thirteen Torah scrolls, one for each of the twelve tribes,

⁵⁰⁸ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:1-2; *Haqdamot ha-Rambam*, ed. Shailat, 327. Cohen noted the surprising word *ta`wīl*: not only is this at odds with Sa`adya’s use, Maimonides himself focused on *tafsīr marwī*, not *ta`wīl*; *Opening the Gates of Interpretation*, 473; see there, 114-15.

⁵⁰⁹ For Muslim writers, see Wansbrough, *Quranic Studies*, 148-70; Leah Kinberg, “*Muḥkamāt* and *Mutashābihāt* (Koran 3/7): Implication of a Koranic Pair of Terms in Medieval Exegesis,” *Arabica* 35, no. 2 (1988): 143-72; and Jane Dammen McAuliffe, “Quranic Hermeneutics: The Views of al-Ṭabṛāī and Ibn Kathīr,” in *Approaches to the History of Interpretation of the Qur`ān*, ed. Andrew Rippin (Oxford: Clarendon Press, 1988), 51-53. For Jewish writers, see Richard C. Steiner, “Saadia vs. Rashi,” 216-17; Goldstein, “Abū l-Faraj Hārūn,” 382-83; and Mordechai Cohen, *Three Approaches to Biblical Metaphor: From Abraham Ibn Ezra and Maimonides to David Kimhi* (Leiden: Brill, 2003), 41-42, 83-84. Numerous appearances of these terms are collected in Blau, *Dictionary*, 140, s.v. محکم, 325, s.v. شبيهة. Note the use of *muḥkam* in Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:201 (Introduction to mSan10); *Haqdamot ha-Rambam*, ed. Shailat, 363; and *Mishnah ‘im Peirush*, ed. Kafih, 6:126 (mKel 12:7).

⁵¹⁰ On Maimonides’ claim that the oral nature of extra-scriptural traditions guarantees its perfection and authenticity, see Halbertal, “What is the *Mishneh Torah*,” 89-90.

and one for the Levites, and the people verified (*ṣahḥahū*) the received traditions with Moses.⁵¹¹

Maimonides made very similar claims in the Introduction to the *Mishneh Torah*: “All of the commandments that Moses received at Sinai,” he wrote, “were given together with their interpretation (*be-feirushan nitnu*).” Citing Ex. 24:12, “*I will give you the stone tablets with the teaching (ha-torah) and the commandment (ha-miṣvah)*” as evidence, Maimonides explained:

‘*The teaching,*’ refers to Written Torah, ‘*and the commandment,*’ to its interpretation. God bade us fulfill (*la’asot*) in accordance with ‘*the commandment*’. This “*commandment*” refers to that which is called the Oral Torah.⁵¹²

The Introduction to the *Mishneh Torah* also repeats the claims that Moses copied thirteen Torahs before his death and that the transmission was preserved orally.⁵¹³ In this text, however, Maimonides omitted the talmudic narrative regarding Moses’ four-fold repetition of revelation and the unique role of Aaron and his sons. Instead, he provided a long *isnād* (chain of transmission) linking Moses with his own time. Through the time of Hillel the Elder, the phrase “and his court” (*u-veit dino*) accompanies each name; after this, names of particular rabbis replace “and his court.”⁵¹⁴ The Introduction concludes

⁵¹¹ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:2-3; *Haqdamot ha-Rambam*, ed. Shailat, 327-28. Maimonides did not consistently mention Scripture and its *tafsīr*; he wrote that Moses recited a verse and taught its *tafsīr* to Aaron, but for the others, Moses only recited the verse. He only mentioned the *tafsīr* again when describing how the people shared revelation.

⁵¹² כל המצות שניתנו לו למשה בסיני בפירושן ניתנו שנאמר ואתנה לך את לוחות האבן והתורה והמצוה תורה זו תורה פה שבכתב והמצוה זו פירושה וצונו לעשו' התורה על פי המצוה ומצוה זו היא הנקראת תורה שבעל פה; Maimonides, *Mishneh Torah*, eds. Cohen et al., 1 lines 2-4. For sources of this *midrash*, see the notes there. Translation follows Isadore Twersky, *A Maimonides Reader* (New York: Behrman House, 1972), 35, with slight changes.

⁵¹³ Maimonides, *Mishneh Torah*, eds. Cohen et al., 1 lines 4-9; see above, n510.

⁵¹⁴ Maimonides, *Mishneh Torah*, eds. Cohen et al., 2-8. In the letter to Pinḥas, he explained that “his court” indicates that many in each generation knew the Oral Torah; idem, *Igrot*, ed. Shailat, 2:442. Compare the comments about the list of transmitters in idem, *Sefer ha-Miṣvot*, ed. Kafih, 1-2. See also

with a list of the forty generations that made up the period between Moses and the end of the Talmud.⁵¹⁵

Despite their differences, both Introductions emphasize that revelation was two-fold, consisting of written texts and their interpretations. In his formulation of the Principles of Faith in the *Commentary on the Mishnah*, Maimonides similarly affirmed the divine origin of both the Written Torah and “its transmitted interpretation” (*tafsīrihā al-marwī*).⁵¹⁶ By the same token, the *Mishneh Torah* asserts that those who reject Mosaic authorship of the Pentateuch or “deny its explanation, which is the Oral Torah” have no portion in the World to Come (*Hilkhot Teshuvah*, 3:8).⁵¹⁷ And in the *Epistle to Yemen*, he explained that one may neither add to nor subtract from the Written Torah, or from “its transmitted interpretation (*tafsīrihā al-marwī*), which is what the Sages transmitted – that is, the Oral Torah.”⁵¹⁸ Maimonides’ son, Abraham, explicated the *midrash* cited in the Introduction to the *Mishneh Torah* similarly. He explained that the Talmud’s (bBer 5a)

Blidstein, “Mishnah Avot 1:1,” 60-62. On the term “his court,” see also Twersky, *Introduction to the Code of Maimonides*, 98n3.

⁵¹⁵ Maimonides, *Mishneh Torah*, eds. Cohen et al., 2-8; see Salo W. Baron, “The Historical Outlook of Maimonides,” *PAAJR* 6 (1934-1935): 96-101; and Yiṣḥaq Hershkowitz, “Ish mi-pi Ish: ‘Yunim be-Hishtalshalut ha-Torah shebe-‘al Peh be-Haqdamat *Mishneh Torah* le-Rambam,” *JSIJ* 7 (2008): 105-25. For other medieval Jewish genealogies that emphasize the number forty, see Arnold Franklin, *The Noble House: Jewish Descendants of King David in the Middle Ages* (Philadelphia: University of Pennsylvania Press, 2013), 73, 84, 94. Perhaps as a restatement of the entire law, the *Mishneh Torah* demanded a complete *isnād*. The *Commentary* does contain a brief *isnād* (to R. Judah the Prince); see Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:14-15; *Haqdamot ha-Rambam*, ed. Shailat, 335-36.

⁵¹⁶ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:214-15 (Introduction to mSan); *Haqdamot ha-Rambam*, ed. Shailat, 372-73; see Shailat’s comments there, 211; Lasker, “Hashpa‘at ha-Qara’ut ‘al ha-Rambam,” 150n28; and idem, “Maimonides and the Karaites,” 313n8.

⁵¹⁷ כלשה הן הכופרי' בתורה האומ' שאין התורה מעם ה' אפי' פסוק אחד אפי' תיבה אחת ... וכן הכופר בפרושה והוא תור' שבעל פה; see similar formulations in *Hilkhot Sheḥitah*, 4:16, *Hilkhot 'Avodat Yom ha-Kippurim*, 1:7, and *Hilkhot Mamrim*, 3:3.

⁵¹⁸ כמה לא זיאדה פי שריעה משה ולא נקצאן אבדא פי נצוצהא וכד'לך פי תפסירהא אלמרוי והו אלד' רויה אלחכמים ז"ל; Maimonides, *Igrot*, ed. Shailat, 1:98. See also the statement that aspects of certain sacrificial rituals are known by scriptural verse (*naṣṣ al-torah*) and others are “transmitted [and] appended to the verses” (מנקולה מסנדה אלי נצוץ); idem, *Mishnah ‘im Peirush*, ed. Kafih, 5:127 (mMen 5:5).

gloss of the word, “*the commandment*” (Ex. 24:12) as “the Mishnah,” and his father’s explanation of the same word as “the Oral Torah,” were, in effect, identical, for both referred to “the unwritten, transmitted explanation of the commandment.”⁵¹⁹ According to Abraham, even the rabbis referred to “the principles of tradition (*uṣūl al-naql*), rather than [to] the text of the Mishnah.”⁵²⁰

Maimonides’ deployment – and transformation – of another *midrash* in the *Commentary on the Mishnah* underscores his impulse to narrow the scope of oral revelation. According to the *Sifra*, the discussion of the Sabbatical year in Lev. 25, begins with “*The Lord spoke to Moses on Mount Sinai*,” in order to teach that just as the Sabbatical year’s “general rules, details, and particulars” (*kelaloteha u-peraṭoteha ve-diḡduqeha*) were given at Sinai, so all of the other commandments were similarly revealed at Sinai.⁵²¹ Medieval and modern interpreters have usually understood this as a reference to written details of the law,⁵²² but Maimonides offered a different reading. Equating the “general rules, details, and particulars” with the Oral Torah,⁵²³ he linked these to the revealed *tafsīr* no less than three times. (Maimonides chose as his example

⁵¹⁹ לחת האבן והתורה והמצוה ובדלך ינחל כון שרח המצוה ען אלנקל אלגיר מסטור; Abraham Maimonides, *Peirush*, ed. Wiesenberg, 383.

⁵²⁰ פאלקצד בה אצול אלנקל לא נן אלמשנה; *ibid.*, 385. In *Hilkhot Sheḡitah*, 1:4, Maimonides glossed “*commanded you*” (*šivitikha*; Deut. 12:21) as orally transmitted laws. See also Blidstein, “Masoret ve-Samkhut Mosdit,” 11.

⁵²¹ This is Maimonides’ version. See *Sifra de-Vei Rav, Sefer Torat Kohanim*, ed. Isaac Hirsch (Vienna, 1862), 105a (*parashat be-har*, §1). For background, see Michael Chernick, “Kelaloteha u-Peraṭoteha mi-Sinai,” in *Gevurot ha-Romah: Divrei Hakhamim ka-Darbonot ukhe-Mazmerot Kutetu le-Romah, le-R. Moshe Hayim Weiler*, ed. Ze’ev W. Falk (Jerusalem: Mesharim, 1987), 107-119; and Shamma Friedman, “Mah ‘Inyan Har Sinai ešel Shemiṭah? Temurot be-Shiṭat ‘R. Ishmael ve-R. Aqivah’ be-Hitgalut ha-Torah,” *Sidra 24-25* (2010): 387-425.

⁵²² See Chernick, “Kelaloteha u-Peraṭoteh,” 109; and Friedman, “Mah ‘Inyan Har Sinai ešel Shemiṭah,” 394-95n24.

⁵²³ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:2; *Haqdamot ha-Rambam*, ed. Shailat, 327.

the identification of “fruit of the goodly tree” [Lev. 23:40] as the citron as the paradigm of unanimously accepted interpretations contained in the Oral Torah.⁵²⁴) Maimonides even suggested that the phrases “general rules” and “details” refer to use of the *middot* (hermeneutical rules; among which are the rules of *kelal u-peraṭ* and *peraṭ u-kelal*) and other interpretive tools to discover “prooftexts (*isnādāt*), allusions (*talwīḥāt*), and hints (*ishārāt*)” to transmitted interpretations.⁵²⁵ A similar idea appears in the Introduction to the *Mishneh Torah*, where Maimonides wrote that the 613 commandments “were orally imparted to Moses at Sinai, together with their general rules, details, and particulars. All these general rules, details, particulars, and expositions (*veha-bei ’urin*) of every commandment constitute the Oral Torah, which each court received from its predecessor.”⁵²⁶

Maimonides’ repeated emphasis on the two-fold revelation of the commandments and their explanations suggests that he structured revelation itself around the 613 commandments (as mentioned in the Introduction), and that he viewed the revealed text of Scripture as a vehicle for their transmission.⁵²⁷

⁵²⁴ Maimonides, *Mishnah ’im Peirush*, ed. Kafih, 1:16-17; *Haqdamot ha-Rambam*, ed. Shailat, 336-37. Shailat, there, 89-90, noted Maimonides’ rereading of this *midrash* in the *Commentary*. See also Cohen, *Opening the Gates of Interpretation*, 263-64. Compare *Hilkhot Shofar ve-Sukkah ve-Lulav*, 7:2.

⁵²⁵ Maimonides, *Mishnah ’im Peirush*, ed. Kafih, 1:17; *Haqdamot ha-Rambam*, ed. Shailat, 337. Translation follows Cohen, *Opening the Gates of Interpretation*, 271. On these terms, see there, 272-76. See the similar statement at the outset of Principle Two; *Sefer ha-Miṣvot*, ed. Kafih, 12.

⁵²⁶ אלו הם תר”ג מצות שנאמרו לו למשה בסיני הן וכללותיהן ופרטותיהן ודקדוקיהן כל אותן הכללות והפרטות והדקדוקין; Maimonides, *Mishneh Torah*, eds. Cohen et al., 65 lines 503-505. Translation follows Twersky, *A Maimonides Reader*, 40-41, with slight changes.

⁵²⁷ This suggestion differs somewhat from Halbertal’s suggestion that Maimonides used the 613 commandments as the “architecture” or “structure” of the *Mishneh Torah* and of the law as a whole (see above, nn82, 87); “*Sefer ha-Miṣvot le-Rambam*,” 459-61; and idem, *Maimonides*, 107-111. For an alternative explanation of Maimonides’ interest in the 613 commandments, see Friedberg, *Crafting the 613 Commandments*, 28-29, 134-53.

The Oral Torah and the Tafsīr Marwī

Maimonides did not use the term “Oral Torah” (*torah shebe-‘al peh*) in a consistent manner throughout his writings. In its one appearance in the *Commentary on the Mishnah*, Maimonides equated the “Oral Torah” with “the tradition” (*al-naql*) and the revealed *tafsīr*, and he contrasted it with Scripture (*naṣṣ*).⁵²⁸ In the Introduction to *Sefer ha-Miṣvot*, “Oral Torah” refers to Sinaitic laws. Maimonides asserted that “all of the laws of the Torah (*sharī‘a*), in their entirety – which is the Oral Torah – were transmitted from so-and-so, and so-and-so from so-and-so, to Ezra [and] to Moses.”⁵²⁹ In the Introduction to the *Mishneh Torah*, “Oral Torah” usually denotes traditions that originated with Moses: Moses transmitted the Oral Torah to Joshua,⁵³⁰ and “the great sages of Israel” were also its “transmitters” (*ma‘atīqim*).⁵³¹ In certain places in that work, however, Maimonides included post-Mosaic laws in the term “Oral Torah.” Thus, for example, he claimed that the *Mishneh Torah* covers the entire Oral Torah,⁵³² and he described the Sanhedrin as the “essence (*‘iqar*) of the Oral Torah” (*Hilkhot Mamrim*, 1:1).⁵³³

⁵²⁸ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:1-2; *Haqdamot ha-Rambam*, ed. Shailat, 327. See also idem, *Igrot*, ed. Shailat, 1:98, 1:320. Kafih usually translated *naql* and the passive participle *manqūl* as *torah shebe-‘al peh*; e.g., idem, *Mishnah ‘im Peirush*, ed. Kafih, 3:148 (mSan 1:3), 5:175 (mHul 1:2).

⁵²⁹ אַחַתְּאָם אֲלֹשְׂרִיעָה כֻּלְּהָא וְהִי תוֹרָה שֶׁבַעֲלֵ פֵה מְרוּיָה עֵן פְּלֹאן וּפְלֹאן עֵן פְּלֹאן אֲלֵי עֲזָרָא אֲלֵי מֹשֶׁה רַבְּנֵנוּ; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 2 (introduction).

⁵³⁰ Maimonides, *Mishneh Torah*, eds. Cohen et al., 2 lines 11-12.

⁵³¹ גְּדוּלֵי חֲכָמֵי יִשְׂרָאֵל הַמְעִתִּיקִים תוֹרָה שֶׁבַעֲלֵ פֵה; Maimonides, *Mishneh Torah*, eds. Cohen et al., 10 line 109. This denotation appears elsewhere, as in the division between the Written Torah, Oral Torah, and Talmud (*Hilkhot Talmud Torah*, 1:11-12); see below.

⁵³² עַד שֶׁתְּהֵא תוֹרָה שֶׁבַעֲלֵ פֵה כֻּלָּה סְדוּרָה בְּפִי הַכֹּל; Maimonides, *Mishneh Torah*, eds. Cohen et al., 13 lines 158-59.

⁵³³ בֵּית דִּין הַגְּדוֹל שְׁבִירוּשָׁלַיִם הֵם עֵיקֶר תוֹרָה שֶׁבַעֲלֵ פֵה. Note the narrow use of “Oral Torah” in the Short Enumeration in the Introduction to the *Mishnah Torah*, Negative Commandment #313 (hereafter the Short Enumeration), where Maimonides defined the Oral Torah as “the explanation” of the Written Torah

In the Introduction to the *Commentary on the Mishnah*, Maimonides asserted that the *tafsīr marwī* (transmitted interpretation) contains “meanings of ambiguous expressions” (*jumal ma ‘ānī*).⁵³⁴ Referring to Lev. 23:42, “*You shall sit in booths seven days*,” he wrote that the *tafsīr marwī* relates divine clarifications of this verse: who is obligated to sit in a booth, how to construct it, and how to “sit” in it.⁵³⁵ According to Maimonides, there could be no disagreement (*ikhtilāf*) over a matter of *tafsīr*; nobody ever denied that “*fruit of the goodly tree*” (Lev. 23:40) is the citron or that “*an eye for an eye*” (Ex. 21:24; Deut. 19:21)⁵³⁶ imposes financial, and not physical, punishment. Any “sources” for these readings in rabbinic literature, he claimed, are merely hints to laws that are known by means of the *tafsīr*.⁵³⁷ By the same token, asserted Maimonides, a prophet may neither add to nor subtract from either the verses (*nuṣūṣ*) or the *tafsīr marwī*.

(*peirushah*); *Mishneh Torah*, eds. Cohen et al., 61 lines 431-32. At the outset of *Hilkhot Mamrim*, this prohibition is “Not to add to the Torah, neither the written commandments nor their explanation (*be-feirushan*) that we learned *mi-pi ha-shmu‘a*” and “Not to subtract from the entirety (*min ha-kol*).” According to *Hilkhot Megillah ve-Ḥanukah*, 2:18, unlike the rest of the Prophets and Writings, the Book of Esther will never be annulled, “like the Five Books of the Torah and the laws (*halakhot*) of the Oral Torah.” *Hilkhot Ma‘akhalot Asurot*, 8:15, forbids benefit from forbidden foods “unless Scripture exempts it ... or it is explicated (*she-yitpares*) in the Oral Torah.” See the usage in the *Epistle to Yemen*; above, n518. Discussion of the *Mishneh Torah* sources largely relies on Blidstein, “Oral Law as Institution,” 168; idem, “Masoret ve-Samkhut Mosdit,” 13n8; and idem, *Samkhut u-Meri*, 27; Cohen, *Opening the Gates of Interpretation*, 114n91, 260n71, accepted Blidstein’s view. It is possible to read *Hilkhot Mamrim*, 1:1, more narrowly. Henshke claimed Maimonides always used this term in the narrow sense; “Le-Yesodei,” 128-29n78. See Twersky, *Introduction to the Code of Maimonides*, 488-92, who discussed many of these sources; and Chernick, “Kelaloteha u-Peratoteha mi-Sinai,” 119.

⁵³⁴ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:2; *Haqdamot ha-Rambam*, ed. Shailat, 327. See Shailat’s notes there, 27n3, 327n2. On the term *mujmal*, see Weiss, *The Search for God’s Law*, 440-50; Hallaq, *A History of Islamic Legal Theories*, 43-44; and Lowry, *Early Islamic Legal Theory*, 106-108. For other Maimonidean use of the term *mujmal*, see *Mishnah ‘im Peirush*, ed. Kafih, 1:21; *Haqdamot ha-Rambam*, ed. Shailat, 340 (אמר אלה ביפעלה בכלאם מגמל ... גיא אלנקל); and *Mishnah ‘im Peirush*, ed. Kafih, 2:175 (mPes 4:6). Elsewhere, the phrase *jumal (al-)ma ‘ānī* appears to mean “groups of matters”; see *Sefer ha-Miṣvot*, ed. Kafih, 337 (Neg. 349); and *Mishnah ‘im Peirush*, ed. Kafih, 5:341 (mKer 1:1).

⁵³⁵ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:3; *Haqdamot ha-Rambam*, ed. Shailat, 328.

⁵³⁶ See Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:16n50.

⁵³⁷ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:16-17; *Haqdamot ha-Rambam*, ed. Shailat, 336-37; see above, n524. See also Cohen, *Opening the Gates of Interpretation*, 161-64, 276-80.

For example, a prophet cannot read Deut. 25:12, “*You shall cut off her hand,*” literally (*ḥaqīqa*), according to its *zāhir* meaning, because “the tradition brought” (*jā`a al-naql*) teaching that “*cut off*” refers to the imposition of financial punishment.⁵³⁸ Material designated as *naql*, i.e., tradition, can also play an interpretive role. For example, one teaching which Maimonides described as having “brought to us by the tradition” (*jā`nā al-naql*),⁵³⁹ is designated in the *Mishneh Torah* as *mi-pi ha-shemu`ah*, from aural tradition (*Hilkhot Yesodei ha-Torah*, 9:3).⁵⁴⁰ This underscores Maimonides’ claim that rabbinic exegesis often records Sinaitic traditions that are not contained in Scripture.⁵⁴¹

These uses of the term *tafsīr* resemble ways in which the term was used by certain Qur’ānic exegetes, as Mordechai Cohen noted.⁵⁴² For example, both Abū Maṣū‘ al-Māturīdī (d. c. 944) and Jalāl al-Dīn al-Suyūṭī (15th c.) used “*tafsīr*” to denote traditional, transmitted exegesis.⁵⁴³

⁵³⁸ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:6; *Haqdamot ha-Rambam*, ed. Shailat, 330. The verb *jā`a*, to reach or arrive, was Maimonides’ preferred way to describe the transmission of extra-scriptural traditions.

⁵³⁹ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:13; *Haqdamot ha-Rambam*, ed. Shailat, 334.

⁵⁴⁰ למדנו מחכמי ראשונים מפי השמועה. In the Introduction to the *Commentary*, Maimonides also termed this a “statement of the Sages (*naṣṣ lil-ḥakhamim*) in the Talmud”; *Mishnah ‘im Peirush*, ed. Kafih, 1:12; *Haqdamot ha-Rambam*, ed. Shailat, 334. This may relate to the uncommon phrase “the early Sages taught us” here. The tradition is a gloss of Deut. 18:15 found in bSan 90a.

⁵⁴¹ See Guttman, “Die Bedeutung der Tradition,” 211-12; and the similar point in Rabinovitch, *‘Iyunim be-Mishnato shel ha-Rambam*, 132-35. Cohen, *Opening the Gates of Interpretation*, 262-63, coordinated Maimonides’ Hebrew and Arabic classificatory terms. See the examples there, 392.

⁵⁴² Cohen, *Opening the Gates of Interpretation*, 457-58; and idem, “Ha-Biṭuy ‘Bāb/Abwāb al-Ta`wīl,” 163.

⁵⁴³ See Andrew Rippin, “Exegesis of the Qur’ān: Classical and Medieval,” *Encyclopaedia of the Qur’ān*, ed. Jane Dammen McAuliffe (Leiden: Brill, 2002), 2:100-101; and Wansbrough, *Quranic Studies*, 154. While the term *tafsīr marwī* usually refers to legal matters, Bacher collected several examples in which it denotes non-legal material; Bacher, *Die Bibelexegese Moses Maimūni’s*, 28n1; *Ha-Rambam Parshan ha-Miqra*, 32n1; and idem, “Die Agada in Maimunis Werken,” in *Moses ben Maimon*, 2:160. Bloomberg described the *tafsīr marwī* as the “traditional interpretation of a verse as revealed to Moses”; “Arabic Legal Terms,” 33.

In the Introduction to the *Commentary on the Mishnah*, Maimonides subtly distinguished between the terms *tafsīr marwī* and *halakhah le-Moshe mi-Sinai*, both of which denote Sinaitic traditions that were never subject to debate. Because of the “wisdom of the revealed speech” (*ḥikmat al-kalām al-munzal*),⁵⁴⁴ he claimed, later generations were able to use *qiyās* to derive (*istikhrāj*) hints to the *tafsīr*. By contrast, he wrote, a hint about a law designated as *halakhah le-Moshe mi-Sinai* is more tenuous, and is designated an *asmakhta* (support) or *siman* (sign). Hints of this sort did not discern the “intent” (*gharaḍ*) of Scripture.⁵⁴⁵

Post-Mosaic Legal Activity

According to Maimonides, religious leaders who transmitted Sinaitic traditions after revelation passed on the innovations of previous generations and expanded the law through their own intellectual exploration. This process, he claimed, continued without interruption from the time of Joshua until that of Ravina and Rav Ashi, which is designated (bBM 86a) as the “end” of authoritative teaching (*sof hora’ah*).⁵⁴⁶ Post-Mosaic expansion utilized *qiyās* and intellectual speculation; prophecy was excluded from this process.

Maimonides asserted that the Mishnah and the two Talmuds comprise both the received traditions and their expansions. In the Introduction to the *Commentary on the*

⁵⁴⁴ Compare Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12 (Prin. Two). See also Bacher, *Die Bibelexege Moses Maimūni’s*, 28-29n6; *Ha-Rambam Parshan ha-Miqra*, 32n4.

⁵⁴⁵ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:17-19; *Haqdamot ha-Rambam*, ed. Shailat, 336-39. See Bacher, *Die Bibelexege Moses Maimūni’s*, 29n1; *Ha-Rambam Parshan ha-Miqra*, 33n1. On *gharaḍ*, see Cohen, *Opening the Gates of Interpretation*, 278n126.

⁵⁴⁶ On the term *hora’ah*, see above, n213.

Mishnah, he explained that R. Judah the Prince, the second-century redactor of the Mishnah, “collected the transmitted material (*al-riwāyāt*), doctrines, and stated debates from Moses until his time.”⁵⁴⁷ The Mishnah, wrote Maimonides, includes three components: (1) the explanation of the written commandments (*tafsīr al-sharāʿi ʿal-manṣūṣa*), meaning traditions transmitted (*riwāyāt marwīya*) from Moses; (2) material whose validity or authority is unanimously agreed on that is derived (*mustakhrājāt*) through *qiyās*; and (3) material debated by those who perform *qiyās* (*al-qiyāsīyīn*).⁵⁴⁸ Rav Ashi, claimed Maimonides, did the same for the Talmud; he collected the doctrines, details (*tafaqqah*; see below), and the explanation (*tafsīr*)⁵⁴⁹ of the law. In so doing, he wrote, Rav Ashi verified the accuracy of the transmitted material (*ṣahḥaḥa al-riwāyāt*).⁵⁵⁰ In his comments on “the rebellious elder,” Maimonides posited that this fractious figure is one who disagrees either with a transmitted matter (*al-shayʿ al-marwī*) or with a product of the Sanhedrin’s *qiyās* and speculation (*naẓar*). Interpreting the scriptural instruction (Deut. 17:11) to obey the High Court, Maimonides pointedly identified these two categories: “*In accordance with the instruction given you and the ruling handed down to you*” refers to derived laws while “*the verdict that they announce to you*” to received interpretations.⁵⁵¹

⁵⁴⁷ ג'מע אלרואיאת ואלאקאויל ואלאכ'תלאפאת אלמקולה מן לדן משה רבינו אלי איאמה; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:15; *Haqdamot ha-Rambam*, ed. Shailat, 336.

⁵⁴⁸ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:16; *Haqdamot ha-Rambam*, ed. Shailat, 336.

⁵⁴⁹ Kafih translated this word using the plural (*Mishnah 'im Peirush*, ed. Kafih, 1:34), but Shailat, the singular (*Haqdamot ha-Rambam*, ed. Shailat, 51).

⁵⁵⁰ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:34; *Haqdamot ha-Rambam*, ed. Shailat, 348.

⁵⁵¹ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:221 (mSan 11:2). See also *Hilkhot Mamrim*, 1:2; and idem, *Sefer ha-Miṣvot*, ed. Kafih, 10 (Prin. One). According to Blidstein, *Samkhut u-Meri*, 45, the similar interpretation of Deut. 17:11 in *Hilkhot Mamrim*, 1:2, is not found in rabbinic literature; see however below, n578. On the rebellious elder, see also Lasker, “Hashpaʿat ha-Qaraʿut ʿal ha-Rambam,” 158.

Maimonides also drew attention to these two sources of law in the Introduction to the *Mishneh Torah*. He claimed that the jurists who lived prior to R. Judah the Prince had written for themselves “the exposition of the Torah and of its laws ... and the new matters innovated (*she-nithadshu*) in each generation, which had not been received by aural tradition (*mi-pi ha-shemu ‘ah*) but had been deduced by application of the thirteen *middot* (hermeneutical rules).”⁵⁵² R. Judah the Prince, he wrote, collected the Mosaic traditions (*shmu ‘ot*) and the material that the court of each generation derived (*lamdu*).⁵⁵³ Similarly, wrote Maimonides, the two Talmuds include matters innovated after the time of Moses, along with the law “transmitted in an unbroken chain (*she-he ‘etiqu ish mi-pi ish*) from the time of Moses, as he received it from Sinai.”⁵⁵⁴

The Transmission of Received Material

Maimonides used the Arabic root *r-w-y* to denote the act of transmission and the noun *riwāya* to denote transmitted material; this root also appears in the phrase *tafsīr marwī* (a transmitted interpretation).⁵⁵⁵ Muslim writers used this root similarly, often referring to the study of *ḥadīth* as *ilm al-riwāya* (lit., the science of transmission).⁵⁵⁶ In

⁵⁵² כל אחד ואחד כותב לעצמו כפי כוחו מביאור התורה ומהלכותיה כמו ששע ומדברים שתנחדשו בכל דור ודור בדיני' שלא ⁵⁵² Maimonides, *Mishneh Torah*, eds. Cohen et al., 6 lines 49-51; see also there, 9-10 lines 97-105. Translation follows Twersky, *A Maimonides Reader*, 36, with slight changes.

⁵⁵³ Maimonides, *Mishneh Torah*, eds. Cohen et al., 6 lines 52-54.

⁵⁵⁴ כמו שהעתיקו איש מפי איש מפי משה רבינו מסיני ⁵⁵⁴ Gregor Schoeler, *The Oral and the Written in Early Islam*, trans. Uwe Vagelpohl and ed. James E. Montgomery (London: Routledge, 2006), 41-42; and Eerik Dickinson, *The Development of Early Sunnite Ḥadīth Criticism: The Taqdima of Ibn Abī Ḥātim Al-Rāzī (240/854-327/938)* (Leiden: Brill, 2001), 107-109.

⁵⁵⁵ See in detail, Bloomberg, “Arabic Legal Terms,” 38-40; and below.

⁵⁵⁶ Gregor Schoeler, *The Oral and the Written in Early Islam*, trans. Uwe Vagelpohl and ed. James E. Montgomery (London: Routledge, 2006), 41-42; and Eerik Dickinson, *The Development of Early Sunnite Ḥadīth Criticism: The Taqdima of Ibn Abī Ḥātim Al-Rāzī (240/854-327/938)* (Leiden: Brill, 2001), 107-109.

the *Mishneh Torah*, the Hebrew root '-t-q is used to denote the transmission of Sinaitic materials⁵⁵⁷ and the sages are referred to as “the transmitters” (*ha-ma'atqim*) or “the transmitters of aural tradition” (*ma'atqei ha-shemu'ah*).⁵⁵⁸

The *Commentary on the Mishnah* occasionally refers to large groups of people who transmitted the Oral Torah, and, at other times, to individuals who did so. Maimonides claimed, for example, that before Moses died, “the people” verified (*sahhahū*) the *riwāya* or *tafsīr*.⁵⁵⁹ On the other hand, Moses is said to have conveyed (*hamala*) the traditions to Joshua and the Elders (*zeqeinim*),⁵⁶⁰ and the first of ten closing chapters in the Introduction to the *Commentary* contains a list of 91 rabbis who transmitted Mosaic traditions and other laws.⁵⁶¹ Transmissions by elites and by groups are conflated in Maimonides’ comment that mAv 1:1 proves “the veracity of the chain of authorities (*ṣiḥḥat al-sanad*) and the tradition (*al-naql*) – that it is authentic (or, sound; *ṣahīḥ*), the masses (or: community; *al-kāffa*) from the masses.”⁵⁶² The same two types of

⁵⁵⁷ See Maimonides, *Mishneh Torah*, eds. Cohen et al., 9 line 97; *Hilkhot Tefilin u-Mezuzah ve-Sefer Torah*, 7:8; *Hilkhot Shabbat*, 27:1; and *Hilkhot Ma'aseh ha-Qorbanot*, 2:15. Compare above, n267.

⁵⁵⁸ See above, n531; and *Hilkhot Talmud Torah*, 1:9. See Bacher, “Zum sprachlichen Charakter,” 288; and Henshke, “Le-Ṭa'amah shel Halakhah,” 47n10.

⁵⁵⁹ See above, n511.

⁵⁶⁰ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:4; *Haqdamot ha-Rambam*, ed. Shailat, 328. Maimonides implied that some Elders received parts of the tradition independently of Joshua, a claim reminiscent of the assumption in *ḥadīth* literature that no single Companion received the entire tradition.

⁵⁶¹ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:50-52; Shailat did not include these chapters. R. Judah the Prince is the most celebrated figure; elsewhere, Maimonides enumerated his *isnād* to Moses; *Mishnah 'im Peirush*, ed. Kafih, 1:15-16; *Haqdamot ha-Rambam*, ed. Shailat, 336. See the praise for R. Judah the Prince cited above, n399. Compare the second of these closing chapters, which lists 37 lesser figures who did not transmit tradition but were involved in various events, taught a moralistic statement (*adab*), or a *derashah*.

⁵⁶² $\text{ליעלמך צחה אלסנד ואלנקל אנה צחיה אלכאפה ען אלכאפה}$; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:29; *Haqdamot ha-Rambam*, ed. Shailat, 345. Blau, *Dictionary*, 600 s.v. كافة , preferred “community” here, but my sense is that Maimonides excluded the Jewish collective. Kafih offered *ḥaburah* (group) and Shailat *rabbim* (many), Michael Schwarz has *ṣibbur* (community); Maimonides, *Shemonah Peraqim: ve-hem Haqdamat ha-Rambam le-Feirusho le-Masekhet Avot*, trans. Michael Schwarz, intro. Sara Klein-Braslavy (Jerusalem: Yad Ben-Zvi, 2011), 3n2. See also Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:221n6

transmission are also noted in the Introduction to the *Mishneh Torah*, which states that the Oral Torah passed from Moses, to Joshua, etc., and was also transmitted by the courts of certain individuals, such that “thousands and tens of thousands” were involved.⁵⁶³

Maimonides was sensitive to the fact that the Mishnah’s naming of tradents weakened his assertion that its contents were of Sinaitic origin. Echoing claims found in Sherira’s *Epistle*, he explained that the original style of transmitting traditions – associated with Simeon the Just (fl. c. 200 BCE), whose statements are “brief, containing many matters”⁵⁶⁴ – proved adequate for earlier generations, but later ones required more detail.⁵⁶⁵ Moreover, according to Maimonides, certain legal positions which the Talmud ascribes to individual rabbis were actually matters of consensus, for the view of the one was accepted by others. Maimonides also asserted that the talmudic ascription of anonymous mishnaic passages to R. Meir (b’Eiruv 96b; bSan 86a) simply means that R. Meir was the tradition’s final transmitter. In most cases, claimed Maimonides, there was unanimity regarding these derived laws, or Moses himself was their transmitter.⁵⁶⁶

(mSan 11:2). This comment appears to relate to the idea of *tawātur*; see above, n222. Compare the comment that mAv 1:1 highlights a narrow group of transmitters; Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:15-16; *Haqdamot ha-Rambam*, ed. Shailat, 335-36. See Blidstein, “Mishnah Avot 1:1,” 60-61.

⁵⁶³ ועמהם אלפים ורבבות ששמעו מהם; Maimonides, *Mishneh Torah*, eds. Cohen et al., 1-9, at 9 lines 90-91. For Maimonides’ explanation of the term “court,” see above, n514.

⁵⁶⁴ וגעל כלאמה פיה אעני פי אלמשנה כלאמה גיזא משתמלא עלי מעאן כתירה; Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:33; *Haqdamot ha-Rambam*, ed. Shailat, 348. See the repeated praise for Simeon the Just; idem, *Mishnah ‘im Peirush*, ed. Kafih, 1:15, 1:50, 1:52; *Haqdamot ha-Rambam*, ed. Shailat, 336; and *Mishnah ‘im Peirush*, ed. Kafih, 5:169 (mMen 13:10). Compare Abraham Maimonides, *Sefer ha-Maspiq le-Ovdei ha-Shem, Kitāb Kifāyat al-‘Abidin (Part Two, Volume Two)*, ed. Nissim Dana (Ramat Gan: Bar Ilan University, 1989), 310: וגירה והו שימש כהן גדול פי אול בית שני שמעון הצדיק על אלס’ והו כמא קד עלם משירי כנסת הגדולה רפיק אלאנביא חגי זכריה ומלאכי. On Simeon the Just in Abraham’s *Kifāya*, see Gerson Cohen “The Soteriology of R. Abraham Maimuni,” *PAAJR* 35 (1967): 96-98; 36 (1968): 40-44.

⁵⁶⁵ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:33-34; *Haqdamot ha-Rambam*, ed. Shailat, 348. See Lewin, *Igeret Rav Sherira Gaon*, 8-9.

⁵⁶⁶ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:55. Compare Sherira’s claim that R. Meir did not create anonymous *mishnahs* but received them from R. Aqivah, who received them from his teachers; Lewin, *Igeret Rav Sherira Gaon*, 26-27.

Post-Mosaic Legal Creativity

According to Maimonides, leaders from Joshua until the close of the Talmud developed new laws in a consistent fashion. “What Joshua and Pinḥas did in the realm of speculation (*ma’ nā al-naẓar*) and *qiyās* (here: reasoning),” he wrote, “is that which Ravina and Rav Ashi did.”⁵⁶⁷ The intellect – not prophecy – is the source of all post-Mosaic laws.⁵⁶⁸

In his characterization of the activities that resulted in expansion of the legal corpus, Maimonides used several verbs, whose meanings overlap considerably: *istikhrāj*

⁵⁶⁷ מא יפעלה יהושע ופנחס פי מעני אלנטר ואלקיאס הו אלד׳ יפעל רבינא ורב אשי *Mishnah ‘im Peirush*, ed. Kafih, 1:4; *Haqdamot ha-Rambam*, ed. Shailat, 329.

⁵⁶⁸ אלנבוה גיר מפידה פי אלנטר פי תפסיר אלתורה ואסתכ׳ראג׳ אלפרוע בשלש עשרה מדות *Mishnah ‘im Peirush*, ed. Kafih, 1:4; *Haqdamot ha-Rambam*, ed. Shailat, 329. Maimonides claimed that prophecy is only of use for temporary laws (*hora’at sha’ah*); *Mishnah ‘im Peirush*, ed. Kafih, 1:12; *Haqdamot ha-Rambam*, ed. Shailat, 334. See also *Mishnah ‘im Peirush*, ed. Kafih, 5:212 (mHul 7:6), and *Hilkhot Yesodei ha-Torah*, chap. 9.

On the unique role of Mosaic prophecy for halakhic matters, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 37-38; idem, *Ha-Rambam ke-Filosof ukhe-Foseq*, 29; Twersky, *Introduction to the Code of Maimonides*, 455n239; Blidstein, “Maimonides on ‘Oral Law’,” 114-15; idem, “Masoret ve-Samkhut Mosdit,” 12; idem, “Mi-Yesod ha-Nevu’ah,” 25-28; Halbertal, “*Sefer ha-Miṣvot le-Rambam*,” 462-68; idem, “*Al Derekh ha-Emet*,” 33-35; Henshke, “Le-Yesodei,” 129-34; idem, “Ein Neharagin min ha-Din,” 252n74; idem, “Miṣvot ha-Avot u-Miṣvot Sinai: Parashat Gid ha-Nasheh ke-Fereq be-Tefisat ha-Halakhah shel ha-Rambam,” in *Mi-Birkat Moshe*, 2:619-46; Cohen, *Opening the Gates of Interpretation*, 259-60, 486n17; Daniel Lasker “Maimonides’ Influence on Karaite Theories of Prophecy and Law,” *Maimonidean Studies* 1 (1990): 105n21; and Aviram Ravitsky, “Madu’a Ne’erkhu Hilkhot Aveil be-Sefer ‘Shoftim’? ‘Al Samkhuto shel Moshe be-Mishnat ha-Rambam,” in *Samkhut Ruḥanit: Ma’avaqim ‘al Koah Tarbuti be-Hagut ha-Yehudit*, eds. Howard Kreisel et al. (Be’er Sheva’: Ben Gurion University, 2010), 71-82. On Mosaic prophecy in general, see the sources in Mor Altshuler, “Rabbi Joseph Karo and Sixteenth-Century Messianic Maimonideanism,” in *The Cultures of Maimonideanism*, 198n35. Add Faur, *Iyunim be-Mishneh Torah*, 13-18; Kalman Bland, “Moses and the Law According to Maimonides,” in *Mystics, Philosophers, and Politicians: Essays in Jewish Intellectual History in Honor of Alexander Altmann*, eds. Jehuda Reinharz et al. (Durham: Duke University Press, 1982), 49-66; Israel Yuval, “Moshe redivivus: Ha-Rambam ke-‘Ozer le-Melekh’ ha-Mashiah,” *Zion* 72, no. 2 (2007): 161-78; and Yidiel Waldman, “Ma’amadan shel Sheva’ Miṣvot Benei Noaḥ Qodem Matan Torah be-Mishnat ha-Rambam,” *Mesorah le-Yosef* 8 (2014): 443-75. Faur, *Iyunim be-Mishneh Torah*, 13n1, noted the emphasis on Mosaic prophecy in Maimonides’ father Maimon’s *Igeret Neḥamah*; see L.M. Simmons, “Maimon’s Letter of Consolation. Arabic Text,” *JQR* 2, no. 3 (o.s.) (1890): 5, 9. On the authorship of this text, see, however, David J. Wasserstein, “The Date and Authorship of the Letter of Consolation Attributed to Maymūn b. Yūsuf,” *JSAI* 32 (2006): 410-18.

(to derive or deduce), *tantīj* (to infer or draw out), *tafaqqah* (“to treat the specifications and ramifications of a religious law”⁵⁶⁹), and occasionally, *instinbāt* (to draw out or extract).⁵⁷⁰ He also referred to legal “speculation” (*naẓar*), *qiyās*, and “deductions” (*natā’ij*) of *furū’*, i.e., branches, from *uṣūl*, i.e., roots.⁵⁷¹ These terms echo usages among earlier Andalusian Rabbanites, especially Ibn Ghiyāth’s interpretation of “a sage is greater than a prophet,” discussed above, and in Qaraite writings.⁵⁷² Maimonides called the rabbis “the people (*ahl*) of *qiyās* (reasoning)” and “the people of speculation (*naẓar*).”⁵⁷³ In the Introduction to the *Mishneh Torah*, he referred to non-Sinaitic law as having been “innovated” (*ḥ-d-sh*) or “ordained” (*t-q-n*) by various individuals.⁵⁷⁴

Maimonides portrayed legal creativity as having begun immediately after Moses’ death, for Joshua and the Elders derived new laws through *qiyās* by means of the *middot*

⁵⁶⁹ Blau, *Dictionary*, 512 s.v. 4٤٤; see the next note.

⁵⁷⁰ On *istikhrāj*, see Sarah Stroumsa, “Ha-Im haya ha-Rambam Hogeh Muwahidi?” in *‘Aleī ‘Ashor: Divrei ha-‘Ve ‘idah ha-‘Asirit shel ha-Ḥevrah le-Ḥeiqer ha-Tarbut ha-‘Aravit ha-Yehudit shel Yemei ha-Beinayim*, eds. Haggai Ben-Shammai and Daniel Lasker (Be’er Sheva’: Ben Gurion University Press, 2008), 157; Halbertal, “*Sefer ha-Miṣvot* le-Rambam,” 470n23; on *istikhrāj* and *instinbāt*, see Ravitsky, “Ha-Rambam ve-al-Fārābi,” 212n5; and on many of these terms, see Cohen, *Opening the Gates of Interpretation*, 264-67, 469-71. The verb *tafaqqah* is particularly important for *Sefer ha-Miṣvot*, though in that work, it is used differently than in the *Commentary on the Mishnah*; see below, below, nn921-944. Note also the use of *tafaqqah*, apparently to denote extracting new laws, in Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:417 (intro to mAv).

⁵⁷¹ See esp. Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:4, 14-15, 20; *Haqdamot ha-Rambam*, ed. Shailat, 329, 335-36, 339. On *natā’ij*, note the comment in Ravitsky, “Ha-Rambam ve-al-Fārābi,” 213n7.

⁵⁷² Lasker, “Hashpa‘at ha-Qara’ut ‘al ha-Rambam,” 150; idem, “Maimonides and the Karaites,” 313; and Ravitsky, “Ha-Rambam ve-al-Fārābi,” 215. Faur, *Iyunim be-Mishneh Torah*, 137, wrote that Maimonides agreed with Qaraites on several theological matters. See also Blidstein, “Oral Law as Institution,” 171.

⁵⁷³ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:14; *Haqdamot ha-Rambam*, ed. Shailat, 335; idem, *Igrot*, ed. Shailat, 2:609. Noted in Faur, *Iyunim be-Mishneh Torah*, 138.

⁵⁷⁴ Maimonides, *Mishneh Torah*, eds. Cohen et al., 6 line 50, 9 line 100, 65 line 509. Maimonides termed these laws “clearly established judgments and rules” (*mishpaṭim ve-dinim peli’im*); 10 line 102 (following the reading found in the majority of manuscripts). See idem, *Haqdamot ha-Rambam*, ed. Shailat, 89n1. Translation follows Twersky, *A Maimonides Reader*, 37. This claim was central to Faur’s presentations; see “De-Orayta, de-Rabbanan ve-Dinim Mufla’im be-Mishnato shel ha-Rambam,” *Sinai* 67 (1970): 20-35.

(hermeneutical rules). These *middot*, he asserted, were Sinaitic.⁵⁷⁵ Some of the derivations were accepted by consensus (*ijmā'*); “the analogizers” (*al-qiyāsīyīn*) developed other derived laws through debate. Debates were resolved according to the majority, based on “*Follow the majority*” (Ex. 23:2), and each generation derived new *furū'*, branches, from received traditions.⁵⁷⁶ The Torah itself made it clear that the law could not be changed by any post-Mosaic developments; after all, wrote Maimonides, the phrase “*it is not in the heavens*” (Deut. 30:12) precludes later prophecy.⁵⁷⁷ In lieu of prophecy, Maimonides asserted, God “assigned us” (*aḥālnā*), that is, the post-Mosaic community, to sages, or “the people of *qiyās*,” alluded to in the biblical phrase, (Deut. 17:9) “*The judge in those days.*”⁵⁷⁸ Subsequent generations treated laws derived by earlier ones as “principles” (*uṣūl*), extracting new rules from them.⁵⁷⁹ As Halbertal and Mordechai Cohen noted, these claims parallel the definition of “talmud” (or “*gemara*”) offered in Maimonides’ *Mishneh Torah. Hilkhoh Talmud Torah*, 1:11, defines talmud as

⁵⁷⁵ Louis Finkelstein argued that Maimonides retracted the claim that the *middot* are Sinaitic; “Ha-De’ah ki 13 ha-Middot hen Halakhah le-Moshe mi-Sinai,” in *Sefer ha-Zikaron le-Rabbi Shaul Liberman*, ed. Shamma Friedman (New York: Beit Midrash ha-Rabbanim de-America, 1993), 81-84, building on Elijah Alfandari, *Seder Eliyahu Rabbah ve-Zuta* (Constantinople, 1719), 69b. Finkelstein’s arguments are not convincing; see Kassierer and Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit*, 89-90n154. Maimonides termed them thirteen *qawānīn* (canons or principles). On *qawānīn*, see Faur, *Iyunim be-Mishneh Torah*, 132n61, 138n25; and Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 214. Maimonides intimated that even Moses derived laws; see *Sefer ha-Miṣvot*, ed. Kafih, 15 (Prin. Two). He also posited that Moses originated several ordinances; see *Mishnah ‘im Peirush*, ed. Kafih, 1:22; *Haqdamot ha-Rambam*, ed. Shailat, 340; *Mishneh Torah*, eds. Cohen et al., 14 line 165; *Hilkhoh Tefillah*, 12:1, 13:8; and *Hilkhoh Aveil*, 1:1. See Twersky, *Introduction to the Code of Maimonides*, 111.

⁵⁷⁶ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:4; *Haqdamot ha-Rambam*, ed. Shailat, 328. The Maimonidean (and rabbinic) reading of Ex. 23:2 is, of course, acontextual. For background, see Ephraim Urbach, “Al ha-Kelal ‘Aḥarei Rabbim le-Haṭot’,” in *Meḥqarim be-Mada‘ei ha-Yahadut*, eds. Moshe David Herr and Yonah Frankel (Jerusalem: Magnes, 1998), 503-509.

⁵⁷⁷ See above, n568.

⁵⁷⁸ His reading of this verse is strikingly similar to that of Ibn Ghiyāth; see above, n472. I have not found this reading in rabbinic literature; see above, n551.

⁵⁷⁹ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:14; *Haqdamot ha-Rambam*, ed. Shailat, 335.

“deducing conclusions from premises, developing implications of statements, comparing dicta, and understanding the *middot* by which the Torah is interpreted.”⁵⁸⁰

The relationship between *qiyās* and the *middot* in Maimonides’ writings is not entirely clear. In many places, Maimonides connected *qiyās* with the *middot*, but *qiyās* often has broader denotation.⁵⁸¹ As Aviram Ravitsky noted, Maimonides compared legal *qiyās* to dialectical syllogisms (*al-maqāyīs al-jadalīya*), and he contrasted these with demonstrative syllogisms. Dialectical syllogisms are based on one or more mere conventions (*mashhūrāt*) and therefore subject to disagreement, but demonstrative syllogisms are based on perceptions, primary intellegibles, and experience. Conclusions from these syllogisms are apodictic (*burhān*).⁵⁸² Disagreements in rabbinic literature are to be expected, according to Maimonides, because rabbinic derivations are akin to dialectical syllogisms.⁵⁸³ Maimonides cited as a paradigmatic example a rabbinic debate

⁵⁸⁰ יבין וישכיל אחר' דבר מראשיתו ויוציא דבר מדבר וידמה דבר לדבר ויבין במדות שהתורה נדרשת בהן; Maimonides, *Mishneh Torah*, eds. Cohen et al., 179 lines 42-43. Translation follows Twersky, *A Maimonides Reader*, 65, with slight changes. Halbertal, “*Sefer ha-Miṣvot le-Rambam*,” 470-71; and Cohen, *Opening the Gates of Interpretation*, 469. See also Twersky, *Introduction to the Code of Maimonides*, 489-500. Compare Sherira Gaon’s definition of “talmud,” analyzed in Fishman, *Becoming the People of the Talmud*, 23-28.

⁵⁸¹ See above, nn426-434.

⁵⁸² Translations based on Israel Efros, “Maimonides’ *Treatise on Logic (Maḳālah fi-Ṣin‘at al-Mantīk)*: The Original Arabic and Three Hebrew Translations,” *PAAJR* 8 (1937-1938): 47-48 (English pagination). Treatment in Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 198-200; and Arthur Hyman, “Demonstrative, Dialectical, and Sophistic Arguments in the Philosophy of Moses Maimonides,” in *Moses Maimonides and his Time*, ed. Eric L. Ormsby (Washington, D.C.: The Catholic University of America Press, 1989), 42-51. See also Cohen, *Opening the Gates of Interpretation*, 250-51, 268-69. On disagreements resulting from dialectical syllogisms, see Hyman, “Demonstrative, Dialectical, and Sophistic Arguments,” 41-43, citing *Guide*, I:31, II:22. On *mashhūrāt*, see Israel Efros, “Maimonides’ Arabic *Treatise on Logic*,” *PAAJR* 34 (1966): 22 (Hebrew pagination; chap. 8). For Aristotelian background, see Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 202.

⁵⁸³ See Maimonides, *Mishnah ‘im Peirush*, ed. Kafīh, 1:4; *Haqdamot ha-Rambam*, ed. Shailat, 328. Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 203-205, 208n59; see also Arthur Hyman, “A Note on Maimonides’ Classification of Law,” *PAAJR* 46 (1979-1980): 335-38. On al-Fārābī as the source for the broad understanding of *mashhūrāt*, see Efros, “Maimonides’ *Treatise on Logic*,” 19 (English pagination); Kraemer, “Maimonides’ Use of (Aristotelian) Dialectic,” 128n20; and Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 204n38.

(mBer 8:4) about whether to clean the house and then wash one's hands, or the reverse. Asserting that Moses transmitted neither view, Maimonides labeled these and similar debates as “branches of the branches of the branches” (*furū ' furū ' al-furū '*).⁵⁸⁴ Ravitsky suggested that this debate is emblematic because it concerns, like dialectical syllogisms, a matter of convention.⁵⁸⁵

One of Maimonides' goals for his *Commentary on the Mishnah* was “the clarification of the reasons that a position was adopted and the occurrence of disagreement between the disputants.”⁵⁸⁶ One example, concerning cases of restitution, is the rabbinic debate (mGiṭ 5:1) over the meaning of the repayment from “*the best of his field*” (Ex. 22:4). Does “*his*” refer to the victim or to the offender? Maimonides classified this verse as an instance of “*damīr*,” a term from qur'ānic exegesis (where it is usually

⁵⁸⁴ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:20; *Haqdamot ha-Rambam*, ed. Shailat, 339.

⁵⁸⁵ Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 207-208.

⁵⁸⁶ וואט'האר אלעלל אלת' לאג'להא אהצ'ע ד'לך אלכלאם ואלעלל אלת' לאג'להא וקע אלמכ'תלאף בין אלמכ'תלפין; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:48; *Haqdamot ha-Rambam*, ed. Shailat, 358. On the passive meaning of eighth form verbs, see Joshua Blau, *Diqduq ha-'Aravit-ha-Yehudit shel Yemei-ha-Beinayim* (Jerusalem: Magnes, 1961), §84. Compare Maimonides' comment about the Talmud's goals when clarifying the Mishnah; *Mishnah 'im Peirush*, ed. Kafih, 1:34-35; *Haqdamot ha-Rambam*, ed. Shailat, 349.

termed *iḏmar*; lit., ellipsis) meaning “incomplete” or “requiring a supplemental object,”⁵⁸⁷ and he often noted that other debates turn on similar questions.⁵⁸⁸

In short, Maimonides understood that the purpose of rabbinic *qiyās* was to elucidate unclear statements and that many rabbinic disagreements had arisen while

⁵⁸⁷ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 3:221 (mGiṭ 5:1). On *iḏmar*, see C.H.M. Versteegh, *Arabic Grammar and Qur'anic Exegesis in Early Islam* (Leiden: Brill, 1993), 146-51; Kinga Dévényi, “*Iḏmar* in the *Ma'ānī* of al-Farrā': A Grammatical Approach between Description and Explanation,” in *Approaches to Arabic Linguistics: Presented to Kees Versteegh on the Occasion of his Sixtieth Birthday*, eds. Everhard Ditters and Harald Motzki (Leiden: Brill, 2007), 45-65; and Michael C. Carter and Kees Versteegh, “*Iḏmār*,” in *Encyclopedia of Arabic Linguistics*, ed. Kees Versteegh (Leiden: Brill, 2006), 2:300-302. For similar uses of the term *ḏamīr*, see *Mishnah 'im Peirush*, ed. Kafih, 1:415 (m'Orl 3:9), 5:50 (mZev 5:8), 5:85 (mZev 13:3), 6:275 (mOhal 7:2), 6:359 (mNeg 5:4); idem, *Sefer ha-Miṣvot*, ed. Kafih, 240 (Neg. 131), 279 (Neg. 199); idem, *Dalālat al-Hā'irīn*, eds. Munk and Joel, 32 (I:21), 326 (III:13); and below, n668. For one use in Sa'adya, see Meira Polliack and Marzena Zawadowska, “‘God Would not Give the Land, but to the Obedient’: Medieval Karaite Responses to the Curse of Canaan (Genesis 9:25),” in *The Gift of the Land and the Fate of the Canaanites in Jewish Thought*, eds. Katell Berthelot et al. (New York: Oxford University Press, 2014), 141n20. See also the references in Cohen, *Opening the Gates of Interpretation*, 541.

Compare Maimonides' use of *taqdīr* (“restoring lost elements”) to translate the talmudic phrase *ḥasorei miḥasra*; see Hanokh Gamliel, “‘Ḥasorei Miḥasra’ – le-Darkho shel ha-Rambam be-*Feirush ha-Mishnah*,” *Netu'im* 8 (2002): 65-72. On *taqdīr* in Maimonides' writings, see also Hadassa Shy, “Targumo shel ha-Rav Yosef Kafih le-*Feirush ha-Mishnah* le-Rambam,” in *Sefer Zikaron le-Rav Yosef ben David Kafih*, 148-54; idem, “*Taqdīr* and its Counterparts in Mediaeval Judaeo-Arabic,” in *Genizah Research after Ninety Years*, 149-50, 153; and Cohen, *Opening the Gates of Interpretation*, 399-400, 401n48.

⁵⁸⁸ A similar disagreement arose concerning the requirement that “the congregation” (Lev. 4:10) offer a sin following communal transgression. Does “congregation” mean each tribe, the High Court, or both (mHor 1:6)? Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:475 (mHor 1:6). This type of explanation recurs in several other passages. Preliminary examination has uncovered: idem, *Mishnah 'im Peirush*, ed. Kafih, 4:18 (mBQ 3:9), 5:265 (mBek 7:6), 6:572 (mMiq 8:4); see also 5:353 (mKer 2:3). One fascinating example appears in a non-halakhic context. The *Mishnah* (m'Ed 8:7) records four views about Elijah's role in the eschaton. R. Joshua states, “I received from Rabban Yoḥanan ben Zakkai, who heard from his teacher, and his teacher from his teacher, as a *halakhah le-Moshe mi-Sinai*” that Elijah will distance those drawn close through violence and draw close those who were distanced by violence. Translation follows Herbert Danby, *The Mishnah: Translated from the Hebrew, with Introduction and Brief Explanatory Notes* (Oxford: Oxford University Press, 1933), 436, with slight changes. R. Judah states that Elijah will bring close the distant; R. Simeon that he will remove disagreement; and the Sages that he will make peace. The phrase *halakhah le-Moshe mi-Sinai* presented a problem for Maimonides because he denied the possibility of debate about such dicta. He explained that the disputants did not hear this language (*naṣṣ*) from Moses, but simply that God will gather “outcasts at the ends of the world” (Deut. 30:4) and that Elijah will remove iniquities. The rabbis only disagreed about which iniquities Elijah will eradicate; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:336-37 (m'Ed 8:7). Heschel, *Torah min ha-Shamayim*, 2:232, called attention to this passage; see also Shlomi Adler, “Halakhah le-Moshe mi-Sinai,” *Ma'aliyot* 25 (2005): 324-25. Compare the claim that debate only arises if there is no transmission (*riwāya*); *Mishnah 'im Peirush*, ed. Kafih, 1:19; *Haqdamot ha-Rambam*, ed. Shailat, 339.

interpreting ambiguous texts. This claim parallels the thesis set forth by Ibn Rushd (b. Cordoba, d. Marrākush; 1126-98) in the Introduction to his *Bidāyat al-Mujtahid*. Ibn Rushd explained that legal disagreements arose due to lexical ambiguity in revealed texts,⁵⁸⁹ and he attempted in this book to demonstrate this claim for every recorded disagreement among the jurists.⁵⁹⁰ As Ibn Rushd wrote the *Bidāya* between the late 1160s and 1188,⁵⁹¹ this text could not have influenced the *Commentary*, which Maimonides completed in 1167/8.⁵⁹² Nevertheless, there is no reason to assume that the elements of Almohad thought that shaped the perspective of Ibn Rushd did not also affect Maimonides' *Commentary on the Mishnah*.⁵⁹³

⁵⁸⁹ Muḥammad ibn Aḥmad Ibn Rushd, *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* (Beirut: Dar al-Ma'rifa, 1982), 1:3-4; see the translation of this passage in Yasin Dutton, "The Introduction to Ibn Rushd's '*Bidāyat al-Mujtahid*'," *Islamic Law and Society* 1, no. 2 (1994): 200.

⁵⁹⁰ Robert Brunschvig, "Averroès Juriste," in *Etudes d'orientalisme dédiées à la mémoire de Lévi-Provençal*, ed. Emilio García Gómez (Paris: G.-P. Maisonneuve et Larose, 1962), 1:36-37; and Dutton, "The Introduction to Ibn Rushd's '*Bidāyat al-Mujtahid*'," 191-92.

⁵⁹¹ Brunschvig, "Averroès Juriste," 37; Maribel Fierro, "The Legal Policies of the Almohad Caliphs and Ibn Rushd's *Bidāyat Al-Mujtahid*," *Journal of Islamic Studies* 10, no. 3 (1999): 242, 244; and Dutton, "The Introduction to Ibn Rushd," 191.

⁵⁹² Davidson, *Maimonides*, 147. See however Simon Hopkins, *Peirush ha-Rambam le-Masekhet Shabbat: Ṭiyuṭat ha-Peirush le-fi Qeṭa'im Oṭografiyim me-Genizat Qahir* (Jerusalem: Yad Ben-Zvi, 2001), xix n37. Of course, Maimonides continued to edit the *Commentary* throughout his life.

⁵⁹³ Fierro, "The Legal Policies of the Almohad Caliphs," 245; idem, "Proto-Maliki, Maliki, and Reformed Maliki in al-Andalus," in *The Islamic School of Law*, 74; Anna Akasoy, *Philosophie und Mystik in der späten Almohadenzeit: die Sizilianischen Fragen des Ibn Sab'īn* (Leiden: Brill, 2006), 163-64; idem, "Ibn Sab'īn's *Sicilian Questions*: The Text, Its Sources, And Their Historical Context," *Al-Qanṭara* 29, no. 1 (2008): 141-42. See also the discussion of *qiyās* in the *Bidāya* in Abdel Magid Turki, "La Place d'Averroès juriste dans l'histoire du mālikisme et de l'Espagne musulmane," in *Multiplés Averroès: Actes du Colloque Internationale organisée à l'occasion du 850e anniversaire de la naissance d'Averroès, Paris 20-23 septembre 1976*, ed. J. Jolivet (Paris: Les Belles Lettres, 1978), 37-39. Comparisons of the *Bidāya* and the *Mishneh Torah* include David Gonzalo Maeso, "Averroes (1126-1198) y Maimonides (1135-1204), dos glorias de Córdoba (Paralelo)," *Miscelanea de Estudios Árabes y Hebraicos* 16, sección hebreo (1967): 153-54; Noah Feldman, "War and Reason in Maimonides & Averroes," *Journal of Islamic Law and Culture* 9, no. 1 (2004): 65-86; and Stroumsa, *Maimonides in His World*, 68. On these and other grounds, the *Commentary* may be a better comparison. See also Libson, "Zikat ha-Rambam la-Halakhah ha-Muslemit," 1:264-67; Anna Akasoy, "Ibn Sab'īn, Maimónides y la emigración andalusí," in *Maimónides y el pensamiento medieval: VIII Centenario de la muerte de Maimónides 9, 10 y 11 de diciembre de 2004*, ed. José Luis Cantón Alonso (Córdoba: Universidad de Córdoba, 2007), 118-19; and compare Dominique Urvoy, "La pensée d'Ibn Tūmart," *Bulletin d'études orientales* 27 (1974): 33-37.

Maimonides rejected the geonic-era claim that disputes in rabbinic literature arose due to lackadaisical students of Shammai and Hillel, writing that this assertion served to “besmirch the individuals who transmitted (*ḥamalat*) the law (*al-sharī‘a*).”⁵⁹⁴ Rereading the talmudic proof-text (bSan 88b) favored by the geonim, Maimonides claimed that Shammai and Hillel had very few disagreements, because they shared many principles (*uṣūl*) and their *qiyās*, reasoning, led to similar results. Their students argued more, however, because they were weaker in the discipline of *qiyās*. For Maimonides, such debates were not indicative of spiritual crisis. This perspective is a leitmotif of the Introduction to his *Commentary on the Mishnah*.⁵⁹⁵

Maimonides’ distinction between revealed law and manmade law underlies his interpretation of the biblical prohibition against adding to, or subtracting from, the law (Deut. 4:2, 13:11), as Blidstein noted. While the Talmud and geonim understood this verse as prohibiting any change to revelation, Maimonides understood it differently: legal innovations that are not based in prophecy, he claimed, do not violate this prohibition.⁵⁹⁶

For comparisons of Maimonides’ approach to the Oral Torah and al-Fārābī’s claims about the development of religious law, see Ravitsky, “Ha-Rambam ve-al-Fārābī,” 218-22.

⁵⁹⁴ מן קביח אלקול ... וטאען פי אלאשכ'אץ אלד'ין חמלת ענהם אלשריעה *Mishnah 'im Peirush*, ed. Kafih, 1:20; *Haqdamot ha-Rambam*, ed. Shailat, 339. On the geonic position, see above, nn286, 288.

⁵⁹⁵ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:20-21; *Haqdamot ha-Rambam*, ed. Shailat, 339. See Moshe Zucker, “Le-Va‘ayat ha-Maḥloqet be-Masoret,” 2:327; Twersky, “Maimonides and Eretz Yisrael,” 267-68n21; Blidstein, “Oral Law as Institution,” 171; idem, “Masoret ve-Samkhut Mosdit,” 14; idem, *Samkhut u-Meri*, 38; Bloomberg, “Arabic Legal Terms in Maimonides,” 25-26; Halbertal, “*Sefer ha-Miṣvot le-Rambam*,” 474; and Cohen, *Opening the Gates of Interpretation*, 267-71.

⁵⁹⁶ See especially Maimonides, *Mishneh Torah*, eds. Cohen et al., 65-66 lines 509-520. Blidstein, “Oral Law as Institution,” 169; idem, “Masoret ve-Samkhut Mosdit,” 13; idem, *Samkhut u-Meri*, 159-62. See also Halbertal, “*Sefer ha-Miṣvot le-Rambam*,” 477.

Maimonides' Presentation in Sefer ha-Miṣvot

Though the first two Principles in Maimonides' Introduction to *Sefer ha-Miṣvot* explicitly draw on the Introduction to his *Commentary on the Mishnah*, the later work's concise formulation made it the focal point of subsequent debates.⁵⁹⁷ Principles One and Two argue that non-Mosaic laws cannot constitute distinct commandments. Principle One focuses on post-Sinaitic enactments, such as Purim, Hanukah, and the festive Psalms recited liturgically on holidays (*hallel*). Principle Two disentangles *midrashim* that contain *tafsīr marwī*, i.e., a transmitted interpretation, from those *midrashim* that create new law.

The overlapping categories of biblical law and enumerated commandments are central to this discussion. *Sefer ha-Miṣvot* often cites the term (*mi*)*de-orayta* (Aramaic for “from the Torah”) in rabbinic literature to identify laws that constitute distinct commandments. In Principle Two, Maimonides claimed that if the Talmud labels a law “*de-orayta*,” then it is a distinct commandment.⁵⁹⁸ The same is often true of the phrase “*min ha-torah*” (Hebrew for “from the Torah”),⁵⁹⁹ and he often contrasted *min ha-torah* with rabbinic law.⁶⁰⁰ The opening Principles likewise distinguish between laws that are

⁵⁹⁷ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12 (Prin. Two). Ḥananya ben Menaḥem Qazes' conjectured that Naḥmanides was unaware of this Introduction because it had not yet been translated; *Qinat Sofrim*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 57 (Prin. Two); compare the critique of Solomon Luria, there, 77 (Prin. Two). On early use of the *Commentary*, see Kalman Kahana, “*Peirush ha-Mishnah shel ha-Rambam be-Khtav yado?*” *Ha-Ma'ayan* 26, no. 1 (1986): 55-56; no. 2: 58; Ya'aqov Ḥayim Sofer, “‘Al Sefarim ve-Sofrim,” *Ṣefunot* 2, no. 3 (1990): 77-80; and Ya'aqov Shmuel Spiegel, “Ha-Im Ra'u ha-Rashba veba-Rav ha-Magid u-va'al *Hagahot Maymoniyot* et *Peirush ha-Mishnayot* le-Rambam?” *Ṣefunot* 3, no. 1 (1991): 82-84; compare above, n422.

⁵⁹⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 13, 15 (Prin. Two).

⁵⁹⁹ E.g., Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 68 (Pos. 19), 162 (Pos. 203).

⁶⁰⁰ This is explicit in Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 87 (Pos. 56), 243 (Neg. 135), and implicit elsewhere, e.g., 121 (Pos. 122), 125 (Pos. 130), 276 (Neg. 193). Note that the signs of kosher birds are not mentioned *min ha-torah* but are “inferred through induction” (*huṣṣilat bil-istiqra'*) from non-kosher

(*mi*)*de-rabbanan* (Aramaic for “[from] the rabbis”) or (*mi*-)*divrei sofrim* (Hebrew for “[from] the words of the scribes”), on the one hand, and biblical law and enumerated commandments, on the other.⁶⁰¹ In the enumeration itself, Maimonides cited rabbinic use of the terms *de-orayta* or *min ha-torah* to indicate that a given law constitutes a distinct commandment; however in all but three cases, those laws are based on what he termed “clear” verses (see below; on the problem of combining discrete laws into larger “commandment-units,” see Chapter Four).⁶⁰²

birds; there, 133-34. As far as I can tell, Maimonides never used the word *istiqra*’ to classify post-Mosaic legal derivations. It appears to be a term borrowed from formal logic for this type of intellectual activity. He used an identical phrase (*huṣṣil bi-’istiqr’i*) to describe the identification of the signs of kosher fish; *Mishnah ‘im Peirush*, ed. Kafih, 6:614 (mNid 6:10). See Efros, “Maimonides’ *Treatise on Logic*,” 9n6; and Joshua ben Abraham ha-Nagid, *Teshuvot R. Yehoshua ha-Nagid: al-Masā’il*, ed. and trans. Yehuda Raṣhabi (Jerusalem: Mekhon Moshe, 1989), 109. In chap. 6 of the *Treatise on Logic*, he termed “induction” *istiqra*’. Compare Levinger’s claim that according to Maimonides, laws deduced from biblical laws are biblical; *Darkhei ha-Maḥshavah ha-Hilkhatit*, 38-39. This example seems more germane than the one adduced by Levinger.

⁶⁰¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 8-14 passim (Prin. One and Two). For the enumeration, see there, 79 (Pos. 37), 240 (Neg. 131), 243 (Neg. 135). For (*mi*)*de-rabbanan* as rabbinic laws, see there, e.g., 100 (Pos. 78), 243 (Neg. 135), 290 (Neg. 230).

⁶⁰² Two of these are likely among the “three [or] four” exceptions to Principle Two that Maimonides mentioned in his letter to Pinḥas *ha-dayan* (discussed at length below): the prohibitions against an uncircumcised priest consuming heave offerings (*terumah*) and against consuming wine used in idolatrous practices (Maimonides, *Sefer ha-Miṣvot*, 242 [Neg. 135], 276 [Neg. 194]). The third example of a *de-orayta* law that is not based on an explicit verse is the obligation to mourn for one’s relatives, included in the commandment obligating priests to render themselves impure through involvement with the corpse of a deceased relative: אבילות יום ראשון דאורייתא ... פקד באן אן אלתזאם אלאבילות דאורייתא ואנה מצות עשה לכן ביום; הרראשון פקט; *Sefer ha-Miṣvot*, ed. Kafih, 79 (Pos 37). Compare *Hilkhot Aveil*, 1:1; see there, chaps. 1-2, where these prohibitions are closely intertwined. See Moritz Peritz, “Das Buch der Gesetze, nach seiner Anlage und seinem Inhalte untersucht,” in *Moses ben Maimon*, 1:456n3; Friedberg, *Crafting the 613 Commandments*, 123-25 (showing that Maimonides struggled with the source of the obligation to mourn in his later writings); Lawrence Kaplan, “The Unity of Maimonides’ Religious Thought: The Laws of Mourning as a Case Study,” in *Judaism and Modernity: The Religious Philosophy of David Hartman*, ed. Jonathan W. Malino (Aldershot: Ashgate, 2004), 393-412. Compare Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 5:27 (mZev 2:1).

In my view, Maimonides used the phrases *min ha-torah* and *din torah* to mean both “distinct, enumerated commandment” and “law of biblical status” in his letter to Pinḥas *ha-dayan*; *Igrot*, ed. Shailat, 2:453-54. I hope to expand on this elsewhere.

*Principle One: To Exclude Rabbinic Commandments from the
Enumeration*

The opening summary of Principle One reads: “It is inappropriate to enumerate in this grouping (*jumla*) the *mišvot* that are rabbinic (*mide-rabbanan*).”⁶⁰³ Maimonides directed this Principle against earlier enumerators of the commandments, who, he reported, had caused him “pains” (*ālām*) in his youth.⁶⁰⁴ Though laws that Maimonides deemed rabbinic appear in all earlier enumerations,⁶⁰⁵ it may be possible to identify his specific target. It was probably not Ḥefeš ben Yašliaḥ, whom Maimonides praised for counting only a few rabbinic laws.⁶⁰⁶ Rather, the focus of Maimonides’ criticism was probably Sa’adya Gaon. As Moshe Zucker demonstrated, Principle One’s attack on the claim that Moses prophesied about Hanukah quotes from Sa’adya’s *Kitāb al-Sharā’i*.⁶⁰⁷ Indeed, later in this Principle, Maimonides asserted that the inclusion of rabbinic laws in the count of 613 is unacceptable, “no matter who said it.”⁶⁰⁸ Given the standing of Sa’adya in Maimonides’ world,⁶⁰⁹ Maimonides may well have been reticent to name the

⁶⁰³ אנה לא ינבגי אן תעד פי הד'ה אלג'מלה אלמצות אלתי הי מדרבנן; Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 8, 9 (Prin. One). The categorization of rabbinic laws as *mišvot* is unusual; this term usually denotes biblical commandments in *Sefer ha-Mišvot* (but not necessarily in the *Mishneh Torah*); see below, n952. Compare the discussion of *mišvot* “instituted” (*nithadshu*) after revelation; idem, *Mishneh Torah*, eds. Cohen et al., 65 lines 505-506; see the full discussion, lines 509-513; and there, 73 line 133.

⁶⁰⁴ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 4, 5 (introduction). See above, n95.

⁶⁰⁵ See above, nn189-193.

⁶⁰⁶ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 5 (introduction). Judah Ibn Bil’am’s commentary on Deut. 30:2-6 may have been Maimonides’ source for knowledge of the otherwise lost part of this work; see above, n197.

⁶⁰⁷ Zucker, “‘Iyunim ve-He’arot,” 97-98. On Maimonides’ access to Sa’adya’s *Kitāb al-Sharā’i*, see below, n631.

⁶⁰⁸ קאלה מן קאלה; Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 12 (Prin. Two).

⁶⁰⁹ See the Andalusian praise for Sa’adya in Malter, *Saadia Gaon*, 277-79. On Sa’adya’s influence on Maimonides, see Kreisel, “Judah Halevi’s Influence on Maimonides,” 98-99, 101; Robert Brody, “Hashpa’at Ḥiburei ha-Halakhah shel Rav Sa’adya Gaon ‘al *Mishneh Torah* shel ha-Rambam,” in *Ha-Rambam: Shamranut, Meqoriyut, Mahapkhanut*, 1:211-22; Cohen, *Opening the Gates of Interpretation*, 22-23, 33-34; and idem, “Maimonides’ Disagreement with ‘The Torah’ in his Interpretation of Job,” *Zutot*

offending enumerator. (He was similarly coy when he dismissed Sa'adya's claims about the origin of the calendar.⁶¹⁰)

Noting that earlier enumerators were inconsistent in their inclusion of rabbinic laws, Maimonides suggested that they had been confused by the Talmud's discussion (bSab 23a) of the benedictory formula in which God is said to have commanded the performance of rabbinically-ordained rituals. Maimonides acknowledged that the rabbis understood Deut. 17:11, "*In accordance with the instruction given you,*" as a passage demanding obedience to all decrees of the High Court. Still, he argued, if every rabbinic ordinance were included in the count, the sum would far exceed 613. Thus, he reasoned, the enumeration must only include biblical *nuṣūṣ* (texts or verses). In setting forth this position, Maimonides ignored the Sa'adyanic claim – that he had just quoted! – that the commandment to observe Hanukah was revealed by God to Moses.⁶¹¹

Maimonides declared that laws created after the time of Moses were to be regarded as being of rabbinic status. This, he noted, is why the Talmud describes as "rabbinic" and "from the words/matters of the Scribes" laws instituted by King Solomon (see bSab 14b; bSab 34a; b'Eiruv 5b; mYad 3:2). On these grounds, he faulted earlier enumerators for counting laws established by post-Mosaic prophets, such as clothing the naked (claiming that their source was Isa. 58:7; "*When you see the naked, clothe him*").

4, no. 1 (2004): 75-78; see also Sa'adya, *Kitāb Jāmi' al-Ṣalawāt*, eds. Davidson et al., 28-30. Note Maimonides' praise for Sa'adya in his *Epistle to Yemen*, in Maimonides, *Igrot*, ed. Shailat, 1:100.

⁶¹⁰ See above, n121.

⁶¹¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 10, 12 (Prin. One). On this last claim, see Cohen, *Opening the Gates of Interpretation*, 287, 291-92, 306, 432. This rhetoric is typical; the Principles often manipulate geonic-era texts. Compare Maimonides' presentation of this blessing in *Hilkhot Berakhot*, 6:2, 11:3; see also Blidstein, *Samkhat u-Meri*, 34n1.

Laws of this sort, wrote Maimonides, are “subsumed under” (*dākhil tahta*) the pentateuchal charge to provide for the poor (Deut. 15:8).⁶¹²

Maimonides also identified pentateuchal sources for other post-Mosaic, scriptural commandments, such as Ezek. 44:20, which forbids a priest to enter the Temple with unkempt hair. Both the *Commentary on the Mishnah* and *Sefer ha-Miṣvot* consider this prohibition subsidiary to the command that Aaron’s sons not mourn for their brothers (Lev. 10:6). In the latter work, Maimonides wrote that Ezek. 44:20 “clarified” (*bayyana*) the meaning of Lev. 10:6 (*rosheikhem al tifra ‘u*; NJPS offers “do not bare your heads” and “do not dishevel your hair”).⁶¹³ Maimonides also appears to have sought a

⁶¹² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 10-11 (Prin. One). He emphasized that reading the Book of Esther is not *de-orayta*, perhaps because it is based on Est. 9:28 (see bMeg 2b). He added that it is as if “for them, the Talmud was compiled ‘*In a stammering jargon and an alien tongue*’ (Isa. 28:11)” (ןי אחרת (אלחלמד ענד האולא מולפא בלעגי שפה ובלשון אחרת). In the Principles, *dākhil tahta* denotes rabbinic law (see there, 10, 11, 14), but biblical law in the enumeration (210, 286, 337; see 285-86n47). The *Commentary* does not use this phrase consistently to denote one type of law. On some of the challenges with Maimonides’ analysis of Deut. 15:8 and his criticism of laws “subsumed under” this verse that appear in earlier enumerations, see Friedberg, *Crafting the 613 Commandments*, 297-98n41. On geonic-era understandings of laws found in the Prophets, see above, nn198-202.

⁶¹³ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:195 (mSan 9:6); idem, *Sefer ha-Miṣvot*, ed. Kafih, 256 (Neg. 163). He was noncommittal, however, in the *Mishneh Torah*, initially citing Ezek. 44:20, but then equating this prohibition with the prohibition of serving with torn clothing, as both appear in Lev. 10:6 (*eḥad hu*; *Hilkhot Bi’at ha-Miqdash*, 1:8, 1:14); note the parallel statement in *Sefer ha-Miṣvot*, ed. Kafih, 257 (Neg. 164): חכמ פרועי ראש וקרועי בגדים ואחד. In addition to the standard commentaries; see Bacharach, *Havat Yair*, 181a (§192, no. 48); Jacob Ettlinger, *Arukh la-Ner Masekhet Sanhedrin* (Jerusalem, 1931), 68b, s.v. *u-faru ‘ei rosh* (bSan 83b); Perla, *Sefer ha-Miṣvot la-Rasag*, 2:491-93, 3:171; and Isaac Simḥah Hurewitz, *Sefer ha-Miṣvot ‘im Peirush Yad ha-Levi* (Jerusalem, 1926), 225a §3. Others struggled with the relationship of Lev. 10:6 and Ezek. 44:20; see the sources in Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 137-38n25. Add the view of Rabad cited in Naḥmanides, *Kitvei Rabbeinu Moshe ben Naḥman*, ed. Charles Ber Chavel (Jerusalem: Mosad ha-Rav Kook, 1963), 2:214 (*Torat ha-Adam*). The talmudic claim that these laws were transmitted orally from Moses to Ezekiel may have been compatible with Maimonides’ system, but he seems to have preferred Mosaic verses. Isaac Leon ben Eliezer ibn Ṣur Sefardi argued that Maimonides understood the Talmud’s claims, literally; *Megillat Esther*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 92 (Prin. Two).

pentateuchal source for the prohibition, found in Ezek. 44:9, against an uncircumcised priest from serving in the Temple.⁶¹⁴

Maimonides' claims about rabbinic law influenced a ruling that he sent to the students of R. Ephraim of Tyre (d. before 1177).⁶¹⁵ Ephraim (or his students) had inquired if a nazirite, who must abstain from wine (Num. 6:3), may drink wine for the sanctification of the Sabbath. Maimonides forbade this because the nazirite's vow not to drink wine was biblical in origin, while the obligation to consecrate the Sabbath over wine is (merely) of rabbinic status.⁶¹⁶ He explained, in a second responsum, that the mishnaic statement that Jews were "adjured from (the time of) Mount Sinai" (mShev 3:6)

⁶¹⁴ The *Mishneh Torah* indicates that the prohibition forbidding an uncircumcised priest from serving in the Temple has biblical force (see *Hilkhot Sanhedrin* 19:4, no. 31; *Hilkhot Bi'at ha-Miqdash*, 6:8; 9:15, no. 4; *Hilkhot Hagigah*, 2:1; *Hilkhot Ma'aser Sheini ve-Neta' Rav'ai*, 3:4; this law is absent from *Sefer ha-Miṣvot*). In the *Commentary*, Maimonides cited Ezek. 44:9 to show that an uncircumcised priest has the status (*mazila*) of an alien (*ben nekhar*) for the purpose of Temple service; *Mishnah 'im Peirush*, ed. Kafih, 5:29 (mZev 2:1). This comparison appears in the *Mishneh Torah*, where Maimonides added that one who violates this prohibition incurs lashes, "like a non-priest (*zar*) who serves" in the Temple (*Hilkhot Bi'at ha-Miqdash*, 6:8; based on Num. 1:51 etc.). However, the latter prohibition is a distinct commandment and a capital crime, but the prohibition of an uncircumcised priest serving in the Temple is neither. The role that Ezek. 44:9 played is unclear; see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 220 (Neg. 74); and *Hilkhot Bi'at ha-Miqdash*, 9:1. In addition to the standard commentaries; see David ibn Abi Zimra, *She'elot u-Teshuvot ha-Radbaz* (Jerusalem, 1882), 5:30 (§56 [§1459]); Bacharach, *Havat Yair*, 180b, 181a (§192, nos. 33, 49); Judah ben Manoah Sayid, *Ner Miṣvah* (Salonika, 1810), 69a-69b; Ettlinger, *'Arukh la-Ner Masekhet Sanhedrin*, 69a, s.v. *be-Rashi d"h lo yavo* (bSan 84a); Joseph ben Moses Babad, *Sefer ha-Ḥinukh: 'im bei'ur Minhat Ḥinukh* (Jerusalem: Mekhon Yeruahalayim, 1988-1991), 2:105-106; Perla, *Sefer ha-Miṣvot la-Rasag*, 2:425; Faur, *'Iyunim be-Mishneh Torah*, 18n28; and Henshke, "Le-Yesodei," 123n61.

⁶¹⁵ Very little is known about Ephraim. His community appears in Benjamin of Tudela, *The Itinerary of Benjamin of Tudela, Critical Text, Translation and Commentary*, ed. and trans. Marcus Nathan Adler (London: H. Frowde, 1907), 18 (English), 20 (Hebrew). Scholars have debated if Ephraim was from Fustāṭ or southern France; see Avigdor Aptowitz, *Mavo le-Sefer Ravyah* (Jerusalem: Sifrei Yahadut, 1984), 325; Jacob Mann, *The Jews in Egypt and in Palestine under the Fātimid Caliphs* (New York: Ktav, 1970), 2:325n7; Joshua Praver, *The History of the Jews in the Latin Kingdom of Jerusalem* (Oxford: Oxford University Press, 1988), 52-54; Kraemer, *Maimonides*, 134-35; Yosef ben Yiṣḥak Sambari, *Sefer Divrei Yosef*, ed. Shimon Shtober (Jerusalem: Yad Ben-Zvi, 1994), 218n366; Maimonides, *Igrot*, ed. Shailat, 1:90-92, 1:195, 1:203; and Abraham David, "Teshuvah Ḥadashah shel ha-Rambam el R. Ephraim ha-Dayyan mi-Ṣur," *Shenaton ha-Mishpat ha-Ivri* 14-15 (1988-1989): 107-111. On the exchange with Ephraim and his students, see Davidson, *Maimonides*, 204.

⁶¹⁶ Text appears in David, "Teshuvah Ḥadashah shel ha-Rambam," 111-12.

to observe the law, applies only to biblical law.⁶¹⁷ Accordingly, the nazirite's vow, which is of biblical status, overrides the requirement to consume rabbinically-ordained wine for the consecration of the Sabbath.⁶¹⁸

Principle Two: To Exclude (Most) Derived Laws from the Enumeration

Principle Two relies heavily upon Maimonides' Introduction to the *Commentary on the Mishnah* in declaring that the enumeration of the 613 commandments excludes most laws that are not explicit in the Pentateuch. Because this claim depends on assumptions that flout centuries of Rabbanite thought, and according to many of Maimonides' critics, even the Talmud itself, the interpretation of Principle Two has been the subject of robust debate since the thirteenth century.

While other Principles in *Sefer ha-Miṣvot*'s Introduction address entire categories of law, Principle Two opens with the statement: "Not everything known through one of the thirteen *middot* (hermeneutical rules) by which the Torah is interpreted, or by a redundancy (*ribbuy*), is appropriate to count."⁶¹⁹ This formulation implies that some laws known through the *middot* do constitute distinct commandments. Invoking the Introduction to the *Commentary on the Mishnah*, Maimonides wrote that most laws that

⁶¹⁷ On this concept, see Tzvi Novick, *What is Good, and What God Demands: Normative Structures in Tannaitic Literature* (Leiden: Brill 2010), 83-85.

⁶¹⁸ Maimonides, *Teshuvot*, ed. Blau, 2:212-16 (§120). As far as I can tell, Allegri was the first to note the importance of this responsum; see *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 38-40 (Prin. One). See also Isaac Bekhor David, *Divrei Emet*, 81b-82b; and Kassierer and Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit*, 120-22. In setting forth this argument, Maimonides deviated from a ruling of Ibn Migash, who wrote that the biblical command to follow the High Court (Deut. 17:11) dictates that no oath can preclude the observance of rabbinic laws; Meir ha-Levi Ibn Migash, *She'elot u-Teshuvot*, 23b (§148).

⁶¹⁹ אן ליס כל מא יתעלם באחדי שלש עשרה מדות שהתורה נדרשת בהן או ברבוי ינבגו עדה; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 8, 12 (Prin. Two). Translation follows Cohen, *Opening the Gates of Interpretation*, 288, with changes.

are derived from the *middot* are often, though not always, subject to debate.⁶²⁰ Thus, nothing about a law's origin can be discerned from the presence of debate or from its linkage to the *middot*. Maimonides explained that many disagreements among the rabbis concern the precise scriptural passage that supports the *tafsīr marwī* (transmitted interpretation); he termed this “*istidlāl*,” adducing a proof, through the *middot*. Maimonides asserted that a non-explicit law is assumed to be rabbinic unless “the transmitters” (*al-rāwīn*) testify that it is “*de-orayta*” (biblical) or “*guf torah*” (essence of the Torah).⁶²¹ Principle Two thus, primarily, identifies exceptions to Principle One's assertion, that the enumeration consists entirely of Pentateuchal verses (*al-jumla hiya kulliha nuṣūṣ torah*).⁶²²

Charging earlier enumerators with having misunderstood the conclusions outlined in Principle Two,⁶²³ Maimonides wrote: “Even worse” (*ashadd*) than counting *middot*-based laws, they counted commandments derived from rabbinic *derashot*, violating the

⁶²⁰ On this statement, see Blidstein, “Masoret ve-Samkhut Mosdit,” 17.

⁶²¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12-13 (Prin. Two). It is not entirely clear if these laws constitute distinct commandments; I am inclined to think that they do. The term *guf torah* appears most prominently in mḤag 1:8; my translation follows Jaffee, *Torah in the Mouth*, 85. For background, see there, 85-87; Saul Lieberman, *Tosefta ki-Feshutah: bei'ur Arokh la-Tosefta* (New York: Beit ha-Midrash le-Rabbanim sheba-America, 1955-1973), 3:470; David Weiss Halivni, *Meqorot u-Mesorot: Bei'urim ba-Talmud* (Tel Aviv: Devir, 1968-), 2:591-93; and Michal Bar-Asher, “Mountains Hanging by a Strand? Re-Reading Mishnah Hagiga 1:8,” *Journal of Ancient Judaism* 4, no. 2 (2013): 239-40. On the Arabic terms here, see Cohen, *Opening the Gates of Interpretation*, 271-72, 276, 289-90. On the term *de-orayta* in the Talmud, see Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 30 (Prin. Two); Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 7n8; ibn Ṣur Sefardi, *Megillat Esther*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 52 (Prin. Two); Allegri, *Leiv Sameaḥ*, there, 52-54 (Prin. Two); Henshke, “Le-Havḥanat ha-Rambam,” 208-210; and Gruber, “The Meaning of אוריינתא.”

⁶²² אוריינתא מדרבנן; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12 (Prin. One). Compare Maimonides' statements that he would establish the enumeration based on the verses (*nuṣūṣ*) of the Torah and the sages' statements in explaining it (ובאקאויל אלחכמים) (פי תפסירהא גמלה אלמצות אלתי ישתמל עליהא) (ספר התורה אלתי שרענא אללה בהא הי שש מאות ושלש עשרה מצות); *ibid*, 6, 7 (introduction).

⁶²³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 13 (Prin. Two).

rule (bSab 63a etc.) “a verse does not leave the realm of its *peshat*.”⁶²⁴ In so doing, he claimed, these enumerators failed to acknowledge that these readings are actually “commentary” (*sharḥ*) or “inference” (*istidlāl*), and, thus, cannot constitute distinct commandments. According to Maimonides, a talmudic passage (bBQ 100a) that glosses each phrase in Ex. 18:20 as a distinct act⁶²⁵ misled his predecessors, causing them to enumerate, as distinct commandments, the requirements to visit the sick, bury the dead, and comfort the bereaved (the last-mentioned is not included in the talmudic passage). They failed to realize that all of these acts are “subsumed under” (*dākhila taḥta*) the commandment of “*Love your neighbor as yourself*” (Lev. 19:18).⁶²⁶

It may be possible to identify the enumerators criticized in Principle Two, for in the Introduction to *Sefer ha-Miṣvot*, Maimonides chided the author of *Halakhot Gedolot* – whose enumeration spawned many offshoots⁶²⁷ – for counting as distinct commandments the acts of visiting the sick and comforting the bereaved.⁶²⁸ Principle Two also decried the identification of calendrical intercalation (*ḥishuv tequfot*) as a

⁶²⁴ On the term *derashot*, see Cohen, *Opening the Gates of Interpretation*, 8-9, 99n39, 276-80, 310-11; and James A. Diamond, “The Use of Midrash in Maimonides’ *Guide of the Perplexed*: Decoding the Duality of the Text,” *AJS Review* 21, no. 1 (1996): 59-60.

⁶²⁵ “*Make known to them the way they are to go in and the practices they are to follow.*” The talmudic glosses read: *The way* – this is deeds of loving-kindness; *they are to go* – this is visiting the sick; *in* – this is burying the dead; *the practices* – these are the laws (*ha-dinim*); *they are to follow* – this is exceeding the letter of the law (*lifnim mi-shurat ha-din*; את הדרך זו גמילות חסדים ילכו זה בקור חולים בה זו קבירת מתים ואת המעשה אלו הדינין אשר יעשון זו לפנים משורת הדין); text follows Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 14 (Prin. Two), which differs slightly from the printed text. See idem, *Sefer ha-Miṣvot*, ed. Heller, 8n15.

⁶²⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 14-15 (Prin. Two). See Cohen, *Opening the Gates of Interpretation*, 299-300; and Friedberg, *Crafting the 613 Commandments*, 297-98n41. On *dākhila taḥta*, see above n612. He added that many derived laws are “appended to” (*muḏāfa ilā*) larger commandments. This phrase is rare in *Sefer ha-Miṣvot*; see below, nn1006, 1056, 1068.

⁶²⁷ See above, n55.

⁶²⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 5 (introduction). He praised Ḥefeṣ for omitting these laws.

distinct commandment. According to Maimonides, the source for this claim was a rabbinic gloss on Deut. 4:6, “*It will be proof of your wisdom and discernment to other peoples.*” According to the Talmud (bSab 75a), the admiration of the nations is elicited by Israel’s system of intercalation.⁶²⁹ This passage, argued Maimonides, hardly supports the identification of calendrical intercalation as a distinct commandment.⁶³⁰ Since Naḥmanides, commentators have assumed that the target of Maimonides’ critique was the count in *Halakhot Gedolot*, but Kafih suggested that the target was actually Sa’adya.⁶³¹

Anticipating criticism of Principle Two, Maimonides speculated that a reader might charge him with believing that derived laws are, by nature, “uncertain” (*ghayr mutayaqqina*), or that they are either “true” (or: authentic; *ṣahīḥ*) or “untrue.” Such a criticism would be incorrect, he countered, for laws of this category are actually branches (*furū’*) from the 613 roots (*uṣūl*). This claim is reminiscent of one made in his *Commentary*, that each generation extracted *furū’* from earlier *uṣūl*.⁶³² He concluded by

⁶²⁹ The Talmud asks, “How do we know that it is a *mišvah* for an individual to calculate the cycles and planetary courses?” (מנין שמצוה על האדם לחשב תקופות ומזלות). This text appears in all manuscripts on the Lieberman database, but Bahya had “obligated” (*ḥayav*) instead of *mišvah*; *Ḥovot ha-Levavot*, ed. Kafih, 100 (2:3).

⁶³⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9 (Prin. One), 14 (Prin. Two).

⁶³¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 14n10. Maimonides’ shift from the plural to the singular may indicate a specific target (ולו אנה עד מא הו אבין מן הדא ויהם אנה יבגי אן יעד או אכתיר); *Sefer ha-Miṣvot*, ed. Kafih, 15 (Prin. Two). Kafih’s translation does not note this shift; Ibn Tibbon’s does. See however, Perla, *Sefer ha-Miṣvot la-Rasag*, 1:466-67. Sabbato, “Ha-Im hekir ha-Rambam,” claimed that Maimonides did not have access to Sa’adya’s *Kitāb al-Sharā’i’*. Zucker “‘Iyunim ve-He’arot,” 97-98, and Stampfer, “Ha-Ništaveinu ba-Torah la-Ḥug et ha-Ḥanukkah,” 420-21, suggest otherwise. Maimonides interpreted Deut. 4:6 as a reference to the general wisdom of the Torah; see Twersky, *Introduction to the Code of Maimonides*, 385-86; and Cohen, *Opening the Gates of Interpretation*, 180. Twersky (386n78) noted that Abraham Maimonides repeated this reading. Add now Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 152.

⁶³² Compare the similar statement in Maimonides’ *Treatise on Resurrection*; in *Igrot*, ed. Shailat, 1:320-21; see Stroumsa, “Ha-Im haya ha-Rambam Hogeḥ Muwahidi,” 157n27; and Cohen, *Opening the Gates of Interpretation*, 246n12. On *furū’*, see Faur, *Iyunim be-Mishneh Torah*, 20n6; and Ravitsky, “Ha-Rambam ve-al-Fārābi,” 212-13. This imagery is important in another way: labeling the opening Principles *uṣūl* implies that the 613 commandments are *furū’* of these Principles; compare below, n944. Halbertal

stating that only the *tafsīr marwī*, “known through tradition (*naql*) and not *qiyās*,” i.e., not through human derivations, may create distinct commandments. Rabbinic linkage of the *tafsīr marwī* to Scripture through *qiyās* or *istidlāl* simply makes manifest the “wisdom of Scripture.”⁶³³ In order to prove that post-Mosaic derivations cannot be enumerated, Maimonides cited an aggadic passage (bTem 16a) claiming that Israel forgot seventeen hundred *a fortiori* arguments (*qalin ve-ḥamurin*), analogies from verbal congruity (*gezeirot shavot*), and scribal specifications (*diqduqei sofrim*) after the death of Moses. He reasoned that if this volume of learning was lost, the total number of derived laws clearly exceeded 613; the need for consistency would have required that either all these laws, or none of them, be counted as commandments. Therefore, he insisted, no derived law may constitute a distinct commandment.⁶³⁴

Applying Principle Two to the Enumeration of the Commandments

Principle Two does not address one important question: If a *middot*-based law is not included in the enumeration of the commandments, is its source something other than *tafsīr marwī*? In other words, does Principle Two imply that any law omitted from the enumeration is the product of post-Sinaitic exegesis? I believe that the answer is no. As I read it, Principle Two only addresses distinct commandments that are created by *tafsīr*

linked this distinction to the process of interpretation; see “*Sefer ha-Miṣvot* le-Rambam,” 468-72; *Al Derekh ha-Emet*, 47-52; and *Maimonides*, 120-23. I believe that it has more to do with the scope of revelation. See also Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 44-46; and note Cohen’s insight that the *Commentary* does not explicitly state that only Scripture and transmitted interpretations produce biblical law; *Opening the Gates of Interpretation*, 288.

⁶³³ עלם באלנקל לא באלקיאס ואנמא ד’כר אלקיאס פיה ואלאסתדלאל עליה באחד שלש עשרה מדות לאט’האר חכמה אלנץ; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 15 (Prin. Two); see above, n544.

⁶³⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 15 (Prin. Two).

marwī. Crucially, *other laws of biblical status may be excluded from the enumeration despite Maimonides' belief that their origin is revealed tafsīr*.

The centuries-long controversy over Principle Two was closely related to this question. Spanish jurists of the thirteenth and fourteenth centuries adopted the view of Naḥmanides,⁶³⁵ who bitterly dismissed Principle Two and concluded that laws identified by *midrash* are biblical in status until proven otherwise.⁶³⁶ Declaring that the meaning of Principle Two “was revealed” (*nitgaleh*) to him,⁶³⁷ Simeon ben Ṣemaḥ Duran (b. Majorca, d. Algiers; 1361-1444) argued that Principle Two only addressed *middot*-based laws that constitute distinct commandments. He further claimed that Principle Two uses

⁶³⁵ Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 29-33, 78-79; and see above, n381. Add the *novellae* of R. Yom Tov ben Avraham Asevilli to bSuk 43a s.v. *ve-iqka*, which has Maimonides in mind. See also Harris, *How do We Know This*, 92-93; and the comments of Menaḥem ha-Meiri treated in Henshke, “Le-Havḥanat ha-Rambam,” 207-208.

⁶³⁶ Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 34; full comments appear there, 29-51 (Prin. Two). For additional criticism of Principle Two, see there, 398-99, 400-401 (identified in Kassierer and Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit*, 45n44). My formulation of Naḥmanides' position intentionally elides the question of whether Naḥmanides held that halakhic *midrash* creates or upholds law. For early treatment of this problem, see Zecharias Frankel, *Darkhei ha-Mishnah* (Leipzig, 1859), 17; Isaac Halevy, *Dorot ha-Rishonim*, 4:504-508; and Chaim Tchernowitz, *Toldot ha-Halakhah* (New York, 1949), 1:49-50. For treatment, see Harris, *How do We Know This*, 190-202 (on Frankel), 233-34 (on Halevy); and Kassierer and Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit*, 46-47n47. More recently, see Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 160-63; de Vries, *Toldot ha-Halakhah ha-Talmudit*, 11; Meyer S. Feldblum, *Peirushim u-Meḥqarim ba-Talmud* (New York: Yeshivah University Press, 1969), 5n9; Silman, “Torah Elohit she-‘Lo Bashamayim Hi’,” 274-75; idem, *Qol Gadol ve-lo Yasaf*, 108-109; Blidstein, “Oral Law as Institution,” 172-73; idem, “Masoret ve-Samkhut Mosdit,” 21; idem, *Samkhut u-Meri*, 275-85; Halbertal, “*Sefer ha-Miṣvot le-Rambam*,” 471-74, 480; idem, *People of the Book*, 63-65, 84-85; idem, *‘Al Derekh ha-Emet*, 59-62; idem, *Maimonides*, 120-26; Harris, *How do We Know This*, 90-91; Avi Sagi, “Models of Authority and the Duty of Obedience in Halakhic Literature,” *AJS Review* 20, no. 1 (1995): 13-15; idem, “Halakhic Praxis,” 320-21; idem, “Ha-Ṭeqst ha-Miqra’i ha-Qanoni voha-Etgar ha-Hermenuti: ‘Iyun Biqorti be-‘Iqvot ha-Ramban,” *Da‘at* 50-52 (2003): 122-32; idem, “Ba‘ayat ha-Hakhra‘ah ha-Hilkhatit voha-Emet ha-Hilkhatit: li-Qrat Filosofiyah shel ha-Halakhah,” *Dine Israel* 15 (1989-1990): 31-37; idem, *Elu ve-Elu*, 188-89, 209-210, 219-20; Feintuch, *Sefer Piqudei Yesharim*, 19-20; Elliot Wolfson, “By Way of Truth: Aspects of Nahmanides' Kabbalistic Hermeneutic,” *AJS Review*, 14, no. 2 (1989): 128; Michael Abraham, “Indiqāsiyah ve-Analogiyah be-Halakhah (‘Iyun be-Shoresh 2 shel ha-Rambam),” *Shohar* 15 (2003): 27-29; and Kassierer and Glicksberg, *Mi-Sinai le-Lishkat ha-Gazit*, 51, 92-93, 229-31. See there, 46-47, 51-52, 58-59, 94-98, 140n268, 168-69, 192-94, for treatment of several of these views.

⁶³⁷ Duran, *Zohar ha-Raqi‘a*, 13 (introductory pagination; Prin. Two).

the terms “rabbinic” (*mide-rabbanan*) and “*divrei sofrim*” in a relative sense, because the *middot*-based laws in question are “details” of larger commandments. Though excluded from the count of 613, wrote Duran, such derived laws are actually biblical in status.⁶³⁸ Jacob Neubauer’s *Ha-Rambam ‘al Divrei Sofrim* shows that most subsequent jurists accepted Duran’s approach.⁶³⁹ A group of early modern writers, chiefly Abraham Allegri (Constantinople, 1560-1652), reconsidered Duran’s position.⁶⁴⁰ Following Naḥmanides, these authors understood Principle Two to mean that all post-Sinaitic derivations are rabbinic in status, a position that is widely accepted in academic treatments.⁶⁴¹ Among many challenges to Duran’s view, Neubauer noted that other Principles, and not Principle

⁶³⁸ Duran formulated this in a few places, see *She’elot u-Teshuvot ha-Tashbeṣ* (Jerusalem: Mekhon Yerushalayim, 2007), 1:18-19 (§1), 1:326-28 (§151); and *Zohar ha-Raqi’a*, 10-13 (introductory pagination; Prin. Two). He did not apply this approach to the prohibition not to eat a torn animal (*treifah*), which seems to be an outcome of Principle Two, but instead followed Naḥmanides on this issue; *Teshuvot ha-Tashbeṣ*, 1:153 (§67); idem, *Zohar ha-Raqi’a*, 122 (Neg. §30); and Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 46-47 (Prin. Two). For treatment of Duran’s approach, see Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 32-33, 53 and above, n381.

⁶³⁹ Qazes, *Qinat Sofrim*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 65 (Prin. Two), even erroneously guessed that *de-rabbanan* and *divrei sofrim* are mistranslations from the Judeo-Arabic. This claim is repeated in Malakhi ben Jacob ha-Kohen, *Sefer Yad Malakhi* (Livorno, 1767), 2:181b (*kelalei ha-Rambam*, §22). See Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 145n10; and Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 38n21.

⁶⁴⁰ See Allegri, *Leiv Sameaḥ*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 57-61 (Prin. Two); and the influential comments of Jacob ben David Tam ibn Yaḥya, *She’elot u-Teshuvot Ohalei Tam: mi-Tokh Qoveṣ Tumat Yesharim* (Jerusalem: Mekhon Ketav, 1999) 168-69 (§83); treated in Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 47-48, 51-59, 81. In addition, see Isaac Bekhor David, *Divrei Emet*, 80a-85b, not mentioned by Neubauer. Ibn Ṣur Sefardi also reconsidered some of Duran’s claims; see *Megillat Esther*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 76 (Prin. Two).

⁶⁴¹ Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 81-82; Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 38-43, 86; Harris, *How do We Know This*, 88-89; Kafih, “‘Mi-Divrei Sofrim,’” 251; and Cohen, *Opening the Gates of Interpretation*, 264-70, 287-304. See also Blidstein, “Maimonides on ‘Oral Law,’” 113 (“all mizvot were interpreted at Sinai, but not all interpretation is Sinaitic”); idem, “Where Do We Stand,” 13 (“midrash does not produce Torah-law It will produce rabbinic law, and it will confirm revealed interpretation”); idem, “Masoret ve-Samkhut Mosdit,” 14; and Faur, *Iyunim be-Mishneh Torah*, 30. For restatement of Duran’s approach, see Maimonides, *Haqdamot ha-Rambam*, ed. Shailat, 99, 102n20; idem, *Igrot*, ed. Shailat, 2:451-53; and Ben-Menaḥem, “Maimonides’ Fourteen Roots,” 20-25.

Two, address non-enumerated “details.”⁶⁴² The thrust of the *Commentary on the Mishnah* and the use of *furū‘* in *Sefer ha-Miṣvot* both support this interpretation.

To my mind, the “radical” reading of Naḥmanides, Allegri, Neubauer, and others, comes closest to explaining Maimonides’ understanding of rabbinic *midrash*.

Nevertheless, I believe that Duran and his supporters were correct when they noted that, for Maimonides, numerous revealed laws did not count as distinct commandments, and that Maimonides overwhelmingly emphasized scriptural sources, as opposed to extra-scriptural Sinaitic traditions, as the basis for enumerated commandments.⁶⁴³

Non-Explicit and Non-Enumerated Laws of Sinaitic Status in Sefer ha-Miṣvot

In order to reconsider Duran’s claims, three elements in *Sefer ha-Miṣvot* must be closely analyzed: (1) the exceptions covered by Principle Two; (2) Maimonides’ use of *qiyās* to identify biblical prohibitions; and (3) a cluster of Arabic terms used by Maimonides to denote Sinaitic law. These investigations will lead to a culminating question: How did Maimonides determine which *midrashim* contain *tafsīr marwī*?

⁶⁴² Neubauer, *Ha-Rambam ‘al Divrei Sofrim*, 33. Neubauer specifically mentioned Principle Nine, but other Principles are more important. See also there, 8, 17-19, 85-86. I address this problem in Chapter Four.

⁶⁴³ Of course, Naḥmanides and others well understood that an enumerated commandment may include numerous laws (see, e.g., Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 32; [Prin. Two]), but their reading of Principle Two largely focused on the question of whether or not *middot*-based laws are biblical or rabbinic in status. I believe that Principle Two deals primarily with exceptions to Principle One, i.e., those commandments that are not based on pentateuchal verses. On the problem of reducing Jewish law to 613 “commandment-units,” see Chapter Four.

In asking whether Maimonides regarded the product of halakhic *midrash* as biblical law or rabbinic law, interpreters of Principle Two usually assumed that Maimonides approached all *midrashim* in a uniform manner.⁶⁴⁴ Yet there is reason to think that he classified *midrashim* in a variety of ways; after all, he claimed that some *midrashim* create rabbinic law while others hint at Sinaitic law, and the Introduction to his *Commentary on the Mishnah* sets forth a five-fold classification of the Oral Torah.⁶⁴⁵

The “Three or Four” Exceptions Addressed by Principle Two

What may be Maimonides’ most important comment on Principle Two appears in his letter to Pinḥas *ha-dayan*:

Not every matter derived by analogy (*heqqesh*), a *fortiori* argument (*qal va-ḥomer*), analogy from verbal congruity (*gezeirah shavah*), or any of the thirteen *middot* by which the Torah is interpreted is biblical law (*din torah*), unless the Sages explicitly say that it is from the Torah (*min ha-torah*). ... Nothing is biblical except for what is explicit (*meforash*) in the Torah, such as mixtures of linen and wool, intermixing of species, the Sabbath, and forbidden sexual unions, or something that the Sages said is from the Torah – and those are only three [or] four things.⁶⁴⁶

⁶⁴⁴ Harris also followed this approach; see *How do We Know This*, 86-89.

⁶⁴⁵ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 1:19-22; *Haqdamot ha-Rambam*, ed. Shailat, 338-40.

⁶⁴⁶ שאין כל דבר שלמדין אותו בהקש או בקל וחמר או בגזרה שוה או במדה משלש עשרה מדות שהתורה נדרשת בהן הוא דין תורה עד שיאמרו חכמים שהו מן התורה ... ואין שם מן התורה אלא דבר שהוא מפרש בתורה גכון שעטנז וכלאים ושבת ועריות או “שלושה או ארבעה” some manuscripts read “שלושה או ארבעה דברים בלבד”; Maimonides, *Igrot*, ed. Shailat, 2:451-53. Translation mostly follows Cohen, *Opening the Gates of Interpretation*, 7, with the notable change that he has “no matter,” where a more accurate translation is “not every matter.” On *heqqesh*, note the remark in Moses ben Joseph di Trani, *Qiryat Sefer* (Venice, 1551), 7b (§2), who called attention to *Hilkhot Bekhorot*, 7:5, and the comments of Abraham de Biton there (ed. Frankel, 7.2:121).

The assertion that all biblical laws are “explicit” demands explication. After all, *Sefer ha-Miṣvot* regularly relies on the rabbis to determine Scripture’s meaning.⁶⁴⁷ The commandment to serve God constitutes a typical example; according to Maimonides, while several verses that command divine service (‘-v-d)⁶⁴⁸ appear to be broad (‘*amma*; or, unrestricted) instructions, which are excluded from the enumeration by Principle Four,⁶⁴⁹ a “specification” (*takhṣīṣ*) interprets these commands to require prayer, rendering them a distinct commandment with particular, not unrestricted, subject matter.

Though Maimonides did not identify the “three [or] four” commandments that he mentioned in his letter to Pinhas *ha-dayan*, scholars have assumed that he was referring to Negative Commandment #135, which prohibits consumption of the heave offerings (*terumah*) by an uncircumcised priest; Negative Commandment #194, which prohibits consumption of wine used in idolatrous practices; and Negative Commandment #336,

⁶⁴⁷ Davidson, *Maimonides*, 183: “Even scriptural verses that might seem crystal clear and unproblematic are read through Oral Torah spectacles.”

⁶⁴⁸ For the verses, see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 60n32; ed. Heller, 36n18.

⁶⁴⁹ That ‘*amma* verses do not constitute distinct commandments; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 18-19 (Prin. Four), 60-61 (Pos. 5). See Ettinger, “Al Meqomah shel ha-Sevarah,” 21-22; and Cohen, *Opening the Gates of Interpretation*, 339-40. Despite this “specification,” I understand this is as a commandment to serve God, not only to pray. Compare the Short Enumeration, Positive Commandment #5 (Maimonides, *Mishneh Torah*, eds. Cohen et al., 15 line 6), and *Hilkhot Tefillah u-Virkat Kohanim*, 1:1. Another typical example is the prohibition against imposing capital punishments on the Sabbath. Maimonides cited Ex. 35:3, “*You shall kindle no fire in your settlements on the Sabbath day*,” as the source, and numerous rabbinic texts to explain that this verse prohibits the court from implementing the capital punishment of (*sreifah*) on the Sabbath (*Sefer ha-Miṣvot*, ed. Kafih, 330 [Neg. 322]; see also 51 [Prin. Fourteen]). Maimonides could hardly have reached this conclusion without rabbinic interpretation. For treatment of this phenomenon, see Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 40; Ettinger, “Al Meqomah shel ha-Sevarah,” 21-25; and Cohen, *Opening the Gates of Interpretation*, 335-40, who modified Ettinger’s approach.

On *takhṣīṣ* in medieval Islamic texts; see Wansbrough, *Quranic Studies*, 191; David S. Powers, “On the Abrogation of the Bequest Verses,” *Arabica*, 29, no. 3 (1982): 262-64; Aron Zysow, *The Economy of Certainty*, 78-79, 243-54; idem, “Mu‘tazilism and Māturīdism in Ḥanafī Legal Theory,” in *Studies in Islamic Legal Theory*, 248-51 (on “specialization of the cause”), 256n91 (on *takhṣīṣ* more generally); and Muḥammad Bin ‘Ārifin, “The Principles of ‘*Umūm* and *Takhṣīṣ*,” (PhD diss., The University of Edinburgh, 1988), chaps. 6-8. On ‘*amm* as “unrestricted,” see Lowry, *Early Islamic Legal Theory*, 69n11.

which prohibits sexual relations between father and daughter.⁶⁵⁰ Of these, the last best displays the characteristics relevant to these three commandments. Maimonides noted that while there is no specific verse prohibiting sexual relations between father and daughter, they must be prohibited, because relations with a man's granddaughter are forbidden. Though the Talmud (bKer 5a) based this prohibition on a double *gezeirah shavah*, i.e., two analogies based on verbal congruity,⁶⁵¹ Maimonides emphasized that the Talmud explained that this prohibition is “taught” (*limdah*) by Scripture, and not “derived for us” (*lemadnuha*) by the rabbis. In his words, it is “a tradition from the messenger (*naql ‘an al-rasūl*) and a *tafsīr marwī*. . . . But Scripture refrained from mentioning it

⁶⁵⁰ Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 41; Davidson, *Maimonides*, 176n219; Fixler, “Ha-Munaḥim ha-Hilkhatiyim,” 288-90; and Cohen, *Opening the Gates of Interpretation*, 340. Davidson and Fixler included Negative Commandment #76 (see below) and Levinger (41n35) mentioned it as a possibility. Levinger also suggested the commandment “to enter a marriage” because there is only a “hint” (*tanbīh*) to it. The word *tanbīh*, however, is common in this work, and frequently denotes laws known by tradition; see Maimonides, *Sefer ha-Miṣvot*, 45, 110, 137, 250; see also idem, *Mishnah ‘im Peirush*, ed. Kafih, 4:263 (mShev 4:12). I have translated the phrase *‘aqd al-nikāh* as “to enter a marriage,” but it may be more nuanced; see idem, *Sefer ha-Miṣvot*, ed. Kafih, 167n11; Blau, *Dictionary*, 447 s.v. عقد; and Reinhart Dozy, *Supplément aux Dictionnaires Arabes* (Leiden: E.J. Brill, 1881), 2:147 s.v. عقد. Compare the use of *muṣāhara* in Maimonides, *Sefer ha-Miṣvot*, 208-209 (Neg. 53-55), and *nikāh*, 208, 332-34 (Neg. 52, 330-37); the latter may be used specifically for forbidden marriages. For another suggestion, see Friedberg, *Crafting the 613 Commandments*, 125-26n68 (see above, n602). Henshke, “Le-Yesodei,” 127-28n76, argued that the “three or four” are found in the *Mishneh Torah*, a difficult position to maintain; see Fixler, “Ha-Munaḥim ha-Hilkhatiyim,” 288n8.

The approach in Avraham Feintuch, “Ha-Munaḥ ‘de-Orayta’ veva-Middot sheha-Torah Nidreshet ba-hen: ‘Iyun Ḥozar be-Shoresh ha-Sheini,” *Sinai* 119 (1997): 154-60; and idem, *Sefer ha-Miṣvot le-Rambam ‘im Peirush Piqudei Yisharim*, 1:38-40, 41-45, is similar to my own, but Feintuch conflated the term *guf ha-torah* with laws of biblical status, and therefore identified more than “three or four” such prohibitions.

⁶⁵¹ “Never let a *gezeirah shavah* be insignificant in your eyes, for the prohibition of relations with one’s daughter is one of the *gufei torah*, but Scripture only taught (*limdah*) it through a *gezeirah shavah*: ‘they are’ ‘they are’ (Lev. 18:10, 18:17), and ‘depravity’ ‘depravity’ (Lev. 18:17, 20:14); אל תהי גזרה שוה אלא בדרך שוה אתיא הנה הנה אתיא זמה זמה קלה בעיניך שהרי בתו אחד מגופי תורה ולא למדה הכתוב אלא בגזרה שוה אתיא הנה הנה אתיא זמה זמה. Text follows *Sefer ha-Miṣvot*, ed. Kafih, 330 (Neg. 336); translation based on Cohen, *Opening the Gates of Interpretation*, 341. Several manuscripts add *le-isura* and *le-sreifah* to explain that the import of each *gezeirah shavah*. See also bYeb 3a.

because it may be learned (*tata 'allam*) from a *gezeirah shavah*.⁶⁵² Maimonides also suggested that the Talmud's use of the term *gufei torah*, “essences of Torah,” marks this prohibition as an independent commandment.⁶⁵³

Similar thinking pertains to the other “three [or] four” commandments to which Maimonides alluded. The Talmud's exclusion of an uncircumcised priest from eating the heave offerings was based on a *gezeirah shavah*, but Maimonides highlighted the fact that the “transmitters” (*nāqilīn*) labeled this law *de- 'orayta* (see bYev 72a).⁶⁵⁴ The prohibition against drinking wine used in idolatrous worship was derived, in the Talmud (bAZ 29b), from the biblical comparison of idolatrous offerings and libation wine in Deut. 32:38, but Maimonides asserted that the prohibition lacks a “plain, explicit verse” (*naṣṣ jalī bi-bayān*).⁶⁵⁵ He added that the Talmud (bAZ 73b) elsewhere lists this among biblical prohibitions (*isurim sheba-torah*), indicating that it is a distinct commandment.⁶⁵⁶

⁶⁵² כלהא נקל ען אלרסול ווי תפסיר מרוי ... ואנמא סכת אלנץ עך ד'כרהא לכונהא ימכן אן תתעלם בזגרה שוה; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 334 (Neg. 336). The argument that Scripture did not mention obvious prohibitions appears elsewhere, occasionally modifying earlier claims. Compare the following: (1) this passage; the Short Enumeration, Negative Commandment #336 (*Mishneh Torah*, eds. Cohen et al., 63 lines 464-66); and *Hilkhot Isurei Bi'ah*, 2:6; (2) *Mishnah 'im Peirush*, ed. Kafih, 6:244 (mOhal 1:9); 6:259 (mOhal 2:4); and *Hilkhot Tumat Meit*, 1:2; (3) *Mishnah 'im Peirush*, ed. Kafih, 6:735 (m'Uqṣ 3:9); *Sefer ha-Miṣvot*, ed. Kafih, 263-64 (Neg. 172); and *Hilkhot Ma'akhalot Asurot*, 2:1; and (4) *Mishnah 'im Peirush*, ed. Kafih, 3:300 (mQid 2:9), 5:361 (mKer 3:4); *Sefer ha-Miṣvot*, ed. Kafih, 272-73 (Neg. 187); and *Hilkhot Ma'akhalot Asurot*, 9:2. See the partial treatment of some of the *Mishneh Torah* passages in Henshke, “Le-Yesodei,” 126-27 and n74. I hope to treat this subject elsewhere.

⁶⁵³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 333-34 (Neg. 336). See Cohen, *Opening the Gates of Interpretation*, 340-42; and Qazes, *Qinat Sofrim*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 73 (Prin. Two).

⁶⁵⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 242-43 (Neg. 194). Compare similar explanations in Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 3:32-33 (mYeb 8:1); the Short Enumeration, Negative Commandment #135 (idem, *Mishneh Torah*, eds. Cohen et al., 45 lines 183-85); and *Hilkhot Terumot*, 7:10. See Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 75 (Prin. Two).

⁶⁵⁵ Compare the phrase *naṣṣ jalī* in Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 328 (Neg. 318); and Abraham Maimonides in MS. Hunt. 185, 130a, 132b; *Ma'aseh Nissim*, 6, 9 (§1).

⁶⁵⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 276 (Neg. 194). Compare the use of Deut. 32:38 in *Mishnah 'im Peirush*, ed. Kafih, 6:20 (intro. to *Toharot*). Note that in the Short Enumeration, Negative Commandment #194, he cited Deut. 32:38 without comment. He mentioned libation wine in Negative

In this case, he used talmudic terminology to count a revealed, yet not-explicit, prohibition as a distinct commandment.⁶⁵⁷

If Maimonides was thinking of a fourth commandment within this grouping, it was probably Negative Commandment #76, which bars a priest from serving in the Temple if he is a *ṭevul yom*, that is, one who has ritually bathed but will only be fully purified at sunset. Maimonides cited Lev. 21:6 (“*they [the priests] shall not profane the name of their God*”) as the source for this commandment, but noted that this is not an “explicit verse” (*naṣṣ bayyin*); rather, this prohibition is taught by the *tafsīr marwī*.⁶⁵⁸ The *Commentary on the Mishnah* identifies this law as a *naql*, i.e., tradition, linked to (*masnūd li-*) Lev. 21:6,⁶⁵⁹ and the *Mishneh Torah* claims that it was relayed *mi-pi ha-shemu ‘ah*, as an aural tradition interpreting that verse (*Hilkhot Bi’at ha-Miqdash*, 4:4).⁶⁶⁰ Perhaps the dual sources for this commandment, Scripture and tradition, shed light on the tentative formulation “three or four.”⁶⁶¹

Commandment #25 there, a claim that is absent from *Sefer ha-Miṣvot; Mishneh Torah*, eds. Cohen et al., 51 line 273, 36 lines 33-34; see also *Hilkhot Ma’akhalot Asurot*, 11:1-2.

⁶⁵⁷ See Kafih’s similar explanation; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 242-43n97.

⁶⁵⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 221 (Neg. 76). Maimonides quoted “if it has no bearing on its own subject ... apply it elsewhere” (*im eino ‘inyan le-gufo ... teneiho ‘inyan le-*) in bSan 83b to identify the subject of this verse. Translation of this phrase follows Halivni, *Peshat and Derash*, 61-63.

⁶⁵⁹ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:195 (mSan 9:6); see Qazes, *Qinat Sofrim*, in idem, *Sefer ha-Miṣvot*, ed. Hellman, 83 (Prin. Two). *Masnūd li-* could mean “proved by”; see above, n525.

⁶⁶⁰ He cited this verse without qualification in the Short Enumeration; Maimonides, *Mishneh Torah*, eds. Cohen et al., 40 line 106.

⁶⁶¹ See above, n650. Cohen (who only found three examples) suggested that Maimonides wrote this responsum from memory or that “three or four” means “a few”; *Opening the Gates of Interpretation*, 340; see similarly Feintuch, *Sefer ha-Miṣvot le-Rambam ‘im Peirush Piqudei Yisharim*, 1:45.

The Short Enumeration merits careful examination; Maimonides usually identified a scriptural verse, but added exegetical comments or *mi-pi ha-shemu ‘ah* interpretations more than “three or four” times. See Feintuch, “Ha-Munaḥ ‘de-Orayta’,” 150-52; and idem, *Sefer ha-Miṣvot le-Rambam ‘im Peirush Piqudei Yisharim*, 1:36-38.

If the above analysis is correct, it may not be a coincidence that the non-scriptural laws that constitute distinct commandments are all Negative Commandments, because Maimonides insisted that there is a one-to-one correspondence between the number of punishments a sinner incurs and the number of negative commandments that he violates (as will be seen in Chapter Five). As a result, the fact that the violation of each of these “three or four” commandments results in punishment⁶⁶² may have motivated Maimonides to identify exceptions to the rule that all commandments are based on *nuṣūṣ torah*, pentateuchal verses.

Prohibitions Identified Through Qiyās

Following the rabbis, Maimonides identified a scriptural warning (*azharah*) and a penalty (*‘onesh*) for every prohibition.⁶⁶³ Throughout his writings, he cited the rule “[Scripture] did not punish unless it warned” (bYom 81a, bSan 56b, etc.), labeling it an *aṣl* (principle).⁶⁶⁴ In an addendum to the Principles that comprise the Introduction to *Sefer*

⁶⁶² For Negative Commandment #76, see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 221; for Negative Commandment #135, see *Hilkhot Terumot*, 7:10; for Negative Commandment #194, see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 276; and for Negative Commandment #336, see above n651.

⁶⁶³ See, e.g., *Sifra*, ed. Weiss, 88b (*parashat kedoshim*, §2); bSan 54b, 60b. On this distinction, see *Encyclopedia Talmudit*, s.v. *azharah*, 1:418-19; P. Dykan, “Anishah, Azharah, Hatra’ah,” *Proceedings of the World Congress of Jewish Studies* 4, no. 1 (1965): 195-96; and Devora Steinmetz, *Punishment and Freedom: The Rabbinic Construction of Criminal Law* (Philadelphia: University of Pennsylvania Press, 2008), 16-17; note also Azzan Yadin, *Scripture as Logos*, 184n8. Scholars have debated if this distinction helped the rabbis account for duplicate verses or corresponds to the legal principle *nullum crimen sine lege* (“no crime without law”); see Jacob Z. Lauterbach, “A Significant Controversy Between the Sadducees and the Pharisees,” *HUCA* 4 (1927): 182n8; repr. in *Rabbinic Essays*, 59-60n8; and Emmanuel Bulz, “Ha-Hatra’ah be-Mishpaṭ ha-‘Ivri,” *Proceedings of the World Congress of Jewish Studies* 6, vol. 3, div. C (1973): 42-43. See also below, n881.

⁶⁶⁴ לא ענש [הכתוב] אלא אם כן הזהיר; see Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:236 (mMak 3:1); *Hilkhot Shevitah ‘Esor*, 1:4; *Hilkhot Ma‘aseh ha-Qorbanot*, 18:4; *Hilkhot Mamrim*, 5:4, 5:8, 7:1; and, e.g., idem, *Sefer ha-Miṣvot*, ed. Kafih, 193 (Neg. 26), 227 (Neg. 90), 328 (Neg. 318), 329 (Neg. 319), 336-37 (Neg. 347). Compare there, 211 (Neg. 60), and the Short Enumeration, Negative Commandment #60; *Mishneh Torah*, eds. Cohen et al., 39 line 83-86. The Talmud also finds “warnings” through the *middot*

ha-Miṣvot, Maimonides explained that “legal *qiyās*”⁶⁶⁵ may be the source of a warning when a punishment appears in Scripture and when its derivation (*istikhrāj*) accords with the rule “[Scripture] did not punish unless it warned.” In cases like this, *qiyās* does not create new law; rather, it clarifies the “warning” for a prohibition that is already known.⁶⁶⁶

Maimonides made such an argument regarding Negative Commandment #132, which forbids sacrificing an animal while intending to eat it after its appointed time (*piggul*). While the warning against *piggul* is scriptural,⁶⁶⁷ he wrote, the punishment for it is not. Though the Talmud (bKer 5a) derived the punishment of excision (*karet*) from a *gezeirah shavah*, Maimonides described this as “a tradition [that] reached us as an interpretation of this verse.” Quoting the talmudic admonition (bKer 5a) not to take lightly an analogy based on verbal congruity (*gezeirah shavah*), he asserted that the

(e.g., bKer 3a). An earlier version of this phrase appears to be in jYeb 11:2 (12b; מלמד שאין הקב"ה עונש אלא (אם כן הזהיר). Maimonides' extensive use of such rabbinic dicta and the appellation *aṣl* deserve attention; for now, see Dror Fixler, “Lashon ve-Signon be-*Feirush ha-Mishnah* le-Rambam,” *Ma'aliyot* 25 (2005): 217-40; and Yuval, “*Peirush ha-Mishnah* le-Rambam,” 243.

⁶⁶⁵ Maimonides called this *qiyās min al-maqāyīs al-fiqhīhi*. On *qiyās fiqhī*, see Ravitsky, “Ha-Heqqeshim ha-Hilkhatiyim,” 197-205; see also Cohen, *Opening the Gates of Interpretation*, 268n97. For this term in al-Fārābī, see Joep Lameer, *Al-Fārābī and Aristotelian Syllogistics: Greek Theory and Islamic Practice* (Leiden: Brill, 1994), 233-58.

⁶⁶⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 54-55; in standard editions, this addendum is part of Principle Fourteen. See ibn Ṣur Sefardi, *Megillat Esther*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 82-84 (Prin. Two); Allegri, *Leiv Sameah*, there, 77-79 (Prin. Two); and Qazes, *Qinat Sofrim*, there, 89 (Prin. Two). See also Abraham Maimonides, *Teshuvot*, ed. Freimann, 70-72 (§65). The only scholarly treatment that I know of is Blidstein, “Where Do We Stand,” 14; and Henshke, “‘Ein Neharagin min ha-Din’,” 250-51. Maimonides explained that his conclusion does not violate the rule “a warning cannot be ascertained through logic” (*ein mazhirin min ha-din*; bMak 5b, etc.) because the punishment is evidence of the existence of a prohibition and rabbinic *qiyās* only identifies the prohibiting verse. On post-talmudic use of the latter rule, see Henshke, “‘Ein Neharagin min ha-Din’.” Nahmanides was surprised that Maimonides cited rabbinic derivations in order to identify scriptural warnings, arguing that this flew in the face of Maimonides' claim that *midrash* does not generate law of biblical status; *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 43-44 (Prin. Two), 337-38 (Neg. 195).

⁶⁶⁷ Maimonides appears to have misquoted Ex. 29:33; see *Hilkhot Pesulei ha-Muqdashin*, 18:10; *Sefer ha-Miṣvot*, ed. Heller, 128n7; *Sefer ha-Miṣvot*, ed. Kafih, 240n71; *Mishneh Torah*, ed. Kafih, 13:117; and Shapiro, *Studies in Maimonides*, 41.

prohibition of *piggul* is one of the “essences of Torah” (*gufei torah*) known only by a *gezeirah shavah*. This claim establishes the existence of a prohibition in the case of Negative Commandment #336; here, it relates only to the nature of the punishment.⁶⁶⁸

In his enumeration of the commandments, Maimonides invoked Principle Two only once, with regard to three commandments pertaining to priestly impurity: (1) A regular priest may not touch the corpse of non-family members; (2) the High Priest may not enter the tent of a corpse; (3) and the High Priest may not touch a corpse.⁶⁶⁹ Citing Principle Two, he explained that there is no distinct commandment that prohibits a regular priest from entering the tent of a corpse, because this law is derived by a *gezeirah shavah*.⁶⁷⁰ (This prohibition appears to be rabbinic, but the *Mishneh Torah* is unclear about its status.⁶⁷¹) This passing reference to Principle Two underscores Maimonides’

⁶⁶⁸ ג'אנא אלנקל פי תפסיר הד'ה אלפסוק; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 240-41 (Neg. 132). Strikingly, regarding the third example in bKer 5a, the prohibition against leaving sacrificial meat beyond its proscribed time (*notar*), Maimonides cited a verse that requires supplemental interpretation (*ḏamir*) and not the *gezeirah shavah*; *Sefer ha-Miṣvot*, ed. Kafih, 240 (Neg. 131). On *ḏamir*, see above, n587. He did not cite the last example in bKer 5a (*gezeirah shavah*s that identify stoning as the mode of punishment). See however the comment that the *tafsir marwī* identifies some capital punishments; idem, *Sefer ha-Miṣvot*, ed. Kafih, 50 (Principle Fourteen).

⁶⁶⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 259-60 (Neg. 168). He based the prohibitions pertaining to the High Priest on Lev. 21:11: “*He [the High Priest] shall not go in where there is any dead body; he shall not defile himself even for his father or mother.*” He argued that “*he shall not defile himself*” is not an “explanation” (*tabyin*) of “*he shall not go in*” but a distinct prohibition because the *Sifra* (ed. Weiss, 94b [*parashat emor*, §2]) explains that the High Priest is “guilty” (*hayav*; see below, n1115) for both actions. In the Short Enumeration, Negative Commandment #168, he labeled this derivation *mi-pi ha-shemu'ah*; *Mishneh Torah*, eds. Cohen et al., 49 lines 241; compare *Hilkhot Aveil*, 3:6. On *tabyin* in qur'ānic exegesis, see Jonathan Owens, *Early Arabic Grammatical Theory: Heterogeneity and Standardization* (Amsterdam: John Benjamins, 1990), 127, 130, 131; and Jaroslav Stetkevych, “Arabic Hermeneutical Terminology: Paradox and the Production of Meaning,” *Journal of Near Eastern Studies* 48, no. 2 (1989): 90-92.

⁶⁷⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 260 (Neg. 168). The *Sifra* (Ibid.) derived these from a *gezeirah shavah*. Compare Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 282 (Neg. 208); and *Hilkhot Nezirut*, 5:18.

⁶⁷¹ *Hilkhot Aveil*, 3:1-3, 3:6, subsumes the prohibitions against a regular priest and the High Priest entering the tent of a corpse into one. The status of this law is unclear; see Judah ben Samuel Rosanes, *Derekh Miṣvotekha* (Warsaw, 1930), 9b-10a; and Elyaqim ben Yiṣḥaq Gaṭinyo, *Beit Yiṣḥaq* (Salonika, 1792), 144b.

conviction that a law derived through a *gezeirah shavah* is different from a law set forth in explicit biblical verses, and that Maimonides' enumeration centered on commandments based on those verses.

Tafsīr Marwī and Naql in Sefer ha-Miṣvot

For Maimonides, the terms *naql*, tradition, and *tafsīr marwī*, transmitted interpretation (or simply *tafsīr* and less frequently, *marwī*), are often equivalent. For example, Maimonides read five phrases in Deut. 12:17 as ones that prohibit the eating of five types of sacrifices outside of Jerusalem. In so doing, he followed the rabbis and variously ascribed this interpretation to the *Sifrei*, *tafsīr* (twice), and *naql* (twice).⁶⁷² Likewise, where the rabbis offer the same gloss on Deut. 7:2, Maimonides referred to it as *naql* and *tafsīr*.⁶⁷³ Nevertheless, the term *naql* occasionally carries broader signification; he used it, at times, to denote traditions that are not explanations of scriptural terms.⁶⁷⁴

⁶⁷² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 246-48 (Neg. 144-48). These are: “You may not partake in your settlements of ... (1) of the firstlings of your herds (2) and flocks, (3) or of any votive offerings that you vow, (4) or of your freewill offerings, (5) or of your contributions.”

⁶⁷³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 206-207 (Neg. 50). The second instance does not mention Deut. 7:2. In *Hilkhot 'Avodat Kokhavim ve-Ḥuqqot ha-Goyim*, 10:1, 10:4, Deut. 7:2 is the basis for both. He labeled the second interpretation a *naql* in *Mishnah 'im Peirush* ed. Kafih, 1:152 (mDem 6:2), 4:341 (mAZ 1:8). See Maimonides, *Tiqun Mishnah: Hashlamot ve-Tiqunim le-Feirush ha-Mishnah Mahadurat ha-Rav Y. Kafih, Masekhtot 'Avodah Zarah ve-Horayot*, ed. and trans. Isaac Shailat (Jerusalem: Ma'aliyot, 2002), 37. For other examples, see idem, *Sefer ha-Miṣvot*, ed. Kafih, 137 (Pos. 153), 241 (Neg. 132), 334 (Neg. 336).

⁶⁷⁴ I count more than fifty appearances of *tafsīr* and almost thirty of *naql* in the enumeration. This misses some uses because (1) Maimonides commented that a series of commandments are based on the *tafsīr* (*Sefer ha-Miṣvot*, ed. Kafih, 141 [Pos. 159]) and (2) the first example in this paragraph shows that he considered rabbinic interpretations *tafsīr* or *naql* without using these terms. The word *marwī* appears without a modifier there, 2 (introduction), 325 (Neg. 312). Maimonides also labeled the rabbis the “transmitters” (*rāwīn*; 2, 163), “transmitters of the interpretation” (*ruwāt al-tafsīr*; 244 [Neg. 137], 260 [Neg. 168]), and “transmitters of the transmissions” (*rāwī al-rāwiyāt*; 1). See the term “the carriers of tradition” (*al-nāqilīn*; e.g., 27 [Prin. Eight], 243 [Neg. 157], 325 [Neg. 312]). Less frequently, the verbs *b-*

In several places in *Sefer ha-Miṣvot*, Maimonides ascribed “details” of commandments to *naql* and *tafsīr*. These remarks suggest that, for Maimonides, revelation consisted of more than 613 “laws” even if such were to be part of larger “commandment-units.”⁶⁷⁵ He wrote, for example, that the commandment not to eat on Yom Kippur includes prohibitions of washing, anointing, wearing shoes, and marital relations on that day; each of the aforementioned are known by tradition (*naql*), and were not created by the rabbis. By the same token, the *Commentary on the Mishnah* refers to talmudic derivations for these prohibitions (bYom 76a-77b) as “hints and prooftexts” (*ishārāt wa-isnādāt*), and the *Mishneh Torah* refers to these prohibitions as ones that are known *mi-pi ha-shemu‘ah*, from aural tradition (*Hilkhoh Shevitah ‘Esor*, 1:5).⁶⁷⁶

According to *Sefer ha-Miṣvot*, the commandment pertaining to the nullification of vows

y-n (to clarify or explain) and *sh-r-h* (to interpret) describe Sinaitic material; see there 77 (Pos. 34), 162-63 (*b-y-n*; Pos. 205), 182 (Neg. 4), 297 (*sh-r-h*; Neg. 245). Note the phrase “by way of interpretation” (*fi sharḥ*) to describe rabbinic exegesis (69 [Pos. 20], 173 [Pos. 334], 299 [Neg.247]), and “interpreters” (*shāriḥīn*) to denote the rabbis (33 [Prin. Nine; twice]). See the designation of *Targum Onqelos* as “the interpreter of tradition” (*al-shāriḥ lil-naql*; 238 [Neg. 128]). On the *Targumim* in Maimonides’ writings, see Twersky, *Introduction to the Code of Maimonides*, 58n92; Rafael Binyamin Posen, “Targum Onqelos be-Khitvei ha-Rambam,” in *Sefer Zikaron le-Rav Yosef ben David Kafih*, 240-56; and Fixler, “Lashon ve-Signon be-Feirush ha-Mishnah le-Rambam,” 205-209.

⁶⁷⁵ Blidstein, “Where Do We Stand,” 14, termed the commandments in *Sefer ha-Miṣvot* “mizvah-units”; see chap. four. Consider the enumeration’s silence about some explicit laws: The commandment to take palm branches obviously includes all four species listed in Lev. 23:40, though only the palm branches are mentioned in the enumeration; the *Mishneh Torah* explains that all four are “one commandment” (*miṣvah aḥat*; *Hilkhoh Shofar, ve-Sukkah, ve-Lulav*, 7:5; see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 144-45 [Pos. 169]. In Principle Eleven, he described this as “*miṣvat lulav*, which is four species” [מצות לולב אחת] ארבעה מינין; ed. Kafih, 43].). In the Short Enumeration, Positive Commandment #169, he also only mentioned the palm branches; *Mishneh Torah*, eds. Cohen et al., 28 lines 226-27. See similarly the heading of *Hilkhoh Shofar ve-Sukkah ve-Lulav*. I would suggest, perhaps, that *lulav* constitutes what Maimonides called in Principle Seven “the base commandment” (*aṣl al-miṣvah*); see below, n946.

⁶⁷⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 143 (Pos. 164); and idem, *Mishnah ‘im Peirush*, ed. Kafih, 2:262-63 (mYom 8:1). Compare Maimonides’ deployment of these derivations, there. These prohibitions do not appear in the Short Enumeration, Positive Commandment #164; idem, *Mishneh Torah*, eds. Cohen et al., 28 line 221. In the *Commentary*, he originally wrote that violation incurs lashes, but later explained that these are rabbinic lashes (*makat mardut*); ed. Kafih, 2:263n10. This may constitute evidence that non-explicit prohibitions receive different punishments than explicit prohibitions; see Henshke, “Lavin she-Ein Loqin ‘alehem.”

(*hafarat nedarim*) includes a *naql*-based teaching that a sage may facilitate release from vows (*hatarat nedarim*).⁶⁷⁷ The *Commentary* refers to this in the same manner, adding, “there is no evidence for this [tradition] in Scripture” (*lā shāhid lahu fī al-naṣṣ*),⁶⁷⁸ and Maimonides asserted in the *Mishneh Torah* that “Moses our teacher taught this law *mi-pi ha-qabbalah* (from tradition)” (see *Hilkhot Shevu’ot*, 6:1-2). Along the same lines, he described the law prohibiting a priest from serving in the Temple without proper clothing as one that has “arrived by way of (lit., in) the *tafsīr*” (*jā’ fī al-tafsīr*). Pointedly diverging from talmudic claims, he wrote that this law lacks a substantiating verse (*naṣṣ*).⁶⁷⁹

On occasion, Maimonides considered glosses of biblical passages to be Sinaitic “details” of larger commandments. For example, he cited Deut. 17:15, “*You shall set a king over yourself,*” as the basis of the commandment to appoint a king, adding that a revealed *tafsīr* glosses the word “*yourself*” to indicate that subjects should fear the

⁶⁷⁷ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 110 (Pos. 95).

⁶⁷⁸ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 3:152 (mNed 10:8); similarly 3:180 (mNaz 4:7); compare 4:173 (mSan 6:7), 5:210 (mHul 6:7). Joshua ha-Nagid identified anti-Qaraite animus behind these claims; *Teshuvot*, ed. Raṣhabi, 108. Maimonides’ discussion of “heresy” (*minut*) regarding *hatarat nedarim* supports this; see *Mishnah ‘im Peirush*, ed. Kafih, 3:152 (mNed 10:8); and *Hilkhot Shevu’ot*, 12:12. In *Sefer ha-Miṣvot*, he read the claim that the *hatarat nedarim* “flies in the air” (*porḥin be-avir*; i.e., lacks scriptural support [mḤag 1:8]) to mean that it is based on “the sound tradition” (*al-naql al-ṣaḥīḥ*; ed. Kafih, 110 [Pos. 95]). I have not found this claim in the *Commentary*; see esp. his comments on mNed 10:8 (3:151-53) and mḤag 1:8 (2:376). For Qaraite views, see Revel, *The Karaite Halakah*, 81; and Lewin, *Oṣar ha-Geonim, Masekhet Nedarim*, 9-11. Lawrence Schiffman, “The Laws of Vows and Oaths (Num. 30, 1-16) in the Zadokite Fragments and the Temple Scroll,” *Revue de Qumran* 15 (1991): 203n17, treated some of the Maimonidean passages. Note also Abraham Maimonides’ formulations; see below, n781.

⁶⁷⁹ The Talmud derives this prohibition from Ex. 29:9, “*And wind turbans upon them ... and so they shall have priesthood*” (bSan 83b; bZev 17b), asserting that without proper clothing, a priest is equivalent to a non-priest (*zar*). Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 76 (Pos. 33); see similarly *Hilkhot Kelei ha-Miqdash*, 10:4. This rabbinic interpretation appears in *Mishnah ‘im Peirush*, ed. Kafih, 4:194-95 (mSan 9:6); it is a *naql* there, 5:27 (mZev 2:1); see also *Hilkhot Bi’at ha-Miqdash*, 5:2; and *Hilkhot Sanhedrin*, 19:2. For the prohibition against a *zar* serving in the Temple, see *Sefer ha-Miṣvot*, ed. Kafih, 220 (Neg. 74). The only other capital punishment in the Positive Commandments that I have found is for violating the commandment that a priest wash his hands and face before entering the Temple (*Sefer ha-Miṣvot*, ed. Kafih, 72 [Pos. 24]); rabbinic literature associates this law with the commandment of priestly garments; see bZev 19b and *Hilkhot Bi’at ha-Miqdash*, 5:2. Compare also below, n1091.

king.⁶⁸⁰ Regarding the commandment to set apart one who is afflicted with *šara 'at* (usually translated as leprosy), Maimonides noted that a supplemental *naql* obligates setting apart all impure individuals.⁶⁸¹ He also asserted, based on *tafsīr* and *naql*, that the consecration of new months is effective even if the court errs regarding the date of the new moon's appearance.⁶⁸²

These examples show that Maimonides understood Sinaitic law as a category that was broader than the sum of the enumerated commandments. His attempt to identify the 613 commandments, and to organize the law around them, made it necessary for him to include many details under the rubrics of larger commandment-units. This observation corroborates Duran's claim that, for Maimonides, non-explicit biblical "details" often do not constitute distinct commandments. It also indicates that Principle Two primarily addresses a limited group of enumerated commandments that lack "clear" scriptural support and does not primarily focus on the question of whether or not *midrash* creates law of biblical or rabbinic status. Finally, it affirms the tension that Blidstein noted, when

⁶⁸⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 146 (Pos. 173). This appears in *Sifrei*, ed. Finkelstein, 209 (§157); and bSan 20b. Maimonides labeled it a *naql* in the *Commentary; Tiqun Mishnah*, ed. Shailat, 163 (mHor 3:8). He also referred to it as a "principle" (*aṣl*); *Mishnah 'im Peirush*, ed. Kafih, 3:269-70 (mSoṭ 7:6). See also *Hilkhot Melakhim*, 2:1.

⁶⁸¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 118 (Pos. 112); compare *Hilkhot Tumat Šara 'at*, 10:8, and the Short Enumeration, Positive Commandment #112; idem, *Mishneh Torah*, eds. Cohen et al., 24 lines 150-52. The source is *Sifra*, ed. Weiss, 67b (*parashat tazri 'a*, §12).

⁶⁸² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 137 (Pos. 153). Maimonides cited different verses for this; see there, 135 (Pos. 153); the Short Enumeration, Positive Commandment #153 (*Mishneh Torah*, eds. Cohen et al., 27 lines 207-208); and *Hilkhot Qiddush ha-Hodesh*, 1:1, 1:7. Many rabbinic texts state that sanctification is valid even if the court acted willfully incorrectly, but Qaraite criticisms may have encouraged self-censorship. See Lieberman, *Tosefta ke-Feshutah*, 5:1037 line 2; and Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 73n15. See the Qaraite texts in Tirosch-Becker, *Ginzei Hazal*, 2:999, 1001, 1002. Compare Saul Lieberman, *Sheqi 'in: Devarim Aḥadim 'al Agadot, Minhagim u-Meqorot Sifrutiyim shel ha-Yehudim she-Nishtaq 'u be-Sifrei ha-Qara'im voha-Nošrim* (Jerusalem: Wahrman, 1970), 52-72; and Aharon Shweke, "Luḥot ha-Even, ha-Torah voha-Miṣvah," *Tarbiz* 81, no. 1-4 (2013): 346-48.

he juxtaposed Maimonides' claim that "most rules of the law" (*akthar aḥkām al-sharī'a*) are derived by way of the *middot*, in Principle Two, with his ubiquitous use of *mi-pi ha-shemu'ah*, from aural tradition, in the *Mishneh Torah*.⁶⁸³ By using the categories of *tafsīr marwī* and *naql*, Maimonides was able to categorize as "Sinaitic" many non-scriptural laws that appear in halakhic *midrash*.

In short, the question, "does *midrash* produce biblical or rabbinic law?" is misconceived, driven, in part, by readings that flatten or ignore the subtleties of Maimonides' terminology. Rather, Maimonides asked each *midrash*: does this *midrash* create law or uphold law?⁶⁸⁴ I now turn to the difficulties in determining how Maimonides answered this question.

Identifying Tafsīr Marwī in Midrash Halakhah

Maimonides' failure to provide guidelines for the identification of Sinaitic traditions within rabbinic *midrash* bothered several scholars.⁶⁸⁵ Neubauer conjectured that when "*peshat* is against a particular interpretation, it seems that this interpretation must be received," and he suggested that Maimonides used "logic and hermeneutics" in determining which *midrashim* contained Sinaitic law.⁶⁸⁶ Shimshon Ettinger took a

⁶⁸³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12 (Prin. Two); and Blidstein, "Masoret ve-Samkhut Mosdit," 17. Examination of the *Commentary on the Mishnah* would undoubtedly reveal a similar phenomenon.

⁶⁸⁴ Some have hinted at this distinction, but it has not received adequate treatment; see Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 85-87; Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 42; Blidstein's comments cited above, n641; and Rabinovitch, *Iyunim be-Mishnato shel ha-Rambam*, 132-35.

⁶⁸⁵ See Zvi Karl, "'Sefer ha-Miṣvot' leha-Rambam," *Moznayim* 3 (1935): 463; Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 88; and Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 42; see also above, n437. Maimonides' tendency to transform rabbinic *midrash* into *tafsīr marwī* was perhaps first noted by Guttman (see above, n541).

⁶⁸⁶ Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 89.

different view, writing that Sinaitic traditions, for Maimonides, are based on “clear ... logic and common sense” and “the plain meaning of the text.” On the other hand, wrote Ettinger, if a “teaching appears remote from this simple meaning” it is “an allusion (*asmakhta*) only” and merely rabbinic.⁶⁸⁷ According to Mordechai Cohen, Maimonides “adhere[d] as closely as possible to the principles of philological-contextual analysis.”⁶⁸⁸ As is evident from the preceding excursus, none of these general statements adequately accounts for Maimonides’ perspectives on halakhic *midrash*.

For Maimonides, the presence or absence of received traditions was marked by certain features. The existence of a biblical punishment was the most direct evidence of a biblical commandment.⁶⁸⁹ In one letter to Samuel ben ‘Eli, Maimonides cited the biblical prescription of flogging as evidence of a biblical prohibition,⁶⁹⁰ and in the letter to Pinḥas *ha-dayan*, he invoked biblically imposed punishments in asserting that marriages transacted through a legal document (*shṭar*) are of biblical status. Relying on the rabbinic

⁶⁸⁷ Ettinger, “Al Meqomah shel ha-Sevarah,” 19-20; trans. in idem, “On the Place of Logic (*Svara*) in Maimonides’ Code,” in *Authority, Process and Method: Studies in Jewish Law*, eds. Hanina Ben-Menahem and Neil S. Hecht (New York: Harwood Academic Publishers, 1998), 155. See similarly Meyer S. Feldblum, “Criteria for Designating Laws Traditions, Derivations from Biblical Exegesis, and Legislative Enactments,” in *Maimonides as Codifier of Jewish Law*, ed. Nahum Rakover (Jerusalem: Library of Jewish Law, 1987), 48: “any rabbinic interpretation of a Torah verse that results in a law must be philologically defensible, even if it is derived by the 13 hermeneutical principles.”

⁶⁸⁸ Cohen, *Opening the Gates of Interpretation*, 431. Cohen added that Maimonides used “halakhic evidence” to isolate received traditions. I am not sure what this term means; see there, 417, 424; see also 434, and below, n690. Compare ibn Ṣur Sefardi, *Megillat Esther*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 76 (Prin. Two).

⁶⁸⁹ See Qazes, *Qinat Sofrim*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 55 (Prin. Two).

⁶⁹⁰ Maimonides, *Teshuvot*, ed. Blau, 2:574 (§310); treated in Cohen, *Opening the Gates of Interpretation*, 388-89. The example is flogging for travelling beyond the Sabbath boundaries (see b’Eiruv 17b). Maimonides cited this statement in *Sefer ha-Miṣvot*, ed. Kafih, 188 (Neg. 10); and in another letter to Samuel; *Teshuvot*, ed. Blau, 2:571 (§309). Elsewhere, Cohen explained that Maimonides considered a law that “is assumed in the Mishnah to be *de-orayta*” to be based on a “transmitted interpretation” (425). This “assumption” is based on the fact that violating this law incurs excision, as noted in Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 62 (Prin. Two).

reading of the word “possesses her” (*ba’alah*; Deut. 24:1) to mean coition (*bi’ah*; bQid 4b, 9b), he asserted that marriages enacted by intercourse are of biblical status. Though it might have been assumed that marriages contracted through legal documents and the exchange of money are of rabbinic status (*mi-diverehem*) because they are derived “from logic” (*min ha-din*), Maimonides came to a different conclusion. The Talmud’s imposition of capital punishment for adultery with a maiden (*na’arah me’urasah*)⁶⁹¹ betrothed through a legal document (bQid 9b) indicated to him that such a marriage must be of biblical status, because capital punishments are only incurred for violation of a biblical prohibition.⁶⁹² *Sefer ha-Miṣvot* also deems laws “biblical” if their violation incurs biblical punishment, even in cases where the prohibition in question has no supporting verse.⁶⁹³ Maimonides even cited the inclusion of a particular prohibition on a rabbinic list of sins whose violation incurs capital punishment to prove that it is an independent commandment.⁶⁹⁴ By the same token, when a ritually pure nazirite is exposed to a type of impurity that would compel him to begin his period of nazirism anew, this impurity must *ipso facto* be biblical in nature.⁶⁹⁵ Maimonides similarly wrote that a specific prohibition

⁶⁹¹ Rabbinic law limits this status to a girl between the ages of twelve and twelve and a half.

⁶⁹² Maimonides, *Igrot*, ed. Shailat, 2:454.

⁶⁹³ E.g., Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 76 (Pos. 33; see above, n679), 221 (Neg. 76). See the similar usage there, 243. He cited lists in mKer 1:1, bMak 22b, and bSan 83a. See Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 70-71 (Prin. Two). Compare also *Hilkhot Sanhedrin*, chap. 19. Maimonides’ usage differed from geonic-era usage; see Guttman, *Beḥinat ha-Miṣvot*, 16-18, 20-21. *De-orayta* mandated lashes evince a biblical prohibition; e.g., Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 208 (Neg. 52), 285 (Neg. 215), 286 (Neg. 216).

⁶⁹⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 337 (Neg. 349). This may be his argument elsewhere; there, 225 (twice; Neg. 86-87), 324 (Neg. 309). Abraham Maimonides used these lists similarly; see n754.

⁶⁹⁵ This case and its attendant details are quite complex; see Isaac Bekhor David, *Divrei Emet*, 84a-85b; Henshke, “‘Al ha-Meši’ut ha-Mishpaṭit,” 236-37; idem, “Sheniyot le-‘Divrei Sofrim,” 58-63; idem, “Le-Yesodei,” 114-18; and Ettinger, “Shetei He’arot,” 238-42. The details of this rule troubled Maimonides throughout his life; Abraham Karelitz claimed that Maimonides was “undecided” about

is rabbinic in status because it is neither included in these lists nor learned from the *peshateh di-gera*.⁶⁹⁶

Maimonides often inferred a law's rabbinic status from the Sages' explicit use of the *middot*.⁶⁹⁷ Yet the fact that he regarded certain *middot*-derived laws as biblical in status⁶⁹⁸ suggests that he alone ultimately determined – based on the criteria suggested above and other possible factors – which *midrashim* created laws, and which upheld received laws,⁶⁹⁹ citing accordingly the rabbinic texts that best matched his conclusions.

Conclusion

A number of dichotomies populate Maimonides' conception of revelation: Sinaitic and post-Sinaitic law; written and oral revelation; Moses and subsequent leaders; and the transmission of legal material and its creation. Maimonides drew on Andalusian depictions of rabbinic legal creativity and he mobilized geonic, Andalusian, and Islamic thinking about Scripture and revelation in order to decisively reject geonic presentations

several applications of this principle (*merafya ha-davar be-yado*); *Sefer Hazon Ish: Toharot* (Benei Brak, 1974), 73b (mOha 10:8); noted in Henshke, "Le-Yesodei," 118.

⁶⁹⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 16-17 (Prin. Three). Compare my reading to Cohen, *Opening the Gates of Interpretation*, 327-28 (see there, n136), 333.

⁶⁹⁷ For example, on *ribbuy*, see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 13 (Prin. Two); and note the comparison of *ribbuy* with *qiyās* in idem, *Mishnah 'im Peirush*, ed. Kafih, 1:397 (m'Orl 1:2), and with *nazar* and *qiyās*, 4:256 (mShev 3:6). In one place, the principle *ribbuy aḥar ribbuy* teaches a *naql*; 2:357 (mMeg 4:3). On *gezeirah shavah*, see idem, *Sefer ha-Miṣvot*, ed. Kafih, 243 (Neg. 135); and above n670. Several appearances of this term in the *Commentary* denote biblical law, e.g., *Mishnah 'im Peirush*, ed. Kafih, 4:242 (mMak 3:5), 6:672 (mZav 3:1). See the equation of *middot* and *naql* there, 5:150-51 (mMen 9:7); see similarly 6:53-55 (mKel 2:1). The *Commentary* may be less careful than *Sefer ha-Miṣvot* about these terms; in one passage, Maimonides insisted that he did not intend to fully explicate the *middot* in the *Commentary* (m'Orl 1:2, noted in Sinai, "Peirush ha-Mishnah le-Rambam," 212-13n52). I hope to treat the *Commentary*'s use of the *middot* in a future study.

⁶⁹⁸ See Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 42-43.

⁶⁹⁹ Cohen, *Opening the Gates of Interpretation*, 306, reached a similar conclusion. Compare the comments in Naftali Zvi Yehuda Berlin, *Ha'amek She'eilah* (Jerusalem: Mosad ha-Rav Kook, 1999), 1:6, regarding the term *halakhah le-Moshe mi-Sinai*.

of the Oral Torah's origins. An array of Arabic and Hebrew terms helped Maimonides navigate the realms of revelation, received tradition, and rabbinic law. Nevertheless, the search for precisely 613 commandments occasionally led Maimonides to blur his own neat definitions and conceptual boundaries.

Further research could explore how Maimonides applied his system and the extent to which he worked out his ideas between writing the *Commentary on the Mishnah* and *Sefer ha-Miṣvot*. Integrating these works, along with the *Mishneh Torah* and Maimonides' responsa into studies of Maimonides' intellectual development may help to clarify his reformulation of ideas when challenged by new agendas, such as enumerating the commandments, formulating a legal compendium, or various interlocutors.

Chapter Three: Daniel ben Sa'adya ha-Bavli and Abraham Maimonides on the Oral

Torah

Introduction

The early thirteenth-century debate between Daniel ben Sa'adya ha-Bavli and Abraham Maimonides constitutes the first controversy over Maimonides' approach to the Oral Torah. Less than three folios in the lone manuscript, Daniel's challenges to Principles One and Two of Maimonides' *Sefer ha-Miṣvot* demonstrate that Maimonides' views were influential, even for those who rejected his conclusions. Daniel's approach to the Oral Torah – at least as can be inferred from his criticism of Maimonides – integrated elements of geonic and Maimonidean thought. Abraham Maimonides, for his part, staunchly defended his father, and, in his later writings, upheld and expanded upon Maimonides' understanding of the Oral Torah in the service of his own pietistic program.

This chapter begins with Daniel and Abraham's debate in order to underscore the (continuing) importance of reflections on the Oral Torah among Judeo-Arabic writers. I then turn to Abraham's later writings, especially his *Kifāyat al- 'Ābidīn (The Sufficient Guide for the Servants of God)* and responsa. Analysis of these texts, augmented by brief treatment of Abraham's biblical commentary, uncovers the ways that Abraham championed and applied his father's system.

Daniel ha-Bavli's Criticism of Principles One and Two

In his query to Abraham Maimonides, Daniel ben Sa'adya ha-Bavli grouped his criticisms of Principles One and Two into one question,⁷⁰⁰ implicitly adopting the assumption of many modern treatments that regard Principles One and Two as intimately connected.⁷⁰¹

The Scope of Revelation and the Enumeration of the Commandments

Daniel began his comments on Principle One, which excludes “rabbinic commandments” from the enumeration of the commandments, by explaining that Maimonides only enumerated material based on *faṣīḥ al-naṣṣ*, an express scriptural passage.⁷⁰² Daniel, however, considered all “revealed” material – so identified in rabbinic literature – to be of equal status for the purpose of enumeration. Therefore, while he accepted Maimonides’ claim that the description of the 613 commandments as “said to Moses at Sinai” (bMak 23b) precludes the enumeration of rabbinic enactments,⁷⁰³ he rejected the idea that the Written Torah is of special importance for the enumeration.

⁷⁰⁰ This is clear from internal evidence; Daniel transitioned from Principle One to Principle Two with *wa-kadhālika* (“and likewise”; MS. Hunt. 185, 128a; *Ma’aseh Nissim*, 4; §1). There is no reason to think that the copyist of this manuscript from the (lost) original combined what were originally two questions.

⁷⁰¹ E.g., the work of Blidstein, Halbertal, Harris, and Kassierer and Glicksburg.

⁷⁰² Translation follows Blau, *Dictionary*, 505, s.v. *فصيح النص*. This phrase does not appear in Maimonides’ *Sefer ha-Miṣvot*, nor, as far as I can tell, elsewhere in his writings. For geonic usage, see Yehuda Raṣḥabi, “Seridim mi-Peirush R. Sa’adya le-Megillat Esther,” *Sinai* 104, no. 1 (1989): 207; Wechsler, *The Book of Conviviality in Exile*, 564 line 13; Sa’adya, *Kitāb al-Amānāt wal-I’tiqādāt*, ed. Kafih, 220; and Greenbaum, *Peirush ha-Torah le-Rav Shmuel ben Hofni*, 216 (Gen. 44:1). Two Qaraite biblical commentators use this phrase; see Yevr.-Arab. I 25, 40a, published in Haggai Ben-Shammai, *Kitvei ha-Yad be-‘Aravit-Yehudit be-Osfei Firqoviṣ: Yefet ben ‘Eli al-Baṣri, Peirush Bereishit, Qatalog le-Dugmah, Meqorot u-Meḥqarim* (Jerusalem: Yad Ben-Zvi, 2000), 29; and Yevr.-Arab. I 2131 (from Jeshua ben Judah).

⁷⁰³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9 (Prin. One); see above, n190.

After all, he noted, the Talmud does not state, “Moses wrote for us 613 commandments in the Torah.” For this reason, asserted Daniel, one may criticize geonic-era enumerations for counting rabbinic ordinances and decrees (*gezeirot* and *taqqanot*), but not for counting laws based on extra-scriptural Sinaitic traditions.⁷⁰⁴

Daniel turned to the two scriptural prohibitions pertaining to priests serving in the Temple found in Ezekiel (44:9, 20).⁷⁰⁵ According to the Talmud, these prohibitions were orally transmitted from Moses long before Ezekiel wrote them down (bTan 17b, etc.).⁷⁰⁶ For Daniel, this talmudic claim demonstrates that extra-scriptural traditions are equivalent to explicit biblical passages for the purpose of enumeration. Given their Sinaitic origin, Daniel asserted that Maimonides erred in excluding these laws from the enumeration.⁷⁰⁷

Daniel used this line of reasoning to respond to Maimonides’ claim that geonic-era enumerators had mistakenly counted commandments to clothe the naked, visit the sick, and comfort the bereaved. Where Maimonides claimed that these enumerators

⁷⁰⁴ MS. Hunt. 185, 127a; *Ma’aseh Nissim*, 2. He wrote that bMak 23b includes anything that is a *halakhah le-Moshe mi-Sinai*: פקד חוי הד’א אלקול כל מא הו הלכה למשה מסיני ולם יסקט אלא אלתקנות ואלגזרות אלתי; MS. Hunt. 185, 127a; *Ma’aseh Nissim*, 2 (§1). I believe that the phrase *halakhah le-Moshe mi-Sinai* here refers to all unwritten, revealed laws, not just laws that receive this designation in rabbinic literature (see below, nn707, 724), as Daniel contrasted *halakhah le-Moshe mi-Sinai* with “ordinances and decrees.” See also MS. Hunt. 185, 128b-129a; *Ma’aseh Nissim*, 4 (§1): ועלי אננא גיר מקיידין; פי עדיד תר”ג מצות בפציה אלנצוץ כמה קד תקדם אלקול לאן אלעודד הו למא קבל משה מסיני אן כאן מכתוב פציה ואן כאן גיר מנצוץ.

⁷⁰⁵ The prohibitions against an uncircumcised priest serving in the Temple and a priest entering the Temple with unkempt hair. The latter example is curious, because it appears in surviving texts of *Sefer ha-Miṣvot*, as Abraham Maimonides noted; see MS. Hunt. 185, 120a; *Ma’aseh Nissim*, 6 (§1). For the suggestion that Daniel’s version of *Sefer ha-Miṣvot* omitted this commandment, see Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 25 (introductory pagination), 118n13; see also below, n1044.

⁷⁰⁶ For background in rabbinic literature and geonic-era use of these texts, see above, nn200, 202.

⁷⁰⁷ Daniel assumed that Maimonides accepted the talmudic claim that these laws were transmitted orally from Sinai; MS. Hunt. 185, 127a; *Ma’aseh Nissim*, 2-3 (§1). On Maimonides’ view, see above, nn613-614. Daniel labeled these laws *halakhah le-Moshe mi-Sinai*, which the Talmud did not (writing: לכנהא ליסת נצוץ בל הלכה למשה מסיני; MS. Hunt. 185, 127a; *Ma’aseh Nissim*, 2; §1); see above, n704, and below, n723.

considered “*When you see the naked, clothe him*” (Isa. 58:7) to be the source of the obligation to clothe the naked, but their true source to be the pentateuchal command to provide for the poor (“*Sufficient for what he needs*”; Deut. 15:8), Daniel inverted Maimonides’ argument and likened these laws to those found in Ezekiel. Daniel thus described the verse in Isaiah as a “transmitted interpretation” (*sharḥ manqūl*), elaborating on Deut. 15:8, writing that the later prophet had “stated expressly” (*faṣaḥa bihā*), i.e., in a more elaborate form, the Sinaitic charges.⁷⁰⁸ Similarly, where Maimonides had asserted that talmudic glosses (bBQ 100a) to each phrase in Ex. 18:20 (“*Make known to them the way they are to go in and the practices they are to follow*”) misled earlier enumerators to count visiting the sick and comforting the bereaved as separate commandments,⁷⁰⁹ Daniel labeled each of these glosses a “narrated interpretation (*sharḥ marwī*) from the messenger (i.e., Moses).”⁷¹⁰

Particular Manifestations of General Scriptural Commands

Daniel ha-Bavli next turned to two other laws excluded by Maimonides, the requirement to recite the *Hallel* prayer, which is comprised of Pss. 113-18 and is recited on festive days, and the celebration of the post-biblical festival of Hanukah. Earlier enumerators had listed both as commandments, but Maimonides deemed them rabbinic in status.⁷¹¹ In order to prove the “biblical” status of these requirements, Daniel argued that

⁷⁰⁸ MS. Hunt. 185, 127a; *Ma’aseh Nissim*, 3 (§1). For Maimonides’ view, see above, n612. On *faṣaḥa* (or *faṣṣaḥa*) *bihā*, see Blau, *Dictionary*, 505, s.v. *فصح* I, II.

⁷⁰⁹ See above, nn625-626; see also above, n198.

⁷¹⁰ שרר מרר ען ארסור; MS. Hunt. 185, 127b; *Ma’aseh Nissim*, 3 (§1).

⁷¹¹ See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9-10 (Prin. One); and above, n607.

discrete manifestations of general scriptural commands may be counted as distinct commandments. Turning to *Hallel*, he claimed that the rabbis had “stated expressly (*faṣīḥ*) that [the recitation of *Hallel*] is biblical in status (*de-orayta*) on eighteen days.”⁷¹² (This is actually an inference from bTa’an 28a, which lists these eighteen days in order to prove that the requirement to recite *Hallel* on the first day of new months – days *not* counted among the eighteen – is not biblical in status.⁷¹³) Daniel next cited a *baraita* that addresses the origin of *Hallel* (bPes 117a):

Who recited this *Hallel*? R. Yosi says: “My son Eleazar says: ‘Moses and all Israel said it at the moment that they ascended from the sea.’ But his colleagues disagree with him, saying ‘David [the presumed author of Psalms] said it.’ His view appears preferable to theirs: is it possible that Israel slaughtered their paschal sacrifices and did not recite song?”⁷¹⁴

While Daniel accepted the first view, he asserted that, even according to the second view, “it is not impossible that the command (*amr*) [ordains] general praise (*tasbīḥ stam*), not necessarily with these designated words. Rather, [God] obligated the recitation of songs and praises during these festivals (*mawāsim*) – with any words.”⁷¹⁵

⁷¹² פקד קאלו ז"ל פציח אנהא דאורייתא בי'ח' ימים i.e., eight days of each of Sukkot and Hanukah and the first days of Passover and Shavu'ot; bTa'an 28b, b'Erkh 10a; see also jSuk 54c (4:5).

⁷¹³ Daniel's text of bTa'an 28a accords with most manuscripts, which differ slightly from the printed edition. See also MS. Hunt. 91b; *Birkat Avraham*, 51 (§38; the numbering differs in the manuscript).

⁷¹⁴ הלל זה מי אמרו ר' יוסי אומר אלעזר בני אומ' משה וכל ישראל אמרוהו בשעה שעלו מן הים וחלוקין עליו חביריו לומר. This is Daniel's text; manuscripts, with the exception of Vatican 109, record few variants. On the texts of Bavli Pesahim, see below, n1225. Rashi, s.v. *efshar*, explained that R. Yosi's rhetorical question asks: did Israel not recite *Hallel* when they slaughtered their paschal sacrifices between the time of the Exodus and that of King David?

⁷¹⁵ וחתי עלי ראי מן יקול דוד אמרו לא ימתגע אן יכון אלאמר באלהסביח סתם לם ילזם אן יכון בהד'ה אלא לפאט' תהיא MS. Hunt. 185, 127b; *Ma'aseh Nissim*, 3 (§1).

Daniel suggested that “*Sing to the Lord, for He has triumphed gloriously*” (Ex. 15:21) constitutes the source for the obligation to recite *Hallel*.⁷¹⁶ “It is clear,” he wrote, “that all of the festivals commemorate the Exodus from Egypt. It is obligatory from this that we thank and praise Him every time He makes His power and deliverance manifest (*yuzhir*) to us.”⁷¹⁷ Daniel asserted that since God’s power was manifest during the Maccabean revolt, the recitation of *Hallel* on Hanukah constitutes a biblical obligation, even though “the days of Hanukah are not explicitly stated (*manšūša*) in the Torah.”⁷¹⁸ Claiming that the recitation of *Hallel* also fulfills the commandment to “publicize a miracle” (*pirsumei nisa*; see bSab 23b etc.), he invoked the rabbinic comment “it is inferred (*mi-mashma*) from ‘Do not desecrate’ – sanctify,” describing the obligation to publicize a miracle as “supported by” (*mustanida ilā*) the verse “Do not desecrate the name of your God” (Lev. 18:21).⁷¹⁹

⁷¹⁶ *Encyclopedia Talmudit*, s.v. *Hallel*, does not list anybody else who cited this verse as the source for the obligation to recite *Hallel*.

⁷¹⁷ ואלאמר בדלך הו קול אלרסול ע"ה שירו ליוי כי גאה גאה וקד באן באן אלמועדים כלהא זכר ליציאת מצרים ווג'ב מן Daniel may have relied on the prayer book for the claim that all holidays commemorate the exodus; alternatively, Uri Melamed (personal communication) noted this claim in Saul Lieberman, ed., *Midrash Devarim Rabbah* (Jerusalem: Shaleim, 1992), 17 (§18).

⁷¹⁸ לא אן איאם אלחנוכה מנצוצה פי אלתורה MS. Hunt. 185, 127b; *Ma'aseh Nissim*, 3 (§1). Standard commentators on the enumeration in the *Halakhot Gedolot* have concluded that this enumeration counted the eighteen days as eighteen, not one, commandments; Shaul ben Musah ha-Kohen, *Netiv Mišvotekha* (Livorno, 1841), 45a-45b; and Mordecai Sluṣqi, *Azharot le-Ḥag ha-Shavu'ot: Mevu'ar be-sheim Hidur Zaqein* (Warsaw, 1900), 9-11; see also Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 81. Daniel’s position on this question is unclear.

⁷¹⁹ ממשמע שנא' לא תחלל אמר קדש MS. Hunt. 185, 127b-128a; *Ma'aseh Nissim*, 3 (§1). Daniel quoted Lev. 18:21; surviving editions of the *Sifra* link this gloss to Lev. 22:32 (“*You shall not desecrate My holy name*”); noted in Perla, *Sefer ha-Miṣvot la-Rasag*, 1:515; see *Sifra*, ed. Weiss, 99b (*parashat emor*, §9). Daniel described this interpretation as offered “by way of interpretation” (*fi sharḥ*), perhaps hinting that such interpretations have the status of biblical law. On the phrase *fi sharḥ* in Maimonides’ writings, see above, n674. Daniel also suggested that the recitation of *Hallel* is not the only possible way to publicize a miracle.

This conclusion facilitated Daniel’s response to the Maimonidean claim about the Talmud’s assertion (bSab 23a) that the requirement to light Hanukah candles has the same basis as all rabbinic decrees (“*In accordance with the instruction given you*”; Deut. 17:11).⁷²⁰ Daniel agreed that the requirement to light Hanukah candles is rabbinic in origin, but saw this as different from the recitation of *Hallel*, which, he claimed, fulfills the “biblical” commandment to observe Hanukah. Whereas Maimonides interpreted the talmudic query, “where were we commanded to light Hanukah candles?” to mean, “what is the scriptural basis for Hanukah?” Daniel understood it as, “why was Hanukah singled out with the lighting of candles?”⁷²¹ Thus, in Daniel’s view, specific manifestations of general biblical commands – in this case, the recitation of *Hallel* and the celebration of Hanukah – may constitute distinct commandments.

Laws Derived Through the Middot

Daniel ha-Bavli began his rebuttal of Principle Two by attacking Maimonides’ insistence that the vast majority of laws derived from the *middot* (hermeneutical rules) are neither enumerated nor of biblical status.⁷²² Incredulous, Daniel exclaimed that Maimonides could not possibly deny that the thirteen *middot* and that which is “deduced by means of them” (*al-mustafād bi-ṭarīqihā*) is of Sinaitic origin; he termed that which

⁷²⁰ See above, n611; see also above, n345.

⁷²¹ Daniel asserted that lighting Hanukah candles is “a commandment (*mišvah*) to listen to the sages from ‘*You shall not deviate [from the verdict that they announce to you]*’ (Deut. 17:11; פכאן אלגיאב; לאן מצוה לשמוע דברי חכמים מלא תסור); MS. Hunt. 185, 128a; *Ma’aseh Nissim*, 3 (§1). Manuscripts of bSab 23a only quote Deut. 17:11, not the phrase “a commandment to listen to the sages.” In Principle One, Maimonides quoted this phrase from bHul 106a, linking it to Deut. 17:11 (*Sefer ha-Miṣvot*, ed. Kafih, 10). It is likely that Daniel imputed this phrase due to Maimonides’ comments.

⁷²² See above, n621.

was derived in this manner *halakhah le-Moshe mi-Sinai*; i.e., law given to Moses at Sinai.⁷²³ Daniel, for his part, insisted that the label *de-orayta* (of biblical status) may be applied to any law derived from the *middot*, writing: “That which is verified for us [as having] its basis (*isnādahu*) in one of the *middot*, we term it *de-orayta*.” On the other hand, he explained, “That which is not verified for us [as having] its basis in one of the *middot*, we term it *halakhah le-Moshe mi-Sinai*, meaning, merely a *halakhah* (here: tradition).”⁷²⁴

Because Daniel equated scriptural laws with laws derived through the *middot*, he asserted that a law in either category may be the basis of a distinct commandment if it constitutes not merely “part” (*juṣ*) of a commandment, but a “*guf mišvah*,” lit., “body of a commandment”; i.e., a self-contained or discrete commandment.⁷²⁵ He therefore agreed with Maimonides that geonic-era enumerators had been wrong to count as a distinct

⁷²³ מע כונה ז"ל לא ינכר אן שלש עשרה מדות הלכה למשה מסיני וסאיר אלמסתפאד בטריקהא הלכה למשה מסיני; others have read this sentence not as an expression of astonishment but as Daniel's attempt to interpret Maimonides, claiming that Daniel felt that Maimonides held that laws derived by the *middot* are biblical in status; Perla, *Sefer ha-Miṣvot la-Rasag*, 1:19; Neubauer, *Ha-Rambam 'al Divrei Sofrim*, 152; and Friedberg, *Crafting the 613 Commandments*, 209n7. This reading fails to account for the fact that Daniel also quoted Maimonides' assertion that if the Talmud did not identify a derived law as *de-orayta* or *guf ha-torah*, the law in question is rabbinic in status. How could Daniel's supposed interpretation of Maimonides contradict the passage that he immediately quoted? Perla and Friedberg even suggested that Daniel anticipated Simeon ben Šemaḥ Duran's claim that the terms “biblical” and “rabbinic” in Principle Two distinguish between enumerated and non-enumerated laws.

⁷²⁴ לכן מא יצח לנא אסנאדה באחד אלמדות נסמיה דאורייתא ומה לא יצח לנא אסנאדה באחד אלמדות פנסמיה הלכה פקט למשה מסיני נעני הלכה פקט; MS. Hunt. 185, 128a; *Ma'aseh Nissim*, 4 (§1). Daniel appears to use the phrase *halakhah le-Moshe mi-Sinai* in two different senses in this passage; see also above, nn704, 707.

⁷²⁵ Daniel used this term twice here, and elsewhere contrasted it with acts done to complete a commandment (*tashlumei mišvah*; MS. Hunt. 185, 173b-174a; *Ma'aseh Nissim*, 60; §5). I have uncovered no rabbinic or geonic usage of this phrase. My guess is that it relates to the mishnaic terms *kol ha-guf* (an entire principle [mHor 1:3]; see below, n848) and *guf torah* (essence of the Torah [mḤag 1:8]; see above, n621). Note Joseph ben Abraham Gikatilla, *Kelalei ha-Miṣvot*, ed. Barukh Avigdor Heifeš (Safed, 1992), 198: ואם הלויה שאינה גוף מצוה מיוחדת מתר"ג מצות אלא ענף א' מענפי גמילות חסדים אין לה שיעור ק"ו שאר גופי מצות שבתורה. See also Arieḥ Goldschmidt, ed., *Maḥzor Vitry le-Rabbeinu Simḥah mi-Vitry, Talmid Rashi* (Jerusalem: Ošar ha-Posqim, 2003), 3:941: הרב ר' חיים כהן בר' חננאל פי' מצות וחוקים ובכור מצות אלה המשפטים שהן גופי מצות ודיניו.

commandment the obligation to fear sages. But while Maimonides excluded this on the grounds that it is derived from a lexical redundancy (*ribbuy*) and was not explicit in the Pentateuch, Daniel argued that fear of the sages is a biblical “part” of the commandment to fear God (both are based on Deut. 6:13).⁷²⁶

Daniel also used his equation of explicit laws with those based on the *middot* to reject Maimonides’ claim that derived laws constitute “branches” (*furū*) of Sinaitic “roots” (*uṣūl*);⁷²⁷ he argued that the enumeration should include any “*guf miṣvah*” that the rabbis “derived” (*istakhrājū*) through the *middot*. For Daniel, such a commandment would be both “derived” and Sinaitic – and it could not be mapped onto the distinction between “roots” and “branches.” Daniel exploited this argument to reject Maimonides’ conclusion from the legend that the Israelites forgot seventeen hundred derived laws after Moses’ death (bTem 16a). Maimonides had cited this tradition in order to exclude most derived laws from the enumeration; after all, he reasoned, the number of derived laws clearly exceeds 613 and consistency dictates that either all of them be counted or none of them.⁷²⁸ Daniel explained that these forgotten derivations are Sinaitic “branches of commandments (*miṣvot*), parts, and specifications (*fiqh*) of explicit commandments

⁷²⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 13 (Prin. Two); MS. Hunt. 185, 128a-128b; *Ma’aseh Nissim*, 4 (§1); see bPes 22b. For similar positions, see *Encyclopedia Talmudit*, s.v. *yirat ha-sheim*, 25:88nn161-62. Daniel described this law as “supported” (*musnad*) by Deut. 6:13. Maimonides’ position may be more complex than Principle Two suggests; see *Sefer ha-Miṣvot*, ed. Kafih, 164-66 (Pos. 209); *Hilkhot Talmud Torah*, 5:1; di Trani, *Qiryat Sefer*, 11b-12a (*Hilkhot Talmud Torah*, chap. 5); and Friedberg, *Crafting the 613 Commandments*, 315n72, 324-25.

⁷²⁷ See above, nn632-633.

⁷²⁸ See above, n634.

(*sharā' i' manṣūṣa*); one commandment can entail (*taḥtamil*) numerous branches.” Hence, such derivations are not enumerated because they do not constitute a “*guf miṣvah*.”⁷²⁹

The assertion that all laws that are “derived” through the *middot* were in fact given at Sinai⁷³⁰ also led Daniel to challenge another assertion, in which Maimonides claimed that the talmudic term *guf torah* (“essence of the Torah”) denotes a select set of unwritten, Sinaitic laws that constitute distinct commandments. As evidence, Maimonides had pointed to the Talmud’s (bKer 5a) application of the term *guf torah* to a few non-explicit laws, and to its warning about them: “Do not take a *gezeirah shavah* (analogy based on verbal congruity) lightly.”⁷³¹ Daniel, however, rejected Maimonides’ assumption that the term *guf torah* is relevant for the enumeration of the commandments. Instead, he inferred a general rule from this passage and claimed that any law learned from a *gezeirah shavah* can be considered a *guf torah*, whether or not the rabbis used this term.⁷³² However, a law labeled *guf torah* may only be counted in the enumeration if it constitutes a “whole” commandment (i.e., what Daniel called a *guf miṣvah*).

Daniel concluded by claiming that Maimonides had inconsistently applied his own rules when he counted the prohibition against a priest who has ritually bathed but will only be fully purified with sunset (*tevul yom*) serving in the Temple, which the Talmud (bSan 83b, bZev 17a) learns from a scriptural “hint” (*remez*) in Lev. 21:6. After

⁷²⁹ לאן חאצל הד'ה פרוע מצות ואגזא ופקה שראיע מנוצח תחתמל אלשריעה אלואחדה פרוע עדידה; MS. Hunt. 185, 128b; *Ma'aseh Nissim*, 4 (§1). On the meaning of the term *fiqh* here, see above, n570, and below, nn921-944; see below, nn998-999, for Daniel’s use of this term.

⁷³⁰ See the text cited above, n723.

⁷³¹ See above, nn651-653, 668. Maimonides, of course, used several criteria to identify such commandments.

⁷³² MS. Hunt. 185, 128b; *Ma'aseh Nissim*, 4 (§1).

all, he noted, Maimonides had asserted that the only non-scriptural laws that constitute distinct commandments are those designated *de-orayta* or *guf torah* in rabbinic literature.⁷³³ Daniel also drew attention to Maimonides' comment, elsewhere, that another law could not constitute a distinct commandment because it is derived from a "hint," and not from the *peshateh di-qera*.⁷³⁴ As rabbinic literature labeled neither law of *de-orayta* status or a *guf torah*, Daniel observed, they should be identical for purposes of the enumeration.⁷³⁵

Other Maimonidean Claims about the Oral Torah

The comments about revelation and rabbinic tradition that appear throughout Daniel's queries demonstrate that he sensed, at least in part, the breadth of Maimonides' claims about the Oral Torah. One case pertains to a law that the Talmud (bSan 83b) linked to Ex. 29:9, but that in Maimonides' opinion, was based on a revealed *tafsir*, rather than an explicit verse (*naṣṣ*).⁷³⁶ Daniel agreed with Maimonides, writing "there is no doubt that without the *halakhah* that arrived from Sinai ... it would have been impossible

⁷³³ See the references above, n731. Maimonides identified the *tafsir marwi* as the source of this law. Daniel added that, in his view, the *Sifra*'s reading of Lev. 21:6 (ed. Weiss, 91a [*parashat emor*, §1]), constitutes the *peshateh di-qera* of this verse.

⁷³⁴ I.e., the prohibition against stealing a libation vessel (*qisvah*); bSan 81b. See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 16-17 (Prin. Three). On this passage, see above, n696.

⁷³⁵ MS. Hunt. 185, 129a; *Ma'aseh Nissim*, 4-5 (§1); *Sifra*, ed. Weiss, 94ab (*parashat emor*, §1). Elsewhere, Daniel wrote the rabbis considered this "hint" a *ribbu*; MS. Hunt. 185, 140a; *Ma'aseh Nissim*, 19 (§3).

⁷³⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 76 (Pos. 33), concerning the prohibition against an improperly dressed priest (*meḥusar begadim*) serving in the Temple. In *Hilkhot Kelei ha-Miqdash*, 10:4, Maimonides cited Ex. 29:9, but no extra-scriptural interpretation of this verse (e.g., *mi-pi ha-shemu'ah* or *mi-pi ha-qabbalah*).

to derive it (*istakhrājuhu*) from this verse.”⁷³⁷ Another comment by Daniel relates to a debate over the phrase “*the seventh day*” in the verse “*On the seventh day you shall rest; you shall rest from plowing and harvesting*” (Ex. 34:21): does this refer to the Sabbatical year or to the weekly Sabbath (bMK 3b-4a)?⁷³⁸ Despite the fact that the talmudic *sugya* appears to accept the latter view, Daniel noted that Maimonides cited this verse, among others, as the basis for the commandment to refrain from farming during the Sabbatical year.⁷³⁹

Daniel was also among the early critics to claim that Maimonides was wrong when (in *Hilkhot Ishut*, 1:2, 3:20) he categorized the effectuation of marriage through the exchange of money as a law of *divrei sofrim* status (words or matters of the scribes). Was it possible, asked Daniel, that the obligation to marry, categorized by Maimonides (in *Hilkhot Ishut*, 1:2) as a biblical law (*shel torah*), could be fulfilled through a rabbinically-ordained mechanism? Indeed, asked Daniel, if a woman who is married through the exchange of money enters into a second marriage through a biblically-ordained mechanism, does the second marriage override the first? Daniel further wondered what reason Maimonides had for distinguishing between the effectuation of marriage through money, which is derived from a *gezeirah shavah* (bQid 2a), and its effectuation through

⁷³⁷ ולא שבהה אן לולא אלהלכה אלוארדה מסיני ... למא אמכנ אסתכ'ראג'ה מן הד'א אלנץ; MS. Hunt. 185, 140b; *Ma'aseh Nissim*, 19 (§3). On this passage, see also below, n1041.

⁷³⁸ The first view asserts that this verse extends the prohibitions against plowing and harvesting to a period before and after the Sabbatical year, based on the assumption that there is no reason to single out plowing and harvesting among the labors prohibited on the Sabbath. The second holds that only optional plowing and harvesting are forbidden on the Sabbath, but such actions are permitted when fulfilling a commandment (i.e., for the purposes of the 'omer sacrifice); for treatment see David Henshke, “Be-Ḥarish uve-Qašir Tishbot’ – Eḥad Miqra u-Shenayim Midrash,” *Sidra* 15 (1999): 13-29.

⁷³⁹ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 127 (Pos. 135); MS. Hunt. 185, 195b-196a; *Ma'aseh Nissim*, 88 (§9).

legal documents, which is derived through a scriptural “analogy” (*heqqesh*; bQid 5a); neither mechanism, he wrote, is explicit in Scripture.⁷⁴⁰

Daniel ha-Bavli’s Use of Sefer ha-Miṣvot

Daniel ha-Bavli’s criticism of Principles One and Two highlights the controversy over Maimonides’ portrayals of revelation and of laws derived through the *middot*. In asserting the divine basis of much of Jewish law (and not only that which is explicit in the Torah), Daniel occasionally went further than talmudic claims. One such case is his declaration that laws identified by Isaiah are Sinaitic – in keeping with the talmudic claim regarding laws mentioned by Ezekiel. Daniel’s description of the *middot* using Arabic roots such as *kh-r-j*, *h-ṣ-l*, and *f-y-d*, which denote derivation or deduction, differed from the Sa’adyanic model, which saw the *middot* as “matching” Scripture with received tradition.⁷⁴¹ This choice of terminology suggests the influence of Maimonides’ portrayal, and understanding, of rabbinic activity.⁷⁴²

⁷⁴⁰ MS. Hunt. 185, 114b-115b; *Birkat Avraham*, 61-62 (§44). For Maimonides’ view, see above, n692. For Daniel’s challenge to a law that Maimonides labeled *mi-pi ha-shemu’ah* (*Hilkhot Qorban Pesah*, 9:3), see MS. Hunt. 185, 28a-28b; *Birkat Avraham*, 14 (§8).

⁷⁴¹ See above, n244.

⁷⁴² Compare below, n828. Feldblum, *Peirushim u-Meḥqarim*, 5n9, astutely noted that Naḥmanides’ position that (some? see above, n636) halakhic *midrash* creates laws of biblical status fundamentally accepts Maimonides’ position that halakhic *midrash* (when not based on *tafsīr marwī*) generates law; see also Blidstein, “Masoret ve-Samkhut Mosdit,” 21; and idem, “Oral Law as Institution in Maimonides,” 181n141, writing: “[Naḥmanides] also learns from Maimonides. . . . His own view of rabbinic *midrash* is that it in fact creates law with Scriptural status. This carries beyond Maimonides, but it may also reflect the permission granted by Maimonides to see the rabbi [*sic*] as creative” (there, 172-73). Compare Wolfson, “By Way of Truth,” 128.

The fact that Daniel did not respond to all of the criticisms that Maimonides leveled against geonic-era enumerators⁷⁴³ suggests that he may have lacked either the interest or ability to defend them.

Abraham Maimonides' Responses to Daniel ha-Bavli

The perspectives of Maimonides cast an overwhelming shadow over the presentations of his son Abraham, not only because Abraham sought to defend his father, but also because he employed his father's theories in his later works in order to bolster his own pietistic reforms. Abraham's responses to Daniel (which most likely constitute his first written reflections on the Oral Torah) focus primarily on the taxonomic status of a distinct commandment. Abraham also offered rejoinders to Daniel's claims about specific commandments; these rebuttals shed light on Abraham's applications and extensions of his father's system.

Revelation and the 613 Commandments

The first part of Abraham's answer challenged Daniel's claim that the enumeration may include any revealed law, even laws not found in Scripture. Abraham asserted that Daniel's position "does not allow for the ability to differentiate (or, to make into parts; *tab 'īd*), but necessitates ... enumerating every law whose basis is transmission

⁷⁴³ Of the "commandments" counted by geonic-era enumerators rejected in Principles One and Two, Daniel did not mention observing the festival of Purim, reciting one hundred blessings a day, intercalating the calendar, and burying the dead (though this relates to his treatment of Lev. 19:18). He also accepted Maimonides' claims that fear of the sages does not constitute a distinct commandment and that geonic-era enumerators erred by counting rabbinic decrees.

from the master, the messenger (i.e., Moses).”⁷⁴⁴ He suggested that the talmudic phrase “613 commandments were said to Moses at Sinai” may refer to: (1) express scriptural passages (*manṣūṣ*) and what is “entailed by” (*yalḥaq*) them; (2) transmitted (*manqūl*) material only and not scriptural passages; or (3) express scriptural passages and what is “entailed by it” as well as to other transmitted material. Abraham declared that nobody with a “sound ability to conceptualize” (*taṣawwur sālim*) could accept the second option, and the third, which he identified as Daniel’s view, necessitates counting more than 613 commandments. Therefore, only the first – in Abraham’s mind, his father’s approach – is viable.⁷⁴⁵ In his words, this is “an established argument (*qiyās*) and conclusive proof.”⁷⁴⁶

Abraham did not explain the distinction between extra-scriptural traditions that are “entailed by” Scripture and other revealed material. I am not aware of any relevant Maimonidean usage of the term “entailed by” (*yalḥaq*); this term may refer to the “three [or] four” exceptions to Principle Two⁷⁴⁷ or to the *tafsīr marwī*, the interpretation transmitted from Sinai.

Two of Abraham’s comments imply that he, like his father, accepted that some rabbinic dicta constitute Sinaitic traditions but do not qualify as distinct commandments. He explained that an “interpretation” of revelation may not qualify as a distinct commandment, even though it may be “a verse (*naṣṣ*) of the Torah, a verse stated (*naṣṣ*

⁷⁴⁴ לא יצח אלתבעיין' בל ילזם עלי הד'א אלפרין' עדר כל חכם אצלה מנקול ען אלסיד ארסול על' אלס' MS. Hunt. 185, 129b; *Ma'aseh Nissim*, 5 (§1).

⁷⁴⁵ MS. Hunt. 185, 129b-130a; *Ma'aseh Nissim*, 5-6 (§1).

⁷⁴⁶ והד'א קיאס מסתקל ודליל קאטע למן יפהם אלמקאייס וידריהא MS. Hunt. 185, 130a; *Ma'aseh Nissim*, 6 (§1). For this meaning of *mustaqill*, see Blau, *Dictionary*, 560, s.v. *قال* X.

⁷⁴⁷ While Abraham evinced no knowledge of the letter that mentions these exceptions (see below, n762), Principle Two does mention them.

kalām) [by] a prophet, a transmitted interpretation (*tafsīr marwī*), or derived (*mustanbat*) through *qiyās*.⁷⁴⁸ Similarly, he wrote that a particular rabbinic gloss should not be enumerated as a distinct commandment, even “if it is conceded (*idhā sullima*) that it is a verified interpretation (*sharḥ muḥaqqaq*), and not [a conclusion made merely] on the basis of its support (*isnād*).⁷⁴⁹

Deflections of Daniel ha-Bavli’s Claims

In the remainder of his response, Abraham focused on two matters raised by Daniel: the question of whether to include in the enumeration the observance of Hanukah and the prohibition pertaining to a priest who must wait until sunset to become pure (*tevul yom*). In Abraham’s view, Daniel’s argument that Hanukah constitutes a manifestation of a general command to express gratitude for God’s deliverance would preclude the “ability to differentiate” (*tab ṭd*), and would necessitate the inclusion of several other post-biblical festivals in the enumeration of the commandments.⁷⁵⁰

⁷⁴⁸ פלא יבגי עדהא לא פרק כאנת נץ [אל]תורה או נץ כלאם נבי או תפסיר מרוי או מסתנבט בקיאס; MS. Hunt. 185, 130b; *Ma’aseh Nissim*, 7 (§1). Compare the threefold division between laws that are “written, transmitted, or derived through *qiyās*” (מנצוצא או מנקולא או מסתכר’גא בקיאס); MS. Hunt. 185, 142b; *Ma’aseh Nissim*, 22 (§3). See also below, nn784-788.

⁷⁴⁹ אד’א סלם אנה שרח מחקק לא עלי חכם אלאסנאד; MS. Hunt. 185, 130b; *Ma’aseh Nissim*, 7 (§1). These “verified interpretations” may not be transmitted from Moses, but just philologically sound readings of Scripture. On the term *isnād*, see above, n525.

⁷⁵⁰ MS. Hunt. 185, 130b-131b; *Ma’aseh Nissim*, 7-8 (§1). He noted that the rabbis annulled the observance of the festivals listed in *Megillat Ta’anit* (bRH 19b), an ancient work that listed a number of victories and other joyous events. How could they do so, he asked, if their observance is biblically mandated? Abraham also used various textual arguments to dismiss Daniel’s claim that reciting *Hallel* constitutes a biblical commandment. On the recitation of *Hallel*, note Abraham’s comments introducing his responses to Daniel’s questions about *Sefer ha-Miṣvor*; MS. Hunt. 185, 126b; *Ma’aseh Nissim*, 1-2 (introduction).

Abraham asserted that the law prohibiting a priest from serving in the Temple prior to sunset on the day of his purification was of biblical status (*min ha-torah*). Though he admitted that this prohibition is “derived through a hint (*remez*) from a verse whose manifest sense (*zāhirihi*) concerns another matter,” Abraham nonetheless affirmed its biblical status, because the “transmitters” (*nāqilīn*) had “expressly” included it among sins that incur the death penalty (bSan 83a).⁷⁵¹ This, he asserted, was equivalent to rabbinic usage of the term *guf torah*. Furthermore, he wrote, despite the lack of a “clear verse” (*naṣṣ jalī*), the *tafsīr marwī*, transmitted interpretation, qualifies it as a distinct commandment.⁷⁵² Abraham also cautioned that “one must accurately consider [Maimonides’] statements before hurriedly and loudly raising doubts against him.”⁷⁵³ Had Daniel paid close attention, Abraham wrote, he would have noticed Maimonides’ remarks on another law derived from a “hint,” the prohibition against stealing a libation vessel. According to Maimonides, this prohibition does not qualify as an enumerated commandment because its violation does not incur capital punishment and it is not based on the *peshatei di-gera*.⁷⁵⁴ This particular defense of *Sefer ha-Miṣvot* supports the hypothesis, offered in Chapter Two, that the presence or absence of biblically imposed punishments helped Maimonides determine if a “derived” law was based on the *tafsīr marwī* and a distinct commandment or on a post-Sinaitic extrapolation.

⁷⁵¹ לכונה מסתכר'ג ברמז מן נץ ט'אהרה פי גיר ד'לך תצריח אלנאקלין פיה באנה מן ג'מלה מחוייבי מיתה violation of rabbinic law, Abraham wrote, cannot incur capital punishment. For *zāhir* as “manifest sense” in Maimonides’ writings, see Cohen, *Opening the Gates of Interpretation*, 93-96.

⁷⁵² On the term *naṣṣ jalī*, see above, n655. This also supports the suggestion that this prohibition constituted one of the “three [or] four” exceptions to Principle Two; see above, n661.

⁷⁵³ תתאמל תחריר אקאוילה ז"ל קבל אלמבאדרה ואלתהאפת ללתשכך עליה.

⁷⁵⁴ MS. Hunt. 185, 132a-132b; *Ma'aseh Nissim*, 8-9 (§1). Abraham used these lists similarly elsewhere; see MS. Hunt. 143b; *Ma'aseh Nissim*, 23 (§3).

Abraham also drew on other elements of his father’s system in his responses to Daniel’s queries. For example, he claimed that the presence of rabbinic debate (*ikhtilāf*) concerning the meaning of “*You shall rest from plowing and harvesting*” (Ex. 34:21) shows that the meaning of this verse is neither apparent (*zāhir*) nor transmitted (*manqūla*).⁷⁵⁵ He suggested that his father had quoted additional verses as the basis of this law in *Sefer ha-Miṣvot* because of the debate over the verse’s meaning; in this case, he wrote, Maimonides may have relied on the reading of this verse found in the *Mekhilta de-Rashbi*.⁷⁵⁶

Abraham’s use of Principle Two elsewhere in his responses to Daniel is of particular interest. In one case, he explained that his father omitted certain laws derived by *qiyās* from the enumeration of 613 because they are neither “explicit” (*mafṣūḥ*) nor labeled by the rabbis as “*guf torah*.”⁷⁵⁷ Daniel’s assertion that distinct laws should be counted in cases where the rabbis used the same verses to teach several laws led

⁷⁵⁵ Compare the similar statement that particular rules (*awḏā’*) pertaining to slaughter are matters of tradition (*naql*) that lack any debate (*khilāf*); MS. Hunt. 185, 203b; *Ma’aseh Nissim*, 97 (§10). Abraham claimed elsewhere that a matter of debate cannot be a Mosaic tradition; see *Teshuvot*, ed. Freimann, 96 (§78); and Elazar Hurvitz, “Ma’amar ‘al Odot Derashot Ḥazal le-Rabbeinu Avraham ben ha-Rambam: Sarid mi-tokh ha-Maqor ha-‘Aravi she-nitgalah be-genizat Qahir,” in *Joshua Finkel Festschrift*, eds. Sidney B. Hoenig and Leon D. Stitskin (New York: Yeshiva University Press, 1974), 150; repr. in idem, “Ma’amar ‘al Odot Derashot Ḥazal le-Rabbeinu Avraham ben ha-Rambam: Sarid min ha-Maqor be-‘Aravit-Yehudit mi-Genizat Qahir,” in *Seridim mi-Toratan shel Geonim ve-Rishonim mi-Genizat Qahir*, vol. 2 (New York: Yeshiva University Press, 1989); references will be to the earlier edition. On this manuscript of the *Ma’amar ‘al Odot Derashot Ḥazal*, see Moritz Steinschneider, *Die arabische Literatur der Juden* (Frankfurt, 1902), 221-22; and Cohen, “The Soteriology of R. Abraham Maimuni,” 35n91.

⁷⁵⁶ MS. Hunt. 185, 196b-197b; *Ma’aseh Nissim*, 89-90 (§9). On scriptural repetition, see Chapter Five. See *Mekhilta de-Rabbi Shimon ben Yoḥai*, ed. Epstein, 223 (see there, n11); and Menahem Kasher, *Ha-Rambam ve-ha-Mekhilta de-Rashbi* (New York, 1980), 86-88. On Maimonides’ view, see his *Mishnah ‘im Peirush*, ed. Kafih, 1:221-22 (mShev 1:1); and *Hilkhot Shemīṭah ve-Yovel*, 1:1; note the comments of Joseph Korkos there, cited in above, n435.

⁷⁵⁷ MS. Hunt. 185, 189a; *Ma’aseh Nissim*, 80 (§7). This use of Principle Two seems to comport with Maimonides’ presentation; see below, n1009.

Abraham to claim that his father's statements in Principle Two reaffirm the view that "a biblical verse does not leave the realm of its *peshat*" (bSab 63a etc.).⁷⁵⁸

Another important comment by Abraham was occasioned by Daniel's suggestion that the requirement to "*Slaughter ... as I have instructed you*" (Deut. 12:21) might imply that eating improperly slaughtered meat violates a positive commandment, given the rule that "a prohibition implied from a command constitutes a command (or, positive commandment)" (*lav ha-ba mi-khlal 'aseh, 'aseh*; bPes 41b etc.).⁷⁵⁹ Abraham rejected this suggestion, because the rabbis did not offer such a reading of this verse. At the same time, Abraham's admission that reasoning (*qiyās*) could mandate such a conclusion,⁷⁶⁰ might be read as rejecting the possibility of deriving laws from Scripture after the rabbinic period. (This would fly in the face of Maimonidean claims.⁷⁶¹)

Lastly, Abraham reported that while his father had originally asserted the rabbinic status (*de-rabbanan*) of the exchange of money to effectuate marriage, Maimonides later reconsidered this. Abraham reported that he possessed a corrected text of *Hilkhot Ishut*,

⁷⁵⁸ MS. Hunt. 185, 163b; *Ma'aseh Nissim*, 48 (§4). See below, n1245. This may relate to Abraham's claim that the enumeration consists primarily of express scriptural passages and what is "entailed by" them. Maimonides, however, appears to have allowed for the possibility that such rabbinic teachings may impart distinct commandments; see below, n1086.

⁷⁵⁹ See MS. Hunt. 185, 200b; *Ma'aseh Nissim*, 94 (§10). Daniel pointed out that although Maimonides did not list such a prohibition, he did list similar ones. On this rule, see *Encyclopedia Talmudit*, 35:289-314, s.v. *lav ha-ba mi-khlal 'aseh*. For Maimonides' discussion, see *Mishnah 'im Peirush*, ed. Kafih, 3:237 (mMak 3:1); he termed it a "principle" (*aṣl*) there, 5:95 (mZev 14:9), 5:204 (mHul 5:1), and in *Sefer ha-Miṣvot*, ed. Kafih, 108 (Pos. 92), 226 (Neg. 89), 263 (Neg. 172). Maimonides mentioned this rule a number of other times in *Sefer ha-Miṣvot* and the *Mishneh Torah*.

⁷⁶⁰ MS. Hunt. 185, 203a; *Ma'aseh Nissim*, 97 (§10).

⁷⁶¹ Namely, *Hilkhot Mamrim* 2:1; see Blidstein, *Samkhut u-Meri*, 79-91.

1:2, written in his father's own handwriting (*be-khtav yado*), which designated this mode of acquiring a wife as a mechanism of biblical status (*din torah*).⁷⁶²

Abraham Maimonides' Later Writings

Studies of Abraham Maimonides' approach to the Oral Torah have largely focused on his *Commentary on Genesis and Exodus*; less attention has been paid to his responsa and *Kifāya*. This section summarizes the conclusions of these earlier studies and seeks to fill this lacuna.

Abraham's *Commentary* contains no methodological discussion of the role that oral traditions play in biblical interpretation.⁷⁶³ Seeking to induce principles from this work, scholars have noted the author's "predilection for plain and simple exegesis" and his "thrust towards the plain sense of the text."⁷⁶⁴ Abraham also frequently evaluated

⁷⁶² MS. Hunt. 185, 115b-116b; *Birkat Avraham*, 62 (§44). Twersky, incorrectly, wrote that Abraham "maintained that a careless scribe was at fault here ... and his father never upheld such a view"; *Rabad of Posquières*, 136n16. Abraham evinced no knowledge of the relevant letter to Pinḥas *ha-dayan*; as noted in Maimonides, *Teshuvot ha-Rambam*, ed. A.H. Freimann (Jerusalem: Meqīsei Nirdamim, 1934), 162n17; see also idem, *Teshuvot*, ed. Blau, 2:633n21. He was apparently ignorant of other responsa penned by his father; see Mordechai Akiva Friedman, "Maḥloqet le-Sheim Shamayim," 261n69; and idem, "'Asarah Baṭlanim shebe-Veit ha-Keneset be-Mishnat ha-Rambam veba-Ra'avam," in *Mi-Birkat Moshe*, 2:813n129. Daniel and Abraham also debated the status of the prohibition against travelling on the Sabbath; see MS. Hunt. 185, 38a-40b, 206a-206b; *Birkat Avraham*, 19-21 (§12); *Ma'aseh Nissim*, 100-101 (§112). On Abraham's view, see Cohen, *Opening the Gates of Interpretation*, 390, citing Abraham Maimonides, *Peirush*, ed. Wiesenberg, 289 (Ex. 16:29). Maimonides and Samuel ben 'Eli, Daniel's teacher, debated this issue as well; see above, n387.

⁷⁶³ Ilan, "Hanaḥot Te'ologiyot," 58.

⁷⁶⁴ Abraham Maimonides, *The High Ways to Perfection of Abraham Maimonides*, vol. 1, ed. and trans. Samuel Rosenblatt (New York: Columbia University Press, 1927), 1:115; and Paul Fenton, "The Post-Maimonidean Schools of Exegesis in the East: Abraham Maimonides, the Pietists, Tanḥûm ha-Yərušalmi and the Yemenite school," in *Hebrew Bible/Old Testament: The History of Its Interpretation*, vol. 1, part 2: The Middle Ages, ed. Magne Saebø (Göttingen: Vandenhoeck & Ruprecht, 2000), 436. See similarly S.D. Goitein, "Abraham Maimonides and His Pietist Circle," in *Jewish Medieval and Renaissance Studies*, ed. Alexander Altmann (Cambridge: Harvard University Press, 1967), 148-49: "[Abraham's] explications of the Bible and the Talmud are so graceful, so lucid, so persuasive that one is almost convinced that his *derāsh* is *peshāṭ*, that his moralistic and pietist interpretation constitutes the literal meaning of the text." See also Yehoshafat Navo, "Peirusho shel R. Avraham ben ha-Rambam la-Torah,"

midrashim, both halakhic and aggadic, rejecting those that, in his words, reflect “neither the intent (*qaṣd*) of Scripture nor its purpose (*gharaḏahu*).”⁷⁶⁵ On the other hand, he was willing to accept those traditions that he deemed “authentic.” Regarding one *midrash* that, in his estimation, lacked “scriptural proof” (*dalīl naṣṣī*), Abraham cited the mishnaic statement: “if it is a tradition, we accept it, but if it is an inference, there is a rebuttal” (mYeb 8:3, mKer 3:9).⁷⁶⁶

Abraham, of course, professed allegiance to received tradition; in one case, he clarified the “*zāhir*” of “*Do not follow the majority to do wrong*” (Ex. 23:2), but proceeded to write that “the explanation of the tradition (*sharḥ al-naql*) [explains] otherwise – on it we depend (*wuqūfunā*) and rely.”⁷⁶⁷ Abraham also felt comfortable

Sinai 113 (1994): 233-35; Ilan, “Hanaḥot Te’ologiyot,” 58-64; and Ezra Labaton, “A Comprehensive Analysis of Rabenu Abraham Maimuni’s Biblical Commentary,” (PhD diss., Brandeis University, 2012), 244-55. Abraham, of course, was not averse to reading anthropomorphic verses against their apparent (*zāhir*) meaning; see, e.g., *Peirush*, ed. Wiesenberg, 5 (Gen. 1:26); and Labaton, “A Comprehensive Analysis,” 251, 252n670. On Abraham’s use of earlier commentators, particularly Abraham Ibn Ezra, see Navo, “Peirusho shel R. Avraham,” 252; and Fenton, “The Post-Maimonidean Schools,” 436.

⁷⁶⁵ ואין לא [יכן] קצד אלנן ולא גרציה; Abraham Maimonides, *Peirush*, ed. Wiesenberg, 89 (Gen. 28:22); mentioned in Eppenstein, *Abraham Maimuni*, 39n2. For treatment, see there, 39-40, 70; Abraham Maimonides, *High Ways*, ed. Rosenblatt, 1:115-19; Navo, “Peirusho shel R. Avraham,” 234-35; Amnon Bazak, “Peirusho shel R. Avraham ben ha-Rambam la-Torah,” in *Teshurah le-‘Amos: Asupat Mehqarim be-Farshanut ha-Miqra mugeshet le-‘Amos Hakham*, eds. Moshe Bar-Asher et al. (Alon Shvut: Tevunot, 2007), 117-18; and Labaton, “A Comprehensive Analysis,” 255-60. The terms *qaṣd* and *gharaḏ* in this sense appear throughout the *Commentary*. For a similar claim, see Abraham Maimonides, *Teshuvot*, ed. Freimann, 44-45 (§39). Compare the phrase “among the best explanations” (*min ghurrah al-tafāsīr*) used to describe rabbinic interpretations; idem, *The High Ways to Perfection of Abraham Maimonides*, vol. 2, ed. and trans. Samuel Rosenblatt (Baltimore: The Johns Hopkins Press, 1938), 2:348. This phrase appears in Maimonides, *Mishnah im Peirush*, ed. Kafih, 4:404 (intro. to mSan, chap. 8).

⁷⁶⁶ ואם הלכה נקבל ואם לדין יש תשובה; Abraham Maimonides, *Peirush*, ed. Wiesenberg, 223-25 (Ex. 2:1; see similarly there, 179 [Gen. 46:27]), concerning the *midrash* that Yokheved was born at the precise moment Jacob’s family entered Egypt; mentioned in Bazak, “Peirusho shel R. Avraham,” 118. Abraham also cited this phrase in *Peirush*, ed. Wiesenberg, 557 (Ex. 32:27), concerning the *midrash* that certain letters that were carved in the stone tablets of the Ten Commandments were miraculously supported (writing: (ואלנקאלון ז’ל אכבר); and *Sefer ha-Maspiq*, ed. Dana, 299: ואן כאן פשאטיה דקרא אן ד’לך מת’ל קולה בין אב; לבתו פאלאמור מנקולה מקבולה אם הלכה נקבל; see also below, n782.

⁷⁶⁷ לכן שרר אלנקל גיר ד’לך ומעה וקופנא ואליה אנתהאינא; Abraham Maimonides, *Peirush*, ed. Wiesenberg, 359 (Ex. 23:2); see Ilan, “Hanaḥot Te’ologiyot,” 64-65. On Ex. 23:2, see above, n576. He also wrote that the translation of *Targum Onqelos* is based on *manqūl*, transmitted material; see below, n792. Note the

contrasting Scripture's *peshat* or *zāhir* (literal or “plain” meaning) with the interpretation suggested by “tradition” (*naql*). Regarding “*You shall not steal*” (Ex. 20:13), for example, he explained, “the transmitters restrict (*yukhaššišūn*) this prohibition to the kidnapping of a Jew (see bSan 86a) ... but, nevertheless, a biblical verse does not leave the realm of its *peshat*.”⁷⁶⁸ Similar comments led two contemporary scholars to conclude that Abraham allowed for a “dual hermeneutic” of Scripture, accepting both a philological-contextual reading and a reading guided by received tradition.⁷⁶⁹

Scripture and Tradition in Abraham Maimonides' Kifāya and Responsa

Neither the responsa of Abraham Maimonides nor his *Kifāya* are preserved in their totality, and though the *Kifāya* predominantly treats ethical and pietistic subjects and only a fraction of its halakhic discussions are extant,⁷⁷⁰ what remains of these writings

comment that “the explanation of the translator (i.e., Onqelos) in this ... is built on derived interpretation or transmitted [material]; so too the interpretations of the Sages regarding it” (ושרח אלמתרגם פי דלך ופי אכת'ר) (הד'ה אלברכות מבני עלי תאויל [מסתנבט] או מנקול וכדלך שרוח אלחכמים ז'ל' פיהא Wiesenberg, 195 [Gen. 49:3]; see there, n16; noted in Labaton, “A Comprehensive Analysis,” 248.

⁷⁶⁸ פשטיה דקרא נהי ען כל סרקה ... ואלנאקלון ז'ל' יכ'צון אלנהי בגונב נפש מישראל ... ומע דלך אין מקרא יוצא מיד' פשוט; Abraham Maimonides, *Peirush*, ed. Wiesenberg, 219-21 (Ex. 20:13); noted in Labaton, “A Comprehensive Analysis,” 250.

⁷⁶⁹ Harris, *How do We Know This*, 292n51; and Cohen, *Opening the Gates of Interpretation*, 380n93, 390, 433n4, 445n3, 446n34, 467n29. According to both Harris and Cohen, this is closer to geonic and earlier Andalusian approaches than to Maimonides' approach. Both also focus on legal traditions; Abraham in fact accepted received tradition in non-halakhic areas as well (see, e.g., above, n766). See also Halivni, *Peshat and Derash*, 200-201n75. Cohen, *Opening the Gates of Interpretation*, 390n39 (see also 401n48), argued that the fact that Abraham did not define *peshat* as the *zāhir* sense of Scripture as rendered by the halakhic tradition (i.e., Cohen's understanding of Maimonides' use of the term *peshat*) led Abraham to use the words *peshat* and *zāhir* interchangeably; see above, n444.

⁷⁷⁰ Goitein, “Abraham Maimonides and His Pietist Circle,” 147, estimated the size of the *Kifāya* at 2500 pages of Judeo-Arabic text, a claim repeated in Daniel Frank, “Review of Nissim Dana, *Rabbi Abraham Ben Moshe Ben Maimon: Sefer ha-Maspik le-'Ovdey ha-Shem*,” *JJS* 40, no. 2 (1989): 254; and Paul Fenton, “En marge du *Kitāb Kifāyat al-'Ābidīn* «La provision suffisante des serviteurs» de rabbi Abraham ben Moïse Maïmonide,” *REJ* 150, no. 3-4 (1991): 386. Large parts of two of the original ten sections of this work survive, published by Rosenblatt and Dana; Paul Fenton, “Dana's Edition of Abraham Maimuni's *Kifāyat al-'Ābidīn*,” *JQR* 82, no. 1-2 (1991): 194. Several pieces of other sections survive, the best known is a translation of the so-called *Ma'amar 'al Odot Derashot Ḥazal*; on this section, see Cohen,

include numerous discussions of the Oral Torah. Surviving texts provide at least a tentative picture of Abraham's views of revelation and the development of Jewish law.

In these texts, Abraham repeated conventional Rabbanite statements affirming that extra-scriptural traditions determines the meaning of scriptural passages. Clear statements to this effect appear in two responsa, written to the same correspondent, regarding his father's *Sefer ha-Miṣvot*.⁷⁷¹ The first concerns the charge "Walk in His ways" (Deut. 28:9), which Maimonides had counted as a distinct commandment. The correspondent had suggested that this should have been excluded from the enumeration by Maimonides' own Principle Four, which precludes broad (‘āmm; or, unrestricted) verses from the count of 613.⁷⁷² In his programmatic response, Abraham invoked what he called the:

Great principle of the law (*sharī‘a*), through which we distinguish ourselves, the community of the Rabbanites, from the position (or, school; *madhhab*) of the Qaraites.⁷⁷³ This principle is that we do not rely on what the verse alone

"The Soteriology of R. Abraham Maimuni," 35-36; Hurvitz, "Ma'amar 'al Odot Derashot Ḥazal," 139-40; and Ya'akov Elbaum, *Le-Havin Divrei Ḥakhamim: Mivḥar Divrei Mavo la-Aggadah vela-Midrash, mi-shel Ḥakhmei Yemei ha-Beinayim* (Jerusalem: Mosad Bialik, 2000), 146-48. I also utilize Avraham Harkavy, *Ḥadashim Gam Yeshanim* (Jerusalem: Karmiel, 1970), 202-203; Yeḥezkel David, "Qeṭa'im Ḥadashim mi-Sefer 'ha-Maspiq le-'Ovdei ha-Shem' le-R. Avraham ben ha-Rambam," *Sinai* 132 (2003): 3-38; Ḥayim Sabbato, "Qeṭa' Ḥadash mi-Sefer 'ha-Maspiq le-'Ovdei ha-Shem' le-R. Avraham ben ha-Rambam," *Ma'aliyot* 25 (2005): 22-30; idem, "Qeṭa' be-'Inyanei Hashavat Aveidah mi-Sefer *ha-Maspiq le-'Ovdei ha-Shem* shel Rabbi Avraham ben ha-Rambam," in *Mi-Birkat Moshe*, 1:3-11; and Paul Fenton, "Torat ha-Devequt be-Mishnato shel R. Avraham ben ha-Rambam: Qeṭa'im mi-tokh ha-Heleq ha-Avud shel *ha-Maspiq le-'Ovdei ha-Shem*," *Da'at* 50-52 (2003): 107-119 (which only includes a translation). Friedman estimated that the Genizah contains over 60 unpublished responsa from Abraham's pen; "Responsa of R. Abraham Maimonides," 31; and idem, "Al Shut ha-Ra'avam u-Vnei Doro she-min ha-Genizah," *Bar Ilan Annual* 26-27 (1995): 260.

⁷⁷¹ Abraham praised the author of these questions; see *Teshuvot*, ed. Freimann, xiv, 72.

⁷⁷² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 18-19 (Prin. Four), 62-63 (Pos. 8); and Abraham Maimonides, *Teshuvot*, ed. Freimann, 65-66 (§63). On Principle Four, see above, n649.

⁷⁷³ This reference to Qaraites appears incongruous, as there is no evidence that his interlocutor had Qaraite inclinations.

(*mujarrad al-naṣṣ*) indicates, but on what the verse and tradition, together, indicate.⁷⁷⁴

Abraham explained that even if the “apparent meaning” (*zāhirihi*) of “Walk in His ways” were an exhortation that pertains to the entire law, “it would then be incumbent upon us to believe” that it is a “restricted command” (*amr khāṣṣ*), because the “tradition clarified” that the verse ordains specific deeds, i.e., the imitation of God’s traits.⁷⁷⁵ In the other responsum, Abraham repeated the claim that Rabbanites do not “draw inferences” (*lā nastadill*) solely from the “unaccompanied verse,” but from both Scripture and tradition together. Abraham described this rule as “the sound principle ... in legal matters” and a “pillar upon which everything depends and a peg upon which everything hangs.”⁷⁷⁶

Like his father, Abraham maintained that hints to unwritten tradition could be found in Scripture.⁷⁷⁷ He asserted, for example, that the singular word *ot* (sign) for the arm phylactery and the plural *ṭotafot* (“frontlets”)⁷⁷⁸ for the head phylactery (Ex. 13:16) shows that the former contains one compartment and the latter, multiple compartments,

⁷⁷⁴ אצל עט'ים פי אלשריעה ובה ננפצל נחן ג'מאעה אלרבאנין מן מד'הב אלקראיין וד'לך אלאצל הו אננא לא נתעמד עלי *עלי* *mujarrad*, see below, n1142. on the term *mujarrad*, see below, n1142.

⁷⁷⁵ פלו אן הד'א אלנץ ידל ט'אהרה קטעא עלי אן אלקצד בה אמתת'אל ג'מלה אלשריעה ללזמנא אן נעתקד פיה אנה אמר *כ'אץ למא בין אלנקל פיה מה הוא ניקרא חנון וכו'*; Abraham Maimonides, *Teshuvot*, ed. Freimann, 66-67 (§63). He clarified that this verse ordains imitating God in “matters that pertain to character, as the tradition made clear” (אשיא מתעלקה באכ'לאק כמה צרה אלנקל). On the *midrash* cited here, see there, 67n13; and Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 37n18. This responsum is treated briefly in Cohen, *Opening the Gates of Interpretation*, 343n168; and Friedberg, *Crafting the 613 Commandments*, 155n137; see also there, 294n36. There is extensive literature on Maimonides’ understanding of this verse, see Howard Kreisel, “*Imitatio Dei* in Maimonides’ *Guide of the Perplexed*,” *AJS Review* 19, no. 2 (1994): 169-211; and the literature cited there. On *‘amm* and *khāṣṣ* in Islamic legal literature, see above, n221; for use in geonic-era literature, see above, nn280, 282, 289; see also above, n649.

⁷⁷⁶ אנא לא נסתדל במא ידל עליה מג'רד אלנץ בל [ב]מא ידל אלנץ ואלנקל ג'מיעא פאן הד'א אלאצל אלצחיה הו אלד'י *תרתפע בה ג'ל אלשכך בל כלהא אלטאריה פי אלנצוץ פלא תנסאה לאנה פי אלפקה עמוד שהכל נשען עליו ויתד שהכל תלוי בו* (the printed text reads *כמה*); Abraham Maimonides, *Teshuvot*, ed. Freimann, 72 (§65). On the place of tradition, note also David, “Qeṭa’im Ḥadashim,” 19 (discussing the signs of kosher and non-kosher animals).

⁷⁷⁷ For Maimonides’ approach, see above, nn538, 544, 633.

⁷⁷⁸ The meaning of this word is uncertain; see Yehudah B. Cohn, *Tangled Up in Text: Tefillin and the Ancient World* (Providence: Brown Judaic Studies, 2008), 38 esp. nn34-37.

“as the tradition explained” (*ka-mā bayyana al-naql*).⁷⁷⁹ Yet in the *Kifāya*, as in the *Commentary*, Abraham recognized that some traditions contradict Scripture’s *zāhir* or *peshat*.⁷⁸⁰ For this reason, like his father, Abraham wrote that a sage’s ability to release vows is based solely on “the sound tradition” (*al-naql al-ṣaḥīḥ*); he described the scriptural support (*asmakhta*) for this law as “very weak” (*ḏa ‘īf bi-marra*).⁷⁸¹

In one noteworthy passage, Abraham asserted that a law may follow Scripture’s “literal” meaning, notwithstanding received tradition. Noting that the “*zāhir*” meaning of the prohibition against overcharging (*ona’ah*; Lev.25:14) is not limited to one type of property, he observed that “the tradition explained and restricted” this prohibition (*al-naql sharaḥahu wa-khaṣṣaḥahu*) to moveable property (see mBM 4:9). In this case, he cautioned his readers not to rely solely on the rabbinic reading (*drash*), but to consider Scripture’s *zāhir* meaning and avoid any sort of overcharging. He wrote, “if it is a tradition, we accept it,”⁷⁸² but also cited the adage “a biblical verse does not leave the realm of its *peshat*,” arguing that one cannot overlook a verse’s *zāhir* meaning, despite the “transmitted or derived interpretations” (*tafāsīr manqūla aw mustakhraja*).⁷⁸³

⁷⁷⁹ Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 261; see also, e.g., 260, 269, 273, 297, 299.

⁷⁸⁰ Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 262, 299, 302; see above, nn768-767.

⁷⁸¹ והד'א אמר מנקול ואסנאדה ללנץ צ'עייף במרה אעני לא יחל דברו הוא אינו מוחל אבל אחרים מוחלין לו הד'א אסמכתא וצ'עייפה וחיקקה אלאמר מא נצתה אלמשנה התר נדרים ושבועות פורחין באויר ואין להם על מה שיסמכו; Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 303. See Blau, *Dictionary*, 655, s.v. מָרָה. For similar usage of the term *asmakhta*; see there, 299; idem, *High Ways*, ed. Rosenblatt, 1:176 (describing an aggadic tradition); and idem, *Peirush*, ed. Wiesenberg, 347 (Ex. 22:4). At least one usage of this term may denote a matter that is not received tradition; there, 263 (Ex. 12:17). For Maimonides’ view, see above, n674.

⁷⁸² Compare above, n766.

⁷⁸³ Harkavy, *Hadashim Gam Yeshanim*, 202-203. Harkavy (204) inferred from this claim that Abraham felt that the law should follow Scripture’s *peshat*, irrespective of the Oral Torah. Rejecting this interpretation, Carmiel Cohen, “Al Odot Sefer ‘ha-Maspiq le-‘Ovdei ha-Shem’,” *Ma‘aliyot* 25 (2005): 33n11, noted Abraham’s frequent deference to rabbinic tradition. While this is certainly correct, Cohen did not fully account for this passage. On the term *derashot*, see below, n793.

The Scope of Revelation and the Role of the Rabbis

Abraham's understanding of the scope of revelation and of the role of rabbinic legal activity must be inferred from passing comments in unrelated discussions. Several times in the *Kifāya*, Abraham listed the elements that, in his view, constitute authoritative legal sources.⁷⁸⁴ He occasionally cited the familiar division between written Scripture and its transmitted interpretation;⁷⁸⁵ elsewhere, he was more expansive, writing, twice, that “the text of the Pentateuch, the texts of the prophets, ... and the statements of the sages ... prove” a particular argument,⁷⁸⁶ and referring in another place to “what the Pentateuch commanded and [what] the practices (*siyar*) of the prophets and traditions of the transmitters (*āthār al-naqala*) prove.”⁷⁸⁷ In another passage, Abraham added another element, writing, “there is no controversy regarding this matter because *qiyās* (here: reasoning) demands it, the express passages (*nuṣūṣ*) of the sages obligate it, and the express passages of the prophets – nay, the express passages of the Pentateuch – prove it.”⁷⁸⁸ Proofs from post-Mosaic prophets constitute the most unusual component in these

⁷⁸⁴ This paragraph benefits from the argument in Lowry, “Does Shāfi’ī Have a Theory of ‘Four Sources’ of Law?” 31-33. Compare the statements quoted above, n748.

⁷⁸⁵ E.g., וואדא תאמל שריעה בן סורר ומורה ומה ורד פי נצחא ומה תצמנה אלתפסיר פי נקלהא, Abraham Maimonides, *High Ways*, ed. Rosenblatt, 2:218.

⁷⁸⁶ פידל עלי דלך איצא נץ אלתורה ונצוץ אלאנביא ע' אלס' וואקאויל אלחכמים ז"ל, Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 139, 141.

⁷⁸⁷ ומה אמרת בה אלתורה ודלת עליה סיר אלאנביא ואתאר אלנקלה על' אלס', Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 155. Similarly: פי נץ אלתורה אלד' עליה בנית; there, 99 (Joseph Lowry suggested that בינאה here should perhaps be בניה). Abraham appears – at least rhetorically – to distinguish between *āthār* and *naql* (tradition); הדה אלבריתא – at least rhetorically – to distinguish between *āthār* and *naql* (tradition); הדה ברכת כהנים אלמאמור בהא וקתהא; עלי מא שהד בה אלנקל ותצמנה אלתאר' ודל עליה אלנץ; there, 211. For the equation of prophetic and rabbinic *āthār*, see there, 104.

⁷⁸⁸ לא נזאע פיה לאן אלקיאס יקצ'יה ונצוץ אלחכמים ז"ל תוג'בה ונצוץ אלאנביא בל נצוץ אלתורה תדל עליה, Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 168. I discuss Abraham's use of the term *qiyās* below. Similarly: פלאנה מכאלף לנץ אלאנביא ונץ אלחכמים (there, 133); and ממה יסתשהד עליה בנץ ולא בקיאס (there, 94).

lists, as Rabbanites did not usually derive law from the Prophets or Writings.⁷⁸⁹ One recent study has argued that Abraham turned to prophetic dictates because they – more than the Pentateuch or rabbinic literature – corroborated his innovative, pietistic practices.⁷⁹⁰

Passages from surviving texts of the *Kifāya* do not define the scope of Sinaitic, extra-scriptural tradition. The *Kifāya* uses terms like *naql* (tradition) and *tafsīr* (interpretation) to mark what the author regarded as Sinaitic traditions.⁷⁹¹ Of particular interest is Abraham’s reliance on *Targum Onqelos*, which in his view, and in that of his father, contains numerous Sinaitic traditions.⁷⁹²

Abraham offered several tools to interpret rabbinic traditions that he labeled “*derashot*” in the so-called *Ma’amar ‘al Odot Derashot Hazal* (Statement Concerning

⁷⁸⁹ For talmudic and Rabbanite views, see Urbach, “Halakhah u-Nevu’ah,” 12-21 (compare, however, there, 8n65, with Shweke, “Luhot ha-Even,” 350-51); and Yiṣḥaq Gilat, “Lo ba-Shamayim Hi,” in *Yad le-Gilat: Asupat Ma’amarim shel Yiṣḥaq Dov Gilat*, eds. Israel Ta-Shma and Israel Gilat (Jerusalem: Bialik, 2002), 140-44. For Maimonides’ view, see above, nn455, 506, 533, 538, 567, 577, 596, 612. For Qaraite views, see Klar, *Mehqarim ve-‘Iyunim*, 303-304; Aharon Dotan, “Ha-Omnam haya Ben-Asher Qara’i?” *Sinai* 41 (1957): 287-88; Assaf, *Tequfat ha-Geonim ve-Sifrutah*, 121; Lasker “Maimonides’ Influence on Karaite Theories of Prophecy and Law,” 100n4, 106-113; idem, “Hashpa’at ha-Qara’ut ‘al ha-Rambam,” 155n53; and Yoram Erder and Meira Polliack, “Ha-Qanon ha-Qara’i be-Me’ot ha-teshi’it ‘ad ha-aḥat ‘esreh le-Sefirat ha-Noṣrim,” *Te’udah* 23 (2009): 197-210.

⁷⁹⁰ Elisha Russ-Fishbane, *Judaism, Sufism, and the Pietists of Medieval Egypt: A Study of Abraham Maimonides and His Times* (Oxford: Oxford University Press, 2015), 79.

⁷⁹¹ See e.g., David, “Qeṭa’im Ḥadashim,” 14 lines 7-8 (based on bRH 17a, cited in Maimonides’ *Hilkhot Teshuvah*, 3:6), 15 lines 14-15 (based on bSan 59b); and Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 218 (based on bSoṭ 38a), 274 (based on bRH 17b?). See also idem, *Teshuvot*, ed. Freimann, 41 (§34). Abraham even reported that the geonim transmit a tradition (*yanqulūn*), which may or may not be Sinaitic, about the status of a particular food; David, “Qeṭa’im Ḥadashim,” 19 lines 7-8. Maimonides’ *Hilkhot Ma’akhalot Asurot*, 1:19, was undoubtedly the source for this claim (אמרו הגאונים שמסורת בדיהם).

⁷⁹² See, e.g., Abraham Maimonides, ed. Rosenblatt, *High Ways*, 2:52, 2:390. Abraham relied on *Targum Onqelos* extensively in his *Commentary*; see above, n767. On Maimonides’ use of *Onqelos*, see above, n674. He appears to use the phrase “by way of interpretation” (*fī sharḥ*), like his father, to denote Sinaitic tradition; see Abraham Maimonides, ed. Rosenblatt, *High Ways*, 1:174, 1:176, 2:42, 2:348; idem, *Sefer ha-Maspiq*, ed. Dana, 174; idem, *Teshuvot*, ed. Freimann, 131 (§85), 139 (§95); Sabbato, “Qeṭa’ Ḥadash,” 5; idem, “Qeṭa’ be-‘Inyanei Hashavat Avedah,” 28; and David, “Qeṭa’im Ḥadashim,” 12 line 13. This phrase also appears throughout his *Commentary*.

Midrash of the Rabbis).⁷⁹³ Abraham described many *derashot* as “poetical conceits” (*nawādir al-shi‘rīya*),⁷⁹⁴ and asserted that the authors of such *midrashim* would admit that their creations did not relay the “true” meaning of Scripture. As evidence, he cited the adage “Scripture stands alone and *midrash* stands alone” (*miqra le-ḥud u-midrash le-ḥud*). (Though he ascribed this to the rabbis, this saying does not appear in surviving rabbinic literature.⁷⁹⁵) Abraham also warned readers not to assume that all of “the interpretation of the verses” (*sharḥ al-nuṣūṣ*) are matters of tradition (*naql*); this would be akin to the error of those who assume that “just as the principles of the law and the traditions are transmitted, so too all of their [i.e., the rabbis] statements are transmitted.” He explained that the comments made by rabbinic interpretations, both legal and non-legal, addressed Scripture from many subtle perspectives: “[Regarding] their interpretations of verses that are not connected (*muta‘alliqa*) to the law (*fiqh*) and the rules (*aḥkām*) – some of them are in the form of deduction (*istinbāṭ*) and weighing alternatives (*tarjīḥ*), and some of them are in the form of rhetorical flourish (*tanaddur*) and juristic preference (*istiḥsān*).”⁷⁹⁶

⁷⁹³ This text is primarily preserved in a medieval Hebrew translation, which the anonymous translator reported was part of the *Kifāya*. A large part of the Judeo-Arabic original survives; see above, n755. The term *derashot* has a narrow denotation in Maimonides’ writings, see above, n624.

⁷⁹⁴ In *Guide*, III:43, upon which Abraham based these comments, Maimonides explained that some people consider *midrashim* to have the status of “poetical conceits” (עלי צורה אלנואדר אלשעריה); *Dalālat al-Ḥā’irīn*, eds. Munk and Joel, 419; translation follows *The Guide of the Perplexed*, trans. Pines, 573.

⁷⁹⁵ Hurvitz, “Ma’amar ‘al Odot Derashot Ḥazal,” 149 lines 67-70. Hurvitz, 159n70, cited a similar phrase in bHul 137b and b’AZ 45b; see however Shraga Abramson, *Mi-pi Ba’alei Leshonot* (Jerusalem: Mosad ha-Rav Kook, 1988), 238. The text Abramson cited now appears in Kafih, *Hameish Megillot*, 127.

⁷⁹⁶ ולא חט’ן אן כל קול יקולה ז’ל פי שרח אלנצוץ הו נקל באידיהם כמא יט’ן ג’מאעה לא יצלוא לאלתחריר אן כמא אצול אלפקה ואלרואיאת מנקולה כד’לך כל אקאוילהם ז’ל מנקולה בל אעלם אן שרוחהם ללנצוץ אלגיר מתעלקה באלפקה ואלאחכאם ובעצ’הא עלי חכם אלסתנבאט ואלתרגי’ח ובעצ’הא עלי חכם אלתנדר ואלאסתחטאן Hurvitz, “Ma’amar ‘al Odot Derashot Ḥazal,” 149-50 lines 76-83. It is difficult to know how far to take this implied affirmation of the divine basis of all extra-scriptural legal traditions.

Singling out a prototypical example of a non-revealed interpretation, the rabbinic debate concerning the content of what “*Jethro heard*” (Ex. 18:1), Abraham asserted that the very existence of disagreement demonstrates that the rabbis’ suggestions could not have been received tradition (*naql*).⁷⁹⁷

Passing remarks in the *Kifāya* also affirm Abraham’s conviction that humans possess the authority to interpret revelation. In using words like *qiyās* (reasoning) and *istidlāl* (drawing inferences) to characterize rabbinic activity, Abraham implied that the rabbis had derived law by means of their intellects.⁷⁹⁸ His equation of a *gezeirah shavah* with *qiyās* in one non-legal passage suggests that he may have regarded some, or all, such derivations as post-Sinaitic.⁷⁹⁹ Abraham also unabashedly described the rabbis as the source of particular laws,⁸⁰⁰ and he used the phrase (*mi-*)*divrei sofrim* (words or matters of the scribes) to describe rabbinic enactments.⁸⁰¹

Post-Talmudic Legal Development

Abraham frequently considered post-talmudic legal development in his responsa and in the *Kifāya*. In several responsa, he utilized the terms *uṣūl*, principles or roots, and

⁷⁹⁷ Hurvitz, “Ma’amar ‘al Odot Derashot Ḥazal,” 150 lines 86-94; for rabbinic sources, see there, 161n86. The last claim builds on Maimonidean arguments; see above, nn414, 417, 537.

⁷⁹⁸ For *qiyās*, see e.g., Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 92, 190; for *istidlāl*, there, 65, 118, 318; for *istimdād*, there, 110, 317 (for geonic *istimdād*, there, 137); for *istinbāt*, there, 190.

⁷⁹⁹ Hurvitz, “Ma’amar ‘al Odot Derashot Ḥazal,” 149 lines 51-52. Compare above, n697.

⁸⁰⁰ E.g., Abraham Maimonides, *High Ways*, ed. Rosenblatt, 2:116, 2:162, 2:352.

⁸⁰¹ E.g., Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 83, 227, 234, 271; idem, *High Ways*, ed. Rosenblatt, 2:358; and idem, *Teshuvot*, ed. Freimann, 4, 8. Like his father, Abraham argued that despite the fact that the Talmud identifies a scriptural source for the requirement to recite one hundred blessings a day, this is a rabbinic obligation; *Sefer ha-Maspiq*, ed. Dana, 247; see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9 (Prin. One); *Hilkhot Tefillah*, 7:14.

furū’, details or branches, to describe the relationship of texts and their interpretation.⁸⁰²

Thus, he wrote:

The judge (*ḥākim*) who only follows what is written (*masṭūr*) and explicit (*manṣūṣ*) in his rulings is deficient and weak. [Acting] accordingly, he abolishes their [i.e., the rabbis’] statement “a judge (*dayan*) only has what his eyes see” (bSan 6b *inter alia*.). The matter is not like this. Rather, the written matters are the principle (*aṣl*), and it behooves the judge (*ḥākim*) or jurisconsult (*mufṭī*) [treating] them to exercise discretion (*yataṣarraḥ*), in accordance with each and every case, and to compare (*yaqīs*) the law to its equivalent, and to bring forth details (*yuntij furū*) from these principles.⁸⁰³

In another context, Abraham described rabbinic statements as “the principle from which all later [jurists] derive (*istamadd*) after them.”⁸⁰⁴

What may be Abraham’s most important remarks on post-talmudic legal development appear in his attempts to preempt challenges to one of his pietistic reforms, the increased use of prostration in prayer.⁸⁰⁵ Given the staunch opposition to Abraham’s

⁸⁰² On these terms, see below, n899.

⁸⁰³ אלחאכם מתי כאן לא יתבע פי אחכאמה אלא אלמסטור ואלמנצון פקט עגז' וכל ובחסב ד'לך יסקט קולהם אין לדיין אלא מה שעניו רואות וליס אלאמר כד'לך בל אלאמור אלמסטורה הי אלאצל וינבגי ללחאכם או אלמפתי אן יתצרף פיהא בחסב ואקעה ויאקעה ויקיס אלחכם לנט'ירה וינתג' פרוע מן תלך אלאצול; Abraham Maimonides, *Teshuvot*, ed. Freimann, 96 (§78); see the lengthy deployment of *uṣūl* and *furū* in that responsum, 98-101. Maimonides cited this adage in *Hilkhot Sanhedrin*, 23:9; and *Teshuvot*, ed. Blau, 1:1 (§1), 2:640 (§365); see also *Hilkhot She'eilah u-Fiqadon*, 6:4 (ואין לו לדיין אלא מה שדעתו סומכת עליו).

⁸⁰⁴ ויקצד אלשוואהד מן קול רבותינו ז"ל אלתי הי אלאצל אלד'י אסתמד מנה כל מתאכר בעדהם; Abraham Maimonides, *Teshuvot*, ed. Freimann, 115 (§82); similar statements appear there, 96 (§78), 172 (§104); though the editors noted that the text of the relevant manuscript is unclear). On the first of these responsa, see Friedman, “Responsa of R. Abraham Maimonides,” 35-40; idem, “Al Shut ha-Ra'avam,” 261-62; and idem, “Masa u-Matan bein Ḥakham mi-Teiman le-R. Avraham ben ha-Rambam 'al Kesef ha-Ketubah ve'al Samkhut ha-Masoret,” *Te'udah* 14 (2008): 139-65.

⁸⁰⁵ On Abraham Maimonides’ prayer reforms, see Naphtali Wieder, *Hashpa'ot Islamiyot 'al ha-Pulḥan ha-Yehudi* (Oxford: Sifriyat Mizraḥ u-Ma'arav, 1947), passim; Goitein, “Abraham Maimonides and His Pietist Circle,” 162-64; Friedman, “Abraham Maimuni’s Prayer Reforms,” 139-54; idem, “Maḥloqet le-Sheim Shamayim,” 245-98; Elisha Russ-Fishbane, “The Maimonidean Legacy in the East: A Study of Father and Son,” *JQR* 102, no. 2 (2012): 190-223; and idem, *Judaism, Sufism, and the Pietists of Medieval Egypt*, 158-84. On bowing specifically, see also Y. Tzvi Langermann, “From Private Devotion to Communal Prayer New Light on Abraham Maimonides’ Synagogue Reforms,” *Ginzei Qedem* 1 (2005): 31-49.

pietistic program, it is unlikely that this was a theoretical exercise.⁸⁰⁶ Abraham claimed that he was simply restoring biblical and rabbinic practice, but his opponents charged him with imitating contemporary Muslims, in violation of the prohibition against imitating gentiles (Lev. 20:23).⁸⁰⁷

The first charge that Abraham anticipated was that his proposed innovations violated the mishnaic (mPes 4:1) exhortation to refrain from observing customs⁸⁰⁸ that are at variance with local practice lest disputes arise. The obligation to maintain accepted practice, he suggested, might be particularly acute because earlier scholars had tacitly endorsed the status quo by not opposing it.⁸⁰⁹ Abraham sought to pre-empt such a charge in two ways. In the first (echoed in the [lost] Introduction to the *Kifāya*), he argued that there is no obligation to uphold accepted practice in the face of evidence proving its deficiency, even if the practice is widespread or ancient. He explained that later scholars,

⁸⁰⁶ In addition to the sources in the previous and next notes, see S.D. Goitein, "A Treatise in Defence of the Pietists by Abraham Maimonides," *JJS* 16, no. 3-4 (1965): 108-114; idem, "New Documents from the Cairo Geniza," in *Homenaje a Millas-Vallicrosa*, ed. Roberto Almagià (Barcelona: Consejo Superior de Investigaciones Científicas, 1954), 1:707-713; Cohen, "The Soteriology of R. Abraham Maimuni," 76-78; Obadiah ben Abraham Maimonides, *The Treatise of the Pool* (al-Maqāla al-Ḥawḍiyya), ed. Paul Fenton (London: Octagon Press, 1981), 12-19; Paul Fenton, *Deux traités de mystique juive* (Paris: Lagrasse, 1987), 81-89; idem, "Tefillah ba'ad ha-Rashut u-Reshut ba'ad ha-Tefillah: Zuṭot min ha-Genizah," *Mi-Mizrah umi-Ma'arav: Qoveš Mehqarim be-Toldot ha-Yehudim be-Mizrah uve-Maghreb* 4 (1984): 17-21; Mordechai Akiva Friedman, "Hitnagdut le-Tefillah ule-Minhagei Tefillah Ereš-Yisraeliyim be-She'elot u-Teshuvot she-min ha-Genizah," in *Keneset Ezra: Sifrut ve-Ḥayim be-Veit ha-Keneset, Asupat Ma'amarim Mugeset le-Ezra Fleischer*, eds. Shulamit Elizur et al. (Jerusalem: Yad Ben-Zvi, 1994), 71-85; and idem, "Abraham Maimonides on His Leadership," 500-510. See also below, n809.

⁸⁰⁷ On Abraham's response to this charge, see Wieder, *Hashpa'ot Islamiyot*, 55-57; Cohen "The Soteriology of R. Abraham Maimuni," 85-86; Paul Fenton, "Deux écoles piétistes: les *hasidei Ashkenaz* et les soufis juifs d'Égypte," in *La société juive à travers l'histoire*, ed. Shmuel Trigano (Paris: Fayard, 1992), 221; idem, "Abraham Maimonides (1186-1237): Founding a Mystical Dynasty," in *Jewish Mystical Leaders and Leadership in the 13th Century*, ed. Moshe Idel (Northvale, NJ: Jason Aronson, 1998), 151; and Russ-Fishbane, *Judaism, Sufism, and the Pietists of Medieval Egypt*, 76-85.

⁸⁰⁸ He used the Hebrew *minhag* and the Arabic *'āda* (and their plurals) interchangeably to denote "custom."

⁸⁰⁹ Both of these claims also appear in R. Joseph *rosh ha-seder's* responsum regarding the attempt on the part of Babylonian Rabbanites to alter the practices of the Palestinian Rabbanite community in Fustāṭ; see Friedman, "Hitnagdut le-Tefillah," 88 line 9, 89 line 2.

at times, clarified matters that were opaque to earlier ones by “improving what had not been improved and deriving (*yastanbiṭ*) what had not been derived, because the earlier ones were engaged in other matters.”⁸¹⁰ In Abraham’s view, this explains why all accept the post-talmudic principle that the law follows later authorities (*hilkheta ke-batrai*), notwithstanding the talmudic statement (bYom 9b) “the fingernails of the earlier ones are larger than the stomachs of the later ones.”⁸¹¹ This, he wrote, is not due to the perfection (*kamāl*) of later ones but due to the fact that later authorities “examine (*yanzuru fī*) the statements of the earlier ones, build upon them, take from them, and bring forth (*yuntij*) conclusions according to the rules of reasoning (*qawānīn al-qiyās*).”⁸¹² Abraham made a similar point in the first of his seven preambles to the *Kifāya* (now lost), which addressed the development of Jewish law. He argued, there, that later generations may be superior to earlier ones in certain respects and, for this reason, might be qualified to alter particular religious practices.⁸¹³

Abraham thus argued that it would be illogical to reject a novel legal opinion solely because it was not held by earlier generations. Indeed, he noted, the history of post-talmudic legal discourse proves this: Later geonim challenged earlier geonim, Alfasi challenged his predecessors Hayya Gaon and Nissim of Qayrawān, and Ibn Migash

⁸¹⁰ ויתפרג לתנקהי מא למ ינקחה ויסתנבט מא למ יסתנבטה ד'אך אלמתקדם לאשתגאלה בסואה.

⁸¹¹ גדול צפרנן שלראשונים יתר מכריסן שלאחרונים; Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 177. Most manuscripts of bYom 9b have “better” (*tohav*) rather than larger (*gadol*); MS. Vatican 134 has *gedolah*. On this post-talmudic principle, see Stampfer, “Hilkheta ke-Batrai,” 417-25; compare above, n265.

⁸¹² אלמתאכ'ר ינט'ר פי אקאויל אלמתקדמין ויבני עליה ויאכ'ד' מנהא וינתג' פיהא בקואנין אלקיאס נתאיג'; Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 176-77.

⁸¹³ See Abraham’s discussion of this preamble in *Sefer ha-Maspiq*, ed. Dana, 177, 183. For an outline of the contents of the *Kifāya*, see Cohen, “The Soteriology of R. Abraham Maimuni,” 89-96, 33-40; and Fenton, “Dana’s Edition,” 197-99.

challenged his teacher Alfasi. And though Maimonides called these figures (Alfasi and Ibn Migash?⁸¹⁴) “my teachers” (*rabbotai*) in the *Mishneh Torah*, he disagreed with them in a number of places.⁸¹⁵ Abraham insisted that scholars, unlike ignoramuses, recognize that such disagreements do not constitute censure (*intiḳād*), but are the expected outcome of intellectual discourse.⁸¹⁶

The other way in which Abraham sought to pre-empt criticisms of his innovations was by narrowing the scope of practices covered by the mishnaic injunction cited above. According to Abraham, the exhortation to uphold local custom applies exclusively to customs that lack either a textual or logical basis, to customs that *qiyās* ([textual] reasoning) neither supports nor rejects, and to customs that are based on local business practice.⁸¹⁷ In such cases, he explained, “custom overrides (lit., abolishes) law” (*minhag mevaḥel halakhah*; jYeb 12:1 [12c]; jBM 7:1 [11b]). Abraham asserted, however, that accepted practice has no say regarding matters that are “religiously mandated” (*wājiba fī al-dīn*). He did not offer a detailed definition of this last category, but implied that either text (*naṣṣ*) or reasoning (*qiyās*) might impose obligations that would result in the overturning of custom by law.⁸¹⁸

⁸¹⁴ The referent of the phrase “these figures” is not entirely clear.

⁸¹⁵ For disagreements with “*rabbotai*,” see *Hilkhot Geirushin*, 9:31; *Hilkhot Mekhirah*, 29:17; *Hilkhot Zekhiyah u-Matanah*, 3:8; *Hilkhot Shluḥin ve-Shutafin*, 6:4-5; *Hilkhot Malveh ve-Loveh*, 27:1; and *Hilkhot To‘en ve-Niṭ’an*, 3:2, 3:7. Abraham added that Maimonides even disagreed with his own father; see *Hilkhot Sheḥitah*, 11:10.

⁸¹⁶ Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 177-78.

⁸¹⁷ In the first category, he offered the example in mPes 4:1 of not performing labor before noon on the eve of Passover; in the second, lighting candles for the Day of Atonement; and in the third, quoted the statement that “everything follows local practice” (*ha-kol ke-minhag ha-medinah*) in financial matters (mKet 6:4; mBB 1:1).

⁸¹⁸ Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 178-79; see similarly there, 98. In the remainder of this section, he vociferously criticized the appointment of prayer leaders who, in his view, are unfit and, citing his father, certain customs observed in the Palestinian synagogue in Fustāṭ (179-81). See

Abraham was also concerned to forestall the charge that additional prostrations during prayer cannot be required, even if the need for them is derived using *qiyās*, because the practice lacks explicit rabbinic support. Abraham offered both a “general” (*kullī*) and “particular” (*juz’ī*) answer in anticipation of this challenge. The general answer (which he reportedly discussed, as well, in the [lost] Introduction to the *Kifāya*) divided rabbinic law regarding acts of divine worship (*‘ibādāt*) into three classes: explicitly forbidden acts, explicitly mandated acts, and acts neither forbidden nor required.⁸¹⁹ In his words, those in the last category are:

Left to the form of that which reasoning establishes (*‘alā mā yu ‘īthi al-qiyās*)⁸²⁰ and to that which the verses of [holy] writings (*nuṣūṣ al-kutub*), the traditions of the transmitters (*āthār al-nāqilīn*), and rules of reasoning (*qawānīn al-qiyās*) indicate (*yadullu*) regarding their obligation or rejection. Therefore, we have discussed them using speculative reason and evidence.⁸²¹

Abraham acknowledged that strong evidence from rabbinic literature might lead his conclusions to be overturned. Short of that, he would rebuff unpersuasive arguments with reasoning and evidence.⁸²²

Friedman, “Maḥloqet le-Sheim Shamayim,” 256-76 (for earlier scholarship, see there, 259nn61-62); idem, “Abraham Maimuni’s Prayer Reforms,” 144-48; idem, “Hitnagdut le-Tefillah,” 74-76; Ezra Fleischer, *Tefillah u-Minhagei Tefillah Ereṣ-Yisraeliyim bi-Tequfat ha-Genizah* (Jerusalem: Magnes, 1988), 215-29; and Russ-Fishbane, *Judaism, Sufism, and the Pietists of Medieval Egypt*, 16. For Maimonides’ position on *piyut*, which formed part of this controversy, see below, n856. On the place of custom, see also Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 92: וליס אלמנהג הו אלצל אלד’י יג’ב אן יעתמד עליה בל אלנן או אלקיאס או מג’מועהא פאן ג’ד אלמנהג מבניא עלי אלואג’ב אסתמר עליה ואן ג’ד עלי גיר אלואג’ב רגע ענה אלי אלואג’ב.

⁸¹⁹ Examples in the first category include reciting an unnecessary blessing and changing the text (*maṭbei ‘a*) of blessings; the second, praying three times a day and reciting the blessings surrounding the *shma*. For the third, see what follows.

⁸²⁰ See Blau, *Dictionary*, 443, s.v. *عطر* IV.

⁸²¹ פהי באקיה עלי צורה מא יעטיה אלקיאס וידל עליהא נצוץ אלכתב ואתאר אלנאקלין וקואנין אלקיאס מן איג’בהא או אנכארהא ולד’לך תנאולנאהא באלנט’ר ואלדליל.

⁸²² Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 181-82. For R. Joseph *rosh ha-seder*’s similar claim, also made in the context of pietistic prayer reform, see Friedman, “Hitnagdut le-Tefillah,” 91 lines 17-18.

In the more “particular” answer, Abraham pointed readers to his detailed discussion of prostration.⁸²³ He added that other prayer practices, like the reading of Ps. 92 on the Sabbath and of 1 Chron. 16:8-36 and selections from Psalms each morning, similarly lack any basis in rabbinic literature, but no “gaon, sage (*hakham*), or jurisconsult (*mufti*)” ever criticized their recitation. The fact that the blessings of *barukh she-amar* and *yishtabaḥ* (recited before and after these passages) do not appear in the Talmud, wrote Abraham, constitutes even more compelling proof for the permissibility of adding to divine worship.⁸²⁴ (This endorsement of these two post-talmudic blessings appears to be in tension with the *Kifāya*’s criticism, elsewhere, of the “blessing of virginity.” There, Abraham noted that this blessing lacks talmudic support and asserted that post-talmudic authorities may not institute a new blessing that uses the standard blessing formula.⁸²⁵)

Abraham’s conviction that jurists in the post-talmudic period must use reasoning and textual arguments to reach legal conclusions is expressed in the *Kifāya* and in his responsa, but is most elaborately presented in his defense of pietistic prayer reforms.

⁸²³ See Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 117-47.

⁸²⁴ Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 182-83.

⁸²⁵ I.e., *be-sheim u-malkhut*, mentioning God’s name and sovereignty; Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 232. See the similar tension discussed in Robert Brody, “Saadya Gaon on the Limits of Liturgical Flexibility,” in *Genizah Research after Ninety Years*, 41-43. On this blessing and Maimonides’ opposition to it, see A. Marmorstein, “The Jewish ‘Blessing of Virginity,’” *JJS* 1 (1948): 33-34; Israel Ta-Shma, “Teshuvat ha-Rambam be-‘Inyan Birkat Betulim,” *Maimonidean Studies* 2 (1992): 9-15; repr. in idem, *Ha-Tefillah ha-Ashkenazit ha-Qedumah: Peraqim be-Ofyah uve-Toldoteha* (Jerusalem: Magnes, 2003), 181-87; idem, *Minhag Ashkenaz ha-Qadmon*, 44n90; Gerald Blidstein, *Ha-Tefillah be-Mishnato ha-Hilkhatit shel ha-Rambam* (Jerusalem: Bialik, 1994), 126, 132, 135; Ruth Langer, “The *Birkat Betulim*: A Study of the Jewish Celebration of Bridal Virginity,” *PAAJR* 61 (1995): 53-94; idem, *To Worship God Properly: Tensions Between Liturgical Custom and Halakhah in Judaism* (Cincinnati: Hebrew Union College Press, 1998), 60-73; and Anat Kutner, “Birkat Asher Ṣag: Gilgulei Berakhah she-Ne’elamah,” *Granot* 3 (2003): 179-87.

Abraham's remarks on this topic rely heavily upon perspectives expressed by his father; namely, Maimonides' cognizance of the inherent ambiguities of textual interpretation and his valorization of human reasoning in the evolution of law.⁸²⁶

Conclusion

Maimonides' revolutionary attempt to limit the scope of revelation and to broaden the purview of post-Sinaitic contributions to Jewish law evoked considerable anxiety; an early testimony to this is the criticisms that Daniel ha-Bavli leveled against Principles One and Two in Maimonides' Introduction to *Sefer ha-Miṣvot*. The tone of Daniel's comments and his assertion that all *middot*-based laws were, in fact, revealed at Sinai, suggest that Maimonides' claims offended Daniel's "religious sensibility;"⁸²⁷ Daniel simply could not countenance the idea that the vast preponderance of Jewish law is man-made. The above analysis shows, however, that Maimonides influenced Daniel's understanding of the geonim, and, at least terminologically, his description of rabbinic activity.⁸²⁸ While Daniel understood that Maimonides had successfully demolished the geonic-era approach to revelation, he rejected the Maimonidean system, as it unduly minimized God's role in the creation of Jewish law.

⁸²⁶ On Maimonides' view, in addition to the discussion in Chapter Two, see Cohen, "Ha-Biṭuy 'Bāb/Abwāb al-Ta'wīl,'" 174-75.

⁸²⁷ In seeking to explain the bitterness of Naḥmanides reaction to Principle Two in *Sefer ha-Miṣvot*, Blidstein asked if Naḥmanides was concerned that Maimonides' system fails to account for the "academic dialectics of the Talmud" or if Maimonides' approach offended Naḥmanides' "religious sensibility"; "Oral Law as Institution," 172. In the English version of this article, he left this as an open question, but in the Hebrew version ("Masoret ve-Samkhut Mosdit," 21), he preferred the first option.

⁸²⁸ As Harry Wolfson noted, "beliefs and ideas ride on the back of terms"; *The Philosophy of the Kalam* (Cambridge: Harvard University Press, 1976), 70-71; see Lobel, *Between Mysticism and Philosophy*, 6, 183n14.

In defending his father's understanding of the Oral Torah, Abraham Maimonides forcefully rebuffed all of Daniel's criticisms. By contrast, Abraham's reactions to Daniel's critique of other Principles were often more measured. (These will be treated in Chapters Four and Five of this dissertation.) Abraham's assertions are frequently difficult to parse, however; the polemical nature of his exchange with Daniel may have led him to make sweeping or ambiguous statements in order to vindicate Maimonides. He may also have recognized problems with his father's depiction of revelation and of the rabbis, but preferred not to acknowledge them.

Abraham's later writings evince sustained interest in the mechanics of the Oral Torah and a strong commitment to his father's understanding of the scope of revelation and rabbinic tradition. He employed Maimonides' arguments to great effect in many of his writings, particularly when justifying his own pietistic reforms.

Subsequent research may explore the ways in which Abraham used rabbinic traditions, in both legal and non-legal discussions, in the *Commentary* and in the *Kifāya*. Further analysis might also clarify how differences of emphasis and framing between Maimonides and Abraham reflect the commonalities and divergences in their respective corpora.

Chapter Four: Creating Commandment-Units

Introduction

The challenge of selecting those laws that comprise the list of the 613 commandments was one of the most enduring problems of enumeration. Those who attempted to list 613 commandments encountered numerous difficulties, for there is apparent arbitrariness to the number 613, rabbinic literature offers no guidance,⁸²⁹ and the Talmud seems to assume that innumerable laws are biblical in status.⁸³⁰ These and other challenges motivated one Rabbanite to suggest that 613 is “an approximation” (*‘ala sabīl al-taqrīb*),⁸³¹ and another to write that “the number is roughly (*naḥwa*) 613 commandments (*sharī‘a*).”⁸³² Such a perspective is implicit in lists that contain fewer than 613 entries,⁸³³ among them, perhaps, the earliest attempt at enumeration.⁸³⁴ This chapter, however, focuses on the methodologies of those who attempted to identify

⁸²⁹ As Nahmanides noted at length; *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel 1-7 (Prin. One); see similarly Duran, *Zohar ha-Raqi‘a*, 225 (concluding remarks). See also below, n907. Blidstein, “Where Do We Stand,” 25: “the Talmud, needless to say, does not really consider the problem of what a mizvah is for [the purpose of enumeration].”

⁸³⁰ The importance of this problem for Maimonides’ *Sefer ha-Miṣvot* is noted in Peritz, “Das Buch der Gesetze,” 1:440-42; and Halbertal, “*Sefer ha-Miṣvot* le-Rambam,” 461-62. Bloch, “Les 613 Lois,” 198-200, noted the general challenges of enumeration.

⁸³¹ Fuchs, *Studien über Abu Zakaria Jachja*, xxiii; and Perez, “Commentary on Numbers & Deuteronomy,” 63. See also Duran, *Zohar ha-Raqi‘a*, 225 (concluding remarks).

⁸³² אֵלֶּעֶד נָחוּ תְרִיג שְׂרִיעָה; Baḥya, *Hovot ha-Levavot*, ed. Kafih, 23 (introduction); note Kafih’s attempt to reread this, there, 23n12. Elsewhere, Baḥya did not qualify this number; 137 (2:3), 427 (10:7). See similarly Gersonides, *Peirushei ha-Torah le-Rabbeinu Levi ben Gershon*, ed. Ya‘aqov Leib Levi (Jerusalem: Mosad ha-Rav Kook, 1992-1998), 2:76 (Ex. 12).

⁸³³ Avraham Oḥayon, “Ha-Omnam Taryag Miṣvot?” *Sha‘anan: Shenaton ha-Mikhlah ha-Datit le-Hinukh* 14 (2009): 94, pointed out that Eliezar ben Samuel of Metz’s *Sefer Yire‘im* counts 417 commandments, and that it is difficult to imagine that Isaac of Corbeil, who listed 320 commandments for the post-Temple era in his *Sefer Miṣvot Qatan*, could have found 293 Temple-era commandments.

⁸³⁴ The *piyut* titled *Atah hinḥalta*; see Frankel, *Maḥzor Shavu‘ot*, 36 (introductory pagination). Sa‘adya already noticed this; see above, n60. Ephraim of Bonn (1132-97) made a similar complaint; see Fleischer, “Azharot le-R. Binyamin,” 42n150. Compare Maimonides’ statement that “nobody *who enumerated the commandments* ever doubted the number 613” (וְהָאֵלֶּיךָ מֵאֵלָּהּ אֶחָד מִן כָּל מִן עַד אֶלְמִצְוֹת אֵעִי) (דה”א מא לא יג’הלה אחד מן כל מן עד אלמצות אעני); *Sefer ha-Miṣvot*, ed. Kafih, 7 [introduction]; emphasis added).

exactly 613 commandments. While central to any enumeration project, this problem is irrelevant to applied law.

Enumerators faced the problem of identifying what constitutes a “commandment.” To take two examples (treated below), the Pentateuch (Num. 9:4-13) provides an opportunity for those unable to offer the paschal sacrifice at its designated time to do so one month later. Is this law, known in rabbinic literature as *pesah sheini*, the second paschal sacrifice (see mPes chaps. 8-9), a distinct commandment, or is it part of the commandment to offer the paschal sacrifice in its time (Ex. 12:6)? Are the head and arm phylacteries to be counted as one or as two commandments? According to Moses ben Joseph di Trani (Salonika, Safed; 1505-85), the “vast majority” (*rov kol*) of the debates between Maimonides and Nahmanides over the enumeration of the commandments turn on the question of when a specific “law” constitutes a distinct commandment.⁸³⁵ Gerald Blidstein termed the groups of laws listed as “commandments” in Maimonides’ *Sefer ha-Miṣvot* “mizvah-units”⁸³⁶ (“commandment-units”), and I use this term throughout this chapter.

Ḥanina Ben-Menaḥem pointed to a similarity between the challenge of reducing Jewish law to 613 commandments and a concept in legal theory known as “individuation,” which divides a legal system into distinct laws.⁸³⁷ The philosopher and jurist, Jeremy Bentham (England; 1748-1832), was the first to reflect on the individuation

⁸³⁵ di Trani, *Qiryat Sefer*, 9a (introduction, §6).

⁸³⁶ Blidstein, “Where Do We Stand,” 14.

⁸³⁷ See Ḥanina Ben-Menaḥem, “Individu’āṣiyah shel Ḥuqqim,” 95-97; idem, “Maimonides’ Fourteen Roots,” 3-7; and idem, “Ha-Sod shel *Yesod Mora*,” 179-80, 188. Friedberg drew on this concept in his study of *Sefer ha-Miṣvot; Crafting the 613 Commandments*, 50-52. See also Michael Abraham, “Kelalav shel ha-Rambam le-Minyan ha-Miṣvot,” 1:146-49.

of laws. Bentham had a longstanding interest in the determination of what constitutes a “whole law.”⁸³⁸ In his earliest work, he attacked the compiler of English Common Law, William Blackstone (1723-80), for having failed to distinguish between “one law” and its constituent parts.⁸³⁹ Bentham sought to replace Blackstone’s *Commentaries on the Laws of England* with a more progressive code, called the “*Pannomion*.”⁸⁴⁰ This never-completed work was to be organized around distinct laws, so that “the precise number ... might be counted, were it to answer any purpose.”⁸⁴¹ Bentham struggled at length to identify “a compleat law,”⁸⁴² but, as one prominent modern reader noted, never presented a clear way to do so.⁸⁴³ Still, in broad terms, Bentham’s search for a “whole law” may be analogous to the problem of identifying distinct commandment-units.⁸⁴⁴

⁸³⁸ Jeremy Bentham, *Of the Limits of the Penal Branch of Jurisprudence*, ed. Philip Schofield (Oxford: Clarendon Press, 2010), 168.

⁸³⁹ Jeremy Bentham, *A Comment on the Commentaries and A Fragment on Government*, eds. J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 2008), 72 (emphasis in original). On Bentham’s attack on Blackstone, see Richard A. Posner, “Blackstone and Bentham,” *Journal of Law and Economics* 19, no. 3 (1976): 569-71; and David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century England* (Cambridge: Cambridge University Press, 1989), 257-62.

⁸⁴⁰ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, eds. J.H. Burns and H.L.A. Hart (Oxford: Clarendon Press, 1996), 305; see David Lieberman, “From Bentham to Benthamism,” *The Historical Journal* 28, no. 1 (1985): 205. On Bentham’s penchant for neologisms, see H.F. Pitkin, “Slippery Bentham: Some Neglected Cracks in the Foundation of Utilitarianism,” *Political Theory* 18, no. 1 (1990): 105.

⁸⁴¹ Bentham, *Limits*, 269. Bentham similarly wrote that “the number and description, then, of the several laws of which the system is composed being once given, the whole code will be given likewise: the parts or contents of it will be an object of arithmetic” (*Limits*, 222). David Lieberman argued that Bentham was interested in what constitutes a “whole law” in order to provide “the proper means for comprehending the nature of the legal system as a whole and for evaluating the merits of its parts” (*The Province of Legislation Determined*, 277). For alternative interpretations, see M.H. James, “Bentham on the Individuation of Laws,” *Northern Ireland Legal Quarterly* 24, no. 3 (1973): 357-70; and A.M. Honoré, “Real Laws,” in *Law, Morality, and Society: Essays in Honour of H.L.A. Hart*, eds. P.M.S. Hacker and Joseph Raz (Oxford: Clarendon Press, 1977), 102-103; and below, n844.

⁸⁴² See Bentham, *Limits*, 168-97, 268-70.

⁸⁴³ H.L.A. Hart, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), 107, 125; and idem, “Bentham on Legal Powers,” *The Yale Law Journal* 81, no. 5 (1972): 814n44, 815, 819.

⁸⁴⁴ Joseph Raz used the concept of individuation to solve problems in legal philosophy, arguing that the perennial question “what is law?” is unintelligible without first understanding what comprises a

This chapter begins with a brief review of passages and terms in rabbinic literature that are germane to the question of what constitutes a “complete law,” although there is little discussion of these texts in medieval reflections on the enumeration of the commandments. I then turn to the surviving pre-Maimonidean discussions of what constitutes a “commandment.” Next, I analyze Maimonides’ system for the identification of the 613 commandment-units through philological examination of Principles Seven, Eleven, Twelve, Thirteen, and Fourteen in the Introduction to his *Sefer ha-Miṣvot*. I conclude with the relevant discussions from the exchange between Daniel ha-Bavli and Abraham Maimonides.

Throughout this chapter, I use words like “law” and “rule” to denote part of a “commandment-unit.” I am aware that this leaves open the question of what constitutes a distinct “law,” but am unable, at present, to find better terms for conveying this concept.

Background in Rabbinic Literature

Though the idea that God gave 613 commandments appears in the Talmud (bMak 23b), nowhere does the Talmud discuss how these commandments are to be identified.⁸⁴⁵ Several talmudic concepts pertain to the division of laws into distinct units, however.

Ben-Menaḥem drew attention to mHor 1:3, where the Mishnah discusses cases in which

complete law; “Legal Principles and the Limits of the Law,” *The Yale Law Journal* 81, no. 5 (1972): 823-32; and idem, *The Concept of a Legal System: An Introduction to the Theory of a Legal System*, 2nd ed. (Oxford: Clarendon Press, 1980), 70-91, 141-46. See the criticism in Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), 71-80. In applying individuation to Maimonides’ *Sefer ha-Miṣvot*, Ben-Menaḥem followed Raz and claimed that individuation is a “purely theoretical” endeavor that “proffers a mode of dividing the totality of material constituting a legal system into separate units”; “Maimonides’ Fourteen Roots,” 3-4.

⁸⁴⁵ See above, n829.

the court erroneously rules against laws that the rabbis considered to be biblical in status.⁸⁴⁶ It reads:

If the [members of the] court gave a decision uprooting an entire principle (*kol ha-guf*): if they said, “There is nothing in the Pentateuch concerning the menstruant,” [or] “There is nothing in the Pentateuch concerning the Sabbath,” [or] “There is nothing in the Pentateuch concerning idolatry,” they are not culpable. If they gave a decision that in part annulled and in part sustained [a biblical law], they are culpable. How? If they said, “Laws concerning the menstruant are in the Pentateuch, but if a man has intercourse with a woman who awaits day against day (*shomeret yom ke-neged yom*)⁸⁴⁷ he is not culpable”; [or if they said,] “Laws concerning the Sabbath are in the Pentateuch, but if a man carries from a private domain to a public domain he is not culpable;” [or if they said,] “Laws concerning idolatry are in the Pentateuch, but if a man bows [before an idol], he is not culpable,” they [i.e., members of the court] are culpable, for it is written “*if something is hidden*” (Lev. 4:13) [offer an atoning sacrifice] – “*something*,” but not an entire principle.⁸⁴⁸

This Mishnah assumes that an “entire principle” can be distinguished from its parts. As Ben-Menaḥem noted, the broad themes of menstruation, the Sabbath, and idolatry contain many discrete rules. He added that the *Tosefta* and Jerusalem Talmud seem to define “an entire principle” differently than the Mishnah.⁸⁴⁹

A second relevant concept in rabbinic literature is the idea that laws can be part of one topic (*sheim eḥad*).⁸⁵⁰ In two debates (mKer 3:6, 4:4), one view holds that two sin

⁸⁴⁶ Note that not all of the examples in this Mishnah are explicit in the Pentateuch; see Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:472-73 (mHor 1:3).

⁸⁴⁷ A woman who has the status of *shomeret yom ke-neged yom* has experienced flow during the eleven days that follow her seven prescribed days of uncleanness (Lev. 15:19), and awaits a complete day of cleanness.

⁸⁴⁸ הורו בית דין לעקור את כל הגוף אמרו אין נדה בתורה אין שבת בתורה אין עבודה זרה בתורה הרי אלו פטורין הורו לבטל מקצת ולקיים מקצת הרי אלו חייבין כיצד אמרו יש נדה בתורה אבל הבא על שומרת יום כנגד יום פטור יש שבת בתורה אבל המוציא מרשות היחיד לרשות הרבים פטור יש עבודה זרה בתורה אבל המשתחוה פטור הרי אלו חייבין שנאמר ונעלם דבר ולא כל הגוף; translation based on Danby, *The Mishnah*, 462, with slight changes.

⁸⁴⁹ See tHor 1:7 and jHor 1:3 (45d). Ben-Menaḥem, “Individu’ aṣiyah shel Huqqim,” 101-103; and idem, “Maimonides’ Fourteen Roots,” 11-13. One could divide the laws of the Sabbath according to the 39 labors and the laws of idolatry according to methods of worship (see bSab 71a-72a and bSan 82a).

⁸⁵⁰ The concept of *sheim eḥad* appears to be related to the rabbinic division between *avot* and *toladot* (principle and derivative categories); see Moscovitz, *Talmudic Reasoning*, 107-108. On *sheim eḥad*, see there, 103-107, 144-59. Compare the general comments about tractate *Keritot* in Federico Dal Bo,

offerings are incurred for the simultaneous violation of two laws, but another view posits that the inadvertent sinner needs to bring only one sacrifice because the laws fall into the same category. The second view relies on some method to include discrete laws in one category.

An Amoraic question of whether multiple prohibitions may come together in a single situation (*isur ḥal 'al isur*)⁸⁵¹ presupposes that discrete laws can be included in one category. According to some interpretations, this problem concerns the number of punishments incurred for violating multiple prohibitions in a single act. For example, the Talmud (bQid 77a) wonders if a High Priest who marries a woman who is both a divorcée and a widow (see Lev. 21:14) is punished once or twice.⁸⁵² This issue turns, in part, on the classification of prohibitions and the identification of distinct laws.

In setting forth his enumeration of the commandments, Maimonides was concerned with the multivalent term *mišvah* (lit., commandment). This term has many meanings in rabbinic literature, but it does not seem to mean “discrete commandment.”⁸⁵³

“‘Women to Think With’: Sexual Transgressions as Heuristics in *bKeritot* 17a-20a,” in *A Feminist Commentary on the Babylonian Talmud V: Introduction to Seder Qodashim*, eds. Tal Ilan et al. (Tübingen: Mohr Siebeck, 2012), 241. See also below, n1107.

⁸⁵¹ For treatment, see de Vries, *Toldot ha-Halakhah ha-Talmudit*, 60-68; and *Encyclopedia Talmudit*, s.v. *ein isur ḥal 'al isur*, 1:581-91.

⁸⁵² See *Encyclopedia Talmudit*, s.v. *ein isur ḥal 'al isur*, 1:581-82.

⁸⁵³ In fact, I have found no evidence of this usage. On this term, see Zvi Hirsch Chajes comments to bBer 4b s.v. *af 'al pi*; Zvi Pereš Chayes, “Hagahot le-Masekhet Berakhot,” in *Festschrift zu Israel Lewy's siebzigstem Geburtstag*, eds. M. Brann and J. Elbogen (Breslau, 1911), 174 (Hebrew section); Saul Lieberman, “Tiqunei Yerushalmi,” 6, no. 1 (1934): 97-99; Gedaliah Alon, “Shevut, Reshut, Mišvah,” *Tarbiṣ* 7, no. 3 (1936): 135-42; de Vries, *Toldot ha-Halakhah ha-Talmudit*, 50-59; Simon Greenberg, “The Multiplication of the Mitzvot,” in *Mordecai Kaplan Jubilee Volume: On the Occasion of his Seventieth Birthday*, ed. Moshe Davis (New York: Jewish Theological Seminary, 1953), 384-89 (esp. Louis Ginzberg’s comments cited there, 388n37); Urbach, *Ḥazal*, 297-301, esp. 297n77; Marc Hirschman, “Mišvah u-Sekharah be-Mishnah uve-Tosefta: le-Darkhah shel Mašshevet Ḥazal,” *Proceedings of the World Congress of Jewish Studies*, 10, Division C Vol. 1: Jewish Thought and Literature (1989): 54-60; Robert Goldenberg, “Law and Spirit in Talmudic Religion,” in *Jewish Spirituality from the Bible through the Middle Ages*, ed. Arthur Green (New York: Crossroad, 1986-1987), 1:236; Aharon Shemesh, “Le-

In his *Sefer ha-Miṣvot*, Maimonides frequently argued that a specific law constitutes a distinct commandment because the rabbis termed it a “*miṣvah*” (see below). However, this claim is difficult to maintain, as many have pointed out.⁸⁵⁴

Pre-Maimonidean Attempts to Create Commandment-Units

Early Liturgical Enumerations

The authors of *azharot* (“warnings”), liturgical poems that enumerate the commandments, appear to have been the first to list the 613 commandments.⁸⁵⁵ In the introduction to his *Sefer ha-Miṣvot*, Maimonides described these authors as “poets, not jurists,”⁸⁵⁶ even though at least two, Sa’adya ben Joseph Gaon and Isaac ben Reuben al-Bargeloni (c. 1043 - c. 1113), were certainly “jurists.”⁸⁵⁷ Many traditional commentators have struggled to identify 613 commandments in these poems,⁸⁵⁸ and because the

Toldot Mashma’am shel ha-Musagim Miṣvot ‘Aseh u-Miṣvot lo Ta’aseh,” *Tarbiṣ* 72, no. 1-2 (2003): 133-50; Novick, *What is Good and What God Demands*, 26-34, 39-60, 89-107; and idem, “Blessings over *Miṣvot*: The Origins of a Category,” *HUCA* 79 (2008): 76-78. Compare Sherira Gaon’s definition (mentioned by Urbach) in Joel Müller, *Teshuvot Geonei Mizraḥ u-Ma’arav* (Berlin, 1888), 34 (§141): דמצות תרין אנפי הויאן מנהון חובה דמאן דלא עביד לה קאים בעון ומנהון רשות דמאן דעביד(ר) לה אית ליה שכר.

⁸⁵⁴ See Daniel ha-Bavli’s comments treated below; Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 128-30 (Prin. Eleven); and Friedberg, *Crafting the 613 Commandments*, 36-46, 61-64.

⁸⁵⁵ On this genre, see above, n44.

⁸⁵⁶ שער א ולא פקהא; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 5 (introduction). See Twersky, *Introduction to the Code of Maimonides*, 250-51n29. On Maimonides’ objections to *piyut*, see Jacob I. Dienstag, “The Prayer Book of Maimonides,” in *The Leo Jung Jubilee Volume: On the Occasion of his Seventieth Birthday*, eds. Menaḥem M. Kasher et al. (New York: The Jewish Center, 1962), 62-63; Blidstein, *Ha-Tefillah be-Mishnato ha-Hilkhatit shel ha-Rambam*, 134-39; idem, “Maimonides’ *Taqqanah* Concerning Public Prayer,” *Maimonidean Studies* 3 (1995): 24-25; Yosef Yahalom, “Ha-Rambam voha-Meliṣah ha-‘Ivrit,” *Pe’amim* 81 (1999): 4-18; Edwin Seroussi, “More on Maimonides on Music,” *Zutot* 2 (2002): 126-135; and Hopkins, “The Languages of Maimonides,” 95n42.

⁸⁵⁷ Contrast Moses Ibn Ezra’s description of al-Bargeloni as “among the master jurisprudents and its teachers” (מן צדור אלפקהא ואעלאמהם); *Sefer ha-‘Iyunim voha-Diyunim*, ed. Halkin, 75 line 88.

⁸⁵⁸ On the enumeration in *Halakhot Gedolot*, see Avraham Shimon Traub, *Sefer Halakhot Gedolot: Meḥubar u-Meyusad le-Halakhot ke-fi Seder Shata Sidrei Talmud ha-Bavli* (Warsaw, 1874); and Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*.” On one of Sa’adya’s enumerations, see Perla, *Sefer ha-Miṣvot le-Rasag*; and Shimon Halperin, *Sefer ha-Miṣvot le-Rasag: ‘im bei’ur Qaṣar u-Maspiq* (Jerusalem, 1930). On Isaac ben Reuben al-Bargeloni’s *azharot*, see Shaul ben Musah, *Netiv Miṣvotekha*. On Solomon

authors, with one exception, did not number the commandments, it is almost impossible to do so with certainty.⁸⁵⁹ The liturgical setting for these works leads one to wonder if commentators committed a category error by relating to them as juridical texts. It may be fruitful, however, to contrast these poems with later, more jurisprudentially inclined enumerations in order to consider how later enumerators “thought with” earlier liturgical lists.

Several of these enumerations contain terms used for grouping numerous laws under one heading. For example, the author of the *piyut* titled *Atah hinhalta*, which may be the earliest surviving enumeration, used the synonyms “*din*” and “*mishpat*” (law) to collect groups of laws.⁸⁶⁰ Sa’adya followed this style, using the words “*datei*” and “*huqqei*” for the same purpose, and al-Bargeloni used the word “*torat*,”⁸⁶¹ all of which are nouns in the construct state that mean “laws of.” In addition, several lists count the

Ibn Gabirol’s *azharot*, see Abraham Israel, “Peirush Rabbi Moshe Ibn Tibbon le-Azharot she-Ḥiber R. Shlomo Ibn Gabirol” (MA thesis, Ben Gurion University, 2007); Duran, *Zohar ha-Raqi’a*; and Shaul ben Musah, *Netiv Mišvotekha*; Neubauer published parts of Moses Ibn Tibbon’s commentary in “Miscellanea Liturgica,” 699-703. On Elijah ha-Zaqein’s *azharot*, see Mordecai Sluṣqi, *Azharot le-Ḥag ha-Shavu’ot*; Israel Issar Shapiro, *Azharot Eliyahu ha-Zaqein: Kolel Taryag Mišvot ‘im bei’ur rahav šefunot yigaleh niqra be-sheim Meteq Azharot* (Jerusalem, 1972); Ephraim Kupfer, “Peirush Azharot de-Rabbana Eliyahu ha-Zaqein bar Menaḥem mi-Mans me-et Ḥakham eḥad mi-ḥug shel Rabbeinu Ḥayim bar Ḥananel ha-Kohen,” *Qoveš ‘al Yad* 11, no. 2 (23) (1989): 109-207; and Abraham Grossman, *Ḥakhmei Šarfut ha-Rishonim* (Jerusalem: Magnes, 1995), 98-99.

⁸⁵⁹ See Hildesheimer’s comments in “Haqdamat *Halakhot Gedolot*,” 15-18 (introductory pagination); add Guttman, *Behinat ha-Mišvot*, 15-17.

⁸⁶⁰ Frankel, *Maḥzor Shavu’ot*, 622 line 48.

⁸⁶¹ Sa’adya, *Kitāb Jāmi’ al-Šalawāt*, eds. Davidson et al., 163 line 74, 164 line 80; and Isaac ben Reuben al-Bargeloni, *Azharot* (Jerusalem: Mekhon Ben Yissakhar, 1992), 17a.

collected rites of the Day of Atonement as one unit.⁸⁶² These authors, however, were far from consistent when grouping laws.⁸⁶³

The Term Parshiyot & Punishments as Commandments

Though the Talmud divides the 613 commandments into 248 positive and 365 negative commandments, many early enumerators divided the commandments into four categories, positive and negative commandments, and two categories that do not appear in the Talmud, *parshiyot* (sing., *parasha*) and punishments (‘*onashim*). Though the author of *Atah hinḥalta*⁸⁶⁴ did not use these latter groupings in his enumeration, they appear in the list in *Halakhot Gedolot* and several other enumerations.⁸⁶⁵ Both of these post-talmudic classifications may be relevant to the discussion of how to create commandment-units.

⁸⁶² E.g., Frankel, *Maḥzor Shavu‘ot*, 623 line 55; and Isaac ben Reuben, *Azharot*, 8b; see the comments in Frankel, *Maḥzor Shavu‘ot*, 37. Note also the general commandments in the list in *Halakhot Gedolot*, e.g., to bring a sin-offering and seek forgiveness (וחטא להתכפר בתחנונים ובקרוב), and the grouping of valuations (‘*eirekhin*) as one commandment (Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 90, 101).

⁸⁶³ Kafih guessed that Maimonides had Hefes ben Yaşliḥ in mind when he criticized an anonymous enumerator for counting as distinct commandments eleven laws of one afflicted by *şara‘at*; *Sefer ha-Mişvot*, ed. Kafih, 25n17. These laws do not appear in surviving fragments of Hefes’s work; Maimonides may (also?) have been referring to *Atah hinḥalta* (Frankel, *Maḥzor Shavu‘ot*, 624-25 lines 65-79), or even to a list by Sa‘adya (though this is unclear; see Perla, *Sefer ha-Mişvot le-Rasag*, 1:805-806). See Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit*, 79.

⁸⁶⁴ This *piyut* does use the phrases *parashat soṭah*, *parashat ‘eglah ‘arufah*, and *parashat ha-melekh*, all of which appear in mSot 7:1-2; Frankel, *Maḥzor Shavu‘ot*, 617 line 17 and 629 line 98. The author did not use this term to group laws that do not appear in this Mishnah.

⁸⁶⁵ For Sa‘adya’s usage, see below, nn869-872. See Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 12, 25-26 (introductory pagination), for discussion of those who included these four classes of laws; add Zulai, “Azharot R. Yişḥaq Ibn Gikatilla,” 174 lines 314 (*parshiyot*), 173 line 195 (punishments); Fleischer, “Azharot le-R. Binyamin,” 35-37, 43-44; and Frankel, *Maḥzor Shavu‘ot*, 41-42 (introductory pagination). Solomon Ibn Gabirol’s lists are another exception, see Dov Yarden, *Shirei ha-Qodesh le-Rabbi Shlomo Ibn Gabirol* (Jerusalem, 1972), 414; and Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 26 (introductory pagination). Enumerations based on the Ten Commandments obviously did not use this system; see Frankel, *Maḥzor Shavu‘ot*, 13n42.

The meaning of the word *parshiyot* is subject to dispute. The simplest interpretation is that *parshiyot* are units of laws grouped together for the purpose of the enumeration, e.g., the *parashah* of oaths or the *parashah* of inheritance laws. This is how the term was understood by Abraham Ibn Ezra, Maimonides, Nahmanides, and Simeon ben Šemaḥ Duran; this view may find support in a rabbinic text adduced by Michael Guttman.⁸⁶⁶ However, several medieval readers noticed that the enumeration in *Halakhot Gedolot* is inconsistent in its use of this term: some commandments listed as *parshiyot* appear elsewhere in that count, while certain laws listed as distinct commandments seem as if they should be grouped together.⁸⁶⁷

Several researchers have attempted to explain why these enumerators labeled some laws *parshiyot*, while listing others as positive or negative commandments. The most widespread interpretation is that *parshiyot* are rules that obligate the community, and not the individual. This view, adopted by Guttman and Yeruḥam Fischel Perla, appears in one manuscript of *Halakhot Gedolot* and in Baḥya ibn Paqudah's *Duties of the Heart*; a number of liturgical enumerations also hint at it.⁸⁶⁸

⁸⁶⁶ ואחת יש בה מששים ששים מצות דמר ר' יוחנן בשם ר' שמע' בן יוחי שלש פרשיות כתב לנו משה בתורה וכל אחת ואילו הן פרש' פסחים ופרשת נזיקים ופרשת קדושים ר' לוי בשם ר' שילה דכפר תמורתה משבעים שבעים א"ר תנחומה ולא פליגין מן דעבד פסחים שבעים כלול עימה פרש' תפילין מן דעבד פרשת נזיקין שבעים כלול עמה פרשת שמיטה מן דעבד פרשת קדושים שבעים ערלה כלול עמה פרש' ערלה; *Pesiqta de-Rav Kahana: 'al pi ketav yad Oqsford* (New York: Beit ha-Midrash le-Rabbanim sheba-America, 1987), ed. Bernard Mandelbaum, 1:99 lines 2-8 (*pisqa* 5 s.v. *ha-ḥodesh ha-zeh*, §10). See Guttman, *Behinat ha-Miṣvot*, 22. It is not clear that *parshiyot* here means a group of laws. As the editor pointed out, the idea that the *parashah* of phylacteries includes 10 commandments may be based on the fact that that one of the relevant sections of the Pentateuch contains ten verses (Ex. 13:1-10). See also Novick, *What is Good and What God Demands*, 95-96n14.

⁸⁶⁷ Abraham Ibn Ezra, *Yesod Mora*, eds. Cohen and Simon, 102 (2:1); Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 25 (Prin. Seven), 43 (Prin. Eleven; note his use of this term, 52 [Prin. Fourteen]); Nahmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 62 (Prin. Three), 127 (Prin. Ten); Duran, *Zohar ha-Raqi'a*, 18 (introductory pagination; Prin. Seven). See ibn Zimra, *Teshuvot ha-Radbaz*, 6:22 (§2111).

⁸⁶⁸ Hildesheimer, ed., *Halakhot Gedolot: 'al pi Ketav-yad Romi*, 14 (ואילו הן פרשיות חקים ומשפטים); Baḥya, *Hovot ha-Levavot*, ed. Kafih, 427 (המסורים לציבור); Zulai, "Azharot R. Yiṣḥak Ibn Gikatilla," 174 line 314 (ששים וְחֲמֵשׁ פְּרָשְׁיֹת הַמְסוּרוֹת לְעֻדְתִּי); and Elijah ha-

It is possible that Sa'adya offered this interpretation too, though Moshe Zucker felt that his position was more complex. At the outset of one of his liturgical enumerations, Sa'adya described the *parshiyot* as “65 laws established for cases that occur.”⁸⁶⁹ In the introduction to his *Kitāb al-Sharā'i* (*Book of the Commandments*), he added a few important words, defining the *parshiyot* as “65 laws established for cases that occur concerning the community” (*fī ḥukm al-jamā'a [fī]ha*). Zucker, however, transcribed the last phrase “*fa-yahkum al-jamā'a [fī]ha*,” meaning that the community is to rule on these laws (i.e., they are laws entrusted to the courts). Zucker based his interpretation on a division in one of Sa'adya's liturgical enumerations, between the first forty *parshiyot* and the remaining twenty-five,⁸⁷⁰ claiming that Sa'adya distinguished between commandments entrusted to the court and commandments that obligate the community. However, Zucker incorrectly transcribed the manuscript of the introduction to *Kitāb al-Sharā'i*;⁸⁷¹ moreover, the second group of *parshiyot* in Sa'adya's liturgical enumeration contains laws other than those enforced by the courts.⁸⁷² It seems more

Zaqein's *azharot* in Frankel, *Maḥzor Shavu'ot*, 669 line 136 (תמו פֿרשיות הִוקי צבֿור דְּבִקְיָה). Benjamin ben Samuel's enumeration seems to hint at this as well, though it is unclear because the entire text is not preserved; see Fleischer, “Azharot le-R. Binyamin,” 47 lines 50-51 (הָרִי כָּאֵן הִמֵּשׁ וְשִׁישִׁים \ אַרְךָ מִצְוֹת עֶשֶׂה) (ומשפטי עדה). Guttman, *Behinat ha-Miṣvot*, 23, 38; and Perla, *Sefer ha-Miṣvot le-Rasag*, 1:10, 3:205-208. Compare the distinction in Islamic law between individual and communal obligations (*farḍ al-'ayn* and *farḍ al-kifāya*).

⁸⁶⁹ Sa'adya, *Kitāb Jāmi' al-Ṣalawāt*, eds. Davidson et al., 156 lines 22-23.

⁸⁷⁰ Sa'adya, *Kitāb Jāmi' al-Ṣalawāt*, eds. Davidson et al., 182 line 244 (סִכּוּם אַרְבָּעִים מִצְוֹת).

⁸⁷¹ The fragment is ENA 2674.10, which reads: מוֹצִיעַה לְחֻוּאֵת תְּחִדַת' פִּי חֲכָם אֶלְגַּמְאֵעָ (פִּי־הָאֵה). See the transcription in David Sklare, “The Religious and Legal Thought,” 2:192 lines 3-5.

⁸⁷² See Zucker, “Qeṭa'im Ḥadashim,” 11; see also idem, “Milu'im,” 386, quoting oral communication with Saul Lieberman. Neither Perla (*Sefer ha-Miṣvot le-Rasag*, 3:205-208) nor the editors of Sa'adya's *Kitāb Jāmi' al-Ṣalawāt* (eds. Davidson et al., 179) agreed with Zucker's interpretation.

likely, then, that Sa'adya viewed the *parshiyot* as laws that obligate the community as a whole.

Hefeş ben Yaşliaḥ may have claimed that earlier writers distinguished between *parshiyot* that contain laws entrusted to the courts and *parshiyot* that do not. In the Introduction to his *Kitāb al-Sharā'ī*, he wrote that some writers distinguished between commandments that do not depend on the discretion of the judge (*laysa mu'allaq bi-naẓar al-ḥākim*), and those that do. Zucker suggested that this refers to the *parshiyot*.⁸⁷³

Ezriel Hildesheimer, the most recent editor of *Halakhot Gedolot*, proposed a third interpretation; he suggested that the term *parshiyot* is based on the verb *f-r-sh* (to interpret or explain), and refers not to “units” of laws but to “interpreted laws.” The primary evidence for this theory is a passage in the homiletical introduction to the enumeration in *Halakhot Gedolot*:

The sages taught 65 *parshiyot*, which are the essence of the Torah (*gufah shel Torah*). Each and every *parashah* was explained by the sages of Israel.⁸⁷⁴

Based on this passage, Hildesheimer contended that the term “*parshiyot*” designates commandments that the sages explicated, and not commandments that obligate the community or involve the court.⁸⁷⁵ In the end, however, no single explanation has been able to account for all of the laws termed *parshiyot* in enumerations of the 613 commandments.⁸⁷⁶

⁸⁷³ Zucker, “Qeṭa'im Ḥadashim,” 11-12, 14.

⁸⁷⁴ ושנו חכמים חמשה וששים פרשיות גופה שלתורה וכל פרשה ופרשה פירשה חכמי ישראל; Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 19 lines 32-33.

⁸⁷⁵ Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 94n421.

⁸⁷⁶ Compare Perla, *Sefer ha-Miṣvot le-Rasag*, 3:196-200. The exception may be one of Sa'adya's enumerations, see there, 3:205-206, and Tobi, “Piyutei Rav Sa'adya Gaon,” 1:95.

The label “punishments” may also reflect thinking about the ways that laws can be grouped into commandment-units.⁸⁷⁷ Maimonides vociferously attacked enumerators who counted “punishments” as a category distinct from negative commandments; he described this as “confusion that requires no rebuttal.”⁸⁷⁸ One apologist suggested that enumerators who included “punishments” did so in lieu of listing these prohibitions among the negative commandments,⁸⁷⁹ but the overlap between the punishments and the negative commandments undercuts this explanation.⁸⁸⁰ Perla suggested that the negative commandments are prohibitions, and that punishments designate the court’s penal obligations. Such a reading suggests that some enumerators divided laws according to their respective performers.⁸⁸¹ According to Ḥefeṣ ben Yaṣṣīah, the inclusion of excision (*karet*) among the punishments that make up the count of 613 serves as a reminder of the role that God plays in the Jewish legal system.⁸⁸²

⁸⁷⁷ For background, see Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 12-14 (introductory pagination).

⁸⁷⁸ תכיליט לא אחתאגי עליה רד; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 52 (Prin. Fourteen).

⁸⁷⁹ Traub, *Sefer Halakhot Gedolot*, 14 (§31). Compare Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 140-42 (Prin. Fourteen).

⁸⁸⁰ As Maimonides noticed; *Sefer ha-Miṣvot*, ed. Kafih, 52-53 (Prin. Fourteen).

⁸⁸¹ Perla, *Sefer ha-Miṣvot le-Rasag*, 3:4. Compare Bentham, *A Comment on the Commentaries*, 72: “In the directory part [the law] bids, in the sanctional part it prophesies. In the remedial part ... it bids other men than him whom it bade and prophesied to before, to fulfill such a prophecy ... upon the first man in case of his disobedience”; and idem, *An Introduction to the Principles*, 302: “A law confining itself to the creation of an offence, and a law commanding a punishment to be administered ... are two distinct laws; not parts ... of one and the same law. The acts they command are altogether different; the persons they are addressed to are altogether different.” On *azharah* and *‘onesh*, see above, n663.

⁸⁸² This is not preserved in the surviving fragments of Ḥefeṣ’s work, but Maimonides quoted it; *Sefer ha-Miṣvot*, ed. Kafih, 53 (Prin. Fourteen); see Halper, *A Volume of the Book of Precepts*, 54, 107-108. Note Sa’adya’s inclusion of excision among the seven methods of punishment; *Kitāb Jāmi’ al-Ṣalawāt*, eds. Davidson et al., 174 line 180. Compare Abraham Ibn Ezra’s comment to Lev. 18:29 that excision is preformed either by the court or God (בפרהסיא שתמיתום ואם בסתר אני אכריתם); *Peirushei ha-Torah*, ed. Weiser, 3:59; treated in Ben-Menahem, “Ha-Sod shel *Yesod Mora ve-Sod Torah*,” 191. On this issue, see also Mubashshir ha-Levi’s discussion in *Kitāb Istidrāk*, ed. Zucker, 57-58.

Pre-Maimonidean Reflections on Creating Commandment-Units

As mentioned in the Introduction, Sa'adya counted the commandments numerous times, in several liturgical poems and in his more juristic *Kitāb al-Sharā'i'* (*Book of the Commandments*), which is only partially preserved.⁸⁸³ (Nevertheless, he asserted that he did not regard enumeration itself as particularly important.⁸⁸⁴) Like others, Sa'adya recognized that commandment-units contain numerous laws; in one poem, he wrote:

Many acts are found in one commandment /
Like flaying and cutting burnt offerings.⁸⁸⁵

Sa'adya surmised that the obligations to flay and cut a burnt offering (*'olah*; Lev. 1:6) constitute one commandment, not two.⁸⁸⁶ Likewise, he wrote:

An illustration of no negative [commandment] in it /
Upon consideration they are one commandment /
Like “give his [wage] in the day” (Lev. 19:13), without “[his] leaving” (Deut. 24:15) /
This and that are one commandment.⁸⁸⁷

Sa'adya combined Leviticus' prohibition against withholding a day laborer's wages until the day following his work with Deuteronomy's directive to pay him before sunset; he chose not to count them as separate positive and negative commandments.⁸⁸⁸

⁸⁸³ See above, n61-62.

⁸⁸⁴ See above, n60.

⁸⁸⁵ מצוי במצוה אחת רבות פעולות \ כהפשת וניתוח בערך עולות Tobi, “Shivata Shenyah le-Shavu'ot,” 244 lines 49-50.

⁸⁸⁶ According to Tobi, “Shivata Shenyah le-Shavu'ot,” 244n, Sa'adya hinted to this in his *azharot*; see Sa'adya, *Kitāb Jāmi' al-Ṣalawāt*, eds. Davidson et al., 161 line 49, 174 line 113.

⁸⁸⁷ ציור אם אין במו בשוב \ שתיקה פיקוד אחד חשוב \ כבימו תתן בלי לך ושוב \ אשר זה וזה אחד קשוב Tobi, “Shivata Shenyah le-Shavu'ot,” 247 lines 69-72 (see Prov. 3:28). In the next few lines (247-48 lines 73-76), Sa'adya grouped another two acts as one commandment.

⁸⁸⁸ On overlapping positive and negative commandments, see Neubauer, “Miscellanea Liturgica,” 707; Halper, *A Volume of the Book of Precepts*, 22-23, 86-87; Baneth, “Hathalat Sefer ha-Mišvot le-Rav Sa'adya,” 380-81; and Tobi, “Shivata Shenyah le-Shavu'ot,” 247 lines 73-76. Compare Sklare, *Samuel ben Hofni Gaon*, 167-68n7, 197, 238, 285-86, 290; Zysow, *The Economy of Certainty*, 60-73; and Hallaq, *A History of Islamic Legal Theories*, 48-56. I hope to expand on this parallel elsewhere.

Another effort by Sa'adya to combine various biblically-prescribed acts as commandment-units is mentioned in Samuel ben Ḥofni's Arabic translation of Sa'adya's introduction (*reshut*) to one liturgical enumeration.⁸⁸⁹ Samuel mentioned various divisions that Sa'adya proposed for the commandments, including:

Section Sixteen: Commandments that depend on a group of actions (*af'āl jamā'a*) but comprise a single commandment. This is like the flaying and the cutting (Lev. 1:6), and breaking the neck of the heifer (Deut. 21:1-9).⁸⁹⁰

This section also apparently discussed the combination of rules as commandment-units. Sa'adya often grouped together acts as commandment-units in his enumerations.⁸⁹¹ It is difficult, however, to identify any principles underlying his methodology. At the outset of his voluminous commentary on one of Sa'adya's liturgical enumerations, Perla compared it, anachronistically, to Maimonides' Fourteen Principles in the Introduction to *Sefer ha-Miṣvot*, and considered the extent to which Sa'adya "agreed" with them. While Perla's arguments are often compelling, it is hard to know which of his speculative reconstructions are correct.⁸⁹²

As discussed in the Introduction, Samuel ben Ḥofni's *Kitāb fī al-Sharā'i'* (*Book on the Commandments*) placed commandments in overlapping categories; Samuel was

⁸⁸⁹ On the authorship of this text, see Baneth, "Hathalat Sefer ha-Miṣvot le-Rav Sa'adya," 371n33, citing earlier scholarship; Assaf, "Mi-Shiyarei," 27; and Sklare, *Samuel ben Ḥofni Gaon*, 30. For the impact of this commentary on Samuel's division of the commandments, see there, 184n43.

⁸⁹⁰ ואלקסם אליו אלמצות אלתי תתעלק בלואחדה מנהא אפעאל גמאעה וחי מצוה ואחדה והד'ה כאלהפשט ואלניתוח וואלערף פי אלעגלות; Neubauer, "Miscellanea Liturgica," 706. A parallel fragment appears in Schechter, *Saadyana*, 43. See Baneth's attempt to reorganize this text; "Hathalat Sefer ha-Miṣvot le-Rav Sa'adya," 379-80nn18-19. Tobi, "Shivata Sheniyah le-Shavu'ot," 244n, suggested that "breaking the neck of the heifer" (*al-'ereffī al-'agalot*) should read "setting the burnt offerings" (*al-'eirekh fī al-'olot*).

⁸⁹¹ For example, see the selections of Sa'adya's *Kitāb al-Sharā'i'* in Sklare, "The Religious and Legal Thought," 2:197 lines 1-3, 2:199 lines 1-5, 2:201 lines 1-8.

⁸⁹² See Perla, *Sefer ha-Miṣvot le-Rasag*, 1:22-24, 1:31-33, 1:40-46. Compare Halperin, *Sefer ha-Miṣvot le-Rasag*, 6-15; see Abraham Hirsch Rabinowitz, *Ha-Miṣvah veba-Miqra: 'im bei'ur Binah be-Miṣvah* (Jerusalem: 'Atir, 1988), 29-30.

therefore less interested in classifying laws as single commandment-units.⁸⁹³

Nevertheless, there are instances in which Samuel implicitly addressed the problem of identifying such units.⁸⁹⁴ He noted, for example, that there are two kinds (*darbayn*) of prohibitions that forbid priests to touch dead bodies: the first categorically prohibits the High Priest from any contact with the dead, while the second prohibits regular priests from such contact with certain exceptions.⁸⁹⁵ Samuel apparently regarded these as two manifestations of one commandment; elsewhere, he referred to commandments regulating the conduct of the High Priest and of regular priests as two expressions of a single commandment.⁸⁹⁶ In situations where the Pentateuch indicates that one can choose one of two acts – e.g., entrance into a levirate marriage, or refusal to do so (Deut. 25:5-10), or redeeming a firstborn donkey, or breaking its neck (Ex. 13:13, 34:20) – Samuel seems to have counted both of the acts as a single commandment.⁸⁹⁷ If so, this would have been in sharp contrast to the adamantly-held position taken, later, by Maimonides (this is detailed below).

Ḥefeṣ ben Yaṣṣīyah explicitly addressed the problem of distinguishing between a commandment and its parts. In the Introduction to his *Kitāb al-Sharāʿi*, he noted that his predecessors had enumerated the commandments in different ways. He criticized some of

⁸⁹³ See above, n73.

⁸⁹⁴ All of the following examples come from the fragments of Part Two of Samuel's *Kitāb fī al-Sharāʿi*; Sklare did not translate this part of the text; see *Samuel ben Ḥofni Gaon*, 176-77.

⁸⁹⁵ Sklare, *Samuel ben Ḥofni Gaon*, 20 lines 609-620 (Hebrew pagination); 21, lines 673-74. See similarly 21 lines 666-67. Maimonides counted this as two; *Sefer ha-Miṣvot*, ed. Kafih, 259 (Neg. 166, 168).

⁸⁹⁶ See Sklare, *Samuel ben Ḥofni Gaon*, 20 lines 620-23, 22 lines 679-821 (Hebrew pagination). Similar examples appear elsewhere, such as the meal offerings brought by the High Priest in the morning and evening (Lev. 6:13) constitute one commandment, and there are ten commandments (*sharāʿi*) related to the Temple and its vessels; idem, 21 lines 671-72, 25-26 lines 820-30 (Hebrew pagination).

⁸⁹⁷ Sklare, *Samuel ben Ḥofni Gaon*, 34 lines 1125-31 (Hebrew pagination).

them for confusing commandments (which he termed *uṣūl*; i.e., roots or principles) with details (here *furūʿ*; i.e., branches or details).⁸⁹⁸ The distinction between *uṣūl* and *furūʿ* is widespread in Islamic law.⁸⁹⁹ Ḥefeṣ wrote that in order to arrive at an accurate count, this confusion was in need of resolution:

With thorough scrutiny you find more than a thousand commandments (*sharīʿa*). However, those among them that exceed [the count of] 613 have the status of branches (*furūʿ*) that extend⁹⁰⁰ from the roots (*uṣūl*), which are 613; they are not [true] roots (*lā li-annahā uṣūlan [sic] kal-uṣūl*). For example, the components (*fuṣūl*) of making [the] Tabernacle: each one of them is a single commandment (*sharīʿa wāḥida*), from which stem branches and regulations (*qawānīn*). Similarly, the components of the sacrifices and components of other[law]s.⁹⁰¹

While Ḥefeṣ highlighted the alleged errors of his predecessors, none of the published fragments of his *Kitāb al-Sharāʿi* sets forth a methodology for distinguishing commandments from details. Not unlike Perla, in his study of Saʿadya, Benzion Halper, the first compiler of Ḥefeṣ’s work, attempted to deduce the author’s system by comparing the lists of commandments drawn up by Ḥefeṣ and Maimonides. Of course, this referral to a later scholar is anachronistic; moreover, Halper was mistaken to assume that because Ḥefeṣ included a commandment that Maimonides excluded on the basis of a particular

⁸⁹⁸ וימנהם מן יגעל בעץ אלאצול פרועה [ובעץ] אלפרוע אצולא; Zucker, “Qeṭaʿim Ḥadashim,” 14. See Cohen, *Opening the Gates of Interpretation*, 284-85, 302, 438.

⁸⁹⁹ Islamic legal theorists used the distinction between *uṣūl* and *furūʿ* to illustrate the link between sources of the law and its branches or applications; *furūʿ* can also mean substantive laws; see above, n480.

⁹⁰⁰ Zucker, “Qeṭaʿim Ḥadashim,” 14, read *inbaṣaṭat*, following a correction of a later scribe (the manuscript is T.-S. Ar. 18(1).22). The first scribe wrote *inḍabaṭat*, a less common word, which would mean “established” by the 613 *uṣūl* (on this meaning, see Dozy, *Dictionnaires Arabes*, 2:2; and Blau, *Dictionary*, 382, s.v. ضبط). I thank Marina Rustow for her help with this manuscript.

⁹⁰¹ וענד תצפח אל מסתקצא פתגד זאיד עלי אלף שריעה לכן אלתי מנהא הו זיאדה עלי תר”ג מנולתהא מנולת פרוע אנבצטת מן אלאצול אלתי הי תר”ג לא לאנהא אצולא כאלאצול מן ד’לך פצול מעשה משכן פאד’ כל ואחד מנהא יתחוי עלי שריעה וואחדה ואסעה אלקול יתפרע מנהא פרועה וקואנין וכד’אך פצול אלקראבין ופצול אכד’ איצא גיר הד’א כמא סנד’כרהא פי מואצעהא; Zucker, “Qeṭaʿim Ḥadashim,” 14-15. Translation based on Cohen, *Opening the Gates of Interpretation*, 302, with changes.

Principle, Ḥefeṣ necessarily rejected the relevant Principle.⁹⁰² Yet some of Halper's conclusions are quite suggestive. As the underappreciated Ḥefeṣ certainly influenced Maimonides,⁹⁰³ it is likely that Maimonides had the earlier work in mind when shaping some of his Principles.

Halper collected thirty commandments that appear in both Maimonides' *Sefer ha-Miṣvot*, and in the fragments of Ḥefeṣ's *Kitāb al-Sharā'i* to which he had access, and he contrasted these with twenty-one commandments on Ḥefeṣ's list that were omitted by Maimonides. Of the twenty-one commandments that are not on Maimonides' list, sixteen are excluded on the basis of Principle Seven, four on the basis of Principle Twelve, and one on the basis of Principle Nine.⁹⁰⁴ Halper therefore asserted that Maimonides' Principle Seven, which eliminates instantiations (see below) of a commandment from the enumeration even when they are explicit in the Pentateuch, was "chiefly directed" against Ḥefeṣ.⁹⁰⁵

Abraham Ibn Ezra dedicated the second chapter of his *Yesod Mora ve-Sod Torah* (*The Foundation of Reverence and the Secret of the Torah*) to the difficulties of

⁹⁰² See Halper, *A Volume of the Book of Precepts*, 61-88, see below, n905.

⁹⁰³ In one responsum, Maimonides ascribed what he later considered to be an error to reliance on Ḥefeṣ; *Teshuvot*, ed. Blau, 2:383 (§217); *Igrot*, ed. Shailat, 1:295. For treatment of Maimonides' relationship to Ḥefeṣ, see Twersky, *Introduction to the Code of Maimonides*, 16, 247-48, 253.

⁹⁰⁴ Ḥefeṣ counted the prohibition against using money of a prostitute or dog for the altar (Deut. 23:18) as two commandments; Halper, *A Volume of the Book of Precepts*, 85, ascribed Maimonides' counting them as one to his "inconsistency"; see also there, 70. On Maimonides' view, see below, n1184.

⁹⁰⁵ Halper, *A Volume of the Book of Precepts*, 86. To my mind, Halper was premature to imply that Ḥefeṣ thought about the problems Principle Seven poses in Maimonidean terms when he concluded that Ḥefeṣ followed scriptural formulations but that Maimonides was "guided by logical principles in the system of enumerating the commandments"; *A Volume of the Book of Precepts*, 87-88; see also 57-58. See Twersky, *Introduction to the Code of Maimonides*, 247; and Baron, *SRHJ*², 6:95-96. On this issue, note Eliezer of Metz's statement that he did not follow the organization of the Pentateuch in arranging the commandments (ולא בסדר המקראות כי כל מצוות הנכללות בדמיון אחד אייחד לבד בכלל אחד) mentioned by Twersky).

enumerating the commandments.⁹⁰⁶ Unlike the above authors, he argued that the search for an accurate enumeration is futile.⁹⁰⁷ Like Ḥefeṣ, he noted that earlier enumerators employed different schemes to list the commandments. And echoing Ḥefeṣ's complaint about the confusion of *uṣūl* and *furū*, Ibn Ezra wrote that some counted general principles (*kelalim*) and details (*peṛaṭim*) separately, but others mixed them together.⁹⁰⁸ He added that the problem of determining which general principles constitute distinct commandments is compounded by the fact that an “overarching principle” (*kelal gavohah*) may impose numerous obligations.⁹⁰⁹

Abraham Ibn Ezra offered an example that would highlight the arbitrary nature of enumerations. According to the rabbis, the three verses prohibiting the cooking of a kid in its mother's milk (Ex. 23:19, 34:26, and Deut. 14:21) teach three separate prohibitions: benefiting from, eating, and cooking mixtures of milk and meat.⁹¹⁰ Abraham Ibn Ezra noted that some enumerators listed this prohibition once, and others, three times.⁹¹¹

⁹⁰⁶ According to some manuscripts, this work was originally called *Sefer ha-Miṣvot*; M. Friedländer, “Ibn Ezra in England,” *Transactions of the Jewish Historical Society of England* 2 (1894-1895): 48n3; and Ben-Menaḥem, “Ha-Sod shel *Yesod Mora*,” 179n12.

⁹⁰⁷ “In truth, the number of commandments is endless” (ועל דרך מחקר האמת אין קץ למספר המצוות); Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 92 (2:4); see the treatment there, 28-29, 88.

⁹⁰⁸ ויש מי שיספור הכללים והפרטים ויש שסופרים פעם הכללים לבדם ופעם הפרטים לבדם; Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 92 (2:3).

⁹⁰⁹ יש כלל גבוה כמו לשמור את כל מצוות ה' כולל עשה ולא תעשה ומלת ועבדתם את ה' אלהיכם כוללות כל מצוה עשה; Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 93 (2:6). Compare idem, *Sefer ha-Ibur*, ed. Solomon Zalman Ḥayim Halberstam (Lyck, 1874), 11b, where he categorized commandments as principles (*iqarim*) and remembrances thereto (*zekher la-hem*).

⁹¹⁰ See *Encyclopedia Talmudit*, s.v. *basar be-ḥalav*, 4:694-95.

⁹¹¹ יש מהם שספר בשולל גדי פעם אחת ויש שספרו בשלש מצוות כנגד שנכתב שלש פעמי' וחכמינו דרשו ורבות ככה; Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 91-92 (2:3); see the notes for earlier positions. Ibn Ezra reiterated this problem throughout this chapter; see 94 (2:6), 98 (2:9), 99 (2:9), 106 (2:15). Some of his methodological comments are treated in Ben-Menaḥem, “Ha-Sod shel *Yesod Mora ve-Sod Torah*,” 186-88. For a proposed parallel between Ibn Ezra's statement and Maimonides' Principle Seven, see Avraham I. Bromberg, “Haqbalot be-Raba' uve-Rambam,” *Sinai* 55 (1963): 44.

Creating Commandment-Units in Maimonides' Sefer ha-Miṣvot

Like his predecessors, Maimonides recognized the challenge of separating commandments from details of commandments; he declared Principle Eleven, which asserts that parts of a commandment are not distinct commandments, “extremely difficult to understand” (*‘awīṣ al-fahm jiddan*).⁹¹² Maimonides’ system for distinguishing commandments from details has not been subject to thorough investigation.⁹¹³ Jacob Levinger suggested that when Maimonides described certain laws in the *Mishneh Torah* as “included” in (*be-khlal*) others, he may have referred to the activity of grouping laws under larger headings.⁹¹⁴ However, Levinger mostly focused on a few examples in the *Mishneh Torah* while examining the creation of commandment-units, though this work is

Though beyond the scope of this chapter, note Moses Ibn Tibbon’s statement that some made principles (*shorashim*; the same word he used to translate Maimonides’ term *aṣl*) into branches (*porot*; Ezek. 17:10), while others, branches into roots (יש רבים מונים במספר המצוות פרטים אחרים ועושים מן השורשים); Israel, “Peirush Rabbi Moshe Ibn Tibbon,” 32). *Porot* clearly relates to the term *furū’*.

⁹¹² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 44 (Prin. Seven). See also the end of Principle Seven: “understand this Principle; it is the central pillar (*‘amud ha-tavekh*) for our topic” (פאפהם הד’א אלאצל אנה) (עמוד התוך פי מא נחן בסבילה there, 26). As Bloch and Joshua ha-Nagid noted, this could refer to the fact that this Principle is in the middle of the Principles or to the importance of its subject matter; Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 26n4; and Joshua ha-Nagid, *Teshuvot*, ed. Raṣhabi, 100; I prefer the second option.

⁹¹³ Duran (*Zohar ha-Raqi’ a*, 6-32, introductory pagination) may have been the first to comment on all of the Principles. More recently, Perla (*Sefer ha-Miṣvot le-Rasag*, 1:17-46) penned the most systematic examination.

⁹¹⁴ See, e.g., *Hilkhot Yesodei ha-Torah*, 5:11: “there are other matters included in the prohibition against desecrating God” (יש דברים אחרים בכלל חילול השם); Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit shel ha-Rambam*, 78-80. The author of *Sefer ha-Hinukh* used the phrase “included in this commandment” (בכלל מצוה זו) for a similar purpose. On the term *be-khlal* in the *Mishneh Torah*, see Shoḥetman, “Le-She’elat ha-Yaḥas,” 37n19; and Cohen, *Opening the Gates of Interpretation*, 309, 310n86, noting that *be-khlal* may refer to rabbinic laws that are “included” in a larger commandment-unit.

of secondary importance to this problem. He did not explore the relevant Principles in *Sefer ha-Miṣvot* at length, and in one instance, he failed to distinguish between laws excluded by Principle Seven and those excluded by Principle Eleven.⁹¹⁵

In his attempt to determine which of Maimonides' Principles addressed the challenge of reducing Jewish law to 613 units, Ben-Menaḥem divided the Fourteen Principles into "exclusionary rules" and "rules of individuation." Ben-Menaḥem further subdivided the "exclusionary rules" into "rules of identification" (Principles One, Two, and Three) and "rules of interpretation" (Principles Five, Eight, and Ten), and the "rules of individuation" into "analytical rules" (Principles Seven, Eleven, and Twelve) and "rules of individuation proper" (Principles Four, Six, Nine, Thirteen, and Fourteen). Ben-Menaḥem claimed that the "analytical rules" and the "rules of individuation proper" were those that address "individuation."⁹¹⁶

⁹¹⁵ See Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit shel ha-Rambam*, 81n39, treating *Hilkhot Shabbat*, 29:1, and Positive Commandment #145. On the apparent contradiction between these passages, see also Binyamin Ze'ev Benedikt, *Ha-Rambam le-lo Sṭiyah min ha-Talmud* (Jerusalem: Mosad ha-Rav Kook, 1985), 112-16.

⁹¹⁶ Ben-Menaḥem, "Maimonides' Fourteen Roots," 17-29; see *ibid.*, "Individu'asiyah shel Ḥuqqim," 103-106, for an earlier presentation; see above, n844. This analysis is helpful, but ignores the order of the Principles. (I cannot entirely explain the order of the Principles, but there appears to be some logical arrangement; see n918.) Another problem is that Ben-Menaḥem described the "rules of individuation proper" as "rules that stipulate how the laws are actually to be individuated." I do not see why this covers Principles Four (not to count instructions that cover the entire law) and Six (to count overlapping positive and negative commandments as two commandments), but excludes Principle Eleven (not to count parts of a law). Why is Principle Six in the same category as Principle Four? How is Principle Eleven not a "rule of individuation proper"? On Ben-Menaḥem's proposal, see also Friedberg, *Crafting the 613 Commandments*, 52. Halbertal, "*Sefer ha-Miṣvot* le-Rambam," 461n8, claimed that Principles Nine to Fourteen deal with the details of the law; and Feintuch, *Sefer ha-Miṣvot le-Rambam 'im Peirush Piqudei Yisharim*, 1:69, considered Principles Seven, Ten, Eleven, and Twelve to address the question of when scriptural laws are grouped together under the heading of one commandment.

In my view, five Principles in the Introduction to Maimonides' *Sefer ha-Miṣvot* address the distinction between commandments and details of commandments.⁹¹⁷ Principle Seven asserts that the *fiqh* (here: instantiations) of a commandment are not to be counted in the enumeration; Principle Eleven asserts that parts of a commandment are not to be counted; Principle Twelve asserts that parts used to assemble a commandment are not to be counted; and, Principle Thirteen asserts that if an act is required over a number of days, it is only counted once. In short, Principles Seven, Eleven, Twelve and Thirteen deal with two types of acts that form one commandment-unit: Principle Seven addresses different ways a single commandment is manifest, while Principles Eleven, Twelve, and Thirteen focus on parts of a commandment-unit that must (or should) come together or appear in a series.⁹¹⁸ Lastly, Principle Fourteen considers the extent to which the requirement to impose punishments (*iqāmat al-ḥudūd*) results in the creation of distinct commandments. Maimonides also addressed the creation of “commandment-units” in his enumeration, raising potential objections and dismissing them.⁹¹⁹

⁹¹⁷ See Blidstein, “Where Do We Stand,” 26: “the massive issue handled by Maimonides piecemeal in Principles 7, 11, 12, 13, 14, and in a sense, 8 as well: how to identify single norms, norms that are composed of many aspects or components or actions.” I understand Principle Eight to be concerned with linguistic matters.

⁹¹⁸ If Principles Seven, Eleven, Twelve, Thirteen, and Fourteen deal with creating commandment-units, why is Principle Seven separated from the others? This relates to the larger question of whether there is an order to the Principles. Maimonides likely did not group Principle Seven with the other relevant Principles because Principle Seven deals with unique manifestations of one law, but the others treat parts of one law that are (usually) present simultaneously. (Compare Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 139 [Prin. Seven]; Allegri's claims are largely compelling, but because he read *Sefer ha-Miṣvot* in translation, he occasionally asked questions that the Arabic shows are unnecessary.)

⁹¹⁹ E.g., “a skeptic could be skeptical and say” (והוא יבגו למשכך אן ישכך עליי ויקול) and “one could challenge me and say” (וללמערתך אן יערתצני ויקול); Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 88 (Pos. 57), 102 (Pos. 83).

Principles Nine and Ten, which relate to the creation of commandment-units but do not deal with it directly, are excluded from this analysis. Principle Nine focuses on the relationship between the Pentateuch and the enumeration of the commandments (see Chapter Five). And according to Principle Ten, a commandment's preliminary steps (*tauṭi'āt*) are not to be counted as separate commandments.⁹²⁰ Technically speaking, these prefatory steps are not details but preliminary actions needed for a commandment's performance. An example would be the need to “take choice flour” (Lev. 24:5) in order to prepare the showbread.

Principle Seven

In Principle Seven, Maimonides claimed that an instantiation (*fiqh*) of a commandment is not a distinct commandment. Use of the word *fiqh* in this sense is decidedly uncommon.⁹²¹ In the early Islamic period, the term *fiqh* referred to theology in general or to theological conclusions that were not the product of revelation.⁹²² By the ninth century, *fiqh* came to refer solely to jurisprudence,⁹²³ and not only for Muslim writers. Judeo-Arabic writers, Maimonides among them, also used the term *fiqh* to denote law or jurisprudence. But what did Maimonides mean in the heading of Principle Seven

⁹²⁰ See Blau, *Dictionary*, 770, s.v. *وطأ*. Kafih and Ibn Tibbon translated this word as *haqdamot* (preliminaries [?]).

⁹²¹ First noticed, as far as I know, in Ignaz Goldziher, “Das arabische Original von Maimuni's Sêfer Hammišewôt,” *Wiener Zeitschrift für die Kunde des Morgenlandes* 3 (1889): 81-82. See also Israel Friedlaender, *Arabisch-deutsches Lexikon zum Sprachgebrauch des Maimonides: Ein Nachtrag zu den arabischen Lexicis* (Frankfurt: J. Kauffmann, 1902), 88, s.v. *فقه*; Goldberg's comments in *Ma'aseh Nissim*, 16 (§3); and Levinger, *Darkhei ha-Mašhavah ha-Hilkhatit shel ha-Rambam*, 78.

⁹²² van Ess, *Theologie und Gesellschaft*, 1:209; and A.J. Wensinck, *The Muslim Creed: Its Genesis and Historical Development* (London: Frank Cass, 1965), 110-11.

⁹²³ Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1999), 2-3.

when he wrote, “it is inappropriate to count the *fiqh* of a commandment”⁹²⁴ In his Hebrew translation of *Sefer ha-Miṣvot*, Moses Ibn Tibbon rendered *fiqh al-sharī‘a* (the *fiqh* of a commandment) as *diqduqei ha-miṣvah* (the specifics of a commandment),⁹²⁵ and in his, Kafih suggested *peraṭei hilkhot ha-miṣvah* (the details of the laws of a commandment) and *mishpaṭei ha-miṣvah* (the rules of a commandment).⁹²⁶ These translations are not particularly helpful in understanding the term *fiqh*. Jon Bloomberg suggested that Maimonides may have used the word *fiqh* as a calque of the Hebrew word *halakhah* in Principle Seven.⁹²⁷ How, then, did he distinguish the *fiqh* of a commandment from its parts (*ajzā’*, sing., *juz’*)?⁹²⁸ (These parts were excluded from the enumeration by Principle Eleven.)

At the outset of Principle Seven, Maimonides wrote: “Know that a single commandment (*al-sharī‘a al-wāḥida*) is an accepted proposition (*qaḏīya mā musallama*), and this premise (*muqaddima*) necessitates (*yalzam*) many commands and prohibitions (*awāmīr wa-nawāhī*) that are the *fiqh* of a commandment.”⁹²⁹ This sentence is full of

⁹²⁴ אנה לא יבגי אן יעד פקה אלשריעה; Maimonides, *Sefer ha-Miṣvot*, 21 (Prin. Seven).

⁹²⁵ Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 13 (Prin. Seven). Compare the phrase *diqduqei nezirut* (from mNaz 1:2; *Hilkhot Nezirut*, 1:9, 2:14, 2:22, 4:12, 6:2), which denotes distinct commandments.

⁹²⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 21 (Prin. Seven); see also there, 2n13. Note the term *mishpaṭei miṣvah* in the Introduction to the *Mishneh Torah; Mishneh Torah*, eds. Cohen et al., 14 line 171. See also below, n934.

⁹²⁷ “This use of *fiqh* would appear to be a calque, inasmuch as the Hebrew *hālakhaḥ* has a twofold connotation, referring to Jewish law in general on the one hand, and to a specific norm of Jewish law on the other”; Bloomberg, “Arabic Legal Terms in Maimonides,” 8.

⁹²⁸ Both Ibn Tibbon (Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 24) and Kafih (ed. Kafih, 43; Prin. Eleven) translated *ajzā’ al-sharī‘a* (the parts of a commandment) as *helqei ha-miṣvah*. See below, n961, and Allegri’s explanation of the difference between Principles Seven and Eleven mentioned above, n918.

⁹²⁹ אלשריעה אלואחדה הי קציה’ מא מסלמה וילזם ען תלך אלמדקמה אואמר ונואהי כתירה פי פקה אלשריעה; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 21 (Prin. Seven). My translation is based on Michael Schwarz, “‘*Al-Fiqh*’, A Term Borrowed from Islam used by Maimonides for a Jewish Concept in His *Sefer ha-Mitzwoth* and in His *Guide of the Perplexed*,” in *Adaptations and Innovations: Studies on the Interaction between Jewish and Islamic Thought and Literature from the Early Middle Ages to the Late Twentieth Century*, eds. Y. Tzvi Langermann and Josef Stern (Paris: Peeters, 2007), 352, with some changes.

terms borrowed from the science of logic;⁹³⁰ these are not captured by the Hebrew translations of Ibn Tibbon or Kafih.⁹³¹

⁹³⁰ As far as I know, Joshua ha-Nagid was the only pre-modern reader to notice this; see *Teshuvot*, ed. Raṣḥabi, 99. Schwarz's translation shows that he was aware of the parallels, though he did not explicate them. Kafih translated the sentence as: "One commandment is a totally complete unit, and that introduction obligates many commands and prohibitions in the laws (*halakhot*) of the commandment" (המצוה האחת היא (יחידה מסוימת שלמה, ומתחייבים מאותה ההקדמה צווים ואזהרות רבים בהלכות המצוה המצוה האחת היא). Both Ibn Tibbon (Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 13) and Kafih (idem, *Sefer ha-Miṣvot*, ed. Kafih, 21; Prin. Seven) translated "muqaddima" as "haqdamah" (introduction); compare above, n920. Kafih's explanation shows the difficulty of this translation (כלומר השם הכללי המוגדר והמגובש של המצוה שאנו מציגים אותו בפתח דברינו כל פעם שאנו) (באים לדבר על מצוה מסוימת there, 21n87). In the logical sciences, *muqaddima* refers to each of the first two parts of a syllogism. For Maimonides' use, see Efos, "Maimonides' Arabic *Treatise on Logic*," 16 line 19 (Hebrew pagination). Similarly, the word *qadiya* means premise or proposition. Maimonides' use of the root *l-z-m* also hints at the logical sciences. In formal logic, the verb *l-z-m* means "necessitates," as in a proof or deduction, and in legal contexts it means "obligates." On Solomon ibn Ayyub's translation of the verb *l-z-m*, see Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 6 (introductory pagination). On this verb in Avicenna's logical writings, see Robert Wisnovsky, *Avicenna's Metaphysics in Context* (Ithaca: Cornell University Press, 2003), 217.

Scholars have adduced further examples of the relationship of the *Treatise on Logic* and *Sefer ha-Miṣvot*. See Halbertal, "*Sefer ha-Miṣvot* le-Rambam," 471, 475n32; and Daniel Sinclair, "Ḥashivah Mishpatit be-Mishnatam shel ha-Rambam voha-Ramban," in *Sefer ha-Yovel Minḥah le-Ish: Qoveṣ Ma'amarim Mugash be-Hoqarah leha-Rav Avraham Yishayahu Dolgin be-Melot lo Shiv'im ve-Hameish Shanah*, ed. Itamar Warhaftig (Jerusalem: Beit Keneset Beit Ya'aqov, 1991), 350. Principle Eight also relies on concepts from Greek logic; see also Cohen, *Opening the Gates of Interpretation*, 24n81. Note Abraham Ibn Ezra's call for the use of logic in the enumeration; *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 88-91 (2:1-2; see Ben-Menaḥem, "Ha-Sod shel *Yesod Mora*," 183-84; and Cohen, *Opening the Gates of Interpretation*, 302n69); and Abraham Maimonides' censure of Daniel ha-Bavli for the latter's alleged ignorance of logic treated below.

Herbert Davidson rejected the ascription of the *Treatise on Logic* to Maimonides, but several scholars have challenged this; see his "The Authenticity of Works Attributed to Maimonides," in *Mei'ah She'arim: Studies in Medieval Jewish Spiritual Life, in Memory of Isadore Twersky*, eds. Ezra Fleischer et al. (Jerusalem: Magnes, 2001), 118-25; idem, *Maimonides*, 313-22; idem, "Ibn al-Qifṭī's Statement Regarding Maimonides' Early Study of Science," *Aleph* 14, no. 1 (2014): 245-58; Ahmad Hasnawi, "Réflexions sur la terminologie logique de Maïmonide et son contexte farabien: Le *Guide des perplexes* et le *Traité de logique*," in *Maïmonide: Philosophe et Savant (1138-1204)*, eds. Tony Lévy and Rushdī Rāshid (Leuven: Peeters, 2004), 69-78; Mordechai Cohen, "Dimyon ve-Higayon, Emet ve-Sheqer: Gishotehem shel Ramba' ve-Rambam le-Metaforah ha-Miqra'it le-Or ha-Po'etiqah voha-Filosofiyahh ha-'Ivrit," *Tarbiz* 73, no. 3 (2004): 420-21; Y. Tzvi Langermann, "Igeret shel ha-Rambam le-R. Ḥisdai: 'Ed Ḥadash le-Nusah ve-Hagigim Nosafim 'al Yehuso le-Rambam," in *Ta Shma*, 2:536; and Sarah Stroumsa, "On Maimonides and Logic," *Aleph* 14, no. 1 (2014): 259-63. See also Joseph A. Buijs, "Maimonides' Use of Logic in *The Guide of the Perplexed*," in *Judaic Logic*, ed. Andrew Schumann (Piscataway, NJ: Gorgias Press, 2010), 47-76.

⁹³¹ Wael Hallaq ascribed the introduction of Greek syllogisms into *uṣūl al-fiqh* to al-Ghazālī and described some of the ramifications and receptions of formal logic in Sunni *uṣūl al-fiqh*; see his "The Development of Logical Structure in Sunnī Legal Theory," *Der Islam* 64 (1987): 58-65; idem, "Non-Analogical Arguments," 300-306; idem, "Logic, Formal Arguments and Formalization of Arguments in Sunnī Jurisprudence," *Arabica* 37, no. 3 (1990): 315-21; and idem, *A History of Islamic Legal Theories*, 137-42. This engendered a sharp response from Ibn Taymiyya; see idem, *Ibn Taymiyya Against the Greek Logicians* (Oxford: Clarendon Press, 1993), xiv-xxiv. See also Felicitas Meta Maria Opwis, *Maṣlaḥah and*

Several times in Principle Seven, Maimonides connected the word *fiqh* with the word “stipulation” (*sharṭ* or *ishtirāṭ*), for example: “Scripture completed the *fiqh* of the law of this punishment (*qiṣāṣ*) and provided several stipulations (*ishtirāṭāt*).”⁹³² He also contrasted the *fiqh* of a commandment with its overarching principle (*aṣl*).⁹³³ I think that the best translation of the term *fiqh* in this and similar contexts is “instantiation,” “manifestation,” or “application.”⁹³⁴ This accounts for many appearances elsewhere in *Sefer ha-Miṣvot* and for the examples in Principle Seven of its Introduction.⁹³⁵ In addition, Maimonides used the fifth form of the root *f-q-h* to denote “detailing of the law.” For instance, in the Introduction to *Sefer ha-Miṣvot*, he wrote, “it is not my intention in this treatise to detail any of the commandments (*al-tafaqquh fī miṣvah min al-*

the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to the 8th/14th Century (Leiden: Brill, 2010), 90-96. Sobhi Rayan argued that while Ibn Taymiyya rejected Aristotelian syllogisms, he used Aristotelian logic more generally; “Ibn Taymiyya’s Criticism of the Syllogism,” *Der Islam* 86, no. 1 (2001): 93-121.

⁹³² ת'ם תמם אלכתאב פקה חכם הד'א אלקצאן ואשתרט פיה אשתראטאת; Maimonides, *Sefer ha-Miṣvot*, 23 (Prin. Seven). Note also the rare plural *fiqhīyāt*; there, 26; adduced by Blau, *Dictionary*, 512, s.v. فقهيّات.

⁹³³ לאן כל מא יג'ד מכתוב יעד מן גיר תאמל לאצל אלמצוה ולא לפקההא או שרוטהא; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 22 (Prin. Seven).

⁹³⁴ Halper wrote that Principle Seven addresses “the various ramifications and hypothetical cases of a certain group of laws,”; *A Volume of the Book of Precepts*, 85. Peritz wrote that Principle Seven is concerned with “*Rechtsverfahren*” (legal procedures) or “*verschieden Bestimmungen*” (various regulations or provisions); “Das Buch der Gesetze,” 1:451n3. Schwarz, “*Al-Fiqh*,” 351-53, offered “detailed rules pertaining to the law” for *fiqh*. I prefer “instantiations” because it accounts for the fact that the commandment manifests itself differently in different circumstances. See Bloch’s comment in Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, xxviii, that the translation that Naḥmanides used consistently translated *fiqh* as *diqduqim* (compare above, n925), but that Ibn Tibbon chose *din* or *mishpat* for *fiqh* and *ḥukm* (rule).

⁹³⁵ See below. Schwarz, “*Al-Fiqh*,” 351-53, wrote that there are 29 appearances *fiqh* and its derivatives in *Sefer ha-Miṣvot*, 28 with this usage. A search on the Friedberg Judeo-Arabic Project returns over 50 appearances of the words (*al-*)*fiqh* and (*al-*)*tafaqquh*. Among Muslim jurists, *tafaqquh* denoted studying or applying oneself to the study of law; Makdisi, *The Rise of Colleges*, 99-100, 103, 114, 172-73.

Jonathan Owens’ definition of a technical term is useful here: “When a term is consistently used to represent a constant extensional class or a fixed process it can be taken as a technical term. Very often such terms are represented as a derivational set”; *Early Arabic Grammatical Theory*, 11. See also Versteegh, *Arabic Grammar*, 1-2.

mišvot); rather, solely to count them.”⁹³⁶ In the course of identifying the location of the primary talmudic discussion of each law, he often mentioned the *fiqh* or *aḥkām* (rules) of a commandment. At times, he seems to have chosen the word *fiqh* because of the broad nature of the commandment in question. However, I cannot explain every case.⁹³⁷

In Maimonides’ other writings, the word *fiqh* can refer either to jurisprudence in general or to the details or instantiations of a law. Michael Schwarz showed that in the *Guide of the Perplexed*, *fiqh* usually means jurisprudence but can occasionally mean specific rules.⁹³⁸ In the *Treatise on Resurrection*, Maimonides described the *Mishneh Torah* as “compilations of the law (*tawālīf fiqh al-sharī‘a*) and exposition of its statutes (*aḥkāmuhā*);”⁹³⁹ he elsewhere categorized the *Mishnah* as a “book of law” (*kitāb fiqh*).⁹⁴⁰ In one responsum, he distinguished between the *fiqh* and the *uṣūl* (roots) of a law.⁹⁴¹ Abraham Maimonides frequently said that the *fiqh* of a given subject is detailed in a

⁹³⁶ וליס גרצ'י פי הד'ה אלמקאלה אלתפקה פי מצוה מן אלמצות בל עדהה פקט; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 6 (introduction). See Bloomberg, “Arabic Legal Terms in Maimonides,” 8-9; Blau, *Dictionary*, 512, s.v. فقه; and Cohen, *Opening the Gates of Interpretation*, 266n88, 469. Compare the formulation in one letter to Samuel ben ‘Eli, that the intent of *Sefer ha-Miṣvot* is not to discuss the *fiqh* of the commandments (*sharā‘i*), only the basic contours thereof (בל מערפה מענאהא [פקט]); Maimonides, *Igrot*, ed. Shailat, 1:378. On this line in *Sefer ha-Miṣvot*, see also Abraham Maimonides’ comments in MS. Hunt. 185, 213a; *Ma‘aseh Nissim*, 106-107 (§13).

⁹³⁷ For example, “*din shor*” (“the law of oxen”) is one commandment and the “*fiqh* of this law” (*fiqh hādhā din*) appear in the third chapter of Bava Qamma (Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 174; Pos. 337). See the description of the commandment to redeem a Jewish slavegirl, which contains “rules and stipulations, and there are many *fiqh* therein” (והד'ה אלפדיה להא אחכאם ושרוט ופיהא פקה כת'ר) (*ibid.*, 173).

⁹³⁸ See Schwarz, “*Al-fiqh*,” 351.

⁹³⁹ אלחואליף פי פקה אלשריעה ותביין אחכאמהא; Maimonides, *Igrot*, ed. Shailat, 1:319 lines 21-22. Translation based on David Hartman, *Crisis and Leadership: Epistles of Maimonides*, trans. Abraham S. Halkin (Philadelphia: JPS, 1985), 211. Some manuscripts have the singular *ta‘alīf*. On this line, see Twersky, *Introduction to the Code of Maimonides*, 45, 257.

⁹⁴⁰ Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 5:122 (mMen 4:1). See Twersky, *Introduction to the Code of Maimonides*, 168n203, 235-36.

⁹⁴¹ וד'לך כלה אנמא הו פקה עלי אצול אלאחכאם; Maimonides, *Teshuvot*, ed. Blau, 1:237 (§129).

particular section of the *Mishneh Torah*.⁹⁴² Tanḥum ben Joseph ha-Yerushalmi (d. 1291), a supporter of Maimonides who wrote *al-Murshid al-Kāfī* (*The Sufficient Guide*), a Judeo-Arabic dictionary of difficult words in the *Mishneh Torah*, occasionally used the word *fiqh* in ways that are found in Principle Seven.⁹⁴³

Maimonides' use of the word *fiqh* is all the more striking when compared with the use of the word *furū'* (branches) and its Hebrew synonyms by others who reflected on the enumeration of the commandments. Maimonides did use the word *furū'* in Principle Two, but there it describes rabbinic law, not the (biblical) instantiations considered in Principles Seven, or the parts of commandments discussed in other Principles.⁹⁴⁴

Collecting Fiqh al-Miṣvah into Commandment-Units

The primary goal of Principle Seven, like the other Principles of Maimonides' *Sefer ha-Miṣvot* treated in this chapter, is to group several laws into one commandment-unit. According to Maimonides, the author of the count in the *Halakhot Gedolot* was aware of the need to do this and therefore listed *parshiyot* that collected vows, oaths, and inheritance laws. But, in Maimonides' opinion, this earlier enumerator had failed to fully grasp this problem, listing many laws as individual commandments solely because they

⁹⁴² See Abraham Maimonides, *Peirush Rabbeinu Avraham*, ed. Wiesenberg, 345 (see also 341); idem, *Sefer ha-Maspiq*, ed. Dana, 123, 131; on the word *fiqh* in this work, see there, 51. See also idem, *Teshuvot*, ed. Freimann, 68, 97, 132.

⁹⁴³ See Tanḥum ben Joseph ha-Yerushalmi, *Al-Murshid al-Kāfī: Milono shel Tanḥum ha-Yerushalmi le-Mishneh Torah le-Rambam*, ed. Hadassa Shy (Jerusalem: ha-Aqademyah ha-Le'umit ha-Yisraelit le-Mada'im, 2005), 2, 6. The fifteenth-century Qaraite Samuel ben Moses al-Maghrebī also used *fiqh* this way in his *Kitāb al-Murshid*; see Joshua Blau, *Ha-Sifrut ha-'Arvit ha-Yehudit: Peraqim Nivḥarim* (Jerusalem: Magnes, 1980), 266n94.

⁹⁴⁴ On the term *furū'* in *Sefer ha-Miṣvot* and the *Commentary on the Mishnah*, see above, n632. On the root *f-q-h* in the latter work, see above, nn415, 569-570. As far as I can tell, this root invariably denotes laws of biblical status in *Sefer ha-Miṣvot*, but can refer to laws of rabbinic status in the *Commentary*.

are mentioned in the Pentateuch.⁹⁴⁵ According to Maimonides, the enumeration of the commandments should only list the “principle” or “base” commandment (*aṣl al-miṣvah*), and not “its instantiations or stipulations” (*fiqhīhā ’aw shurūtiḥā*), even if these are explicitly set forth in the Pentateuch.⁹⁴⁶

Determining the *aṣl al-miṣvah* was not a simple task, however, and in Principle Seven, Maimonides did not offer a clear way to identify it. Most of Principle Seven consists of criticism of his predecessors, and of examples. Four of the five examples are laws that are collected as one commandment, though they vary considerably in application. For example: the permissibility of entering a levirate marriage depends on the widow’s relationships to the family of her deceased husband; the nature of a particular sin-offering varies according to the wealth of the sinner (Lev. 5:6-11); and the personal status of an adulteress determines her punishment.⁹⁴⁷

In his fifth example, Maimonides stated that the rules pertaining to accidental homicide comprise one commandment: the “law” (*din*) of unintentional homicide.⁹⁴⁸ He used the term *fiqh* here to refer to the ways that unintentional homicide may occur. Even though these details are set forth in the Pentateuch (Num. 35:16-23), they are not distinct commandments. However, some laws that Maimonides called *fiqh* are better rendered “details” or “provisions”; one example is the requirement that the unintentional killer flee

⁹⁴⁵ לכה להם יתלכץ לה הד' אלמעני עלי אלכמאל ולא תחצל לה ולד'לך עד פי תלך אלפרשיות מא קד תקדם לה עדה והו' Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 25 (Prin. Seven). See above, n867.

⁹⁴⁶ פאן פקה אלמצוה איצ'א אד'א כאן נץ אלתורה לא יבגי עדה לאן לים בכון אלכתאב בין פקה תלך אלמצוה או אלאשתראטאת אלתי פיהא נעד נחן כל שרט או כל פרצ'ה פקהייה במצוה וקד גלט פי הד'א כת'יר לאן כל מא יוג'ד מכתוב יעד מן גיר תאמל לאצל אלמצוה ולא לפקהא או שרוטהא Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 22 (Prin. Seven).

⁹⁴⁷ I.e., whether she is the daughter of a priest, a betrothed girl between the age of twelve and twelve and a half (*na'arah ha-me'urasah*), or lacks either of these statuses; see *Encyclopedia Talmudit*, s.v. *eshet ish*, 2:291.

⁹⁴⁸ אלמצוה אלמעדודה פהו דין מכה נפש בשגגה Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 24 (Prin. Seven).

to a city of refuge (Num. 35:15). Maimonides was clearly aware that this case differs from the others in Principle Seven, for he wrote only that examples one to four are “of the same type” (*wa-min hādhā al-qabīl*), but did not use this phrase to introduce the fifth example. Maimonides added that the fact that the Pentateuch calls these rules *mishpaṭim* (ordinances; Num. 35:24), and not *mišvot*, is further evidence that they are not distinct commandments.⁹⁴⁹

From the examples in Principle Seven, it seems that Maimonides primarily looked for conceptual connections when searching for the *aṣl al-mišvah*, which he occasionally called “the enumerated commandment” (*al-mišvah al-ma’dūda*) or just the “*mišvah*.” In the enumeration itself, he identified different types of evidence to distinguish between the *fiqh* and the enumerated commandment. According to Maimonides, the fact that the Mishnah (mBek 1:7) uses the word *mišvah* to describe both levirate marriage and the levir’s release of the widow (*ḥaliṣah*) shows that these are distinct commandments.⁹⁵⁰ And although *qiyās* (here: analogy or logic) dictates that redeeming a firstborn calf or breaking its neck should be treated as *fiqh* of a commandment, the same Mishnah terms each of these acts a *mišvah*, which indicates that they are two commandments.⁹⁵¹ Albert Friedberg showed that Maimonides was inconsistent in citing the phrase “commandment-

⁹⁴⁹ Note the various words that Maimonides used to classify these commandments in the enumeration. He referred to the components of levirate marriage, variable sin offerings, and unintentional homicide as *aḥkām* (*Sefer ha-Mišvot*, ed. Kafih, 95 [Pos. 72], 169 [317], 171 [Pos. 226], 319 [Neg. 295]), used the root *f-q-h* to describe vows and sacrifices for unintentional sins (the other example in this Principle; 93 [Pos. 70], 110 [Pos. 95]), classified the statuses of an adulteress as *tafṣīl* (detail or component, see below; 23 [Prin. Seven], 336 [Neg. 347]), and called the inheritance laws “*dinei naḥalot*” (177 [Pos. 248]). Note the same phrase in the Short Enumeration in the *Mishneh Torah*; idem, *Mishneh Torah*, eds. Cohen et al., 34 line 317.

⁹⁵⁰ See Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 102 (Pos. 82), 168-69 (Pos. 216-17).

⁹⁵¹ See Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 102 (Pos. 82), and above, n897.

x” (*mišvat-x*) as evidence for a distinct commandment and that there are many examples in rabbinic literature that Maimonides ignored.⁹⁵² Unstated evidence and conceptual factors appear to have led Maimonides to rely only selectively on this phrase.

In Principle Seven, Maimonides also used the root *f-ṣ-l* (to divide or separate) and the verbal noun *tafṣīl* (making divisions or dividing) to denote part of a commandment-unit.⁹⁵³ In one instance, he associated the *tafṣīl* of a commandment with its “stipulations,” (*ishtirāt*),⁹⁵⁴ and in four places in the enumeration, he used this root in relationship to punishments imposed for similar acts.⁹⁵⁵ In Principle Nine, Maimonides employed this root to tease apart individual prohibitions that are part of overarching negative commandments (*lav shebe-khlalot*).⁹⁵⁶ Maimonides also used the word *tafṣīl* to denote a component of the Temple, similar to Ḥefeṣ’s description of the Tabernacle.⁹⁵⁷

Another kind of evidence appears in Maimonides’ discussion of *pesaḥ sheini* (the second paschal sacrifice), an arrangement which makes it possible for those unable to

⁹⁵² Above, n854. One problematic example (cited by Friedberg) is mSuk 4:3, which describes taking the willow-branch as a *mišvah*, but Maimonides, following the Talmud (bSuk 44a), called this a *halakhah le-Moshe mi-Sinai*, both in the *Commentary on the Mishnah (Mishnah ‘im Peirush*, ed. Kafih, 2:182) and *Hilkhot Lulav*, 7:20-21. Note *Sefer ha-Miṣvot*, ed. Kafih, 108 (Pos. 93), where Maimonides cited a passage from the *Sifra (Parashat Meṣora* ‘, §2:6, ed. Weiss, 71b) that designated three instructions to shave a *mišvah*. Maimonides counted two of these (Pos. 93 and 111), but the third is a temporary commandment excluded from the enumeration by Principle Three.

Modern readers of the *Mishneh Torah* have argued that Maimonides used the term *mišvah* in that work differently than he did in *Sefer ha-Miṣvot*. See Friedberg, *Crafting the 613 Commandments*, 173-206, 271-326, and the literature cited there. See also Michael Chernick, “Ha-Hevdel bein Miṣvah ve-Halakhah be-Torato shel ha-Rambam,” *CCAR Journal* (Special issue, 1997) 113-17.

⁹⁵³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 23, 25 (Prin. Seven).

⁹⁵⁴ אמא תפציל אלאשיא אלתי יכון בהא טמא או טהור פלא ינבגי עדהא לאנהא אשתראטאת; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 25 (Prin. Seven).

⁹⁵⁵ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 186 (Neg. 9), 208 (Neg. 52), 219 (Neg. 73), 336 (Neg. 347).

⁹⁵⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 33, 37 (Prin. Nine).

⁹⁵⁷ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 70 (Pos. 21); see also there, 99 (Pos. 77). For Ḥefeṣ’s use, see above, n901; compare above, n896.

bring the paschal sacrifice in its time to do so one month later. According to Maimonides, one could have thought that this second occasion for a paschal sacrifice is a *fiqh* of the commandment to bring the paschal sacrifice at the first opportunity. He claimed that this question is at issue in a talmudic debate (bPes 93a) about the number of punishments incurred for failing to offer the paschal sacrifice. Maimonides cited the view of R. Judah the Prince, who had claimed that one who fails to bring the paschal sacrifice at either time incurs two punishments because *pesah sheini* is an “independent festival” (*regel be-fnei ‘ašmo*). This shows, in Maimonides’ view, that the second paschal sacrifice does not constitute a *fiqh* but is a distinct commandment.⁹⁵⁸

Maimonides also struggled to determine when acts in a series comprise one commandment-unit. Two examples of this problem appear in *Sefer ha-Mišvot*: the acts that mark the end of one’s status as a nazirite (Num. 6:13-21), namely sacrifices and shaving, and these same acts when used to purify one afflicted by *šara ‘at* (Lev. 14:9-10). He wrote that the acts marking the end of one’s status as a nazirite are *fiqh* of a single commandment because both are required to permit the former nazirite to drink wine.⁹⁵⁹ But in the case of one afflicted by *šara ‘at*, the acts of shaving and of sacrifice have different goals (*ghāya*). After bringing the sacrifices, this individual is in an intermediate state of purification (known as *meḥusar kaparah*; see, e.g., bNaz 45a); he is only completely pure after shaving.⁹⁶⁰ Therefore, argued Maimonides, the acts of shaving and

⁹⁵⁸ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 88 (Pos. 57); see below, n1001.

⁹⁵⁹ Maimonides described these acts as the *fiqh* of this *mišvah* twice in *Sefer ha-Mišvot* and one time used the fifth form verb *f-q-h* to describe them; see *Sefer ha-Mišvot*, ed. Kafih, 108-109 (Pos. 93), 117 (Pos. 111). Note the careful use of the terms *fiqh* and *juz’* (part) there, 117 (Pos. 111); on the latter term, see below.

⁹⁶⁰ See Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 116-17 (Pos. 111).

of sacrifice comprise a single commandment for the former nazirite, but two commandments for one who had been afflicted by *šara 'at*.

Principles Eleven and Twelve

In Principles Eleven and Twelve, Maimonides argued that “parts” of a commandment form a single commandment-unit. In both Principles, he used the same Arabic word for “part” (*juz*’, pl., *ajzā*’). Indeed, the terminological similarity suggests that Maimonides could have combined Principles Eleven and Twelve.⁹⁶¹ While these Principles are very similar, they differ in that Principle Eleven groups different objects or acts and Principle Twelve is concerned with different components that comprise a larger, manufactured object.

Principle Eleven states that parts of a commandment-unit can be combined in two ways. The first requires the presence of a number of objects or acts. In the case of the commandment to take the four species (Lev. 23:20), several objects must come together. In order to set apart the individual afflicted by *šara 'at* (*'amāzat al-mešora*’; Lev. 13-14), a series of actions must be performed. Maimonides wrote that the latter case consists of six “characteristics” (*šifāt*); each act (*fi l*) cannot possibly be a distinct commandment (*mišvah be-fnei 'ašmah*). Using words from the root *j-m-*’ (to combine) to describe the

⁹⁶¹ Note Kafih’s recognition of this and his decision to use the Hebrew words *heileq* in Principle Eleven and *peraš* in Principle Twelve; Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 45n84.

relationship of the parts, he wrote that the desired outcome cannot be attained (*al-ghāya al-maṭluba lam tuḥaṣṣal*) with only one “part.”⁹⁶²

Maimonides claimed that the second way that parts of a commandment-unit can be combined is “extremely difficult to understand.”⁹⁶³ The difficulty arises when the absence of one of the needed components does not inhibit fulfillment of the commandment (*einan me‘aqvin zeh et zeh*). He cited the blue (*tekheilet*) and white fringes of a four-cornered garment (Num. 15:38) to illustrate the complexity of this problem. Lest “one imagine” (*yasbiq lil-khāṭir*)⁹⁶⁴ that the two colors refer to two commandments, Maimonides cited a halakhic *midrash*:

Perhaps they are two commandments (*mišvot*), the commandment of blue and the commandment of white? Therefore it says “*it will be for you as fringes*” (Num. 15:39); “*it*” is one commandment and not two commandments.⁹⁶⁵

Maimonides drew a general rule from this *midrash*:

This clarifies for you that even if the absence of the parts of a commandment does not inhibit its fulfillment, [the parts] may nevertheless constitute one commandment (*mišvah aḥat*) if they are one concept (or, meaning; *al-ma‘nā wāḥid*). Since the purpose (*qaṣd*) of the fringes is “*to remember [all of the commandments]*” (Num. 15:40), and all of the prescribed matter (*al-shay’ al-mūjab*) is to remember, it is counted as one commandment. [Consequently,] for the enumeration of the commandments we ignore their [i.e., the rabbis’] statements about parts of a commandment whose absence inhibit the fulfillment

⁹⁶² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 43-44 (Prin. Eleven); see also 117-18 (Pos. 112), 144-45 (Pos. 169).

⁹⁶³ See above, n912.

⁹⁶⁴ This phrase is exclusively a pejorative; Blau, *Dictionary*, 286, s.v. سبِق.

⁹⁶⁵ יכול שהן שתי מצות תכלת ומצות לבן תלמוד לומר והיה לכם לציצית מצוה אחת היא ואינן שתי מצות; he cited this *midrash* here as the *Mekhlta* but elsewhere as the *Sifrei* (*Sefer ha-Miṣvot*, ed. Kafih, 45 [Prin. Eleven], 66 [Pos. 14]). Naḥmanides cited this as the *Mekhilta*. Heller noted that this *midrash* is known today as *Sifrei Zuta*; see Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 26n10; and *Sifrei Zuta*, ed. Ze’ev Joskowitz (Lodz, 1929), 2:367. See Louis Finkelstein, “Maimonides and the Tannaitic Midrashim,” *JQR* 25, no. 4 (1935): 475-76, 477n15; and Jacob Dienstag, “The Relationship of Maimonides to his Predecessors: Part I, Midrashic Literature,” *Jewish Law Annual* 1 (1978): 57-58.

of other parts. Rather, [we consider] only the concept: Is it one concept or many concepts?⁹⁶⁶

Maimonides here identified an additional way to bring acts into the framework of a single commandment-unit. Apart from the relationship of the acts, the enumeration may depend on the meaning or goal of the commandment, as in the case of fringes, whose goal – remembrance – is stated in the Pentateuch. It is unclear how Maimonides would have identified the *maʿnā* (concept or meaning) of the vast majority of commandments whose intentions are not specified. His use of the term *maʿnā* may resemble its use in some *kalām* texts.⁹⁶⁷

Many readers of *Sefer ha-Miṣvot* have noticed that Maimonides’ approach to the (single) commandment of fringes seems to be in tension with his enumeration of the head and arm phylacteries as two distinct commandments.⁹⁶⁸ The Talmud (bMen 44a) rejects

⁹⁶⁶ פקד באן לך אן ולו אלאג'זא אלתי אינ מעכבין זה את זה קד תכון מצוה אחת אד'א כאן אלמעני ואחד לאן אלקצד באלציצית למען תזכרו פג'מלה אלשי אלמוג'ב ללד'כר מצוה אחת ינעד פלם יבקי אד'א אן נלתפת פי עדיד אלמצות לקולהם מעכבין ואינן באלציצית למען תזכרו פג'מלה אלשי אלמוג'ב ללד'כר מצוה אחת ינעד פלם יבקי אד'א אן נלתפת פי עדיד אלמצות לקולהם מעכבין ואינן. Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 45 (Prin. Eleven). Apparently based on this discussion, Maimonides added a similar passage to the *Commentary on the Mishnah*, writing: “the commandment of fringes includes two precepts” (*miṣvat ṣiṣit mushtamil ʿala farīdatayn; Mishnah ʿim Peirush*, ed. Kafih, 5:121n7 [mMen 4:1]; note that *miṣvah* and *farīd* are often synonyms in Judeo-Arabic. Here the term *miṣvah* denotes one of the 613 commandments. For some reason, Joshua ha-Nagid was unaware that this was a correction to the *Commentary on the Mishnah*; see *Teshuvot*, ed. Raṣhabi, 95. See also Twersky, *Introduction to the Code of Maimonides*, 16n21; and *Sefer ha-Miṣvot*, ed. Kafih, 28-31 [Prin. Eight].) Maimonides formulated this somewhat differently in *Hilkhot Ṣiṣit*, 1:4: והתכלת אינו מעכב את הלבן והלבן אינו מעכב את התכלת כיצד הרי שאין לו תכלת עושה לבן לבדו וכן אם עשה לבן ותכלת ונפסקו הלבן ותכלת אינו מעכב את הלבן והלבן אינו מעכב את התכלת כיצד הרי שאין לו תכלת עושה לבן לבדו וכן אם עשה לבן ותכלת ונפסקו הכשר. See Fixler, “Ha-Biṭuy ‘Ḥakhamim/Ḥasidim Rishonim,’” 60-61.

⁹⁶⁷ On the term *maʿnā* in *Sefer ha-Miṣvot*, see Chapter Five, esp. nn1108-1115. In the enumeration of the commandments, I think that it is unlikely that Maimonides had in mind the medieval project of identifying reasons for the commandments. In some works on Islamic legal theory, the term *maʿnā* is interchangeable with *ʿilla* (*ratio legis*), the basis for juridical *qiyās*. See Zysow, *The Economy of Certainty*, 160n3, 193; Shehaby, “*ʿIlla* and *Qiyās* in Early Islamic Legal Theory,” 27-46; and Hallaq, *A History of Islamic Legal Theories*, 23. On early use of this term, see Versteegh, *Arabic Grammar*, 96-99. See also Richard Frank, “Al-Maʿnā: Some Reflections on the Technical Meanings of the Term in the Kalām and its Use in the Physics of Muʿammar,” *JAOS* 87, no. 3 (1967): 250-52.

⁹⁶⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 65-66 (Pos. 12-13). See Nahmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 129-30 (Prin. Eleven); Isaac ben Sheshet, *Sheʿelot u-Teshuvot ha-Rivash* (Jerusalem: Mekhon Yerushalayim, 1993), 1:145-46 (§137); Duran, *Teshuvot ha-Tashbeṣ*, 3:146-47

the position that one should avoid wearing only one phylactery,⁹⁶⁹ asking: “Should one who lacks two commandments (*mišvot*) not perform one?”⁹⁷⁰ Based on the Talmud’s use of the word *mišvah*, Maimonides saw in this passage evidence (*dalīl*) that these are two commandments.⁹⁷¹

One exception to Maimonides’ understanding of rabbinic use of the term *mišvah* is the biblical requirement to count the days from Passover to Pentecost (Lev. 23:15). While the Talmud (bMen 66a and parallels) says, “it is a commandment (*mišvah*) to count the days and a commandment to count the weeks,”⁹⁷² Maimonides claimed that the counting of days and the counting of weeks are two parts (*ajzā’*) of a single commandment. Reading the rabbinic phrase, he wrote, “if one says ‘you must (*yalzam*) do such-and-such,’ this statement does not mean that the act (*al-fi’l*) must be an independent commandment.”⁹⁷³ He further argued that use of a lone blessing indicates that the counting of days and of weeks constitutes a single commandment.⁹⁷⁴

(§137); Jacob ben Joseph Reisher, *Shevut Ya’aqov* (Metz, 1789), 3:2a (§3:4); and Daniel ha-Bavli’s claims, treated below. See also Faur, *Iyunim ba-Mishneh Torah*, 142-43.

⁹⁶⁹ Maimonides originally accepted this position; see *Mishnah ‘im Peirush*, ed. Kafih, 5:121n7 (mMen 4:1); and idem, *Sefer ha-Mišvot*, ed. Kafih, 65-66n60. Compare Abraham Maimonides, *Sefer ha-Maspiq*, ed. Dana, 261-62.

⁹⁷⁰ מצוה לממני יומי ומצוה לממני שבועי. מאן דלית ליה שתי מצות חדא לא לעביד.

⁹⁷¹ See above, n952. As mentioned, he did not cite this term consistently; in two places the *Mekhilta de-Rabbi Ishmael* uses the phrase *mišvat tefillin* (the commandment of phylacteries) to describe both phylacteries; see *Mekhilta de-Rabbi Yishmael*, eds. Horovitz and Rabin, 67 line 13 (*masekhta de-fasha* §17), 74 line 8 (*masekhta de-fasha* §18).

⁹⁷² מצוה לממני יומי ומצוה לממני שבועי.

⁹⁷³ אדא קלת ילזם אן יפעל כדא וכדא פליס ילזם מן הדא אלקול אן דלך אלפעל מצוה בפני עצמה; Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 142 (Pos. 161).

⁹⁷⁴ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 142 (Pos. 161). See Duran, *Zohar ha-Raqi’a*, 61 (Neg. §53). Note that the prohibitions against shaving the corners of a man’s face and beard contain numerous parts (*ajzā’*; the four corners of a face and the five prohibited parts of a beard); Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 202-203 (Neg. 43-44).

Principle Twelve considers material parts used to manufacture (*ajzā' šinā'a*) a single object.⁹⁷⁵ Maimonides explained that occasionally:

It is known that a particular act is legislated for us, then the scriptural (or, explicit; *naṣṣ*) text confirms the explanation of how to perform that act and explains the term (*ism*, lit., noun) which it had mentioned and states what it encompasses.⁹⁷⁶

But what, for Maimonides, constitutes an *ism* (which I have translated as “term”)?⁹⁷⁷ This word appears two more times in Principle Twelve, where it refers to the commandment-unit of offering a meal offering (Lev. 2; Maimonides also called this “*torat ha-minḥah*”).⁹⁷⁸ Though the word “*ism*” in *Sefer ha-Miṣvot* frequently means “name,” it sometimes appears to have a more technical meaning. For example, Maimonides twice stated that the goal of *Sefer ha-Miṣvot* is only to “explain the *ism*” (*sharḥ al-ism*) of the commandments.⁹⁷⁹

Maimonides’ Principle Twelve frames the vessels and other objects in the Temple as one commandment-unit; the collection of the parts is termed (*yatasammā*; from the same root as *ism*) the Temple (*miqdash*).⁹⁸⁰ Each sacrifice is also a single procedure,

⁹⁷⁵ אלאצלא אלת'אני עשר אנה לא ינבגי אן תעד אג'זא צנעה מא מאמור בעמלהא כל ג'ז עלי אנפראדה; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 45 (Prin. Twelve).

⁹⁷⁶ מעלום אנה קד נשרע בעמל מא מן אלאעמל ת'ם יאכ'ד אלנץ פי תבין כיפיה ד'לך אלעמל וישרח אלאסם אלד'י ד'כר; this is Bloch's text, which I have followed for ease of translation; see Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 47 (Prin. Twelve); and idem, *Sefer ha-Miṣvot*, ed. Kafih, 45n24.

⁹⁷⁷ Following Israel Efros' translation of the *Treatise on Logic*; “Maimonides' *Treatise on Logic*,” 47 (English pagination). On the range of meanings of this word, see Almog Kasher, “The Term *Ism* in Medieval Arabic Grammatical Tradition: A Hyponym of Itself,” *JSS* 54, no. 2 (2009): 459-74.

⁹⁷⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 48 (Prin. Thirteen).

⁹⁷⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 7 (introduction), 55 (supplemental introduction). On this phrase, see Naḥum Eliezer Rabinovitch, *Mishneh Torah 'im Peirush Yad Peshuṭah: Zemanim I* (Ma'aliyot: Ma'aleh Adumim, 2007), 687 (intro. to *Hilkhot Shabbat*, chap. 27). Compare the statement in his letter to Samuel ben 'Eli, cited above, n936. See below, n1107.

⁹⁸⁰ See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 45-46 (Prin. Twelve), 69 (Pos. 20). See also Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 168-69 (Neg. 33).

involving numerous steps.⁹⁸¹ By the same token, the separation of each of the tithes and their transferences constitute single commandments.⁹⁸²

Principle Thirteen

Maimonides' Principle Thirteen is "the straightforward rule" (*al-qānūn al-mustaqīm*), according to which acts that repeat over time, whether over the course of a year, or continuously (*muttašila*), constitute a single commandment-unit. For example, the *tamid* sacrifice offered each morning and night (Num. 28:3-8) is counted once, as are sacrifices of new months (Num. 28:11-15). In language reminiscent of Principle Eleven, Maimonides claimed that the count depends on "*al-ma'nā al-ma'amūr*" ("the commanded concept"). Maimonides further asserted that this Principle should be obvious, except for the "enormous and repulsive mistake" (*ghalṭa 'aẓīma wa-shanī'a*) made by earlier enumerators who counted all of the additional sacrifices of festivals (*mussafin*) once, rather than counting the sacrifices of each holiday independently.⁹⁸³

How does one discern and identify cases that have one, as opposed to two, "concepts"? Maimonides' division between commandments and parts, while far from

⁹⁸¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 46-47 (Prin. Twelve). Maimonides stated that general requirements for all sacrifices are exceptions and are counted as distinct commandments (*Sefer ha-Miṣvot*, ed. Kafih, 48). Note that in one instance, he described commandment-units of this type as a "ritual" (*rutba*; see Blau, *Dictionary*, 238, s.v. רִטְבָּה). Kafih noticed that the word *ṣinā'a* impacted the title of the relevant section in the *Mishneh Torah* (i.e., *Hilkhot Ma'aseh ha-Qorbanot*); *Sefer ha-Miṣvot*, ed. Kafih, 46n90. This makes sense in light of Maimonides' emphasis of the importance of Principle Twelve for the enumeration of sacrifices.

⁹⁸² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 47 (Prin. Twelve). See Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 134-37 (Prin. Twelve); and Isaac de Leon's suggestion that Maimonides changed his mind about some of the applications of this argument (*Megillat Esther*, in *Sefer ha-Miṣvot*, ed. Hellman, 190; Prin. Twelve).

⁹⁸³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 48-49 (Prin. Thirteen).

capricious, is certainly subject to debate.⁹⁸⁴ Noting some arbitrariness in the applications of Principle Thirteen, Avraham Feintuch observed that Maimonides counted the additional sacrifices of the seven days of Passover as a single commandment, while he regarded the injunction to rest on the first and seventh days of Passover as separate commandments.⁹⁸⁵

Principle Fourteen

In Principle Fourteen, Maimonides turned to the question of whether or not punishments constitute distinct commandments. In his view, his predecessors had inconsistently counted punishments as distinct commandments.⁹⁸⁶ By contrast, Maimonides argued that the requirement to enact each type of punishment constitutes a distinct commandment, but that the same punishment meted out for different sins only constitutes a single commandment. As evidence, he cited the rabbinic designation of each of the four types of capital punishment as “commandment-x” (*mišvat-x*), and analogized from these designations to the other types of punishment (e.g., lashes and each sacrifice offered to atone for a sin). If the punishment for each sin was counted as a distinct commandment, he argued, the number of positive commandments would exceed four hundred!⁹⁸⁷ Maimonides does not seem to have considered the other extreme, that

⁹⁸⁴ See, e.g., below, n1092.

⁹⁸⁵ Avraham Feintuch, “Minyan ha-Mišvot shel ha-Rambam u-Qedushat ha-Mo‘adim,” *Sinai* 116 (1995): 218-19. Regarding Principle Thirteen, Friedberg wrote: “we see here that the individuating criteria are not firmly set and can vary almost whimsically” (*Crafting the 613 Commandments*, 58; see also 78-80, 88-90).

⁹⁸⁶ See above, n878.

⁹⁸⁷ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 51-52 (Prin. Fourteen); on this number, see there, n33.

imposition of all of the punishments might constitute a single commandment;⁹⁸⁸ it may be that the rabbinic phrase *mišvat-x* precluded this option.

The Root t-b-‘ to Describe a Component of a Commandment-Unit

In *Sefer ha-Mišvot*, words derived from the root *t-b-‘* (to follow or be subordinate) describe a subordinate element of a commandment-unit. Maimonides used this root to categorize the requirement to eat bitter herbs with the paschal sacrifice. It is not clear which Principle – if any – relates to this situation; perhaps the closest analogue is Principle Eleven, which stipulates that parts of a commandment are not counted separately. Maimonides, however, did not depict bitter herbs as “part” of the commandment to eat the paschal sacrifice, but as an auxiliary to it. The root *t-b-‘* does not appear frequently in *Sefer ha-Mišvot* to describe the relationship of two laws, so it is hard to clarify how Maimonides used this term. In Principle Four, which stipulates that commands (*awāmir*) that include (*ta‘umm*) all of the commandments (*sharā‘i*) are not counted, Maimonides cited “*you shall be a holy people to Me*” (Ex. 22:30) and referred to the *Mekhilta*’s comment: “When God establishes (*meḥadesh*) a commandment for Israel, He adds sanctity to them.”⁹⁸⁹ From Maimonides’ perspective, this broad understanding of “*you shall be holy*” indicates that this phrase does not constitute an independent commandment, but that Ex. 22:30 is “subordinate (*tābi‘*) to the commandment that is

⁹⁸⁸ This is Naḥmanides’ view; *Sefer ha-Mišvot leha-Rambam*, ed. Chavel, 142 (Prin. Fourteen).

⁹⁸⁹ The version in *Sefer ha-Mišvot* reads: כשהקב"ה מחדש מצוה לישראל הוא מוסיף להן קדושה; preserved with slight variants in *Mekhilta de-Rabbi Yishmael*, eds. Horovitz and Rabin, 320 lines 11-12.

instructed.”⁹⁹⁰ (In at least two places in the *Commentary on the Mishnah*, Maimonides stated that some rituals are appurtenances of others.⁹⁹¹)

In one place, the Pentateuch (Num. 9:11) instructs that the paschal sacrifice be eaten with unleavened bread and bitter herbs, yet elsewhere (Ex. 12:18) it mentions the requirement to eat unleavened bread independently.⁹⁹² Maimonides cited this latter verse as the source for an independent commandment to eat unleavened bread.⁹⁹³ In his view, the consumption of bitter herbs constitutes a “subordinate” (*tābi ‘*) act, or an “appurtenance”⁹⁹⁴ (*tābi ‘a*) of the paschal sacrifice; it is thus part of the commandment-unit to consume the paschal sacrifice. Citing a *Mekhilta* passage stating that neither unleavened bread nor bitter herbs are considered a “*mišvah*” independent of the paschal sacrifice,⁹⁹⁵ and a talmudic statement (bPes 120a) describing the consumption of bitter herbs on Passover as rabbinically ordained (*de-rabbanan*) in post-Temple times (*be-zeman ha-zeh*), Maimonides claimed that the requirement to consume bitter herbs is secondary to the paschal sacrifice.⁹⁹⁶

⁹⁹⁰ תאבוע ללמצה אלמאמור ביהא; Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 18-19 (Prin. Four). Note throughout Principle Four the words that Maimonides used to avoid the word *mišvah*.

⁹⁹¹ One of which may have ramifications for the enumeration; see Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 5:97 (intro. to mMen), 5:109 (mMen 2:3); and compare idem, *Sefer ha-Mišvot*, ed. Kafih, 82 (Pos. 46).

⁹⁹² The rabbinic reading is a decontextualized interpretation of this verse: “*In the first of the month, from the fourteenth of the month at evening, you shall eat unleavened bread until the twenty-first of the month, at evening.*”

⁹⁹³ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 140 (Pos. 158). Maimonides further cited the talmudic description of this as an “obligation” (*ha-kativ qeva ‘o ĥova*; bPes 120a and parallels).

⁹⁹⁴ Translation in Blau, *Dictionary*, 61-62, s.v. تابعة; see also Friedlaender, *Arabisch-deutsches Lexikon*, 13, s.v. تابعة. Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 86-87 (Pos. 56).

⁹⁹⁵ *Mekhilta de-Rabbi Yishmael*, eds. Horovitz and Rabin, 19-20. Horovitz preferred an alternative version of this text (see below, n1014); see his notes and Maimonides, *Sefer ha-Mišvot*, ed. Heller, 51n6.

⁹⁹⁶ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 86-87 (Pos. 56).

Daniel ha-Bavli and Abraham Maimonides on Creating Commandment-Units

Given the centrality of creating commandment-units in *Sefer ha-Miṣvot* and the occasional inconsistencies in Maimonides' arguments, it is not surprising that many of Daniel ha-Bavli's queries focused on the identification of parts of commandments and of whole commandments. Five of Daniel's thirteen questions on *Sefer ha-Miṣvot* tackled this problem, two addressed Principles Seven and Eleven, and three pertained to the enumeration itself. Several of the difficulties noted by Daniel coincided with passages in which Maimonides himself had struggled to clarify his views.⁹⁹⁷ Whatever their source, Daniel's queries demonstrate his careful consideration of Maimonides' grounds for enumeration.

In at least two places, Daniel borrowed Maimonides' use of the root *f-q-h* to describe the relationship of various laws. He rejected Maimonides' claim that despite the different punishments imposed for committing adultery with women of different statuses, there is nevertheless only one Negative Commandment prohibiting adultery. Daniel wrote that the enumeration of the commandments should actually include every instance in which Scripture "details the *fiqh*" (*tafaqqahat al-naṣṣ*) of a commandment.⁹⁹⁸ Daniel

⁹⁹⁷ See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 86 (Pos. 56), 88 (Pos. 57), 116-17 (Pos. 111). Similarly, Maimonides mentioned the difficulties that Daniel raised against Principle Three; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 153-54; MS. Hunt. 138a-140b; *Ma'aseh Nissim*, 9-12 (§2). Daniel's insistence that the enumeration should reflect Scriptural statements may also build on Maimonides' presentation of his predecessors' views.

⁹⁹⁸ MS. Hunt. 185, 139b; *Ma'aseh Nissim*, 18 (§3); Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 23-24 (Prin. Seven); see above, n947.

also labeled the second paschal sacrifice one of the “commandments of restitution” (*mišvot hashlamah*) that are “*fiqh*” of another commandment, and therefore excluded it from the enumeration.⁹⁹⁹ In both cases, Daniel used the word *fiqh* in the way that Maimonides had stipulated, but came to different conclusions.

Abraham Maimonides’ Rejoinders to Daniel ha-Bavli

Daniel’s questions elicited strong reactions from Maimonides’ son Abraham, which ranged from harsh critique to warm compliment.¹⁰⁰⁰ Three themes deserve attention. (1) In some cases, Abraham claimed that Maimonides had already considered the arguments made by Daniel, and had adjusted later works accordingly. (2) In others, Abraham explained *Sefer ha-Mišvot* by resorting to arguments that do not appear in that work. (3) In yet other cases, Abraham affirmed his own reliance on the claims of logicians and dialecticians, or as he put it, on one who is “a proponent of speculative reasoning” (*dhū al-naẓar*).

Twice in these five responsa to Daniel, Abraham claimed that his father had already considered Daniel’s arguments, integrated them into the *Mishneh Torah*, and (silently) disclaimed his earlier assertions in *Sefer ha-Mišvot*. Describing the *Mishneh Torah* as *ṣahīḥ* (reliable or authentic) and the repository of his father’s authoritative statements, Abraham claimed that his father had disavowed the position set forth in *Sefer ha-Mišvot* regarding *pesaḥ sheini* (the second paschal sacrifice; Abraham labeled the

⁹⁹⁹ MS. Hunt. 185, 187b-188a; *Ma’aseh Nissim*, 78 (§7).

¹⁰⁰⁰ See above, n108.

earlier view “objectionable” [*mu‘tariḏ*]).¹⁰⁰¹ In response to Daniel’s claim that shaving is not required to remove the nazirite prohibitions, Abraham similarly explained that his father had, in fact, ruled accordingly in the *Mishneh Torah* (against *Sefer ha-Miṣvot*).¹⁰⁰² In insisting that the *Mishneh Torah* reflects his father’s final views and in calling that work *ṣaḥiṭh*, Abraham echoed Maimonides’ claim that the *Mishneh Torah* is *ṣaḥiṭh* relative to his *Commentary on the Mishnah*.¹⁰⁰³

¹⁰⁰¹ MS. Hunt. 185, 190a-190b; *Ma‘aseh Nissim*, 81-82 (§7). For the earlier view, see above, n958. In *Hilkhot Qorban Pesah*, 5:2, Maimonides did not explicitly contradict his earlier position, but did imply as much; see Korkos there (ed. Frankel, 7.2:39); and Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 52n3. In the *Commentary on the Mishnah*, Maimonides seems to have concurred with the ruling in the *Mishneh Torah*; *Mishnah ‘im Peirush*, ed. Kafih, 2:197 (mPes 9:1). Maimonides’ descendant Joshua ha-Nagid was unaware of any change in Maimonides’ view; *Teshuvot*, ed. Raṣhabi, 106. The language in *Hilkhot Qorban Pesah*, 1:2, seems to echo *Sefer ha-Miṣvot*. For the suggestion that different goals of the *Mishneh Torah* and *Sefer ha-Miṣvot* explains contradictions, see Benedikt, *Ha-Rambam le-lo Sṭiyah min ha-Talmud*, 26, 127; and idem, *Asupat Ma‘amarim*, 135n14; based on the passage in Maimonides, *Igrot*, ed. Shailat, 378 lines 16-17. See also Levinger, *Darkhei ha-Maḥshavah ha-Hilkhatit shel ha-Rambam*, 86, and below, n1003.

¹⁰⁰² For the earlier view, see above, n959. In the later work, Maimonides wrote that shaving the nazirite is “meritorious, but does not preclude” drinking wine (*le-miṣvah ve-lo le-‘aqev*; *Hilkhot Nezirut*, 8:5); see also *Hilkhot Ma‘aseh ha-Qorbanot*, 14:17. Maimonides changed the *Commentary* to agree with the *Mishneh Torah*; see Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 3:189n35 (mNez 6:8). Abraham repeated this elsewhere; see MS. Hunt. 185, 205b-206a, 206a-206b; *Ma‘aseh Nissim*, 99-100 (§11), 100-101 (§12); and below.

¹⁰⁰³ See Maimonides, *Teshuvot*, ed. Blau, 2:383 (§217), and the notes there. Abraham also wrote that the *Mishneh Torah* is “more careful” (*ha-meduqdaq*) than the *Commentary*; *Teshuvot*, ed. Freimann, 106-107 (§81). Compare there, 69-70 (§64): אלדי פי ספר מצות סהו פי חאל אלכתאבה וקד אצלחתה אלן בהדא אלני. Maimonides edited the *Mishneh Torah* and *Commentary on the Mishnah* throughout his life, but *Sefer ha-Miṣvot* appears not to have been finalized, at least in surviving copies. For background, see Twersky, *Introduction to the Code of Maimonides*, 16-17nn21-22; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 11-14 (introductory pagination); Hopkins, *Peirush ha-Rambam le-Masekhet Shabbat*, xxi-xxiii; and idem, “Tiqunei Lashon ve-Hagbahat Signon be-Feirush ha-Mishnah le-Rambam,” in *Hiqrei ‘Ever va-‘Arav*, 254-55. On edits to *Sefer ha-Miṣvot*, see Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 23-25 (introductory pagination), 23n78, 24n6, 118n13; David Henshke, “Seridei *Sefer ha-Miṣvot* la-Rambam be-*Mishneh Torah*,” *Proceedings of the World Congress of Jewish Studies* 1, div.10, division C, no. 1 (1989): 180-86; idem, “Le-Gilguleha shel Shiṭat ha-Rambam ‘al Shevi‘it be-Zeman ha-Zeh,” *Asufot* 8 (1994): 182, 184; idem, “Le-Yesodei,” 145-46; idem, “Le-Ḥashivato ha-Hilkhatit shel ha-Rambam,” 1:144-45n90; and idem, “Ke-Ma‘ayan ha-Mitgaber: ‘*Sefer ha-Miṣvot*’ le-Rambam ke-Biṭuy le-Hitpathut Ḥashivato ha-Hilkhatit,” in *‘Al Pi ha-Be’er: Meḥqarim be-Hagut Yehudit uve-Maḥshevet Yisrael mugashim le-Ya‘aqov Blidstein*, eds. Uri Ehrlich et al. (Be’er-Sheva: Ben Gurion University Press, 2008), 151-82, esp. 152n7. To the premodern testimonies there, add Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 410 (“forgotten” negative commandments); and Duran, *Zohar ha-Raqi‘a*, 231-33 (concluding remarks). See also Yuval Sinai, “Setirot Penimiyot,” 1:179-81; below, nn1044-1045; and the discussions in Chapter Five.

In other cases, Abraham explained Maimonides' positions by invoking criteria absent from *Sefer ha-Miṣvot*. For example, Abraham admitted that his father's attempt to combine blue and white fringes into a single commandment because they share a concept (*ma' nā*) may "be misleading" (*muwahhim*); he acknowledged that hesitation (*mutawaqqif*) regarding this claim was appropriate.¹⁰⁰⁴ Yet he regarded Daniel's claim that all of the commandments connected with remembrance of the Exodus should be counted as one (see below) as excessive. According to Abraham, Daniel's reasoning could be used to argue that all forbidden foods are subsumed under the commandment to be holy (Lev. 11:44-45; this statement appears at the end of a list of prohibited foods), or that all religious law could be subsumed under two overarching commandments, to love God and to fear God (Deut. 28:48, 11:22). As this could not possibly have been Maimonides' intent, Abraham introduced new terms to distinguish phylacteries, which constitute two commandments, from fringes, which constitute one. The two phylacteries, he wrote, are "distinct" (*mutabāyin*), but blue and white fringes are "mutually entailing" (*mutalāzima*).¹⁰⁰⁵

Abraham also twice described a subsidiary law of a larger commandment-unit as an "appendage" (*iḏāfa*) in cases where Maimonides had not used this term.¹⁰⁰⁶ In one instance, he contrasted this "appendage" with the "essence" (*nafs*) of a

¹⁰⁰⁴ MS. Hunt. 177a; *Ma'aseh Nissim*, 64 (§5).

¹⁰⁰⁵ MS. Hunt. 177a; *Ma'aseh Nissim*, 64-65 (§5).

¹⁰⁰⁶ I have only found one instance of this term in Maimonides' enumeration of the commandments and two in the Principles; *Sefer ha-Miṣvot*, ed. Kafih, 13 (Prin. Two), 19 (Prin. Four), 91 (Pos. 66).

commandment.¹⁰⁰⁷ He did admit that Maimonides may not have intended a particular “interpretation” (*ta`wīl*) of *Sefer ha-Miṣvot* that Abraham offered, and that there may be “room to disagree” (*wajh lil-mu`āraḍa*) with some of his father’s proofs.¹⁰⁰⁸ Appealing to Principle Two, Abraham also explained decisions that his father had made by emphasizing that Maimonides had enumerated only explicit (*maḥṣūḥ*) laws, and not laws derived from *qiyās* that are not *guf ha-torah* (essence of the Torah).¹⁰⁰⁹

Finally, Abraham repeatedly cited terms and concepts from logic and dialectics to dismiss Daniel’s arguments. He referred to “a proponent of speculative reasoning” (*dhū al-naẓar*) twice, apparently somebody trained in logic or dialectics, and to a dialectician’s postulate: If one of two contradictory views is disproved, then the other must remain. Applying this to the circumstances at hand, Abraham declared that if Daniel was refuted, Maimonides must emerge victorious.¹⁰¹⁰ Elsewhere, Abraham conceded that even a *dhū al-naẓar* might fail to grasp the difference between phylacteries and the four species, or the talmudic claim (bMen 44a) that the wearing of one phylactery in the absence of the other fulfills a commandment, while the taking of three species in the absence of the fourth is not. Abraham accepted that one might also be confused by another teaching of

¹⁰⁰⁷ MS. Hunt. 185, 181a, 193b-194a; *Ma`aseh Nissim*, 70 (§6), 85-86 (§8). *Nafs* can also mean *independent*; see Blau, *Dictionary*, 708, s.v. نفس.

¹⁰⁰⁸ MS. Hunt. 185, 194b-195b; *Ma`aseh Nissim*, 86-88 (§8). On Abraham’s disagreements with his father in halakhic matters, see Carmiel Cohen, “Moreshet Av be-Khtivato ha-Hilkhatit shel Rabbi Avraham ben ha-Rambam,” *Me`aliyot* 25 (2005): 188-98.

¹⁰⁰⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 12-13 (Prin. Two); MS. Hunt. 185, 188a-189b; *Ma`aseh Nissim*, 78-80 (§7). I have not found any evidence that Maimonides applied Principle Two to the case at hand.

¹⁰¹⁰ MS. Hunt. 141b; *Ma`aseh Nissim*, 21 (§3). This argument is reminiscent of *qiyās al-khulf*; see below n1012. Formal dialectics remains an understudied field; see Larry Benjamin Miller, “Islamic Disputation Theory: A Study of the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries,” (PhD. Diss, Princeton University, 1985).

Maimonides: the claim that if the absence of one act precludes the fulfillment of another, then the two acts constitute one commandment, but when one act does not preclude the fulfillment of another, these two acts are not necessarily two commandments. He insisted that this “subtle” (*daqīq*) distinction requires careful consideration.¹⁰¹¹

Abraham even argued that only a person who is not trained in *qiyās* could read a *Mekhilta* passage as Daniel did. Abraham claimed that his own interpretation follows what “the masters of the art of comparison” (*arbāb šinā ‘at al-maqāyīs*) term an “apagogic syllogism” (*qiyās al-khulf*).¹⁰¹² Any possessor¹⁰¹³ of “comprehension” (*afhām*) who regarded this a weak argument was, in his opinion, similar to a “proponent of the *kalām*” whose incomplete knowledge leads him to dismiss “definitive apodictic demonstrations” (*al-barāhīn al-qaṭ ‘īya*).¹⁰¹⁴

¹⁰¹¹ MS. Hunt. 176a-176b; *Ma’aseh Nissim*, 63-64 (§5).

¹⁰¹² Goldberg (*Ma’aseh Nissim*, 71; §6) translated *maqāyīs* as *higayon* (logic), probably what Abraham had in mind. Translation of *qiyās al-khulf* follows Efras, “Maimonides’ *Treatise on Logic*,” 45-46 (English pagination); see Marvin Fox, *Interpreting Maimonides: Studies in Methodology, Metaphysics, and Moral Philosophy* (Chicago: University of Chicago Press, 1990), 73. On this term (which could be vocalized *qiyās al-khalf*), see also Kwame Gyekye, “Al-Farabi on the Logic of the Arguments of the Muslim Philosophical Theologians,” *Journal of the History of Philosophy* 27, no. 1 (1989): 136-37; and Lameer, *Al-Fārābī and Aristotelian Syllogistics*, 74. For use in legal contexts, see Wael Hallaq, “Logic of Legal Reasoning in Religious and Non-Religious Cultures: The Case of Islamic Law and the Common Law,” *Cleveland State Law Review* 34 (1985-1986): 84. *Qiyās al-khulf* also appears in James Robinson, *Samuel Ibn Tibbon’s Commentary on Ecclesiastes: The Book of the Soul of Man* (Tübingen: Mohr Siebeck, 2007), 218.

¹⁰¹³ MS. Hunt. 185, 182b, does not include the word *dhū*, but Goldberg (*Ma’aseh Nissim*, 71; §6) plausibly suggested that it should be there.

¹⁰¹⁴ MS. Hunt. 185, 181b-182b; *Ma’aseh Nissim*, 70-71 (§6). The text at hand reads: הרי אתה דן עשה והפסח מצות עשה ומרור מצות עשה (*Mekhilta de-Rabbi Yishmael*, eds. Horowitz and Rabin, 20 lines 3-4 (see the notes there); *Ma’agarim* does not preserve any alternative readings). Abraham argued that the phrase *mišvat ‘aseh* indicates that unleavened bread and bitter herbs are one commandment because this phrase is singular and the *Mekhilta* always mentions unleavened bread before the bitter herbs. Neither claim is particularly convincing; the word *mišvat* could be vocalized as *mišvot*, and it is hard to make much of the order of unleavened bread and bitter herbs in this text.

Abraham also claimed that Daniel's comparison between the second opportunity to bring the paschal sacrifice and the opportunity to bring a sacrifice on the intermediate days of a festival (see below) violates basic logic. Similar deductions (*natā'ij*), wrote Abraham, may result from different premises (*muqaddimāt*). Though both the second opportunity to bring the paschal sacrifice and the opportunity to bring a sacrifice on the intermediate days of a festival are opportunities to remedy failure, they are dissimilar for the purpose of the enumeration.¹⁰¹⁵

Substantive Disagreements about the Creation of Commandment-Units

Throughout the responsa that address the creation of commandment-units, both Abraham and Daniel focused on terminological and conceptual themes that were central to Maimonides' attempts to identify 613 distinct commandments. It is clear from their discussions of five issues that both scholars were aware of problems with Maimonides' methodological postulates, and recognized that these could not yield an unassailable enumeration of the commandments.

(1) Daniel ha-Bavli called attention to Maimonides' reliance on rabbinic use of the term *mišvah*. Citing two appearances of this word, Daniel asserted that acts that Maimonides had combined into a single commandment-unit were actually distinct commandments. First, Daniel claimed that in the *Mekhilta* passage cited by Maimonides, bitter herbs and unleavened bread both share the same status; each is described as a "*mišvah*."¹⁰¹⁶ Therefore, bitter herbs are a distinct commandment, asserted Daniel, and

¹⁰¹⁵ MS. Hunt. 185, 189a; *Ma'aseh Nissim*, 80 (§7).

¹⁰¹⁶ MS. Hunt. 185, 178b-179a; *Ma'aseh Nissim*, 66 (§6). For the *Mekhilta* text, see above n1014.

not merely subordinate to the paschal sacrifice. Moreover, wrote Daniel, the talmudic phrase the “commandment of shaving” (*mišvat giluaḥ*, e.g., bNed 4a) indicates that shaving is a distinct commandment for the nazirite, against the view of Maimonides, who counted shaving and sacrifice as one commandment.¹⁰¹⁷

Elsewhere, Daniel asserted that the term *mišvah* cannot possibly denote a distinct commandment. Though the Talmud (bSuk 37b) described the four species (Lev. 23:40) as four “*mišvot*,” he noted, nobody counts these as constituting four commandments. This alone would undermine Maimonides’ claim that the phylacteries count as two commandments since the term *mišvah* applies to each phylactery.¹⁰¹⁸ Daniel suggested that the rabbis may have used the term *mišvah* for each phylactery in the way that they had referred to the four species, with each *mišvah* denoting part of the commandment.¹⁰¹⁹

Daniel’s understanding of the *Mekhilta* elicited Abraham’s above-cited sharp comments about his interlocutor’s ignorance of the ways of *qiyās*. In order to defend his father’s reading, Abraham wrote that, as Daniel recognized that the rabbinic term *mišvah* could refer to parts (*ajzā*) of a commandment, Daniel should acknowledge that the “*mišvah*” of consuming bitter herbs need hardly be a distinct commandment.¹⁰²⁰ Abraham made the same claim to deflect Daniel’s argument about concluding a period of

¹⁰¹⁷ MS. Hunt. 185, 192b; *Ma’aseh Nissim*, 83 (§8); see above, n959.

¹⁰¹⁸ See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 144-45 (Pos. 169). Perla repeatedly insisted that nobody could possibly think that the four species constitute four commandments (*Sefer ha-Miṣvot le-Rasag*, 1:13, 1:160, 1:468, 1:582). Benjamin bar Samuel indicated that the four species are four commandments; see Fleischer, “Azharot le-R. Binyamin,” 46 (see there, 37); and Frankel, *Maḥzor Shavu’ot*, 698 line 27.

¹⁰¹⁹ MS. Hunt. 185, 174b-175a; *Ma’aseh Nissim*, 61-62 (§5). See similarly Daniel’s criticism of Maimonides’ use of the word *mišvah* in MS. Hunt. 185, 198a; *Ma’aseh Nissim*, 91 (§10).

¹⁰²⁰ MS. Hunt. 185, 184b-185a; *Ma’aseh Nissim*, 74 (§6). The transcription should read אללילב מצות ארבעה מצות (not מצוי).

naziriteship.¹⁰²¹ In neither case did Abraham attempt to reconcile his own position with his father's claims.

(2) Daniel also challenged Maimonides' search for conceptual links that would result in the creation of commandment-units. Were this line of reasoning correct, Daniel claimed, laws pertaining to tithes, or firstborn sons and firstborn animals would constitute a single commandment, because each shares a name or appears to be based on similar concepts.¹⁰²² Maimonides had argued that blue and white fringes share a common meaning (*ma 'nā*) because the Pentateuch states that they are affixed to garments “*in order (le-ma 'an) to remember all of the commandments*” (Num. 15:40), but he had suggested that the head and arm phylacteries do not share a common goal. Daniel asserted that if so, all of the commandments which are linked to the requirement to remember the Exodus would have needed to be counted as one. He concluded that the singular word “it shall be” (*ve-haya*; Ex. 13:9, Num. 15:39) indicates that phylacteries and fringes are each a single commandment.¹⁰²³ Noting that the Pentateuch uses the word “*le-ma 'an*” (“*in order to*”; Ex. 13:9, Num. 15:40) with respect to both fringes and phylacteries, Daniel further claimed that they share a single goal (*gharaḏ*). This was the contention that led Abraham to admit that the arguments of his father may have been “misleading” – though Abraham attempted to defend him.

¹⁰²¹ MS. Hunt. 185, 193b-194a; *Ma'aseh Nissim*, 85-86 (§7).

¹⁰²² I.e., tithes are *ma'aser rishon*, *ma'aser sheini*, etc., and require a portion of produce be given away, and both firstborn sons and first born animals, known as *bekhor adam* and *bekhor beheimah*, grant a priest the firstborn (though the former is subsequently “redeemed”); MS. Hunt. 185, 139b; *Ma'aseh Nissim*, 18 (§3).

¹⁰²³ MS. Hunt. 185, 174b-175b; *Ma'aseh Nissim*, 61-62 (§5).

The Role of Scripture in Identifying Distinct Commandments

(3) Daniel disagreed with Maimonides' claims about the role of Scripture in the enumeration of the commandments. He did recognize that the “umbrella” of a larger commandment-unit frequently subsumes numerous laws. A commandment might contain numerous sub-commandments (*farḏāt*)¹⁰²⁴ whose rules (*aḥkām*) differ,¹⁰²⁵ wrote Daniel; although the divisions (*aqsām*) of one commandment (*sharī'a*) may vary, they are nevertheless one unit. This is a “truth about which there is no disagreement,”¹⁰²⁶ he wrote. Daniel also accepted that scriptural divisions, parts (*ajzā'*), or aspects (*wujūh*) of a commandment are not always enumerated separately.¹⁰²⁷ Nonetheless, he argued that the enumeration should hew more closely to scriptural divisions than to conceptual classifications. In Daniel's view, this perspective helps explain several claims made by “the ancients” (*al-quḏman*) whose enumerations Maimonides had dismissed.¹⁰²⁸

In setting forth his theory, Daniel invoked a talmudic passage (bSab 73b-74a) that asks why the Mishnah (mSab chap. 7) lists prohibited Sabbath labors that are similar to one another, such as threshing and winnowing: Could one prohibition not be derived from the other? The answer offered in the Talmud is that the list of prohibited labors accords with the acts performed in the Tabernacle: “everything that was in the Tabernacle: even though there is [something] similar to it, it counts.”¹⁰²⁹ Mirroring this

¹⁰²⁴ This word is related to *farīda* (pl., *farā'īd*), a common Judeo-Arabic term for *miṣvah*, but is uncommon; see Blau, *Dictionary*, 497, s.v. *فرضة*.

¹⁰²⁵ *קד תפקה אלחכמים ז"ל פיהמא ואפרצ'ו פיהא פרצ'את עדידה תכתלף אלאחכאם פיהא באכתלאפהא*; MS. Hunt. 185, 138a; *Ma'aseh Nissim*, 16 (§3).

¹⁰²⁶ *חק לא כלאף פיה*; MS. Hunt. 185, 138a; *Ma'aseh Nissim*, 16 (§1).

¹⁰²⁷ MS. Hunt. 185, 138a-138b; *Ma'aseh Nissim*, 16 (§1).

¹⁰²⁸ MS. Hunt. 185, 139b; *Ma'aseh Nissim*, 18 (§3).

¹⁰²⁹ *כל מילתא דהוי במשכן אע"ג דאיכא דמייא לה חשיב לה*; this is Daniel's text; others vary slightly.

language, Daniel wrote, “everything that is written in the Pentateuch: even if there is [something] similar to it, it counts as a commandment.”¹⁰³⁰ According to Daniel, this explains why earlier enumerations had counted the three punishments for adultery as three commandments, despite the fact that they are all “*fiqh*” of a single prohibition.¹⁰³¹

Daniel highlighted an incongruity in Principle Seven in order to demonstrate his approach. Maimonides had claimed that the sacrifice offered by an inadvertent sinner constitutes a single *mišvah*, even though the sacrifice varies according to the status of the sinner (e.g., head of the court [*nasi*], High Priest, or neither). He compared this to the single commandment obligating an atonement sacrifice for the sin of entering the Temple while impure, for here, too, the sacrifice was related to one’s status. While the rich sinner might bring a lamb or goat (Lev. 5:6), noted Maimonides, these, and the sacrifices of poorer sinners, constitute “without doubt a [single] positive commandment” and its *fiqh*.¹⁰³² Daniel claimed that Maimonides was wrong to equate these laws, for there is great disparity in the sacrificial rites demanded of inadvertent sinners of different statuses;¹⁰³³ they are quite unlike the option of the wealthy man to bring a lamb or a goat to atone for having entered the Temple in a state of impurity.

Daniel compared the option to sacrifice a lamb or a goat to another situation that involved choice. Maimonides had written that, were it not for the fact that the Mishnah

¹⁰³⁰ כּל מלּתּא דּכּתּיב באורייתא אע״ג דאיכּא דדמיא לה מצוה קא חשיבּ לה; see the strikingly similar argument in di Trani, *Qiryat Sefer*, 9a (introduction, §6).

¹⁰³¹ MS. Hunt. 185, 139b; *Ma’aseh Nissim*, 18 (§3).

¹⁰³² מצוּת עשה בלא שׁך; Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 22; see there, 22-23 (Prin. Seven); and Friedberg, *Crafting the 613 Commandments*, 81-83.

¹⁰³³ I.e., their blood is sprinkled in different places and they are offered on different altars; MS. Hunt. 185, 138b-139a; *Ma’aseh Nissim*, 17-18 (§3).

described as “commandments” both the redemption of a firstborn donkey and the breaking of its neck, *qiyās* would dictate that each is a *fiqh* of a single commandment.¹⁰³⁴ This disturbed Daniel: “We cannot say,” he exclaimed, “that they [i.e., the rabbis ...] were ignorant of the ways of *qiyās*!”¹⁰³⁵ Rather, he wrote, the enumeration must follow rabbinic “*qiyās*”; in cases where the Pentateuch offers a choice, both options constitute distinct commandments.¹⁰³⁶ Daniel wrote that “whenever Scripture (or, the explicit text; *naṣṣ*) rules that something be divided, and distinguishes ... between those aspects of it that are subject to division, it is [to be considered] distinct in regard to the enumeration.”¹⁰³⁷

Abraham Maimonides responded by pointing out an ambiguity in Daniel’s argument regarding the atoning sacrifices for inadvertent sinners. According to Abraham, choice is irrelevant to the enumeration; the count of commandments only increases when laws differ depending on their performers (he ignored the role that choice apparently plays in the commandments of the firstborn donkey and levirate marriage).¹⁰³⁸ Daniel’s indignation at Maimonides’ dismissal of rabbinic “*qiyās*” also irritated Abraham. The rabbis knew on the basis of a divine tradition (*naql*) that redeeming a firstborn donkey

¹⁰³⁴ See above, n951.

¹⁰³⁵ ולא ימננא אנה נקול אנהם עלאל"ס כאנוא ג'אהלין בטרק אלקיאס; MS. Hunt. 185, 139a; *Ma'aseh Nissim*, 18 (§3).

¹⁰³⁶ Daniel wrote that the choice to enter a levirate marriage is similar. In his view, the choice of lamb or goat is one commandment, however, apparently because only the animal varies, but levirate marriages and firstborn donkeys entail different actions. Compare Perla’s comment that “nobody could possibly think that the [choice of] lamb or goat is two commandments” (ולא עלה על דעת שום אדם שיאמר דכשבה) (ושעירה שתי מצוות); *Sefer ha-Miṣvot le-Rasag*, 1:584.

¹⁰³⁷ כל מא תחכם אלנץ פי תקסימה ופרק פי חכמה בין וגוה אלתקסים פהו מפתרק פי אלעדד; MS. Hunt. 185, 138a-138b; *Ma'aseh Nissim*, 18 (§3).

¹⁰³⁸ MS. Hunt. 140b-141a; *Ma'aseh Nissim*, 19-20 (§3). See however above, n1036.

and breaking its neck are distinct commandments, he wrote, but general principles of enumeration of the commandments cannot be extracted from such statements.¹⁰³⁹

(4) When Daniel claimed that Maimonides had focused inconsistently on explicit and non-explicit laws, he argued that Maimonides had included certain details (here: *furū`*) of a single commandment (here: *aṣl*) in his enumeration, despite the fact that these details are not explicit in the Pentateuch (*ghayr maṣṣūḥ; ghayr manṣūṣa*) and that their laws do not differ fundamentally (*laysat mukhālif fī al-ḥukm*) from one another. In one such case, claimed Daniel, Maimonides had misclassified the commandment which prohibits an improperly dressed priest from serving in the Temple, for he included this within the positive commandment of donning priestly garments.¹⁰⁴⁰ From Daniel's perspective, this prohibition should be seen as one offshoot (*far` min furū`*) of the commandment that prohibits a non-priest (*zar*) from serving in the Temple.¹⁰⁴¹ Daniel set forth similar perspectives with regard to three negative commandments that prohibit an impure priest from serving in the Temple: the general prohibition; the case of a priest who has taken a ritual bath but remains unclean until sunset (*tevul yom*); and that of the priest who has not completed the rituals of atonement and remains in an intermediate state of impurity (*meḥusar kaparah*).¹⁰⁴²

¹⁰³⁹ MS. Hunt. 142b; *Ma'aseh Nissim*, 22 (§3).

¹⁰⁴⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 75-76 (Pos. 33). See also above, nn736-737.

¹⁰⁴¹ MS. Hunt. 185, 140a-140b; *Ma'aseh Nissim*, 19 (§3). Daniel's assumption is not entirely fair, as Maimonides listed this law as part of the commandment that priests wear specific clothing. See Sayid, *Ner Miṣvah*, 1:48a; and Perla, *Sefer ha-Miṣvot la-Rasag*, 2:424-25, 3:60-62; see also Duran, *Zohar ha-Raqi'a*, 232 (concluding remarks). Note Abraham Maimonides' reformulation of this prohibition; MS. Hunt. 185, 143b-144a; *Ma'aseh Nissim*, 23 (§3).

¹⁰⁴² MS. Hunt. 185, 140a-140b; *Ma'aseh Nissim*, 18-19 (§3).

There is reason to conjecture that this particular challenge is one to which Maimonides himself was sensitive because, curiously, Daniel's third example does not appear in surviving manuscripts of *Sefer ha-Miṣvot*. In his rebuttal, Abraham Maimonides did not claim that Daniel possessed an erroneous text of *Sefer ha-Miṣvot*, as he did when Daniel cited another passage that is absent from surviving versions of *Sefer ha-Miṣvot*.¹⁰⁴³ Ḥayim Heller, however, surmised that Daniel had an earlier version of *Sefer ha-Miṣvot*, and suggested that Naḥmanides' version of this work also included this prohibition.¹⁰⁴⁴ (There are also indications in the *Mishneh Torah* that Maimonides rethought aspects of this prohibition.¹⁰⁴⁵) Whatever the state of Daniel's text of *Sefer ha-Miṣvot*, he regarded these prohibitions as *furū* ' of a single umbrella commandment prohibiting impure priests from serving in the Temple. Rejecting Maimonides' claims, Daniel argued that if the three prohibitions pertaining to impure priests constitute three commandments, despite the fact that they are not explicit in Scripture, then the existence of three different punishments for adultery, which are based on express scriptural passages (*faṣīḥ al-naṣṣ*), should definitely evince the presence of three commandments.¹⁰⁴⁶

¹⁰⁴³ See MS. Hunt. 185, 130a; *Ma'aseh Nissim*, 6 (§1).

¹⁰⁴⁴ See above, n705.

¹⁰⁴⁵ See the sources in Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 45n8; and *Hilkhot Bi'at ha-Miqdash*, 3:9, 4:4, 9:11; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 5:194 (mSan 9:6); Menaḥem ha-Meiri, *Beit ha-Behirah 'al Masekhet Sanhedrin*, ed. Abraham Sofer (Jerusalem: Qedem, 1971), 301 (bSan 83b); Sayid, *Ner Miṣvah*, 1:36a; and Perla, *Sefer ha-Miṣvot le-Rasag*, 3:57.

¹⁰⁴⁶ MS. Hunt. 185, 140a; *Ma'aseh Nissim*, 19 (§3). Regarding these commandments, see also MS. Hunt. 185, 126b; *Ma'aseh Nissim*, 2 (introduction). On the term *faṣīḥ al-naṣṣ*, see above, n702.

The Relationship between “Parts” and “Umbrella” Commandments

(5) Daniel ha-Bavli also challenged a number of Maimonides’ decisions that aggregated individual laws into larger commandment-units. Daniel began his critique of Principle Eleven with one of his favorite tactics, by claiming that Maimonides had contradicted himself. The first part of Principle Eleven posits that if the absence of any component of a ritual prevents its fulfillment, then all components collectively comprise one commandment.¹⁰⁴⁷ According to Daniel, Maimonides had contradicted this by counting, as separate commandments, the injunctions to slaughter the paschal sacrifice and to eat it.¹⁰⁴⁸ Daniel pointed to a talmudic debate (bPes 78b-79a) about the relationship of these laws, in which the minority does not regard failure to eat the paschal sacrifice as a barrier to fulfillment of the commandment of sacrifice (*akhila lo me’aqva*). Though the Talmud does not say as much, Daniel inferred that the majority position was that failure to eat the paschal sacrifice does render the sacrifice invalid. If Maimonides, in fact, followed the majority position, argued Daniel, why had he counted the slaughtering and eating of the paschal sacrifice as two commandments?¹⁰⁴⁹ Daniel posited that these acts constitute a single commandment. In his view, eating the paschal sacrifice completes

¹⁰⁴⁷ See above, n962.

¹⁰⁴⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 86 (Pos. 56).

¹⁰⁴⁹ See *Hilkhot Qorban Pesah*, 2:14, 4:2. The Talmud does not actually say that the majority hold that failure to eat the paschal sacrifice renders it invalid; see Korkos to *Hilkhot Qorban Pesah*, 4:2 (ed. Frankel, 7.2:32); and Avraham Te’omim, *Hesed le-Avraham, Mahadurah Tinyana* (Lvov, 1898), 2:26 (*Hilkhot Qorban Pesah*, 8:1). Maimonides therefore need not have accepted Daniel’s inference; see Perla, *Sefer ha-Miṣvot le-Rasag*, 1:423-25.

the sacrifice (he termed it *tashlumei mišvah*) and is not, by itself, a distinct commandment (*guf mišvah*).¹⁰⁵⁰

In his responses, Abraham Maimonides asserted that there is an “enormous difference” (*farq kabīr*) between saying that two objects are indispensable to one another (*me ‘aqvin zeh et zeh*), and saying that the absence of one object precludes the fulfillment of the other (*davar ploni me ‘aqev davar ploni*).¹⁰⁵¹ Therefore, the majority position that failure to eat the paschal sacrifice precludes fulfillment of the sacrifice need not mean that slaughtering and eating the paschal sacrifice constitute a single commandment. Abraham also added a more convincing argument: These acts are two commandments because slaughtering the paschal sacrifice and eating it are done at different times; excision is only incurred by failure to do the latter.¹⁰⁵²

In his challenges to Maimonides’ claim that bitter herbs are merely an “appurtenance” to the paschal sacrifice and not an independent commandment, Daniel attacked the evidence from the *Mekhilta*,¹⁰⁵³ and proposed an interesting interpretation of bPes 120a. In this passage, Rava claims that since the destruction of the Temple (*be-zeman ha-zeh*), the injunction to consume unleavened bread on Passover would have the force of biblical law, but the injunction to consume bitter herbs, only that of rabbinic law. The Talmud explains that the verse “*they shall eat it with unleavened bread and bitter herbs*” (Num. 9:11) obligates eating bitter herbs and unleavened bread only when the

¹⁰⁵⁰ MS. Hunt. 173a-174a; *Ma ‘aseh Nissim*, 59-60 (§4). As evidence, Daniel cited the Talmud’s statement that eating the paschal sacrifice is of secondary importance (*le-mišvah be- ‘alma*). On the term *guf mišvah*, see above, n725.

¹⁰⁵¹ As Perla noted, Abraham’s “enormous difference” is certainly debatable and does not account for similar passages; *Sefer ha-Mišvot le-Rasag*, 1:426.

¹⁰⁵² MS. Hunt. 175b-176a; *Ma ‘aseh Nissim*, 62-63 (§5).

¹⁰⁵³ Above, n1016.

paschal sacrifice is offered (*be-zeman de-ika pesah*). Rava claimed that a verse that does not mention bitter herbs, “*at evening you shall eat unleavened bread*” (Ex. 12:18), obligates eating unleavened bread even when the paschal sacrifice is not offered (*be-zeman de-leika pesah*). An opposing view cited in the Talmud describes the consumption of both bitter herbs and unleavened bread as rabbinically mandated laws in the absence of the Temple.¹⁰⁵⁴ Rava responded by arguing from the case of an uncircumcised person who cannot bring a paschal sacrifice: “*No uncircumcised person may eat of it*” (Ex. 12:48) – “*it*” (i.e., the paschal sacrifice) he may not consume, but he must consume unleavened bread and bitter herbs. Daniel adduced this passage to argue that the consumption of bitter herbs on Passover is a biblical obligation that is independent of the paschal sacrifice, and consequently (?), an independent commandment.¹⁰⁵⁵

¹⁰⁵⁴ This position holds that Ex. 12:18 obligates one who does not offer the paschal sacrifice during the Temple period to eat unleavened bread and bitter herbs. Although Ex. 12:18 only mentions unleavened bread, the Talmud twice says that this verse imposes an obligation to eat bitter herbs as well (bPes 28b and 120a). All of the manuscripts on the Lieberman Institute website share this reading. Some commentators viewed the appearance of bitter herbs in this statement as “imprecise”; see, e.g., David of Bonafed, *Ḥidushei Rabbeinu David*, ed. Zevulun Shoshanah (Jerusalem: Mekhon Yerushalayim, 1997), 150-51 (bPes 28b); and Nissim ben Reuven of Gerona, *Ḥidushei ha-Ran, Masekhet Pesahim*, ed. Eliyahu Lichtenstein (Jerusalem: Mosad ha-Rav Kook, 1991), 166 (bPes 28b). See also Rashi, bPes 28b, s.v. *le-tamei*; and Menaḥem ha-Meiri, *Beit ha-Beḥirah ‘al Masekhet Pesahim*, ed. Joseph Klein (Jerusalem: Mekhon ha-Talmud ha-Yisraeli ha-Shaleim, 1966), 84 (bPes 28b).

¹⁰⁵⁵ MS. Hunt. 185, 178a-180b; *Ma’aseh Nissim*, 66-69 (§6). See similarly *Tosafot*, bYeb 71a, s.v. *bo*. Maimonides apparently agreed with Daniel’s reading (see *Hilkhot Qorban Pesah*, 9:8) but not about the impact on the enumeration. See Korkos there (ed. Frankel, 7.2:61); Menaḥem ha-Meiri, *Beit ha-Beḥirah ‘al Masekhet Yevamot*, ed. Shmuel Dickman (Jerusalem: Mekhon ha-Talmud ha-Yisraeli ha-Shaleim, 1962), 262 (bYeb 71a); Perla, *Sefer ha-Miṣvot le-Rasag*, 1:434-35; and Babad, *Minḥat Ḥinukh*, 1:96. By distinguishing between those who do not offer the sacrifice when the Temple stood (*be-zeman de-leika pesah*) and the post-Temple period (*be-zeman ha-zeh*). Daniel appears to have read the word *zeman* in this passage to denote both “situation” and “period.” In Daniel’s view, Ex. 12:48 mandates that the former eat both bitter herbs and unleavened bread but Ex. 12:18 mandates that the latter eat only unleavened bread.

This argument elicited a strident response from Abraham, who insisted that bitter herbs are merely an “appendage” (*iḏāfa*) to the paschal sacrifice.¹⁰⁵⁶ He nevertheless concurred with Daniel’s distinction between the obligations after the Temple period and those that were in force while it stood. According to Abraham, the Talmud needed to clarify that those who did not bring the paschal sacrifice while the Temple stood were nevertheless obligated to eat bitter herbs precisely because they are merely an “appurtenance” (*tābi‘a*, as his father had written), and one might have thought that there was no requirement to eat them.

Abraham suggested that Daniel misunderstood this for one of two reasons: Either the entire Talmud was a “sealed document” (Isa. 29:11) for Daniel, or due to the bias (*al-hawī*)¹⁰⁵⁷ that Daniel felt against Maimonides. Otherwise, wrote Abraham, Daniel would surely not have interpreted bPes 120a as he did.¹⁰⁵⁸ These remarks also appear to subtly evoke Maimonides’ battles with Daniel’s teacher, Samuel ben ‘Eli.¹⁰⁵⁹ Abraham further cautioned Daniel that scholars (*‘ulamā’*) do not needlessly quote clear texts, as it is beneath their honor.¹⁰⁶⁰

¹⁰⁵⁶ MS. Hunt. 185, 181a; *Ma‘aseh Nissim*, 70 (§6). This is a reformulation of Maimonides’ claim, as Maimonides did not use this word to describe the relationship of bitter herbs and the paschal sacrifice. For use of the passive participle *mudāfa* in this sense, see above, n1007.

¹⁰⁵⁷ Goldberg has אלהא but the manuscript reads אלהי; MS. Hunt. 185, 184b; *Ma‘aseh Nissim*, 74 (§6).

¹⁰⁵⁸ MS. Hunt. 185, 184a-185a; *Ma‘aseh Nissim*, 73-74 (§6).

¹⁰⁵⁹ Abraham sardonically asked Daniel, “Is it a great thing to read verses?” (רבותא למיקרי פסוקי); MS. Hunt. 185, 181a-181b; *Ma‘aseh Nissim*, 70; §6). In one letter, Maimonides similarly castigated Samuel for quoting texts that Samuel allegedly misunderstood, adding this remark. Though this expression sounds like a quote from rabbinic literature, I have not found a source for this line, and neither have the most recent editors of Maimonides’ letter to Samuel. See Maimonides, *Teshuvot ha-Rambam*, ed. Blau, 2:573 (§310); and *Igrot ha-Rambam*, ed. Shailat, 1:378, 1:383n36. This phrase also appears in a responsum of R. Isaac ben R. Mordecai Qimḥi (Provence, late 13th c.); see Abraham Schreiber, ed., *Teshuvot Hakhmei Provanṣiya* (Jerusalem, 1967), 374 (*dinei shutafut*, §20).

¹⁰⁶⁰ MS. Hunt. 185, 181a-181b; *Ma‘aseh Nissim*, 70 (§6).

In another passage, Daniel disagreed with Maimonides' claim that the designation of the second paschal sacrifice as "*regel bi-fnei 'ašmo*" ("independent festival") indicates that it is a discrete commandment. Daniel compared the second paschal sacrifice to the compensatory sacrifice brought throughout the festival's duration when one is unable to bring the *ḥagigah* sacrifice (Ex. 23:14) on the first day (see bḤag 9a-9b). This, noted Daniel, is not a distinct commandment.¹⁰⁶¹ (This argument is slightly problematic because the Talmud labels compensatory festival offerings a restitution [*tashlumin*] and Maimonides had rejected the notion that the second paschal sacrifice was an opportunity for restitution.) Daniel also described Maimonides surprising claim – that because it is an "independent festival," one who willfully ignores the first opportunity to offer the paschal sacrifice but offered it in the second incurs the punishment of excision¹⁰⁶² – as "very difficult" (*ša 'b jiddan*).¹⁰⁶³ Maimonides had written that This view is indeed surprising, as one would have thought that the Pentateuch had provided the supplementary opportunity in order to avoid punishment! Daniel concluded that "commandments of restitution" (*mišvot hashlamah*) are "*fiqh*" of a commandment and they should be excluded from the count.¹⁰⁶⁴

Lastly, Daniel challenged the distinction that Maimonides had drawn between the rites performed at the end of one's nazirite period and the rites of purification for one afflicted by *šara 'at*. In the latter case, Maimonides had counted the two-step purification

¹⁰⁶¹ MS. Hunt. 185, 185a-186b; *Ma 'aseh Nissim*, 75-76 (§7).

¹⁰⁶² See above, n958.

¹⁰⁶³ MS. Hunt. 185, 186b-187a; *Ma 'aseh Nissim*, 75-78 (§7).

¹⁰⁶⁴ MS. Hunt. 185, 187b-188a; *Ma 'aseh Nissim*, 78 (§7). Daniel also addressed the second paschal sacrifice in one of his queries about the *Mishneh Torah*; see MS. Hunt. 185, 18b-19a; *Birkat Avraham*, 9 (§4).

process (sacrifices and shaving) as two commandments, noting that each act achieves a separate goal (*ghāya*). Though concluding nazirite status involves the same requirements, Maimonides declared these acts “connected” (*murtabiṭ*), and thus, one commandment.¹⁰⁶⁵ Yet Daniel pointed to the majority position in the relevant talmudic discussion (bNaz 46a), which stated that the nazirite prohibitions are revoked once the nazirite offers the requisite sacrifices. This being the case, he wrote, the sacrifices achieve “the desired goal” (*al-ghāya al-maṭlūba*), and the requirement to shave is unrelated to the sacrifices.¹⁰⁶⁶

Abraham commended Daniel on both points, but insisted that his father had changed his mind. He also asked whether Daniel would not consider the Eighth Day of Assembly (Lev. 23:36) a distinct commandment, given the Talmud’s (bSuk 47a and parallels) reference to it as an “independent festival”?¹⁰⁶⁷ Abraham further argued that shaving is the “essence” (*nafs*) of the commandment to conclude nazirite status, while the sacrifices are merely an “appendage” (*iḏāfa*) to the commandment.¹⁰⁶⁸ In the end, however, wrote Abraham, Maimonides had already noticed these challenges. Although he failed to amend *Sefer ha-Miṣvot*, his new conclusions appear in the *Mishneh Torah*.¹⁰⁶⁹

¹⁰⁶⁵ See above, nn959-960.

¹⁰⁶⁶ MS. Hunt. 185, 191a-193b; *Ma’aseh Nissim*, 82-85 (§8).

¹⁰⁶⁷ MS. Hunt. 185, 189b-190a; *Ma’aseh Nissim*, 80-81 (§7). Maimonides relied on this statement as a evidence (*dalīl*) that the sacrifices for the Eighth Day of Assembly are a distinct commandment; *Sefer ha-Miṣvot*, ed. Kafih, 83-84 (Pos. 51). At the end of this section (MS. Hunt. 185, 189a; *Ma’aseh Nissim*, 80; §7), Abraham claimed that his father’s *furū* “flow” (*muṭṭarid*) from his *uṣūl*. Abraham did not use the term *furū* in the way that it is used in *Sefer ha-Miṣvot* (see above, n632), but rather to refer to the enumeration as a whole. See similarly MS. Hunt. 185, 130a; *Ma’aseh Nissim*, 6 (§1), where Abraham wrote: ומן הד’א אלאצל תסתמד בטלאן כל או אכת’ר מא אעתרצ’ת בה עלי תלך אלאצול ופרועהא

¹⁰⁶⁸ See above, n1007.

¹⁰⁶⁹ See above, nn1001-1003.

Conclusion

Grouping laws as commandment-units was one of the central difficulties that any enumerator of the commandments faced. While many individual decisions can be justified, exceptions to programmatic postulates are inevitable. This project may have been doomed from the outset by the arbitrary nature of the number 613, but as medieval enumerators struggled to identify exactly 613 commandments, they crafted nuanced arguments that integrated the Bible, rabbinic literature, and occasionally, ideas from beyond the standard rabbinic corpus (such as dialectics, logic, and *uṣūl al-fiqh*). In this way, the enumeration of the commandments was “good to think with” and gave Rabbanite jurists a vehicle to reflect on the law as a whole.¹⁰⁷⁰

Maimonides appears to have been the first to outline a systematic methodology for the enumeration of the commandments, and he used his scheme to criticize unnamed predecessors who, in his estimation, had violated these “rules.” These enumerators were bound to fail the test that he devised, as the Principles in the Introduction to *Sefer ha-Miṣvot* were, on occasion, shaped by the “blunders” of predecessors.

Shortly after Maimonides’ death, Daniel ha-Bavli engaged in a careful and reasoned criticism of Maimonides’ methodology. While Daniel learned much from Maimonides, he ultimately demonstrated the frailty of Maimonides’ system and the problems endemic to his (and perhaps any) attempt to identify precisely 613 commandments. Daniel was the first reader – and the only reader of the Judeo-Arabic

¹⁰⁷⁰ Compare A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995), 3-4, arguing that Muslims engaged theoretical problems as an entry point into “delicate” or “sensitive” topics that were “too disturbing or unnerving” to address directly. I believe that the jurists who engaged the material treated in this chapter (and the next), in part, did have larger concerns in mind, such as portraying Jewish law as well-organized and coherent.

text of *Sefer ha-Miṣvot* – to demonstrate that *Sefer ha-Miṣvot* is occasionally arbitrary and always vulnerable to criticism.

Daniel's queries were so piercing that Abraham Maimonides' responses frequently seem flimsy by comparison. In fact, Abraham admitted that his father had silently disclaimed positions in *Sefer ha-Miṣvot*, as could be discerned in his later work, the *Mishneh Torah*. Some of Abraham's disagreements with Daniel were due to genuine differences in interpretation, and there is little doubt that Daniel was motivated by the "bias" that Abraham identified. Nevertheless, many of Abraham's retorts seem to have been driven by the impulse to defend his father against a robust, studied evaluation.

Chapter Five: The Pentateuch and the Enumeration of the Commandments

Introduction

Maimonides' *Sefer ha-Miṣvot* asserts that there is an intimate relationship between the Pentateuch and the 613 commandments. It hardly needs to be stated that there is no inkling of the notion of 613 commandments in the Pentateuch itself; likewise, rabbinic literature and, apparently, earlier enumerators of the commandments, did not consider the relationship between the Pentateuch and the enumeration in any substantive way. Maimonides' attempt to connect the enumeration with the Pentateuch has received scant scholarly attention, but is one of the most ambitious and creative elements of *Sefer ha-Miṣvot*. It exhibits his careful readings of Scripture and rabbinic literature, his reliance on Rabbanite lexicographic works, and his innovative suggestions for classification. Scrutiny of his ideas also uncovers an important chapter in the development of Maimonidean *halakhah* and in the writing process that produced *Sefer ha-Miṣvot*.

Maimonides presented his theory regarding the connection between Scripture and the 613 commandments in Principle Nine of his Introduction to *Sefer ha-Miṣvot*. This Principle presented Maimonides with a monumental challenge, and he rethought several related claims throughout his life. Principle Nine may also have been, for him, the most important, as he cited it more than any other,¹⁰⁷¹ writing at its conclusion, "Place this

¹⁰⁷¹ Maimonides cited Principle Nine ten times in his enumeration, and it is the only Principle mentioned in another Principle; *Sefer ha-Miṣvot*, ed. Kafih, 45 (Principle Eleven), 211 (Neg. 60), 229-30 (Neg. 94), 231 (Neg. 98), 238 (Neg. 125), 275 (Neg. 191), 277 (Neg. 195), 292 (Neg. 235), 309 (Neg. 272), 325 (Neg. 311), 338 (Neg. 350). Principle Twelve also references Principle Nine, though not by name; there, 49. For references to Principle Two, see there, 260 (Neg. 168; treated in above, n670); Principle Four, 60 (Pos. 5), 193 (Neg. 26); Principle Seven, 88 (Pos. 57), 102 (Pos. 82; and the "supplemental introduction" appended to Principle Fourteen, 193 (Neg. 26), 211 (twice; Neg. 60), 227 (Neg. 90), 242 (Neg. 133), 277 (Neg. 195). He did not refer to any other Principle in the enumeration.

Principle in its entirety opposite your eyes at all times; it is a very important key for the verification of (*li-tahqīq*) the enumeration of the commandments.”¹⁰⁷²

Principle Nine seeks to link every scriptural *do* and *do not* with a distinct commandment. Maimonides used the Hebrew words ‘*aseh* and *lav*¹⁰⁷³ and the Arabic *amr* and *nahy* to denote “do” and “do not,” verbs in the imperative and prohibitive (or “vetitive”) moods, respectively. Accordingly, “do X” constitutes an ‘*aseh* or *amr*, and “do not do X,” a *lav* or *nahy*. (In this chapter, I frequently use “command” and “prohibition” to denote scriptural *dos* and *do not*s in order to avoid the bulky translation “verb in the imperative/prohibitive mood.”¹⁰⁷⁴)

The first part of Principle Nine argues that each commandment is a stand-alone “concept” (usually *ma ‘nā*, sometimes *shay’*, “thing”) and that repeated scriptural commands (Heb. ‘*aseh*;¹⁰⁷⁵ Ar. *awāmir*) and prohibitions (Heb. *lavin*; Ar. *nawāhī*) that

¹⁰⁷² ואג'על הד'א אלאצל בג'מלתה חד'א עיניך דאימא פאנה מפתאח כביר ג'דא לתחקיק עדד אלמצות Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 42 (Prin. Nine). Some texts read *faṣl* (section) instead of *aṣl* (Principle) in this statement; see Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 44; ed. Kafih, 42 (Prin. Nine); see also ed. Heller, 24n108. While *faṣl* may be preferable according to the principle of *lectio difficilior*, Maimonides referred to this unit “in its entirety,” in contrast with the previous sentence, which only discusses the second part of Principle Nine. The term *faṣl* may also refer to the entirety of Principle Nine. Compare Naḥmanides’ comment that in this Principle, Maimonides “decrees many decrees, ... and they are a large key for him in the enumeration of the commandments” (גיזור בו הרב ז"ל גזירות רבות והם לו מפתח גדול במנין המצות); *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 97 (Prin. Nine). See also ibn Abi Zimra, *Teshuvot ha-Radbaz*, 5:4a (*leshonot ha-Rambam*, §15): ועיין באותו שורש כי הוא רב התועלת וזכרהו תמיד.

¹⁰⁷³ According to Yoḥanan Breuer, “Ḥidushim Miloniyim be-Lashon ha-Amora'im,” *Lēšonenu* 69, no. 1-2 (2007): 56, the singular *lav* denoting “a negative commandment” is a Babylonian innovation, and Tannaitic literature uses the term *lo ta'aseh* to denote “a single negative commandment.”

¹⁰⁷⁴ Note that the scope of a command or prohibition does not correspond to the division of Scripture into verses; one verse may contain several *dos* and one *do* may extend over several verses. Maimonides treated the definition of *nahy* in Principle Eight at length; see *Sefer ha-Miṣvot*, ed. Kafih, 26-32. The ideas developed in Principle Eight and elsewhere are obviously crucial to understanding Maimonides’ approach to the terms *amr* and *nahy*, which were discussed at length by Jewish and Muslim grammarians and legal theorists, but are not central to Principle Nine.

¹⁰⁷⁵ As far as I can tell, Maimonides never used the plural ‘*asin*, which appears in some medieval texts.

address one “concept” do not constitute evidence of multiple commandments.

Maimonides therefore needed to define what constitutes “repetition,” as the Pentateuch frequently repeats itself, using different formulations. The second part of Principle Nine, which he described as “appended to” (*yanḏāf ilā*)¹⁰⁷⁶ the first, asserts that each “concept” must be based on “an exclusive verb in the prohibitive¹⁰⁷⁷ mood” (*lav mujarrad*).¹⁰⁷⁸

Yeruham Fischel Perla noted tension between the first part, which constructs “concepts” that transcend scriptural formulations, and the second, which relies solely on Scripture in grouping distinct laws as a single commandment.¹⁰⁷⁹ I would suggest that the division within Principle Nine may preserve an earlier conceptualization which treated only repeated commands and prohibitions; the second part may have been appended later.

As Maimonides was almost certainly the first enumerator of the commandments to deal in a systematic way with the problems posed by Principle Nine,¹⁰⁸⁰ I only treat earlier literature in cases where it has bearing on his claims. This chapter is organized around the two theses of Principle Nine; it considers their impact on the “verification” of

¹⁰⁷⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 37 (Prin. Nine). See the (nearly?) identical language in the supplemental introduction after Principle Fourteen; ed. Bloch, 56, reads *tanḏāf ilā* (note the variants recorded there), and ed. Kafih, 54, *yanḏāf ilā*. See also ed. Heller, 31n58.

¹⁰⁷⁷ On the Positive Commandments; see below, n1142.

¹⁰⁷⁸ He termed the opposite a *lav shebe-khlalot*, perhaps “a verb in the prohibitive mood that covers several laws”; on both terms, see below.

¹⁰⁷⁹ Perla, *Sefer ha-Miṣvot le-Rasag*, 1:34-37.

¹⁰⁸⁰ *Sefer ha-Miṣvot* itself is the best indication of this: although Maimonides claimed that an unnamed predecessor erred regarding one ramification of this Principle (see below, n1193; see also below, n1128), he was far less concerned with “errors” of earlier enumerators in Principle Nine than he was in other Principles. Compare Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 9, 12 (Prin. One), 13-14 (Prin. Two), 16-17 (Prin. Three), 41-42 (Prin. Nine), 52-53 (Prin. Fourteen). For other criticisms, see there, 18 (Prin. Four), 20 (Prin. Five), 25-26 (Prin. Seven), 27-28 (Prin. Eight), 43 (Prin. Ten), 48 (Prin. Twelve); see also 4-5 (introduction). Note the comment that he could not “remember for the moment” (*fī mā adhkuruḥu al-ān*) anyone who erred concerning the topic of Principle Six (there, 20); compare the text in Baneth, “Haḥalat Sefer ha-Miṣvot le-Rav Sa‘adya,” 381.

the commandments, and it closes with the exchange of Daniel ha-Bavli and Abraham Maimonides' regarding this Principle.

Overlapping Pentateuchal Commands and Prohibitions

It may be of significance that the heading of Principle Nine focuses only on its first argument: “It is inappropriate to count the *do not*s (*al-lavin*) or the *dos* (*al-‘aseh*), but [only] the forbidden or commanded things (*al-ashyā’ al-manhī ‘anhā wal-ma’ mūr bihā*) [should be counted].”¹⁰⁸¹ Or, as Maimonides summarized at the end of this part of Principle Nine: “It is inappropriate to count every *do not* (*lav*) found in the Torah or every *do* (*‘aseh*), for it [i.e., these] may be repeated. Rather, it is appropriate to count the commanded or forbidden concepts (*al-ma ‘ānī al-ma’ mūr bihā aw al-manhī ‘anhā*).”¹⁰⁸² Maimonides asserted that these “concepts” (a term used interchangeably with “things”) fit into four categories: opinions (*ārā’*),¹⁰⁸³ actions, character traits, and utterances.¹⁰⁸⁴ He

¹⁰⁸¹ אלאצל אלתאסע אנה לא ינבגי אן יעד אללאוין ואלעשה בל אלאשיא אלמנהי ענהא ואלמאמור בהא; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 8, 32 (Prin. Nine).

¹⁰⁸² אנה לא ינבגי אן יעד כל לאו יוגד פי אלתורה ולא כל עשה לאנה קד יכון מכרר ואנמא ינבגי אן תעד אלמעאני; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 36 (Prin. Nine). Compare Isaac ben Sheshet, *Teshuvot ha-Rivash*, 2:556 (§387): שבתרבות הלאוין לא תתרבינה המצות.

¹⁰⁸³ Or, one line later, “belief” (*i’ tiqād*). Kafih repeatedly insisted that *i’ tiqād* denotes “knowledge,” not “belief”; see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 32n90, and the references there. Many have rejected this; see Avraham Nuriel, “Remarks on Maimonides’ Epistemology,” in *Maimonides and Philosophy: Papers Presented at the Sixth Jerusalem Philosophical Encounter*, eds. Shlomo Pines and Yirmiyahu Yovel (Dordrecht: Kluwer, 1986), 40-50; Simon Rawidowicz, “On Maimonides’ ‘*Sefer Ha-Madda*’,” in *Essays in Honour of the Very Rev. Dr. J.H. Hertz*, 333-39; repr. in idem, *Studies in Jewish Thought* (Philadelphia: JPS, 1974), 319-23; Herbert Davidson, “The First Two Positive Commandments,” in *Creation and Re-Creation*, 129n61; repr. in idem, *Maimonides the Rationalist*, 35n72; and Blau, *Dictionary*, 444, s.v. *עֵד* VIII.

¹⁰⁸⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 32-33 (Prin. Nine). Kafih (32n88) noted that *Guide* III:28 speaks of a similar division. Perla, *Sefer ha-Miṣvot le-Rasag*, 1:16, added that Abraham Ibn Ezra divided the law similarly: (1) “faith of the heart” (*emunat ha-leiv*), (2) commandments of the mouth, and (3) commandments of action; see Abraham Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 131 line 11 (7:2). The editors of that work noted a similar division in Ibn Ezra’s “Long Commentary” to

claimed that the rabbis, as “the commentators who transmit the tradition” (*al-shāriḥīn al-rāwīn*), relay reports regarding the “division of concepts” (*tafṣīl al-ma‘ānī*) that occasionally override the presumption that the “*zāhir*” (apparent or literal) meaning of Scripture reflects the divine intent. In some such cases, the rabbis may clarify that a seemingly repetitive *do* or *do not* actually “includes” (*yataḍammanu*),¹⁰⁸⁵ or “adds,” a novel concept (*li-ziyāda ma‘nā*).¹⁰⁸⁶

The imposition of punishments offers the most important evidence regarding the “division of concepts.” Maimonides posited a one-to-one correspondence between the number of “concepts” that a sinner violates, the number of punishments that he incurs, and the number of commandments that he contravenes. However, when the rabbis state that a given act violates two (or more) prohibitions (i.e., *la‘avor ‘alav be-shnei lavin*),¹⁰⁸⁷ the prohibitions are deemed repetitions and do not qualify as distinct commandments.¹⁰⁸⁸ Citing several rabbinic statements to support this claim, Maimonides noted that failure to wear phylacteries “violates eight positive commandments” (*‘over be-shmonah ‘aseh*;

Ex. 20:1; see *Peirushei ha-Torah*, ed. Weiser, 2:131. Compare Twersky, *Introduction to the Code of Maimonides*, 275.

¹⁰⁸⁵ In the enumeration, the root *q-m-n* occasionally denotes cases that the sages explain that a commandment includes multiple acts; see, e.g., *Sefer ha-Miṣvot*, ed. Kafih, 59 (Pos. 3), 182 (Neg. 4). In one instance, Maimonides contrasted *gufei di-quera* (“the verse itself”) with acts that the sages explained are included in a given prohibition (there, 204; [Neg. 45]).

¹⁰⁸⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 33-34 (Prin. Nine); see Cohen, *Opening the Gates of Interpretation*, 120-21. Similarly: ולא ימכן מערפֿה אללאז ואלעשה אלמתכרר אנה ג'א לזיאדה מעני אלא במוקף יוקף עלי (ed. Kafih, 36; Prin. Nine). Throughout Principle Nine, Maimonides stressed the rabbis' role as transmitters, most likely because this Principle addresses rules of divine origin and Maimonides held that non-revealed interpretations yield laws rabbinic in status.

¹⁰⁸⁷ On this phrase, see the brief comment in Yaakov Elman, “Le-Toldot ha-Ribbuy be-Talmud ha-Bavli,” *Proceedings of the World Congress of Jewish Studies* Division C: Thought and Literature, Volume I: Rabbinic And Talmudic Literature (1993): 91.

¹⁰⁸⁸ He also understood the statement that a verse is “superfluous” (*vetar*) to mean that it is repeated.

bMen 44a), and that the Pentateuch warned against wronging a convert (*ger*; “stranger” in biblical Hebrew) thirty-six times (bBM 59b). In neither case, he claimed, can each scriptural mention possibly correspond to a distinct commandment.¹⁰⁸⁹ (In both *Sefer ha-Miṣvot* and the *Mishneh Torah*, however, Maimonides often used the phrase ‘*over be-shnei lavin*’ to denote two commandments.¹⁰⁹⁰) Maimonides therefore had an easier time identifying a Negative Commandment than a Positive one, for, with two exceptions, punishment is only incurred for violation of the former.¹⁰⁹¹ Furthermore, Maimonides’ decisions about what constitutes a Positive “concept” tend to be more subjective.¹⁰⁹²

According to Principle Nine, repetitions, even “in different formulations” (*bi-alfāz mukhtalifa*),¹⁰⁹³ may be for “emphasis” (*ta’kīd*) – in which case a designated sin is

¹⁰⁸⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 34, 35-36 (Prin. Nine). On the latter, see ed. Heller, 20n36. Compare *Hilkhot Tefillah u-Nesi’at Kapayim*, 15:12, and *Hilkhot Tefilin*, 4:26. In at least one instance, he asserted the inverse, that the lack of lashes for violating a specific rule shows that this rule merely completes (*tatmīm*) the law; ed. Kafih, 262 (Neg. 170). On tension between “received traditional interpretation” and philological readings of Scripture in Qur’ānic *tafsīr*, see Walid Saleh, *The Formation of Classical Tafsīr Tradition: The Qur’ān Commentary of al-Tha’labī* (d. 427/1035) (Leiden: Brill, 2004), 134-37.

¹⁰⁹⁰ See, e.g., Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 280 (Neg. 201), 297-98 (Neg. 246), 311 (Neg. 280), 328 (Neg. 317); note that there, 229 (Neg. 94), he implied that some sages used the term ‘*over*’ differently than proposed in Principle Nine. For the *Mishneh Torah*, see, e.g., *Hilkhot Sekhirut*, 11:2; *Hilkhot Roṣeah u-Shemirat ha-Nefesh*, 1:15; and *Hilkhot Gezeilah ve-Aveidah*, 1:12. Note the careful use of the terms ‘*over*’ and *loqeh*’ in *Hilkhot Kila’im*, 10:31, and the comments in Joseph Karo, *Kesef Mishneh*, there (*Mishneh Torah*, ed. Frankel, 6:72). I have not found this phrase in the *Commentary*.

¹⁰⁹¹ Compare Friedberg, *Crafting the 613 Commandments*, 34-35. The exceptions are circumcision and offering the paschal sacrifice; see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 54 (supplemental introduction), 86 (Pos. 45), 277-78 (Neg. 196). See also above, n679.

¹⁰⁹² For example, Perla (*Sefer ha-Miṣvot le-Rasag*, 2:48) argued that one of Sa’adya’s enumerations considers “*You shall love the convert (ger)*” (Deut. 10:19) part of the commandment to “*Love your fellow as yourself*” (Lev. 19:18) because the convert is just an example of a fellow Jew. Maimonides marshaled several arguments in order to show that these verses ordain two commandments (*Sefer ha-Miṣvot*, ed. Kafih, 163-64 [Pos. 207]; see also *Hilkhot Dei’ot*, 6:3-4), and reported that no enumerator counted them as one. For Perla’s claim about the Sa’adya’s approach to the Negative Commandments, see there, 1:37-40; compare however Tobi, “Piyuṭei Rav Sa’adya Gaon,” 1:100; and Abraham Ibn Ezra, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 98 lines 57-60 (2:9).

¹⁰⁹³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 36 (Prin. Nine); see Cohen, *Opening the Gates of Interpretation*, 121n114. Maimonides’ example appears to overlook an explicit mishnah. He claimed that the verses “*You shall not pick your vineyard bare (te’olel), or gather the fallen fruit of your vineyard*” (Lev.

“very significant” (‘*aẓīm jiddan*’); alternatively, the repetition may “complete” (*tatmīm* or *takmīl*) the rules of a commandment, in which case it is immaterial to the enumeration.¹⁰⁹⁴ Maimonides was not the first Andalusian Rabbanite to reflect on the concept of “emphasis.” Jonah Ibn Janāḥ (11th c.) dedicated a lengthy chapter of his *Kitāb al-Luma’* (*The Book of Variegated Flower Beds*) to scriptural *ta’kīd*; following Muslim grammarians, Ibn Janāḥ used *ta’kīd* to explain superfluous letters and words.¹⁰⁹⁵ In the

19:10), “When ... you overlook a sheaf in the field, do not turn back to get it” (Deut. 24:19), and “When you beat down (*tefa’er*) the fruit of your olive trees, do not go over them again” (Deut. 24:20) all command a single “concept,” namely, that one may not return to collect forgotten fruits, and that grapes and olives are just two examples of this concept (*mithlayn*; ed. Kafih, 36-37 [Prin. Nine]; see similarly, 121 [Pos. 123], 283 [Neg. 212]). Based on the *editio princeps*, Bloch included an explicit statement that leftover grapes are ‘*olelot* and olives *pe’arot* (זתים פארות) (וסמי אלבקיה מן אלענבים עוללות ואלבקיה מן הזתים פארות); see ed. Bloch, 37n3). Such a statement also appears in Ibn Tibbon’s translation, and Naḥmanides quoted it as well, indicating that it is original; see ed. Heller, 20 (Prin. Nine) and n42; and Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 149 (supplemental introduction). Solomon ibn Ayyub’s translation, in David ben Kokhavi, *Sefer ha-Batim*, 2:240 (Pos. 180), 2:399 (Neg. 212), repeats the position in standard versions of *Sefer ha-Miṣvot*. However, mPea 7:4 defines ‘*olelot* (from Lev. 19:10) as a grape that lacks “shoulder (*kateif*) and pendant (*nateif*)” (trans. in Danby, *The Mishnah*, 18), not as forgotten grapes. Naḥmanides (there) noted that Maimonides followed the mishnaic definition of ‘*olelot* in *Hilkhot Matanot ‘Aniyim*, 4:17-18 (see also 1:5), and not the definition in *Sefer ha-Miṣvot*. The *editio princeps* of *Sefer ha-Miṣvot* includes the following interpolation: הגה’ נראה כי דעת הרב כי בקדשים נזכר פאה ולקט ועוללות ופרט ולא נזכר בו שכחה ובכי תבא נזכרים זיתך לא תפאר אחרך ובענבים כרמך לא תעולל אחרך וה”ה לשאר אילנות ואין זה ממין וכרמך לא תעולל הכתו’ בקדשים כי הוא אפי’ לפני’ אסוי’ ואפי’ כל הכרם עוללות כלה לעניים ואין דין פרט ועוללות אלא בכרם לבד ע”כ’ See Dror Fixler, “‘Olelot – Halakhah u-Ma’aseh,” *Teḥumin* 28 (2008): 355-56, 365-67. Kafih struggled mightily with Maimonides’ deviance from the Mishnah; see *Sefer ha-Miṣvot*, ed. Kafih, 36-37nn22, 25, 121n88, 283n32, 283-84n35. Kafih suggested that the text in Ibn Tibbon’s translation reflects an early version of *Sefer ha-Miṣvot* and that Maimonides eventually removed it. (Kafih’s text appears to have been altered to accord with mPea 7:4 and the *Mishneh Torah*.) There is no hint to the understanding of ‘*olelot* found in *Sefer ha-Miṣvot* in the *Commentary on the Mishnah* to mPea 7:4 (*Mishnah ‘im Peirush*, ed. Kafih, 1:122). In fact, *Sefer ha-Miṣvot* follows the definition of ‘*olelot* as *khusās* (sing., *khāṣa*) in Ibn Janāḥ’s *Kitāb al-Uṣūl*; see *The Book of Hebrew Roots*, ed. Adolf Neubauer (Oxford: Clarendon Press, 1875), 521. Ibn Janāḥ derived his definition from “lexicographic books of the Arabs” (*kutub lugha al-‘arab*).

¹⁰⁹⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 33-34 (Prin. Nine).

¹⁰⁹⁵ Jonah Ibn Janāḥ, *Kitāb al-Luma’*, ed. Joseph Derenbourg (Paris, 1886), 278-90. For the claim that several words can simply be for emphasis, see there, 288. See the brief treatment in Cohen, *Opening the Gates of Interpretation*, 58-59; see also there, 121 and n13. At least one claim of this chapter copies from a Muslim grammarian; see Dan Becker, “Linguistic Rules and Definitions in Ibn Janāḥ’s *Kitāb al-Luma’* (*Sefer ha-Riqmah*) Copied from the Arab Grammarians,” *JQR* 86, nos. 3-4 (1996): 278; and idem, *Meqorot ‘Araviyim le-Diqduqo shel R. Yonah Ibn Janāḥ* (Tel Aviv: Tel Aviv University Press, 1998), 342-44. On Judah Ibn Tibbon’s translation of the term *ta’kīd*, see Jonah Ibn Janāḥ, *Sefer ha-Riqmah be-Tirgumo ha-‘Ivri shel R. Yehuda Ibn Tibbon*, ed. Michael Wilensky (Jerusalem: Ha-Aqademyah le-Lashon ha-‘Ivrit, 1964), 1:52n5. On *ta’kīd* among Muslim grammarians, see Owens, *Early Arabic Grammatical Theory*, 56-57, 62-63, 74-76, 99-100; idem, “The Historical Linguistics of the Intrusive *-n in Arabic and West

Commentary on the Mishnah, Maimonides invoked *ta'kīd* to explain superfluities in Scripture and in the Mishnah itself.¹⁰⁹⁶ Citing “one of the principles of language usage” (*aṣl min uṣūl al-luġha*) in one discussion, Maimonides argued that repeated letters in the quinquiradicals (words with five root letters) *yeraqraq* and *adamdam* (Lev. 13:49) are added for “emphasis”; they respectively denote the deepest green and the deepest red.¹⁰⁹⁷ According to the *Guide*, scriptural instances of *ta'kīd* emphasize the evil of idolatry or the importance of love of God.¹⁰⁹⁸ However, in one place in the *Commentary on the Mishnah*, Maimonides wrote that, according to tradition (*naql*), the five scriptural prohibitions against offering blemished animals as sacrifices are not simply repeated for “emphasis”; rather, each covers a distinct “concept” (*ma'nā*). One might refer to the

Semitic,” *JAOS* 133, no. 2 (2013): 217-48; and Tamar Zewi, “Energicus,” in *Encyclopedia of Arabic Linguistics*, 2:22-25. For use in *tafsīr*, see Wansbrough, “*Majāz al-Qur'ān*,” 251, 258; and idem, *Quranic Studies*, 230-31. I have not found extensive discussions of *ta'kīd* among Rabbanites who predate Ibn Janāḥ.

In another context, Éric Chaumont translated the title *Kitāb al-Luma'* as *Le livre des rais illuminant*; see his *Le livre des rais illuminant les fondements de la compréhension de la loi: traité de théorie légale musulmane* (Berkeley: Robbins, 1999).

¹⁰⁹⁶ For the application to Scripture, see Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 1:397 (m'Orl 1:2); for the application to the Mishnah, 2:376 (mḤag 1:8; explaining the phrase *hen hen gufei torah*).

¹⁰⁹⁷ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 6:388 (mNeg 11:4); see *Hilkhot Tumat Šara'at*, 12:2. This follows the rabbinic understanding, and was adopted by Ibn Janāḥ, *Kitāb al-Luma'*, 120, and Ibn Ghiyāth, in Kafih, *Ḥameish Megillot*, 173. Others argued that quinquiradicals denote the weakest shades of these colors; see Dunash ben Labrat, *Sefer Teshuvot Dunash ha-Levi ben Labrat 'al Rabbi Sa'adya Gaon*, ed. Robert Schröter (Breslau: Schletter'sche Buchhandlung, 1866), 11-12 (§35); Abraham Ibn Ezra, *Peirushei ha-Torah*, ed. Weiser, 3:41 (Lev. 13:49); idem, *Yesod Diquduq hu Sefat Yeter*, ed. Neḥemyah Allony (Jerusalem: Mosad ha-Rav Kook, 1984), 155 and n379; see also idem, *Yesod Mora ve-Sod Torah*, eds. Cohen and Simon, 174 lines 8-9 (11:2). Rashi cited Dunash's position in his commentary to Ps. 68:14 (a verse that seems to indicate that *yeraqraq* means “yellow”). On these roots, see Igal Yannai, “Pe'alim Merubei-ʿIṣurim be-Lashon ha-ʿIvrit,” *Lēšonenu* 38, 1-2 (1974): 118-30, no. 3: 183-94; and idem, “Augmented Verbs in Biblical Hebrew,” *HUCA* 45 (1974): 71-95. On the ascription of this treatise to Dunash, see David Herzog, “The Polemic Treatise Against Saadya Ascribed to Dunash ben Labrat,” in *Saadya Studies*, 26-46.

¹⁰⁹⁸ E.g., Maimonides, *Dalālat al-Ḥā'irīn*, eds. Munk and Joel, 373 (III:28), 400 (III:37), 411 (III:41), 423 (III:45).

blemished animal's sanctity, and another to the sprinkling of its blood.¹⁰⁹⁹ The distinction between repetitions for the sake of *ta'kīd* and repetitions to denote separate “concepts” is central in *Sefer ha-Miṣvot*.¹¹⁰⁰

Principle Nine offers two simple examples of *ta'kīd*: the Pentateuch's twelve-fold repetition of the command to rest on the Sabbath, and its seven-fold repetition of the prohibition against eating blood; nobody, insisted Maimonides, would count each more than once in an enumeration of the commandments.¹¹⁰¹ Maimonides usually used the fifth form of the Arabic root *k-r-r* (to be repeated or reiterated) to denote repetitions, and frequently wrote that Scripture repeats a law “in another formulation” (*bi-lafẓ ākhar*).¹¹⁰² However, this claim that the Pentateuch may, sometimes, add new information in order to “complete the particular ruling of the commandment” (*takmīl ḥukm al-miṣvah*)¹¹⁰³ elides the neat delineation between emphasis and the teaching of a new commandment. Maimonides argued, for example, that several prohibitions addressed to both regular priests and the High Priest do not teach distinct commandments; rather, they are repeated

¹⁰⁹⁹ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 5:144-45 (mMen 8:7). He revisited this conclusion, however; see below, n1189.

¹¹⁰⁰ As far as I can tell, *Sefer ha-Miṣvot*, ed. Kafih, 250 (Neg. 152), is the only discussion of *ta'kīd* in this work that is not connected with the problem of repeated verses.

¹¹⁰¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 34-35 (Prin. Nine); see there, nn6-7, for the verses.

¹¹⁰² E.g., Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 221 (Neg. 77), 231 (Neg. 98), 342 (Neg. 355); see above, n1093.

¹¹⁰³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 34 (Prin. Nine). For example, the various types of capital punishment for different classes of women “complete (*tatmīm*) the law of the punishment for adultery” (תתמים חכם קצאץ אשת איש) (see above, n947), and the examples of improper weights and measures (Lev. 19:36; Deut. 25:13-15) “come to complete the laws (*li-tatmīm aḥkām*) of the *miṣvah*” (לא תט'ץ אן קולה) (לא יהיה לך איפה ואיפה ולא יהיה לך אבן ואבן שתי מצות לאן [אל]שני לאוין אנמא ג'את לתתמים אחכאם אלמצוה (Prin. Seven), 309 (Neg. 272).

in order “to clarify a given matter”¹¹⁰⁴ or in order to rule out an otherwise logical conclusion (see below).¹¹⁰⁵

Maimonides also asserted that acts which incur multiple punishments violate multiple *sheimot* (sing., *sheim*). In rabbinic literature, the term *sheim* (and the related term, *mi-shum*) denotes a legal category, i.e., a heading that covers disparate institutions.¹¹⁰⁶ *Sefer ha-Miṣvot*’s novel argument is that each *sheim* constitutes a “concept,” and a discrete, enumerated commandment.¹¹⁰⁷

Identifying Distinct “Concepts”

Principle Nine asserts, rather than defends, the claim that the enumeration of the commandments consists of 613 “concepts.” Maimonides did not clarify the notion of a “concept,” and its parameters appear somewhat subjective. Maimonides, however, was not the first to equate “enumerated commandment” with the word *ma nā*, i.e., concept; in

¹¹⁰⁴ תכרתת פי כהן גדול לתבין מעני מא; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 258.

¹¹⁰⁵ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 256 (Neg. 163). He repeated this in *Hilkhot Bi’at ha-Miqdash*, 2:6. Two rules derived from the same prohibition do not constitute distinct commandments (for example, the prohibitions against shaving various parts of the face or beard); *Sefer ha-Miṣvot*, ed. Kafih, 202-204 (Neg. 43-44).

¹¹⁰⁶ See Moscovitz, *Talmudic Reasoning*, 105-107, 148-50, 156-59. See also, Shlomo Na’eh, “‘Al Gevul ha-Diqduq voha-Milon,” *Mehqarim be-Lashon* 5-6 (1992): 302-303; and Shamma Friedman, “Shum Davar,” in *Iyunim be-Leshon Hakhmim*, ed. Moshe Bar Asher (Jerusalem: ha-Mekhon le-Limudim Mitqadmim, 1996), 79-84.

¹¹⁰⁷ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 35 (Prin. Nine); see also there, 229 (Neg. 94). The term *sheim* denotes distinct commandments in *Hilkhot Malveh ve-Loveh*, 3:5. However, Maimonides also connected the term *sheim* with two rules created by the same prohibition; compare *Hilkhot Shegagot*, 4:1 (see also 4:4), with *Sefer ha-Miṣvot*, ed. Kafih, 338 (Neg. 350). On the term *sheim*, see Joshua ha-Nagid, *Teshuvot*, ed. Raṣhabi, 101; see further above, n979, and below, n1207.

a passage quoted by Maimonides, Ḥeḥeš ben Yašliaḥ used this word to denote a distinct commandment.¹¹⁰⁸

In the Introduction to *Sefer ha-Miṣvot*, Maimonides announced that the *Mishneh Torah* would group together laws that share one “*ma ‘nā*” (i.e., meaning or intent).¹¹⁰⁹ This terminology suggests that the classificatory project of the *Mishneh Torah* overlapped with that of determining the parameters of a “concept” (*ma ‘nā*) in *Sefer ha-Miṣvot*.¹¹¹⁰ Principle Six appears to blur *ma ‘nā*’s two senses – as “meaning” and as “concept,” arguing that commands and prohibitions that pertain to a single topic (e.g., “keep the Sabbath” and “do not violate the Sabbath”) constitute distinct commandments, because “the *ma ‘nā* of the command (*amr*) is unlike the *ma ‘nā* of the prohibition (*nahy*) – they are two distinct *ma ‘nās*.”¹¹¹¹ In Principle Nine, he contrasted the enumerated *ma ‘nā* with repeated “prohibitions” (*lavin*), and in Principle Eleven, insisted that laws that share a single goal are combined as one “enumerated concept” (*al-ma ‘nā al-ma ‘dūd*).¹¹¹² Elsewhere, Maimonides cited other evidence from rabbinic literature to identify distinct

¹¹⁰⁸ ומנה את־גין ות־לא־ת־ין מעני א־ל־ברנא באנה תבארך ותעאלי יתולא פעלהא לא נחן ג־מיעהא מצ־מון; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 53 (Prin. Fourteen).

¹¹⁰⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 4 (introduction). Note that “Do not curse a leader (*nasi*) in your people” (Ex. 22:27) applies both to one who holds the title *nasi* and a king, because the “meaning” (*ma ‘nā*) of this prohibition relates to anyone in a position of power; there, 326 (Neg. 316).

¹¹¹⁰ On this project, see Twersky, *Introduction to the Code of Maimonides*, 238-323; Haym Soloveitchik, “Hirhurim ‘al Miyuno shel ha-Rambam be-*Mishneh Torah*: Ba‘ayot Amitiyot u-Medumot,” *Maimonidean Studies* 4 (2000): 107-115; trans. in idem, “Classification of *Mishneh Torah*: Problems Real and Imaginary,” in *Collected Essays*, 2:367-77; Kaplan, “Further Reflections on Classification of *Mishneh Torah*,” 29-70; and the literature cited there, 30n2

¹¹¹¹ מעני אלאמר פיהא גיר מעני אלנהי והמא מעניין מתבאין; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 20 (Prin. Six).

¹¹¹² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 44, 45; see also there, 49 (Principle Twelve); treated above, nn966-967.

“concepts”;¹¹¹³ these included distinct punishments or sacrifices,¹¹¹⁴ and statements that one is culpable (*ḥayav*) for multiple prohibitions.¹¹¹⁵

One notable discussion pertains to the three-fold repetition of the pentateuchal prohibition against cooking a kid in its mother’s milk (Ex. 23:19, 34:26, Deut. 14:21). The rabbis had understood this as prohibiting the cooking, eating, and benefiting from mixtures of milk and meat, but unlike others,¹¹¹⁶ Maimonides only counted the first two of these as commandments. Explaining his calculus in detail, he cited talmudic assertions (bMak 21b; bHul 114a) that the cooking and the eating of milk and meat together make one liable for punishment. Missing from these *sugyot*, he implied, is any claim of a penalty for benefiting from such mixtures. Maimonides went added what he called an “important principle” (*aṣl kabīr*): despite the three-fold repetition of this prohibition, and despite the fact that “the transmitters of the interpretation” (*ruwāt al-tasfīr*) explain that

¹¹¹³ For example, the requirement to count years and seven-year cycles for the jubilee derives from “two scriptural statements” (*shenei ketuvim*, lit., two verses; both statements are in Lev. 25:8), showing that “this concept (*ma nā*) . . . must be one commandment” (ומנד' קאל אן הד'א אלמעני לם יחצל אלא משני כתובים דל עלי (*ma nā*) . . . must be one commandment” (Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 130 [Pos. 140]; see however there, n80). See similarly, there, 141-42 (Pos. 161), 161 (Pos. 201); compare there, 305 (Neg. 264). Likewise, leavened bread and leaven are equivalent, based on the statement that Ex. 13:7 “opened with leavened bread and closed with leaven” (*pataḥ ha-katuv be-ḥameiṣ ve-siyem be-se'or*; see bBeṣ 7b); therefore, the prohibitions “No leavened bread shall be found with you and no leaven shall be found in all your territory” ordain a single commandment; there, 279 (Neg. 200) and see n2. Elsewhere, *neshekh* and *marbit*, two terms for prohibited interest, constitute a single commandment because the Talmud (bBM 60b) equates them; there, 291 (Neg. 235).

¹¹¹⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 35 (Prin. Nine), 38 (Prin. Nine), 98-99 (Pos. 77). See the challenges to this cited below, n1180.

¹¹¹⁵ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 232 (Neg. 103), 253 (Neg. 157), 254 (Neg. 161), 260 (Neg. 168), 275 (Neg. 191), 306 (Neg. 266; see *Hilkhot Gezeilah ve-Aveidah*, 7:11). He reinterpreted this term there, 296 (Neg. 242). In *Guide II:46* (eds. Munk and Joel, 288-89), Maimonides used the term *ḥayav* for two laws that are not distinct commandments. See Levinger, *Ha-Rambam ke-Filosof ukhe-Foseq*, 177; and Maimonides, *Moreh Nevukhim*, trans. Yosef Kafih (Jerusalem: Mosad ha-Rav Kook, 1972), 267-68n16.

¹¹¹⁶ See above, nn910-911.

each prohibition (*lav*) covers a distinct “concept,” these prohibitions constitute only two commandments, because eating is a type of benefiting.¹¹¹⁷

Applications in the Enumeration of the Commandments

The idea that repetitions “emphasize” or “complete” a commandment appears throughout *Sefer ha-Miṣvot*, and Maimonides frequently grouped similar verses under the heading of one commandment. Thus, he claimed, the prohibition against priests wounding their heads (Lev. 21:5) repeats (*karrara*) and completes (*tatmīm*) a related prohibition warning all Jews not to wound the front of the head when mourning the dead (Deut. 14:1). Following the rabbis, he explained that certain aspects of each verse are legally operative.¹¹¹⁸ In reference to two prohibitions addressed to both priests and Levites, Maimonides formulated a general rule: “any case of the general and particular (*al-‘umūm wal-khuṣūṣ*) similar to this is only repeated for emphasis or in order to complete (*li-tatmīm*) the law, because the law cannot be completely deduced (*lam yuḥaṣṣal al-ḥukm kāmil*) from one prohibition (*nahy*).”¹¹¹⁹ This is why each prohibition

¹¹¹⁷ He further argued that if benefiting from mixtures of milk and meat constitute a distinct commandment, then all prohibitions against benefiting from an object that is forbidden to eat would be counted separately (even though other prohibitions against benefiting are not based on repeated verses). He concluded by explaining why the Pentateuch repeated this prohibition three times; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 272-74 (Neg. 187); compare *Hilkhot Ma’akhalot Asurot*, 9:2, treated briefly in above, n652. In the *Commentary on the Mishnah*, he referred to this “important principle” as a “wondrous point, ... a key to many other matters” (נכתה עגיבה נובה עליהא אד’ הי מפתאח לאשיא אכר); *Mishnah ‘im Peirush*, ed. Kafih, 5:360 (mKer 3:4).

¹¹¹⁸ The prohibition applies to any part of the head but only to wounds inflicted due to mourning; see bMak 20a; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 262-63 (Neg. 171); see similarly *Hilkhot ‘Avodat Kokhavim*, 12:12, 15. Likewise, two prohibitions forbidding Jew and a priest from shaving (Lev. 19:27; 21:5) are stated “only in order to complete the law” (*li-takmīl al-ḥukm fa-qat*); there, 262 (Neg. 170); see also, 263 (Neg. 171).

¹¹¹⁹ כל מא ישבה הד’א מן אלעמום ואלכצוץ אנמא יכרר ללתאכיד או לתתמים אלחכם אד’ למ יחצל אלחכם כאמל מן אלנהי אלד’; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 261 (Neg. 170). He repeated this, writing: עלי אלעמום פקט הו אלד’ ינעד ון אלד’ יג’ פי ד’לך אלמעני בעינה נהי אכר’ עלי אלכצוץ אנמא הו לתעלם חכם מא או לתתמים

against marrying certain classes of women, repeated for both regular priests and the High Priest (Lev. 21:7, 14), constitute only a single commandment.¹¹²⁰ Maimonides rarely attempted to explain why the Pentateuch could not state the laws for different populations at the same time.¹¹²¹

Maimonides' comments on the recurring pentateuchal prohibitions against oppressing a convert (*ger*) suggest that he continued to think about the phenomenon of literary repetition. Principle Nine asserts that the talmudic statement (bBM 59b) that one who wrongs a convert (i.e., transgresses the prohibition of *ona'ah*, lit., oppression; in financial contexts, overcharging) violates (‘over be-) three prohibitions actually refers to a thrice-repeated prohibition; the number of commandments involved, however, is only two.¹¹²² In his discussion of these commandments in *Sefer ha-Miṣvot*, Maimonides listed four relevant negative commandments: (1) financial *ona'ah* of a Jew; (2) verbal *ona'ah* of a Jew (*ona'at devarim*); (3) verbal *ona'ah* of a convert; and (4) financial *ona'ah* of a convert. In other words, wronging a convert violates the relevant commandments pertaining to the Jew as well as to the convert.¹¹²³ However, in the *Mishneh Torah*, Maimonides' perspective was closer to that of the talmudic statement. He explained that, because the Pentateuch uses the same words for financial and verbal *ona'ah* of a Jew (*lo*

אלקצ'יה. Maimonides insisted that the reader “understand this principle (*ašl*) and obtain it” (פארהם הד'א (אלאצ'ל וחצלה); *ibid*, 262 (Neg. 170). Curiously, the first of these commandments was omitted in the *editio princeps*; see *idem*, *Sefer ha-Miṣvot*, ed. Heller, 1n1 (introductory pagination). See also Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 328 (Neg. 98).

¹¹²⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 261 (Neg. 170). See below, n1193

¹¹²¹ E.g., above, n1118.

¹¹²² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 36 (Prin. Nine): “this is clear, there is no doubt regarding it” (והד'א בין לא אשכאל פיה). See above, n1089.

¹¹²³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 300-301 (Neg. 250-53); the reading in *Sefer ha-Miṣvot*, ed. Bloch, 288, is preferable to the one in ed. Kafih, 301n41.

tonu; Lev. 25:15, 25:17), but “explicitly” (*be-feirush*) repeats the prohibitions against financial and verbal *ona’ah* of a convert, formulating each in different words,¹¹²⁴ the financial or verbal *ona’ah* of a convert violates one prohibition pertaining to a convert, but it violates *both* prohibitions pertaining to a Jew (*Hilkhhot Mekhirah*, 14:16-17).¹¹²⁵

A dense subject related to this part of Principle Nine (though not discussed in this Principle) pertains to a talmudic statement (bPes 24a-24b etc.) that one who eats a *puṭita* (eel-like fish?¹¹²⁶) receives four sets of lashes; a *nemalah* (ant), five; and a *ṣir’ah* (hornet or wasp), six. Given his insistence that multiple punishments are only incurred for the violation of distinct commandments, Maimonides was forced¹¹²⁷ to conclude that the eating of these creatures entailed the violation of four, five, and six unique commandments respectively. He noted that his conclusion disagreed with “all” earlier interpreters of this *sugya*, who had explained that, in this case, repeated verses prescribe multiple punishments.¹¹²⁸

¹¹²⁴ I.e., “Do not wrong the convert (*lo toneh*) and do not oppress him (*lo tilḥaṣenu*)” (Ex. 22:20). He cited the *Mekhilta*’s reading that the former refers to verbal *ona’ah* and the latter to financial *ona’ah*.

¹¹²⁵ ומפני מה עובר בגר על לאו של הונויית דברים אף בהונויית ממון ועל לא של הונויית ממון אף בהונויית דברים מפני
 ושהוציא הכתוב את שניהן בלשון הונוייה סתם וכפל הלאוין בגר בשני הדברים בפירוש לא תונו ולא תלחץ
 n1107. The exemption from lashes (*Hilkhhot Mekhirah*, 12:1) means that punishments cannot be used to determine the number of violations. My reading follows that of Solomon ben Moses of Chelm, *Merkevet ha-Mishneh* (Jerusalem, 2000), 1:84b-85a; see also Feintuch, *Sefer ha-Misvot le-Rambam ‘im Peirush Piqudei Yisharim*, 2:879-80. Yom Tov ben Moses Ṣahalon, *She’elot u-Teshuvot Maharitaṣ* (Venice, 1694), 123a (§190), remarked that this passage “bothered me my entire life” (כל ימי נצטערתי על דברי הרמב”ם).

¹¹²⁶ So Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic of the Talmudic and Geonic Periods* (Ramat Gan: Bar Ilan University Press, 2002), 888-89, s.v. פוטייתא; following a responsum ascribed to Amram bar Sheshna Gaon in Ginzberg, *Geonica*, 1:340; see below.

¹¹²⁷ See Aharon ha-Levi of Barcelona [?], *Sefer ha-Ḥinukh*, ed. Charles Baer Chavel (Jerusalem: Mosad ha-Rav Kook, 2002), 237 (§164): הרבה ... שמועה אותה בפירוש או שהיא כולה או ראיית כלאמה; and Duran, *Zohar ha-Raqi’a*, 22 (introductory pagination; Prin. Nine): שהוא דחק עצמו הרבה.

¹¹²⁸ He wrote that “all (*jami’*) those whose statement I have heard or view I have seen” (אלתפסיר) offered this interpretation; *Sefer ha-Miṣvot*, ed. Kafih, 266 (Neg. 179). See Mirsky, *She’iltot de-Rav Aḥai Gaon*, 3:87-89; Hildesheimer, ed., *Halakhot Gedolot*, 3:195; Ḥananel ben Ḥushiel, *Peirushei Rabbeinu Ḥananel ben Ḥushiel la-Talmud*, ‘Eiruv, eds. David Meṣger and Elijah Dickman, 62 (Jerusalem: Leiv Sameaḥ, 1992) (b’Eiruv 28a); idem, *Pesaḥim*, ed. David Meṣger

Maimonides argued that the *nemalah* and *šir‘ah* are not generic ants or hornets¹¹²⁹ but, rather, specific types of these insects, and because of their characteristics, one who eats them incurs five or six sets of lashes. (It is more compelling to offer such a definition of the *puṭita*, which is not mentioned elsewhere in rabbinic literature). He listed four relevant commandments: Negative Commandment #174: not to eat non-kosher birds; Negative Commandment #175: not to eat flying insects (*shereš ha-‘of / dabīb al-ṭayr*); Negative Commandment #176: not to eat crawling insects (*shereš ha-areš / dabīb al-ard*); and Negative Commandment #179: not to eat water insects (*shereš ha-mayim*).¹¹³⁰ He also identified two other prohibitions that pertain to the eating of these insects in their spontaneously-generated forms, namely: Negative Commandment #177: not to eat insects spontaneously generated in putrid matter (*al-mutakawwin min al-‘ufūnāt*);¹¹³¹ and

(Jerusalem: Leiv Sameaḥ, 1991) 51 (bPes 24a-24b); and Alfasi, *Halakhot*, Ḥullin 25a (though commentators noted problems with the text of this passage). See also Alexander Kohut, *‘Arukh ha-Shaleim* (Vienna: Menorah, 1926), 6:322-32 s.v. פטתא; and Kasher, *Torah Shleimah*, 28:86. Post-Maimonidean jurists also rejected Maimonides’ view; see Daniel ha-Bavli’s comments below, Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 100-113 (Prin. Nine); Aharon ha-Levi [?], *Sefer ha-Hinukh*, ed. Chavel, 236-38 (§164); Yom Tov Asevilli, *Ḥidushei ha-Ritva*, *Masekhet ‘Eiruv*, ed. Moshe Goldstein (Jerusalem: Mosad ha-Rav Kook, 2008), 262-63 (b‘Eiruv 28a); and Menaḥem ha-Meiri, *Beit ha-Beḥirah*, *Masekhet Makkot*, ed. Shimon Štarliš (Jerusalem: Yad ha-Rav Herzog, 1965), 90-93 (bMak 16b). Duran, *Zohar ha-Raqi ‘a*, 22 (introductory pagination; Prin. Nine), described Naḥmanides’ position as “the explanation of the early and the late ones” (פירוש הראשונים והאחרונים).

¹¹²⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 251 (Neg. 175), offered the *zubbūr* as an example of non-kosher creeping birds (*dabīb al-ṭayr*; ed. Kafih, 264, has *dabīb al-ṭā‘ir* (translated as *ha-sherašim ha-me‘ufafim*; see n70), but Ibn Tibbon, who translated *shereš ha-‘of*, clearly had Bloch’s text; ed. Heller, 142). Both Ibn Tibbon and Kafih translated *zubbūr* as *šir‘ah* (hornet or wasp). Later, however, Maimonides wrote that eating a *šir‘ah* incurs six sets of lashes, so he must have understood the *šir‘ah* to be a different animal, not the *zubbūr*; see ed. Kafih, 264n71, 269n100; and ed. Heller, 142n2. The difficulties in Maimonides’ view are evident in Aryeh Leib Horowitz, *Marganita Ṭava*, in idem, *Sefer ha-Miṣvot*, ed. Hellman, 514 (Prin. Nine). *Hilkhot Ma‘akhalot Asurot*, 2:5, categorizes these prohibitions as *shereš ha-‘of*, and offers the *šir‘ah* as an example; see also idem, *Mishneh Torah*, eds. Cohen et al., 50 lines 250. Note that in the *Kifāya*, Abraham Maimonides wrote that the *zubbūr* qualifies as a *dabīb al-ṭā‘ir*; David, “Qeṭa‘im Ḥadashim,” 19 line 13.

¹¹³⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 264-69 (Neg. 174-79). Maimonides did not offer a concise Arabic term in Negative Commandment #179.

¹¹³¹ He cited the *Sifra*’s reading of “You shall not make yourself unclean through any swarming thing that moves [*ha-romes*] upon the earth” (Lev. 11:44) as the source of this prohibition. His text read:

Negative Commandment #178: not to eat animals generated (*al-mutawallida*)¹¹³² in food once they have crawled outside the food.¹¹³³

Maimonides based the prohibition against eating water insects on the sweeping phraseology of the verse, “*You shall not draw abomination upon yourselves through anything that swarms*” (Lev. 11:43). In so doing, he differed from earlier jurists who, he reported, held that “*anything that swarms*” merely replicates other prohibitions against eating insects. In this sense, he wrote, they saw this verse as being “similar to a

אלגמל; והרומש על הארץ אף על פי שאינו פנויה ורובה; *Sefer ha-Miṣvot*, ed. Kafih, 265 (Neg. 177). This comment is absent from standard editions of the *Sifra*.

¹¹³² It appears that Maimonides treated *mutakawwin* and *mutawallida* as synonyms; note אלגמל ולא ימתנע תולד אלצרעה או ... מן אלעפונה; and אלטיאר אלמתולד מן עפונה אלפואכה אלתי אינו פורה ורובה ואלצרעה אלמתולדה מן אלעפונה; *Sefer ha-Miṣvot*, ed. Kafih, 268-69; Neg. 179.

¹¹³³ He reformulated this in *Hilkhot Ma'akhlot Asurot*, 2:16; see *Sefer ha-Miṣvot*, ed. Kafih, 265n79, 268n99; see also Joshua ha-Nagid, *Teshuvot*, ed. Raṣhabi, 115-16. Spontaneous generation was widely accepted in this period. Maimonides testified to his belief in it in many places; see *Sefer ha-Miṣvot*, ed. Kafih, 269 (Neg. 179); idem, *Mishnah 'im Peirush*, ed. Kafih, 5:220 (mḤul 9:6; calling it “confounding” [*mudhish*]); *Hilkhot Shabbat*, 11:2-3; *Hilkhot Tumat Meit*, 3:10; *Hilkhot Ma'akhlot Asurot*, 2:13-14; *Guide*, I:72 (eds. Munk and Joel, 130); and his *Medical Aphorisms*, 24:11, in idem, *Pirqei Moshe bi-Refu'ah: be-Tirgumo shel R. Natan ha-Me'ati*, ed. Sussmann Muntner (Jerusalem: Mosad ha-Rav Kook, 1959), 304; treated in Fred Rosner, *Medicine in the Mishneh Torah of Maimonides* (New York: Ktav, 1984) 294-95; and Davidson, *Maimonides*, 160n155. Kafih was troubled by this; see Maimonides, *Mishneh Torah*, ed. Kafih, 3:231-32 (*Hilkhot Shabbat*, 11:2); and idem, *Sefer ha-Miṣvot*, ed. Kafih, 269n2. Note his inconsistent translations of Maimonides' terms for spontaneous generation; there, 265n78, 267n96. On Aristotelian discussion of spontaneous generation, see James G. Lennox, “Teleology, Chance, and Aristotle's Theory of Spontaneous Generation,” *Journal of the History of Philosophy* 20 (1982): 219-38; and Allan Gotthelf, “Teleology and Spontaneous Generation in Aristotle: A Discussion,” in *Nature, Knowledge, and Virtue: Essays in Memory of Joan Kung*, eds. Terry Penner and Richard Kraut (Edmonton: Academic Print. and Pub., 1989), 181-95. For medieval Jewish views of spontaneous generation, see Harry Austryn Wolfson, “Hallevi and Maimonides on Design, Chance and Necessity,” *PAAJR* 11 (1941): 146-48; and Ahuva Gaziel, “Spontaneous Generation in Medieval Jewish Philosophy and Theology,” *History of Philosophy and Life Sciences* 32 (2012): 461-80. For medieval Muslim views, see Remke Kruk, “A Frothy Bubble: Spontaneous Generation in Medieval Islamic Thought,” *JSS* 35 (1990): 265-82; idem, “Ibn Ḥazm's Tadpoles: A Zāhirite Reads the Book of Nature,” in *Words, Texts and Concepts Cruising the Mediterranean Sea*, eds. R. Arnzen and J. Thielmann (Leuven: Peeters, 2004), 401-409; idem, “Ibn Sīnā on Animals: Between the First Teacher and the Physician,” in *Avicenna and His Heritage*, eds. Jules Janssens and Daniel de Smet (Leuven: Leuven University Press, 2002), 334-39; and Herbert Davidson, *Alfarabi, Avicenna, and Averroes, on Intellect: Their Cosmologies, Theories of the Active Intellect, and Theories of Human Intellect* (Oxford: Oxford University Press, 1992), 233-35.

prohibition that includes additional acts” (*shibh isur kolel*).¹¹³⁴ Since Maimonides was adamant that repeated prohibitions could only incur a single punishment (as set forth in Principle Nine, a conclusion which he termed “the true, demonstrated principles of the text of the Talmud”), he regarded earlier interpretations of “*anything that swarms*” as misguided.¹¹³⁵ Instead, without citing any evidence in rabbinic literature, Maimonides asserted that “*anything that swarms*” refers specifically to swimming insects. He recognized that “*anything that swarms*” could conceivably cover flying, crawling, and swimming insects¹¹³⁶ – unlike the prohibitions against consuming flying and crawling insects, whose prohibitions “are made clear” (*alladhī tabayyana fīhi al-lav*) – yet he nevertheless contended that this phrase must address creatures not yet mentioned,

¹¹³⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 265 (Neg. 179); see n83. Though he rejected this, he appears to echo it in *Hilkhot Ma’akhalot Asurot*, 2:12 (הרי כלל בלאו זה שרץ הארץ ושרץ העוף ושרץ המים); see Horowitz, *Marganita Tava*, in idem, *Sefer ha-Miṣvot*, ed. Hellman, 519 (Prin. Nine). R. Moses ben Jacob of Coucy, who did not have access to *Sefer ha-Miṣvot*, read this line in the *Mishneh Torah* to adopt the view of Alfasi and others; see *Sefer Miṣvot ha-Gadol*, 43b-44a. On Moses of Coucy’s lack of access to Maimonides’ *Sefer ha-Miṣvot*, see Ephraim E. Urbach, *Ba’alei ha-Tosafot: Toldoteihem, Hibureihem, Shit Qatam* (Jerusalem: Mosad Bialik, 1986), 1:472; and Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 2 (introductory pagination). Joseph ben Meir Teomim, *Shoshant ‘Amaqim* (Frankfurt, 1782), 120b-121a, also wondered about this phrase. Joshua ha-Nagid, *Teshuvot*, ed. Raṣhabi, 115, asserted that *shibh isur kolel* accords only with the rejected view; he did not explain the similar line in the *Mishneh Torah*. For Maimonides’ definition of *isur kolel*, see *Mishnah ‘im Peirush*, ed. Kafih, 5:359-60 (mKer 3:4); see also there, 5:84 (mZev 3:2).

¹¹³⁵ והו תפסיר גיר צחיח לא יטרד ולא יתם אלא עלי כלאף אלאצול אלצחיחה אלמתבררהנה פי נץ אלתלמוד; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 266-67 (Neg. 179).

¹¹³⁶ אל תשקצו את נפשותיכם אלדי יחרם שרץ המים איצא בכלל כל שרץ והו קולה אל תשקצו את נפשותיכם בכל השרץ; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 267; or הדא אלנץ אלדי הו אל תשקצו את נפשותיכם אנמא אסתפדנא (268; Neg. 179). Compare the definition in *Hilkhot Ma’akhalot Asurot*, 2:12: האוכל כזית משרץ המים לוקה מן התורה שנאמר אל תשקצו את נפשותיכם בכל השרץ. It is not clear why he did not offer Lev. 11:11 (“*Anything ... that has no fins and scales, among all the swarming things of the water and among all the other living creatures that are in the water, they are an abomination for you*”) as the source. Perhaps he understood “*swarming things of the water*” to refer to fish; see *Sefer ha-Miṣvot*, ed. Kafih, 264 (Neg. 173). He may also have accepted Lev. 11:43 as the source for this prohibition before offering this interpretation; see the next note. See also Vidal of Tolosa, *Magid Mishneh*, to *Hilkhot Ma’akhalot Asurot*, 2:12, in idem, *Mishneh Torah*, ed. Frankel, 4:133; and Kafih’s comments in *Mishneh Torah*, ed. Kafih, 8:63-64. On Maimonides’ interpretation of Lev. 11:43, compare *Sefer ha-Miṣvot*, ed. Kafih, 19; first noted in Horowitz, *Marganita Tava*, in idem, *Sefer ha-Miṣvot*, ed. Hellman, 514 (Prin. Nine).

namely, swimming insects, because one cannot receive two punishments for overlapping verses.¹¹³⁷

Armed with these claims, Maimonides identified the commandments violated by eating the *puṭita*, *nemalah*, and *ṣir'ah*, respectively. In his view, consumption of the *puṭita* violates the prohibitions against eating (1) a non-kosher bird, (2) a flying insect, (3) a crawling insect, and (4) a water insect;¹¹³⁸ consumption of the *nemalah* violates the prohibitions against consuming (1) an insect born in fruit, (2) a crawling insect, (3) a spontaneously generated insect, (4) a flying insect, and (5) a water insect. All of these prohibitions would also be violated by consumption of the *ṣir'ah*, along with the

¹¹³⁷ Kafih (Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 266n88) suggested that Maimonides' first draft of *Sefer ha-Miṣvot* adopted the earlier view, arguing that when Maimonides usually cites views that he opposed, he would first outline his own position. If so, Maimonides could have originally held Lev. 11:43 to be different from other repetitions because it covers multiple distinct commandments and does not repeat the same commandment. For the suggestion that harsh language indicates that Maimonides first held a rejected position, see Fixler, "Lashon Taqifah," 161-88. It may also be significant that Negative Commandment #179, which may have, at one point, covered all types of insects, appears at the end of this list. If it is merely a prohibition against consuming water insects, why is it not Negative Commandment #177? Compare the order of these prohibitions in *Hilkhot Ma'akhalot Asurot*, 2:23: הרי שהיתה הבריה משרץ (see below, n1139). (The verses listed in Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 268 [Neg. 179], are clearly corrupt; the text in ed. Bloch, 254-55 [Neg. 179], is much more coherent.)

¹¹³⁸ This is the conclusion in published editions (Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 255; ed. Heller, 144; and ed. Kafih, 268 [Neg. 179]). Duran, *Zohar ha-Raqi'a*, 22 (introductory pagination; Prin. Nine), claimed that this is "the first edition" (*ha-ha'ataqah ha-rishonah*), but that he found "the final edition" (*ha-ha'ataqah ha-aḥaronah*) that described the *puṭita* as (1) born in fruit, (2) a crawling insect, (3) spontaneously generated, and (4) a flying insect. Daniel ha-Bavli and Abraham Maimonides had this latter text; see *ibid.*, ed. Heller, 9 (introductory pagination), 144n6; and MS. Hunt. 185, 147a, 160a; *Ma'aseh Nissim*, 27, 42-43 (§4). It appears more likely that Daniel and Abraham worked with an earlier version, as in other cases (e.g., those treated below, nn1153, 1197). This factor and the fact that Bloch, Kafih, and Ibn Tibbon have what Duran considered to be the "first edition," lead me to conclude that Duran's "final edition" was actually the earlier edition. The approach in this earlier version had the advantage of adding one commandment to each of the *nemalah* (a water insect) and *ṣir'ah* (a water insect and non-kosher bird), while the other version assumes that the *puṭita* is not spontaneously generated. Nahmanides' text agreed with published editions; *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 106 (Prin. Nine). Solomon ibn Ayyub's translation, in Kokhavi, *Sefer ha-Batim*, ed. Hershler, 2:383 (Neg. 179), includes an incomplete list.

prohibition against eating (6) a non-kosher bird.¹¹³⁹ Maimonides defended the claim that the *šir ‘ah* is both a bird and an insect, writing that it has conditions (*ḥālāt*) and performs actions (*af‘ālahu*) of each.¹¹⁴⁰

Verbs in the Prohibitive Mood that Cover Many Acts (Lav shebe-Khlalot)

The lengthy section “appended” to Principle Nine – “the important principle” (*al-ašl al-kabīr*),¹¹⁴¹ in Maimonides’ words – further complicates the relationship between the Pentateuch and the enumerated “concepts” and underscores the role of punishments in the enumeration. Maimonides argued that every “concept” must either be based on a *lav mujarrad*, “a verb in the prohibitive mood with a single attached object” (which I will term “exclusive verb”),¹¹⁴² or be identified as a discrete commandment by “the transmitters” (*al-nāqilīn*). However, he wrote, if a single *do not* “includes many concepts” (*yashtamil ‘ala ma ‘ānī kathīra*), then all associated “concepts” count as a

¹¹³⁹ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 268-69 (Neg. 179). In *Hilkhot Ma ‘akhalot Asurot*, 2:23, he did not mention these creatures and listed the prohibitions in a different order: (1) flying insects, (2) water insects, (3) crawling insects, (4) creatures created (*nivra ‘u*) in fruit, (5) spontaneously generated creatures, and (6) non-kosher birds. This change is noted and discussed in Berlin, *Ha ‘amek She ‘elah*, 2:95. Standard editions of *Hilkhot Ma ‘akhalot Asurot*, 2:23, are corrupt; recent editions fix the error. Abraham Maimonides’ version agrees with the correct text; see MS. Hunt. 185, 158b; *Ma ‘aseh Nissim*, 41 (§4); noted in *Ma ‘aseh Nissim*, ed. Kahana, 9-10n63.

¹¹⁴⁰ After all, he noted, others described the *puṭita* as both a fish and water insect; *Sefer ha-Mišvot*, ed. Kafih, 268 (Neg. 179).

¹¹⁴¹ Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 42 (Prin. Nine).

¹¹⁴² Blau, *Dictionary*, 84, s.v. *مُجَرَّد*, offered: *simple, uncomplicated, unaccompanied by proofs*, and *explicit*. Among other possibilities, E.W. Lane, *An Arabic-English Lexicon* (Beirut, 1968), 407, s.v. *مُجَرَّد*, has *divested of every accessory*. Ibn Tibbon used *lav be-yiḥud* (Maimonides, *Sefer ha-Mišvot*, ed. Heller, 20; Prin. Nine); and Kafih, *lav meyuḥad* (ed. Kafih, 37; Prin. Nine). In two places, Maimonides appears to use the phrase *lav mujarrad* to denote a verse that repeats a commanded “concept” but is more specific or focused; there, 307 (Neg. 269), 308 (Neg. 270). Two other appearances of this phrase conform better to the usage in Principle Nine; there, 269 (Neg. 179), 337 (Neg. 349). Though he mentioned positive commands (*al-ma ‘ānī al-ma ‘mūr*), I have found no evidence that this section impacts the Positive Commandments.

single commandment.¹¹⁴³ In other words, “don’t do X and don’t do Y” constitutes two commandments, but “don’t do X and Y” only constitutes one.

Maimonides used the Aramaic term *lav shebe-khlalot* in order to describe the opposite of a *lav mujarrad*. Medieval talmudists noted the complexity of this term,¹¹⁴⁴ which may be provisionally translated “a prohibition that covers multiple laws.” The Babylonian Talmud applies this term to eleven verses.¹¹⁴⁵ A brief overview of some of this term’s talmudic appearances will provide background for Maimonides’ deployment of *lav shebe-khlalot*. Two *sugyot* use the term *lav shebe-khlalot* to designate a verse understood by the rabbis to mandate numerous unrelated and non-explicit prohibitions. One such example is, “*Do not eat upon the blood*” (Lev. 19:26); violation of laws derived from this type of *lav shebe-khlalot* incurs no punishment.¹¹⁴⁶ Other *sugyot* consider a *do not* with several explicit prohibitions a *lav shebe-khlalot*, such as “*Eat no fat of ox nor*

¹¹⁴³ או דליל יקולונה אלנאקלין אנה פצל אלמעאני [כלהא] בעצהא מן בעי' Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 37 (Prin. Nine).

¹¹⁴⁴ See Judah ben Kalonymus ben Meir, *Erkhei Tana'im ve-Amora'im*, ed. Moses Blau (New York, 1994), ed. Moses Blau, 1:101: [ש] בחילוקיהם גדול [יש] חילוק גדול בלאו כלולין בלאו חילוק גדול [יש] בחילוקיהם; Isaiah di Trani the Elder, *Tosafot ha-Rid* (Lemberg, 1869), 16a (bPes 41a): עכשיו דלאו שבכללות המוזכר בהרבה מקומות אין; Solomon ben Abraham Ibn Adret, *Teshuvot*, 1:74 (§141): ענין לאו שבכללות בגמרא אין; Aharon ha-Levi [?], *Sefer ha-Hinukh*, ed. Chavel, 136 (§79): פירוש ענין זה כבר בארוהו בספר; and Menahem ha-Meiri, *Beit ha-Behirah, Masekhet Bava Qamma*, ed. Kalman Shlessinger (Jerusalem: Meqisei Nirdamim, 1959), 423 (bBQ 115a-115b): מבולבל הרבה ביד המפרשים (see there, 428). See Babad, *Minhat Hinukh*, 1:48: לבאר הכל על נכון צריך קונטרס מיוחד.

¹¹⁴⁵ The most organized presentation of the talmudic sources is Judah ben Kalonymus, *Erkhei Tana'im*, 1:98-101. For full discussion, see *Encyclopedia Talmudit*, s.v. *lav shebe-khlalot*, 35:617-70. The phrase *lav shebe-khlalot* is apparently Babylonian in origin (Breuer, “Hidushim Miloniyim,” 56-57); tannaitic literature seems unaware of this concept; see Rabad to *Hilkhot Avodah Zarah*, 3:9 (citing tMak 5:7, Moses Samuel Zuckermann, *Tosefta 'al pi kitvei yad Erfurt u-Vienna* [Jerusalem, 1937], 444 lines 15-16). The Babylonian Talmud does impute *lav shebe-khlalot* into a tannaitic debate (bKer 4a). Note also Nahmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 118 (Prin. Nine), treating yNaz 6:1 (54d), and Teomim, *Shoshanot 'Amaqim*, 122b-123b.

¹¹⁴⁶ See bSan 63a; see also bPes 24a citing Ex. 29:34

sheep nor goat” (Lev. 7:23).¹¹⁴⁷ Two other types of verses classified as *lav shebe-khlalot* that are central to Maimonides’ treatment are less clear: “*Do not eat of it* [i.e., the paschal sacrifice] *raw or cooked, but roasted over fire*” (Ex. 12:9),¹¹⁴⁸ and “*Throughout his term as a nazirite, anything obtained from the grapevine, even seeds or skin, he shall not eat*” (Num. 6:4).¹¹⁴⁹ Is each a *lav shebe-khlalot* because it contains a single “*do not*”? Or was it included in this designation because the prohibitions against eating a non-roasted paschal sacrifice and against consuming “*anything obtained from the grapevine*” cover many items? The Talmud also notes that “superfluous” words (*miyater[ei] qera*) serve “to divide” (*le-ḥaleq*) a *lav shebe-khlalot* verse and to impose multiple punishments (bKer 4a-5a).

In a recurring talmudic debate (e.g., bPes 41a, bNaz 38b), Abaye and Rava debate whether violation of the prohibitions pertaining to the paschal sacrifice and the nazirite results in punishment for each explicit prohibition¹¹⁵⁰ or in no punishment (manuscripts disagree about who adopted which view¹¹⁵¹). In several discussions of this debate, the Talmud offers two interpretations (*ika de-amrei*) of the statement that violation of these prohibitions incurs “no punishment”: either violating all of the explicit prohibitions

¹¹⁴⁷ See bKer 4a.

¹¹⁴⁸ See bPes 41a.

¹¹⁴⁹ See bNaz 38b. “Seeds” (*ḥarṣanim*) and “skin” (*zag*) are *hapax legomena*; translation follows rabbinic interpretation.

¹¹⁵⁰ I.e., eating a cooked paschal sacrifice violates “*cooked*” and “*not ... roasted*,” and eating grape seeds, “*anything obtained from the grapevine*” and “*even seeds*”

¹¹⁵¹ As noted by medieval commentators; see, e.g., *Tosafot*, bMen 58b, s.v. *ve-ika*; Judah ben Kalonymus, ‘*Erkhei Tana'im*, 1:99; Rabad to *Hilkhot Nezirut*, 5:8; Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 125-26 (Prin. Nine); Ibn Adret, *She'elot u-Teshuvot*, 1:74 (§141); and Daniel ha-Bavli and Abraham Maimonides’ statements, treated below. See also Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 21-22n68; ed. Kafih 39n38, 229n66; and *Encyclopedia Talmudit*, s.v. *lav shebe-khlalot*, 35:661-62nn457-58, 461.

incurs one punishment (*miha ḥada laqi*) or none at all.¹¹⁵² Maimonides ruled that violation of a *lav shebe-khlalot* with several discrete prohibitions incurs only one punishment. He seems to have initially ascribed this position to Abaye, but later to Rava.¹¹⁵³ (Notably, both Ḥananel ben Ḥushiel – whose approach to *lav shebe-khlalot* prefigures, and may have influenced, Maimonides’ views¹¹⁵⁴ – and Ḥefeṣ ben Yaṣṣiah attributed this view to Abaye.¹¹⁵⁵)

The *Commentary on the Mishnah* contains two definitions of *lav shebe-khlalot*, and it appears that they were written at different times.¹¹⁵⁶ The first defines *lav shebe-khlalot* as a prohibition that “is not stated (*lam ya ’it̄*, lit., does not arrive) with a clarifying

¹¹⁵² Different manuscripts record this in different *sugyot*.

¹¹⁵³ Daniel ha-Bavli reported that Principle Nine and Negative Commandment #94 cite Abaye, but some copies (*ba’ d al-nusakh*) of Principle Nine cite Rava. Abraham Maimonides instructed Daniel to change all texts to Rava; MS. Hunt., 149a-149b, 164b-165a; *Ma’aseh Nissim*, 30, 49 (§4). Bloch has Rava in Principle Nine and Abaye in Negative Commandment #94; Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 40 (Prin. Nine), 216 (Neg. 94); see there, nn1-2; and the version cited in Joshua ha-Nagid, *Teshuvot*, ed. Raṣḥabi, 102; see there, 41n62. The translation of Negative Commandment #94, in Kokhavi, *Sefer ha-Batim*, ed. Hershler, 2:348, has Abaye. Kafih and Ibn Tibbon have Rava in both places; *Sefer ha-Miṣvot*, ed. Heller, 21-22n68, 122n21; ed. Kafih, 39 (Prin. Nine), 229 (Neg. 94).

¹¹⁵⁴ See below, n1167.

¹¹⁵⁵ At least in contemporary editions; Ḥananel ben Ḥushiel, *Peirushei Rabbeinu Ḥananel, Pesahim*, ed. Meṣger, 93 (bPes 41b); and Halper, *A Volume of the Book of Precepts*, 176 lines 4-5.

¹¹⁵⁶ The first definition appears in the body of the text at the bottom of a page and continues midsentence in the first four lines of an eight-line marginal note, and the second appears in the remainder of the note (the next page begins a new topic.) The first part of the note is written in what Solomon Sassoon called “Slow Cursive,” but the second in a tighter script. Most likely, an earlier draft included the entire first definition and Maimonides later added the second. (I find it less likely that the entire note was added from an earlier draft, in part because the second definition starts at the beginning of a new line.) Sassoon thought that the whole note was added at one time, writing: “It may be remarked that in trying to conjecture the period of an alteration, not only the form of the writing but its subject matter also may help in the determination. For instance, the long addendum in Tractate *Makkoth* (II.314) on the subject of לאו שבכללות may well be contemporary with the writing of ספר המצוות where this subject is also discussed at some length. Furthermore, it is in a condensed Slow Cursive, and would therefore fit in with the very early alterations mentioned above”; *Maimonidis Commentarius in Mischnam* (Hafniae [Copenhagen]: Ejnar Munksgaard, 1956), 1:33. This overlooks the different scripts and the fact that the first four lines pick up the discussion midsentence. Kafih wrote that the first four lines were added first and the second later; Maimonides, *Mishnah ’im Peirush*, ed. Kafih, 4:238n45 (mMak 3:1). I thank Robert Brody for helping me work through some of these issues.

[statement] (*bi-bayān*) but is derived (*yustakhraj*) from another statement;”¹¹⁵⁷

Maimonides related this definition of *lav shebe-khlalot* to the talmudic phrase “implicitly stated” (*mi-khlala itmar*). He offered two simple examples: (1) “*You shall eat no bread or parched grain or fresh ears ... until you have brought the offering*” (Lev. 23:14; see bKer 5a) implies a prohibition against consuming any part of the new crop (*ḥadash*) before offering its sacrifice; and (2) “*Do not eat of it raw or cooked,*” implies “do not eat it other than roasted.” He explained that “implied” prohibitions incur no punishment, but each explicit prohibition (i.e., “*bread or parched grain or fresh ears*” or “*raw or cooked*”) does.¹¹⁵⁸

In Maimonides’ third example, the case of the nazirite, who is forbidden to consume “*anything obtained from the grapevine, even seeds or skin*” (Num. 6:4), he understood the words “*anything obtained*” to imply other grape products. While the Talmud (bNaz 38b) reports that the Amoraim, Abaye and Rava, debated the number of punishments a nazirite would incur (if any) for consuming combinations of grape seeds and skins – whether this incurs “no punishment,” or one for grape seeds, one for skins, and one for “*anything obtained,*” Maimonides assumed (based on other *sugyot*) that “no punishment” in fact means one punishment.¹¹⁵⁹ He also claimed that this talmudic debate was applicable to all five prohibitions in Num. 6:3-4 (“[1] *Vinegar of wine or of any other intoxicant he shall not drink, anything in which grapes have been steeped he shall*

¹¹⁵⁷ לאו לם יאתי בביאן לכנה יסתכריג' מן כלאם אכר; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:237 (mMak 3:1).

¹¹⁵⁸ Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:237-38 (mMak 3:1); see however there, n48. See Allegri, *Leiv Sameah*, in idem, *Sefer ha-Miṣvot*, ed. Hellman, 179 (Prin. Nine). He revised this in *Sefer ha-Miṣvot*; see below.

¹¹⁵⁹ It is conceivable that this appeared in Maimonides’ text of bNaz 38b.

not drink, grapes [2] fresh or [3] dried he shall not eat. Throughout his term as a nazirite, anything obtained from the grapevine, even [4] seeds or [5] skin, he shall not eat”.¹¹⁶⁰

According to Maimonides, had the Pentateuch stated, “anything obtained from the grapevine he shall not eat, even seeds or skin he shall not eat,” the consumption of seeds would have resulted in two punishments, one for each “he shall not eat” (i.e., each *do not*). However, since “anything obtained from the grapevine” lacks an independent *do not*, it qualifies as a *lav shebe-khlalot*; for this reason, the eating of seeds or of skin violates “only [one] prohibition” (*ghayr lav*).¹¹⁶¹

Maimonides’ early understanding of *lav shebe-khlalot* formulations as statements that “imply” prohibitions might conceivably account for all talmudic uses of this term, and his later definition of *lav shebe-khlalot* in the *Commentary on the Mishnah* may have been added when he was writing *Sefer ha-Miṣvot*.¹¹⁶² In the later definition, he wrote that a *lav shebe-khlalot* may also be “one verb in the prohibitive mood (*lav eḥad*) that encompasses (*ya ‘umm*) two [or] three prohibitions (*isurei*),”¹¹⁶³ and he labeled this

¹¹⁶⁰ The Mishnah (mNaz 6:2) omits the distinction between “fresh” and “dried” grapes; it is added in bNaz 38b (both cited in Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 281; [Neg. 206]). In *Sefer ha-Miṣvot*, ed. Kafih, 280 (Neg. 202), he insisted that the prohibition “vinegar of wine or of any other intoxicant he shall not drink” is one commandment because the verse does not read “he shall not drink wine, he shall not drink vinegar of wine.” “Anything ... steeped” prohibits the taste of wine (*ta ‘am ke-‘iqar*; lit., taste is like the essence); see also *Hilkhot Nezirut*, 5:5, 9.

¹¹⁶¹ לא ילזמה עלי כל ואחד מן אלמד כורה גיר לאו; Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:238 (mMak 3:1). Two medieval translations (Naples, 1492, and the text in Meiri’s *Beit ha-Behirah*) read: “only one prohibition” (*ele lav eḥad*). On these translations, see Hopkins, *Peirush ha-Rambam le-Masekhet Shabbat*, xx-xxiii, and the literature cited there. The phrase *lav shebe-khlalot* appears nowhere else in the *Commentary*. Kafih explained Maimonides’ claim that a certain prohibition imposes no punishment because “it is not clearly forbidden” (*laysat bi-bayyanat al-tahrīm*; i.e., not explicit) to be based on the concept of *lav shebe-khlalot*; see *Mishnah ‘im Peirush*, ed. Kafih, 4:185 and n6 (mSan 7:6).

¹¹⁶² As suggested by Sassoon, though I disagree with Sassoon’s treatment; see above, n1156.

¹¹⁶³ ואן יאתי לאו אחד יעם תרי תלתא אסורי; Maimonides, *Mishnah ‘im Peirush*, ed. Kafih, 4:238 (mMak 3:1). The similar statement in idem, *Sefer ha-Miṣvot*, ed. Bloch, 38 (Prin. Nine), includes “or”: לאו שבכללות הוא דאתו תרי או תלתא אסורי מחד לאו.

meaning “clearer and easier to understand” than the first.¹¹⁶⁴ The sole example he cited is “*Do not eat upon the blood*” (Lev. 19:26), describing this as a phrase that “included (*kalal*) many prohibitions, none of which was made clear (*lam yatabayyan*) so that we [must] impose (lit., say) one [additional] set of lashes over that which was made clear.”¹¹⁶⁵ This definition distinguishes between a *lav shebe-khlalot* that implies additional prohibitions beyond what is explicit, and a *lav shebe-khlalot* that lacks any explicit prohibitions.

Maimonides offered two definitions of *lav shebe-khlalot* in Principle Nine of his Introduction to *Sefer ha-Miṣvot*. Reiterating the point made in the passage that was added to the *Commentary on the Mishnah*, he gave the example of prohibitions like, “*Do not eat upon the blood*” (Lev. 19:26), which creates five¹¹⁶⁶ prohibitions. The “concepts” that are “included under” (*mushtamila taḥta*) such statements constitute a single commandment, and their violation incurs no punishment. The second definition in Principle Nine, offered by earlier talmudists¹¹⁶⁷ but not explicitly discussed by Maimonides in the *Commentary on the Mishnah*, is that a *do not* with several “attached” (*ma ṭūfa*)¹¹⁶⁸ objects (*ashya*’

¹¹⁶⁴ אבין ואסהל פהם מן אלמת'אלאת אלמתקדמה; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:239 (mMak 3:1).

¹¹⁶⁵ אנה כלל אסורין הרבה ולם יתבין מנהא ואחד מן חית' נקול לוקין עלי אלד'י תבין מלקות אחד; Maimonides, *Mishnah 'im Peirush*, ed. Kafih, 4:238-39 (mMak 3:1).

¹¹⁶⁶ Ibn Tibbon has six; see Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 21 (Prin. Nine) and n54. See also idem, *Mishneh Torah*, ed. Kafih, 22:170 (*Hilkhot Sanhedrin*, 18:1). On Ibn Janāḥ and Ibn Bal'am's interpretations of Lev. 19:26, which are relevant here, see Cohen, *Opening the Gates of Interpretation*, 62, 65, 69; see also there, 168-70, 396.

¹¹⁶⁷ Ḥananel ben Ḥushiel, *Peirushei Rabbeinu Ḥananel, Pesahim*, ed. Meşger, 93 (bPes 41b): לאו על שבכללות כלומר לאו אחד כולל הואכל נא והאוכל מבושל. See also the so-called Mainz commentary to bMen 58b: לאו שבכללות דחד לאו הוא לא תקטירו וכולל בו שאור ודבש ועירוביו. For others, see *Encyclopedia Talmudit*, s.v. *lav shebe-khlalot*, 35:647n329. Joshua ha-Nagid, *Teshuvot*, ed. Rašabi, 101, explained *lav shebe-khlalot* as a “compound term, meaning, a prohibition that includes many goals” (כתי'רה לפצ'ה מרכבה יעני לאו שבו כללות אגראץ'); see there, 40n57.

¹¹⁶⁸ On this term, see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 38n35.

kathira, lit., many things) constitutes a single commandment (e.g., “Do not eat of it raw or cooked”; Ex. 12:9).¹¹⁶⁹ This claim echoes the assertion in the *Commentary* about the hypothetical verse, “anything obtained from the grapevine he shall not eat, even seeds or skin he shall not eat.” Such a formulation, Maimonides had asserted, would not constitute a *lav shebe-khlalot*, but would, instead, impose punishment for each “shall not eat.”¹¹⁷⁰

Integrating talmudic evidence, Maimonides explained that each “attached” object may impose a distinct punishment if it is based on Sinaitic tradition (i.e., the *tafsir marwi*) or if one “thing” appears in a separate verse. In such cases, he wrote, each “thing” is a distinct *sheim* (category) and a discrete commandment. However, without such evidence, the prohibition constitutes a single commandment and the violation of any or all of the “things” incurs only one punishment.¹¹⁷¹ He summarized his entire presentation in

Hilkhot Sanhedrin, 18:3, citing examples crucial to Principle Nine:

What is meant by a *lav shebe-khlalot*? It is a *do not (lav)* that includes several matters (*she-kolel inyanim harbeh*), such as the injunction “Do not eat upon the blood” (Lev. 19:26). Moreover, it comprises such cases as Scripture’s saying, “do not do this and that.” Since there is no unique *do not* prohibiting (*lo yihed lo lav*) each act, violation does not incur the penalty of flogging, unless [Scripture] divided it [the matter] with other *do not*s (*halaq otah be-lavin aheirim*), or there is an aural tradition (*ne’emar mi-pi ha-shemu’ah*) that each be treated separately. How so? For example, Scripture says, “Do not eat of it raw or cooked” (Ex. 12:9). If one eats of it raw and cooked, he is flogged not twice but once. Concerning new produce (*hadash*) it says, “You shall eat no bread or parched grain or fresh ears” (Lev. 23:14), and if one ate all three, he is liable for three floggings, for we learned by way of aural tradition that this [i.e., extra words] serves to divide (*le-haleq*). It is said, “Let none be found among you who passes his son or daughter through the fire, or who is an augur” (Deut. 18:10). Although these matters are covered by a single prohibition, they are divided by other prohibitions, saying,

¹¹⁶⁹ Maimonides, *Sefer ha-Misvot*, ed. Kafih, 37-38 (Prin. Nine).

¹¹⁷⁰ “Implied” prohibitions appear tangentially in Principle Nine; see below.

¹¹⁷¹ Maimonides, *Sefer ha-Misvot*, ed. Kafih, 38, 41-42 (Prin. Nine); the latter conclusion helped Maimonides reduce the number of enumerated commandments.

“*You shall not practice divination and you shall not practice soothsaying*” (Lev. 19:26). This teaches (*melammed*) that each one is affected by its own *do not* (*be-lav bifnei ‘asmo*). So, too, all similar cases.¹¹⁷²

Single Prohibitions that Cover Multiple Non-Explicit Acts

Principle Nine cites two other prohibitions that cover several non-explicit laws:

“*You shall not place a stumbling block before the blind*” (Lev. 19:14) and “*You shall not carry false reports*” (Ex. 23:1). In the enumeration, Maimonides wrote that although the *peshateh di-qera* of Lev. 19:14 refers to giving improper advice, the rabbis said that this verse encompasses (*ya ‘umm*) many “things,” such as helping another sin, or lending with interest; it is, therefore, a *lav shebe-khlalot*.¹¹⁷³ The rabbis also understood Ex. 23:1 as including a number of prohibitions.¹¹⁷⁴

“*Do not eat upon the blood*” (Lev. 19:26) serves as the archetype of this kind of *lav shebe-khlalot*, but Maimonides’ enumeration privileges one talmudic interpretation (bSan 63a), which sees this verse as a “warning” (*azharah*) for the rebellious son (Deut.

¹¹⁷² אי זהו לאו שבכללות זה לאו אחד שכולל ענינים הרבה כגון לא תאכלו על הדם וכן אם נאמר לא תעשה דבר פלוני ופלוני הואיל ולא יחד לו לאו לכל אחד ואחד מהן אין לוקין על כל אחד ואחד אלא אם כן חלק אותה בלאוין אחרים או נאמר מפי השמועה שנחלקו כיצד כגון זה שנאמר אל תאכלו ממנו נא ובשל מבושל אינו לוקה על הנא והמבושל שתים אלא אחת ובחדש הוא אומר ולחם וקלי וקרמל לא תאכלו וחייב על שלשתן שלש מלקיות מפי השמועה למדו שזה לחלק הרי נאמר לא ימצא בך מעביר בנו ובתו באש קוסם קסמים ואף על פי שכלל כל הענינים בלאו אחד הרי חלק אותם בלאוין אחרים ואמר לא תנחשו ולא תעוננו מלמד ובתו באש קוסם קסמים ואף על פי שכלל כל הענינים בלאו אחד מהן בלאו בפני עצמו וכן כל כיוצא בזה;
translation based on Maimonides, *The Code of Maimonides, Book Fourteen: The Book of Judges*, trans. Abraham M. Hershman (New Haven: Yale University Press, 1949), 51, with changes.

¹¹⁷³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 38 (Prin. Nine), 320-21 (Neg. 299). My interpretation disagrees with Cohen, *Opening the Gates of Interpretation*, 318-20, esp. 320n111, who argued that Maimonides considered only the *peshat* reading biblical in status and other readings, rabbinic (he called the latter *furū*, a term that Maimonides did not use). As Cohen noted, in his other works, Maimonides considered other readings biblical in status, consistent with his comment in Principle Nine. Similarly, I am hesitant to accept Cohen’s treatment of Maimonides’ understanding of Deut. 23:24; see Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 109 (Pos. 94); and Cohen, *Opening the Gates of Interpretation*, 325-27; compare there, 301n67. This case is less clear; I treat Cohen’s larger argument above, n445.

¹¹⁷⁴ Such as a judge may not hear claims of one litigant in the absence of the other, one may not speak or accept evil speech, nor bear false witness; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 38 (Prin. Nine), 312 (Neg. 281). See *Hilkhot Sanhedrin*, 21:7. See similarly *Sefer ha-Miṣvot*, ed. Kafih, 246 (Neg. 163), for a *lav* that prohibits distinct but related acts.

21:20), a glutton and drunkard. Characterizing the verse in question as a “prohibition against desiring much (*istikthār*)¹¹⁷⁵ food and drink as a youth,”¹¹⁷⁶ Maimonides explained that, because the punishment is explicit (Deut. 21:21), “it remains for us to seek the warning according to our principles (*uṣūlinā*) ‘Scripture did not punish unless [first] it warned’.”¹¹⁷⁷ Maimonides elsewhere emphasized that an explicit punishment may supersede the lack of “particularized (*mukhtaṣṣa*) warning.”¹¹⁷⁸ “It is not impossible,” he wrote, “for one prohibition (*al-nahy al-wāḥid*) to prohibit many things, and its rule not be that of *lav shebe-khlalot*, if the punishment is made clear for each and every concept (*ma nā*).”¹¹⁷⁹ In each case, Scripture’s statement indicating a punishment constitutes Maimonides’ preferred source for the prohibition.¹¹⁸⁰

¹¹⁷⁵ Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 264 (Neg. 195); ed. Kafih has *istihtār*, excessively following desires; see ed. Kafih, 276n28, 276-77n74-75. Ibn Ayyub had Bloch’s text; Ibn Tibbon’s is not clear; see ed. Heller, 148 and n16.

¹¹⁷⁶ אלנהי אלד’י נהינא ען אלאסתכת’אר פי אלטעם ואלשראב פי סן אלצגנר; Maimonides, *Sefer ha-Miṣvot*, ed. Bloch, 264 (Neg. 195).

¹¹⁷⁷ ובאן אלעונש ובקי אן נבחת’ ען אלאזהרה עלי אצולנא לא ענש הכתוב אלא אם כן הזהיר; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 276-77 (Neg. 195). This also appears in Principle Nine (there, 37), but not in the *Commentary*. See also *Hilkhot Mamrim*, 7:4, *Hilkhot Sheḥita*, 1:2, and *Hilkhot Sanhedrin*, 13:4, 18:3.

¹¹⁷⁸ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 211 (Neg. 60). On this rule, see above, n663.

¹¹⁷⁹ ולא ימתנע כון אלנהי אלוואחד ינהי ען אשיא כת’ירה ולא יכון חכמה חכם לאו שבכללות אד’א תביין אלעונש פי כל ומעני ומעני; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 193-94 (Neg. 26).

¹¹⁸⁰ I have found four examples: (1) “*You shall not curse elohim*” (Ex. 22:27) constitutes the warning against cursing God and a judge (*elohim* can denote both in biblical Hebrew). The punishment for the former is Lev. 24:16; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 210-11 (Neg. 60), 326 (Neg. 316). (2) “*You shall not curse the deaf*” (Lev. 19:14) constitutes the warning against cursing any Jew and one’s parents. The punishment for the latter is Ex. 21:17; there, 326-29 (Neg. 317-18); see also *Hilkhot Mamrim*, 5:4. (3) “*He may be given up to forty lashes, but no more*” (Deut. 25:2-3) constitutes the warning against hitting any Jew and one’s parents. The punishment for the latter is Ex. 21:15; there, 322 (Neg. 300), 329 (Neg. 319). (4) “*Make no mention of the names of other gods*” (Ex. 23:13) constitutes the warning against taking an oath and prophesying in the name of a false god. The punishment for the latter is Deut. 18:20; there, 189 (Neg. 14), 193-94 (Neg. 26). In each case, the Short Enumeration quotes the “punishment” verse; idem, *Mishneh Torah*, eds. Cohen et al., 35 line 19, 36 line 35, 39 lines 83-86, 60 line 416, 61 lines 435, 437-40. The Short Enumeration reads “*Do not eat upon the blood*” to prohibit “eating and drinking the way of a glutton and drunkard, as it says ‘*This son of ours ... is a glutton and drunkard*’,” and omits “*Do not eat upon the blood*” (שלא לאכול ולשתות דרך זולל וסובא שנאמר בנו זה זולל וסובא); there, 51 line 274. See Nahmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 337-38 (Neg. 195); Aharon ha-Levi [?], *Sefer ha-Hinukh*, ed. Chavel, 331-32 (§252); and Duran, *Zohar ha-Raqi’a*, 109-110 (Neg. §15), 136 (Neg. §58),

Prohibitions with Several “Attached” Laws

Maimonides declared that, “in order that the intended matter be clarified with the utmost clarity,” he would list “many, ... or perhaps all” of the *lav shebe-khlalot* prohibitions with “attached” laws.¹¹⁸¹ His first example was eating the paschal sacrifice “raw or cooked” (Ex. 12:9). The *Commentary on the Mishnah* asserts that this verse “implies” a prohibition against eating a non-roasted paschal sacrifice (from “*Do not eat of it ... but roasted*”; Ex. 12:9), and it asserts that the words *raw* and *cooked* each impose a punishment.¹¹⁸² Principle Nine, however, claims that since the prohibition (*lav*) is not “isolated” (*yafrud*) for each “concept” (i.e., the “concepts” of *raw* and *cooked*), this prohibition constitutes a single commandment. For this reason, the violation of both *raw* and *cooked* incurs just one punishment. Although Maimonides also mentioned the “implied” prohibition of non-roasted paschal sacrifices, no other “implied” prohibitions appear in *Sefer ha-Miṣvot*.¹¹⁸³ The six final examples that Maimonides offered are mostly

207-208 (Neg. §131). Similarly, the “warning” “*Do not turn to spirits and necromancers*” (Lev. 19:31), should constitute a *lav shebe-khlalot*, but Maimonides explained that separate punishments in Lev. 20:27 lead to the enumeration of two commandments; *Sefer ha-Miṣvot*, ed. Kafih, 186 (Neg. 9). The Short Enumeration lists the “warning”; *Mishneh Torah*, eds. Cohen et al., 35 lines 14-15.

¹¹⁸¹ ואנא אד'כר אלמת'אלאת אלכת'ירה מן קסמי הד'א אלנוע אלת'אני וקד רבמא ד'כרת תלך אללאוין כלהא אלתי מן אלביאן אלמעני אלמקצוד גאיה אלביאן; Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 38 (Prin. Nine).

¹¹⁸² Above, n1158.

¹¹⁸³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 38-39 (Prin. Nine), 238 (Neg. 125). The second example, “*anything obtained from the grapevine*,” appears out of place; see below. The third, “*No meal offering ... shall be made of leaven, for no leaven or honey may be offered*” (Lev. 2:11), is significant because Maimonides did not consider the first clause to institute a unique commandment, unlike some claims treated below; *Sefer ha-Miṣvot*, ed. Kafih, 39-40 (Prin. Nine).

formulated, “don’t do X or Y,” and, significantly, they do not appear in rabbinic literature.¹¹⁸⁴

Two cases not discussed in Principle Nine reveal difficulties that Maimonides had with this type of *lav shebe-khlalot*. The first treats the “extraneous” word “of them” (*meihem*) in “Anything blind, or injured, or maimed ... you shall not put any of them on the altar” (Lev. 22:22). The Talmud (bTem 7b) considers the word *meihem* a *lav shebe-khlalot* that prohibits the sacrifice of parts of blemished animals, but ultimately concludes by noting that the position that exempts this (every?)¹¹⁸⁵ *lav shebe-khlalot* from punishment is “refuted” (*teyuvta de-X*).¹¹⁸⁶ Accepting the conclusion that violation of the prohibition to sacrifice parts of blemished animals incurs punishment in the *Commentary on the Mishnah*, Maimonides described this prohibition as a distinct “concept” (*ma ‘nā*); in other words, it imposes punishment.¹¹⁸⁷ *Sefer ha-Miṣvot*, however, accepts the view that the Talmud had refuted, ascribes it to Rava,¹¹⁸⁸ and terms it “the sound principle” (*al-aṣl al-ṣaḥīḥ*).¹¹⁸⁹ In the second case, “A handmill or a millstone shall not be taken in

¹¹⁸⁴ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 40 (Prin. Nine). Notably, entering the Temple and giving a legal ruling while drunk, which share a single *do not* (Lev. 10:10-11), incur different punishments; there, 219-20 (Neg. 73). Somebody wrote to Maimonides asking why another example, “You shall not bring the fee of a harlot or the pay of a dog into the house of the Lord” (Deut. 23:18), appears as two commandments in the Short Enumeration. Maimonides replied that his correspondent’s text was corrupt; *Teshuvot*, ed. Blau, 2:724-25 (§447); see idem, *Sefer ha-Miṣvot*, ed. Kafih, 231 (Neg. 100). I see no reason to doubt this; note that Hefesh ben Yaṣliaḥ counted these as two commandments; Halper, *A Volume of the Book of Precepts*, 70, 85, 156 line 7. See above, n904.

¹¹⁸⁵ The Talmud simply renders the statement that one is not punished for violation of a *lav shebe-khlalot* “refuted”; whether this applies only to the specific *lav shebe-khlalot* at issue or all such prohibitions is unclear; Daniel ha-Bavli took the latter view (see below, n1223).

¹¹⁸⁶ This is Maimonides’ version. Other texts read “*teyuvta de-X teyuvta*”; see also below, n1262.

¹¹⁸⁷ See above, n1099.

¹¹⁸⁸ At least in what appears to be the final draft; see above n1153.

¹¹⁸⁹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 229-30 (Neg. 94); see *Hilkhot Isurei Mizbeah*, chap.

pawn” (Deut. 24:6), Maimonides attempted to limit the consequences of the Talmud’s characterization of the verse as a *lav shebe-khlalot* (bBM 115a-116a).¹¹⁹⁰

While most cases of “attached” laws constitute a single commandment in his enumeration, Maimonides explained that Sinaitic tradition, as preserved in rabbinic literature, may identify such laws as multiple commandments. Principle Nine cites the two talmudic examples in which “superfluous” words (according to the rabbis) in specific verses qualify them as this type of *lav shebe-khlalot* (Lev. 23:14 and Deut. 12:17; see bKer 4a-5a).¹¹⁹¹ Based on the idea that “attached” laws may, in some cases, constitute distinct commandments, Maimonides asserted that nine idolatrous practices joined by one *do not* in Deut. 18:10-11 constitute nine discrete commandments because two are separated in Lev. 19:26 (“*You shall not practice divination and you shall not practice soothsaying*”).¹¹⁹² An unnamed enumerator, who had counted as a single commandment the prohibitions in Lev. 21:7 (“*They [i.e., the priests] shall not marry a [1] harlot, [2] a defiled woman [ḥalalah], [3] nor shall they marry one divorced from her husband*”), in Maimonides’ view, failed to understand this. Though Maimonides “excused” this enumerator for grouping together the first two cases, which share a single *do not*, he

¹¹⁹⁰ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 295-96 (Neg. 242). The Mishnah (mBM 9:3) renders one “guilty” (*ḥayav*) for each; bBM 115a-116a records a debate as to whether Deut. 24:6 is a *lav shebe-khlalot*. Maimonides claimed that this asks whether the taking of two interdependent utensils receives two punishments. Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 155 (Prin. Nine), argued that this shows that Maimonides ignored the presence of punishments when counting commandments; I think that this just shows the challenge of applying talmudic evidence to Maimonides’ system.

¹¹⁹¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 40-41 (Prin. Nine); see also there, 246 (Neg. 143). On the text of this passage, see ed. Heller, 23n91. Maimonides cited the statement that burning was singled out to impose separate liability for each Sabbath labor (*hav’arah le-ḥeileq yaṣat*; bSab 70a), but not to count distinct commandments; ed. Kafih, 330 (Neg. 322). Note that the *Commentary* considers the first a *lav shebe-khlalot* due to an “implied” prohibition; see above, n1158.

¹¹⁹² Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 41 (Prin. Nine). Note that rabbinic literature does not designate Deut. 18:10-11 or Lev. 21:7 as *lav shebe-khlalot* verses.

ultimately rejected this, inasmuch as the Talmud says that one is “guilty” (*hayav*; i.e., for Maimonides, worthy of punishment) for each (bQid 77a). The unnamed enumerator’s inclusion of the third case with the others, was, for Maimonides, “absolutely inexcusable” (*lā ‘udhr fīhi al-batta*), as it has a “clarifying, stand-alone prohibiting verb” (*be-lav bi-fnei ‘ašmo mubayyin*).¹¹⁹³

Grape Products Prohibited to the Nazirite

A window onto the process of the editing of *Sefer ha-Miṣvot* is offered by textual alterations that Maimonides appears to have made regarding the scriptural prohibition of grape products to the nazirite. Two talmudic claims regarding these grape products are in tension in Maimonides’ system: One is that “*anything obtained from the grapevine, even seeds or skin, he shall not eat*” (Num. 6:4) constitutes a *lav shebe-khlalot*; the second is the assertion that consumption of each of grape seeds and skin incurs a distinct punishment (bNaz 38b). The first claim should have led Maimonides, according to the rules put forward in Principle Nine, to count just one commandment, but the second, five

¹¹⁹³ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 41-42 (Prin. Nine). I have not identified the “offending” enumerator. Hildesheimer, ed., “Haqdamat *Halakhot Gedolot*,” 66n296, and others cited there, argued that the enumeration in *Halakhot Gedolot* did not adopt the opposing view, though Maimonides may have had a different version of this count. Maimonides applied this rule to four prohibitions pertaining to the High Priest that appear to be a *lav shebe-khlalot* (“[1] A widow, [2] or a divorcée, [3] or a defiled woman, [4] or a harlot [*ḥalalah zonah*] – such he may not marry”; Lev. 21:14). He explained that the latter three prohibitions are repeated (*karrara*) for the High Priest in order to teach that their rules are identical for all priests, and cited the fact that the prohibition against marrying a divorcée is “isolated” (*‘afrada*) by Lev. 21:7 and bQid 77a in order to show that all four are distinct commandments; *Sefer ha-Miṣvot*, ed. Kafih, 255 (Neg. 161); see also 256 (Neg. 162), 262 (Neg. 170), and above, n1120. He offered a similar argument about Num. 18:20 and Deut. 18:2; there, 260-62 (Neg. 170), and *Hilkhot Shemiṭah ve-Yovel*, 13:10. I translate Lev. 21:7, 14 according to the rabbinic understanding; *ḥalalah zonah* could be “one who is degraded by harlotry,” as *NJPS* has (on *zonah*, see bYeb 61b).

(as consumption of each of the five grape products incurs punishment¹¹⁹⁴). In the earlier *Commentary on the Mishnah*, he integrated both statements by explaining that the lack of a *do not* means that “*anything obtained from the grapevine*” imposes no punishment and that eating each grape product incurs a distinct punishment.¹¹⁹⁵ *Sefer ha-Miṣvot* (as we know it) also counts these prohibitions as five distinct commandments.¹¹⁹⁶ However, two thirteenth-century witnesses to *Sefer ha-Miṣvot* suggest that Maimonides’ view shifted over time. Daniel ha-Bavli wrote that in Principle Nine, Maimonides had cited Abaye’s (!) view that one who eats grape seeds and skins incurs just one punishment (even though, according to Daniel’s text, Maimonides had listed five commandments in his enumeration).¹¹⁹⁷ According to Naḥmanides, his text of *Sefer ha-Miṣvot* counted the five grape products as one commandment, while his text of the *Mishneh Torah* counted them as five!¹¹⁹⁸

There is no reason to doubt the veracity of these claims, which come from opposite ends of the Jewish world. Counting these prohibitions as one commandment is eminently reasonable; it accords with the enumeration of Ḥefeṣ ben Yaṣṣiah,¹¹⁹⁹ and it would have entailed silent rejection of the *Commentary on the Mishnah*, which

¹¹⁹⁴ See above, n1160.

¹¹⁹⁵ See above, nn1160-1161.

¹¹⁹⁶ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 280-82 (Neg. 202-206).

¹¹⁹⁷ MS. Hunt. 185, 149a-149b, 151a; *Ma’aseh Nissim*, 29-30, 32 (§4).

¹¹⁹⁸ Naḥmanides, *Sefer ha-Miṣvot leha-Rambam*, ed. Chavel, 123-24 (Prin. Nine); this apparently refers to the Short Enumeration, see the notes there. See Duran, *Zohar ha-Raqi’a*, 29 (Heb. pagination), 148 (Neg. §63), 231 (concluding remarks); Allegri, *Leiv Sameah*, in Maimonides, *Sefer ha-Miṣvot*, ed. Hellman, 181 (Prin. Nine); and Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 8, 24 (introductory pagination). On Naḥmanides’ text of Principle Nine, see below.

¹¹⁹⁹ Halper, *A Volume of the Book of Precepts*, 173-76; see there, 75-76.

Maimonides frequently did.¹²⁰⁰ Assuming that these reports are correct, at an earlier stage of *Sefer ha-Miṣvot*'s composition, when Maimonides considered these prohibitions to constitute a single commandment, Principle Nine would have mentioned the verse that prohibits grape products to a nazirite as one that exemplifies the first type of "attached" prohibitions (i.e., those that constitute just one commandment). However, once Maimonides came to see these prohibitions as constituting five distinct commandments, he would have considered them an example of the second type of "attached" prohibitions.

There are several incongruities in Principle Nine's treatment of these prohibitions. Maimonides included "*anything obtained from the grapevine*" within his listing of the three archetypal "attached" prohibitions that do not constitute distinct commandments, but in summarizing this section, he only mentioned the other two.¹²⁰¹ Moreover, Principle Nine does not include this verse when mentioning the "attached" prohibitions that incur distinct punishments.¹²⁰² And lastly, the *editio princeps* of *Sefer ha-Miṣvot* (Constantinople, 1510) includes the following text: "So too, all of the *do not* (*lavin*) incumbent on the nazirite that are included in the prohibition (*be-isur*) '*anything obtained from the grapevine*' are a single commandment because they are all a detail (*perat*), as explained in the *gemara*."¹²⁰³ In light of the testimony of Daniel ha-Bavli and

¹²⁰⁰ See Guttman, "The Decisions of Maimonides," 230-31 and passim; Saul Lieberman, *Hilkhot ha-Yerushalmi le-Rabbeinu Moshe ben Maimon* (New York: Beit ha-Midrash le-Rabbanim shebe-America, 1948), 6-13; and, systematically, Aaron Adler, "Ha-'Eqronei he-Shitayim ke-Yesod le-'Hazarotav' shel ha-Rambam mi-Feirush ha-Mishnah le-Mishneh Torah," (PhD diss., Bar Ilan University, 1986).

¹²⁰¹ Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 39-40 (Prin. Nine).

¹²⁰² In fact, these are the only "attached" prohibitions treated in the Talmud that go unmentioned.

¹²⁰³ ויכן כל לאוין שבאו באיסור כל היוצא מגפן על הנזיר מצוה אחת מפני שהם כלם פרט כמו שהתבאר בגמרא; cited in Maimonides, *Sefer ha-Miṣvot*, ed. Heller, 23n78.

Naḥmanides, it is highly likely that this sentence reflects the original Arabic of an early version of *Sefer ha-Miṣvot*.

Maimonides' discussion of "attached" prohibitions that constitute a single commandment also includes the following:

And there it is also stated: "Abaye said: 'one who eats grape seeds is punished twice, skins twice, seeds and skin thrice.' And Rava said: 'violating a *lav shebekhlalot* does not incur punishment'" (bNaz 38b) – meaning, [God's] statement "anything obtained from the grapevine," which, Abaye claimed, imposes punishment.¹²⁰⁴

Daniel ha-Bavli's comments show that this text originally reversed the views of Abaye and Rava, not an unexpected finding, given similar inconsistencies between *Sefer ha-Miṣvot* manuscripts.¹²⁰⁵ I would suggest that Maimonides added the explanation of this talmudic quotation (beginning with the word "meaning") after he had concluded that the verse pertaining to forbidden grape products contains five commandments. (Without this claim, this text would mean that these prohibitions constitute a single commandment, fitting more smoothly with this type of "attached" prohibitions.¹²⁰⁶) Imagining the text without this later addition would make Principle Nine compatible with the view that these prohibitions constitute a single commandment and would account for the problems

¹²⁰⁴ והנאך קיל איצ'א אמר אביי אכל זג לוקה שתיים חרצן לוקה שתיים זג וחרצן לוקה שלש ורבא אמר אין לוקין על לאו
ושבכללות יעני קולה מכל אשר יצא מגפן היין אלד' יזעם אביי אנה לוקין עליו
Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 39;
ed. Bloch, 40-41 (Prin. Nine). I would further hypothesize that Maimonides removed this example from his
summary of this discussion.

¹²⁰⁵ See above, n1153.

¹²⁰⁶ Naḥmanides appears to have quoted such a claim: והאמת שהוא לוקה אחת בין שאכל נא או מבושל או
נא ומבושל אחת בלבד לוקה וכן בניזיר בזג וחרצן
Sefer ha-Miṣvot leha-Rambam, ed. Chavel, 114 (Prin. Nine).

outlined above.¹²⁰⁷ In any event, reevaluating these five prohibitions required Maimonides to adjust his count to reach the number 613.¹²⁰⁸

* * *

Daniel ha-Bavli and Abraham Maimonides on Principle Nine

Daniel ha-Bavli attempted to dismantle Principle Nine by pointing out difficulties in Maimonides' system and by rereading key talmudic passages. His comments on this Principle, more copious than on any other, demonstrate that its foundations in rabbinic literature were fragile. Taken as a whole, they underscore the complexity of Maimonides' assertion that the Pentateuch and the enumeration of the 613 commandments are directly linked.

While Maimonides' presentation influenced Daniel's thinking,¹²⁰⁹ two of Daniel's comments suggest that he placed more emphasis on rabbinic literature than did

¹²⁰⁷ In the enumeration, Maimonides explained that the fact that these prohibitions incur distinct punishments signal that they constitute five distinct commandments; *Sefer ha-Miṣvot*, ed. Kafih, 281-82 (Neg. 206); he cited this factor as determinative in *Teshuvot*, ed. Blau, 2:724-25 (§447). In *Sefer ha-Miṣvot*, he added: "what you must know is that these nazirite prohibitions combine to create an olive's bulk [to incur culpability for consumption]" (וממא יגב אן תעלמה אן הד'ה אסורי נזיר מצטרפין כולן לכזית) (ed. Kafih, 282; see mNaz 6:1). This somewhat out of place comment may reflect his earlier view that these prohibitions constitute one commandment, because, elsewhere, he argued that two objects only combine if they constitute a single category (*sheim*), and if not, they are two; as mentioned (see above, n1107), *sheim* and independent commandment are equivalent in *Sefer ha-Miṣvot*. Compare the following: (1) *Sefer ha-Miṣvot*, ed. Kafih, 240 (Neg. 131), claims that meat sacrificed with the intent to consume it after its proper time (*piggul*) and meat left over after its proscribed period for eating (*notar*) do not combine because they are two *sheimot*. (2) *Hilkhot Ma'akhalot Asurot*, 14:6, claims that all untithed produce (*tevel*), whether the priestly (*terumah*) or the levitical tithes (*ma'aser*) have not been separated, combines because it is one *sheim*.

¹²⁰⁸ For earlier treatment of the editing of *Sefer ha-Miṣvot*, see above, n1003.

¹²⁰⁹ In addition to examples in this paragraph, note the use of *k-r-r* and *ta'kid*; MS. Hunt. 185, 146a, 148a; *Ma'aseh Nissim*, 25, 28 (§4).

Maimonides. The first pertains to verses that prohibit farming during the sabbatical year; according to Maimonides, these contained four commandments: “[1] *You shall not sow your field* [2] *and you shall not prune your vineyard*; [3] *you shall not reap ... your harvest* [4] *and you shall not gather grapes of your vines*” (Lev. 25:4-5).¹²¹⁰ In challenging Maimonides’ enumeration, Daniel cited a rabbinic comment that describes pruning as “included under” (*be-khlal*) the act of sowing (insofar as both benefit growth), and the gathering of grapes as “included under” the act of harvesting (bMQ 3a). In short, argued Daniel, each pair of actions comprises one “concept” (*ma’ nā*). He claimed that this talmudic assertion overrides what appears to have been Maimonides’ chief consideration, the four *do not*s in these verses.¹²¹¹ Daniel also challenged Maimonides’ assertion in Principle Nine that nobody would consider the seven-fold repetition of the prohibition against eating blood to constitute more than one commandment.¹²¹² Citing the Talmud’s claim that five of these verses ordain five different rules (bKer 4a),¹²¹³ Daniel claimed that since the rabbis “divided” (*faššalū*) these “repeated” verses into different “concepts,” they constitute five commandments.¹²¹⁴

¹²¹⁰ See Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 287-88 (Neg. 220-23).

¹²¹¹ MS. Hunt. 185, 148a-148b; *Ma’aseh Nissim*, 28-29 (§4). He added that Maimonides elsewhere ignored the distinction between trees and bushes; see Maimonides, *Sefer ha-Mišvot*, ed. Kafih, 121 (Pos. 120), 284-85 (Neg. 214).

¹²¹² See above, n1101.

¹²¹³ E.g., the prohibition against consumption of the blood of non-consecrated animals and the requirement to cover blood from slaughter with dirt.

¹²¹⁴ MS. Hunt. 185, 148b-149a; *Ma’aseh Nissim*, 29 (§4). Compare Perla, *Sefer ha-Mišvot le-Rasag*, 2:120. Daniel here also used the root *q-m-n* as Maimonides did (see above, n1085). See also MS. Hunt. 185, 154b-155a; *Ma’aseh Nissim*, 36 (§4).

Daniel ha-Bavli's Critique of Principle Nine

Daniel's criticism of Principle Nine focused primarily on three topics. The first was the relationship between punishments, enumerated commandments, and legal categories (*sheimot*). The second was the meaning of the term *lav shebe-khlalot*, and its connection to the enumeration. The third was Maimonides' portrayals of the *puṭita*, *nemalah*, and *ṣir'ah*, and his method of explaining the number of commandments implicitly contained in the prohibitions against their consumption.

(1) Daniel cited talmudic evidence to reject Maimonides' link between punishments and the enumeration. In order to refute his claim that the term 'over (violates) only denotes repeated verses, Daniel identified instances in which the Talmud equates the phrase "violates ('over) two prohibitions" with the imposition of two punishments.¹²¹⁵ He also rejected Maimonides' understanding of the term *sheim* (category). Quoting the mishnaic statement that two distinct prohibitions – one forbidding a priest's marriage with a divorcée, and the second forbidding his marriage to a woman released from the obligation to perform levirate marriage (*ḥaluṣah*) – constitute a single "sheim" (mMak 3:1), Daniel argued that *sheim* denotes a "lav," and that such a *sheim* may include multiple distinct prohibitions.¹²¹⁶ Daniel also concluded that violation of a

¹²¹⁵ MS. Hunt. 185, 144a-145b; *Ma'aseh Nissim*, 24-25 (§4); e.g., bPes 25a; bTem 7b. He cited the conclusion that although R. Ishmael holds that eating forbidden fats of three different species incurs three punishments, inadvertent consumption of all three only incurs the obligation to bring a single sacrifice (bKer 4a) in order to argue that this prohibition constitutes a single commandment, regardless of the number of punishments; MS. Hunt. 185, 153b; *Ma'aseh Nissim*, 35 (§4); see also MS. Hunt. 185, 154a; *Ma'aseh Nissim*, 36 (§4). Maimonides did not address this because he rejected R. Ishmael's position; see *Sefer ha-Miṣvot*, ed. Kafih, 272 (Neg. 185).

¹²¹⁶ Because the rabbis derive the latter prohibition from the superfluous "from her husband" in "nor shall they [i.e., the priests] marry one divorced from her husband (Lev. 21:7; see bYeb 24a, bQid 78a); MS. Hunt. 185, 147b; *Ma'aseh Nissim*, 28 (§4); citing bKer 3a (on this text, see below, n1262).

lav shebe-khlalot incurs multiple punishments; in so doing, he dismissed one of Maimonides' primary strategies for reducing the number of punishments, and, consequently, the number of commandments.¹²¹⁷ Lastly, Daniel adduced examples that undercut the punishment-commandment-category matrix established in Principle Nine; Maimonides' claim that "the separation commandments follows punishments" was, for Daniel, "very dubious."¹²¹⁸

At the end of his comments, Daniel expressed frustration that Maimonides had highlighted the role of punishments yet failed to "take advantage of 'categories' (*sheimot*)."¹²¹⁹ The rabbinic determination of punishments, he claimed, is similar to the division of prohibited labors on the Sabbath. Though inadvertent performance of two prohibited labors incurs two sacrifices (bSab 70a), nobody, wrote Daniel, would count each labor as a distinct commandment!¹²²⁰ Reiterating his claim that prohibitions related to different types of blood constitute unique "concepts," Daniel asserted that the enumeration should follow conceptual units rather than punishments.¹²²¹

(2) Turning to Maimonides' understanding of *lav shebe-khlalot*, Daniel maintained – against Maimonides' final view – that Abaye, not Rava, held that the violation of a *lav shebe-khlalot* incurs one or no punishment.¹²²² Noting that Rava is generally followed over Abaye and that the Talmud (bTem 7b) rejects Abaye's

¹²¹⁷ MS. Hunt. 185, 149b; *Ma'aseh Nissim*, 30 (§4).

¹²¹⁸ תמיז אלמצות תאבע ללמלקות פהו משכל גדא; MS. Hunt. 185, 149a; *Ma'aseh Nissim*, 30 (§4).

¹²¹⁹ וולם יהתבל בשמות; MS. Hunt. 185, 154a; *Ma'aseh Nissim*, 36 (§4). Goldberg transcribed יהתכל.

¹²²⁰ He argued that one view imposes multiple sets of flagellation for multiple labors (see bSab 154a, bMak 13b), but would not dream of counting each labor as a distinct commandment.

¹²²¹ MS. Hunt. 185, 154b-155a; *Ma'aseh Nissim*, 36-37 (§4). See above, n1214. For the verses, see above, n1101.

¹²²² See above, nn1151-1153.

position,¹²²³ Daniel concluded that Maimonides should have ruled that a *lav shebe-khlalot* imposes multiple punishments. Daniel also rejected Maimonides' claim, found in his (early) text of Principle Nine, that a nazirite incurs one punishment for eating several forbidden grape products, on the grounds that it contradicts an explicit mishnah.¹²²⁴ By citing a passage – present in one family of manuscripts of bPes 41b¹²²⁵ – that equates the punishments for nazirite consumption of grape products with eating the paschal sacrifice, raw or cooked,¹²²⁶ Daniel also showed the “error” of claiming that the verses prohibiting grape products to a nazirite contain many commandments, while the prohibition pertaining to the paschal sacrifice contains just one.¹²²⁷

Daniel instead offered an interpretation of *lav shebe-khlalot* that was similar to Maimonides' earlier presentation in the *Commentary on the Mishnah*; he argued that this term denotes “non-explicit” (*ghayr maṣfūh*) prohibitions, or those “derived from general statements.”¹²²⁸ Daniel denied that the formula “don't do X or Y” qualifies as a *lav*

¹²²³ Daniel's text read *teyuvta de-Abaye teyuvta*; on this passage, see above, n1186, and below, n1262.

¹²²⁴ This is probably what motivated Maimonides to change his mind; see above, nn1160, 1197, 1207.

¹²²⁵ Despite recent reevaluations of Bavli Pesahim manuscripts, all agree on the connections between those containing this passage; see E.S. Rosenthal, *Talmud Bavli Masekhet Pesahim: Ketav-Yad Sason-Lunzer u-Meqomo be-Masoret-ha-Nusah* (London: Valmadonna Trust Library, 1984), 5-6, 55-59; idem, “Toldot ha-Nusah u-Va'ayot-'Arikhah be-Heiqer ha-Talmud ha-Bavli,” *Tarbiz* 57, no. 1 (1987): 10; Stephen G. Wald, *Pereq Elu 'Ovrin: Bavli Pesahim, Pereq Shlishi, Mahadurah Biqortit 'im bei'ur maqif* (New York: Jewish Theological Seminary of America, 2000), 269-72, 276-83; and Aaron Amit, “Kitvei ha-Yad ha-Teimaniyim be-Mesoret ha-Nusah shel Bavli Pesahim,” *HUCA* 73 (2002): 31-77 (Heb. pagination); see also idem, “Al Girsat Rabbeinu Hananel be-Bavli Pesahim 8b,” *Sidra* 21 (2006): 133-44.

¹²²⁶ Daniel cited only a few words of his version. MS Munich 6 reads: 'וצריכה דאי תנא פסח התם אמ' רבא לוקה שלש אבל בנויר דלא קדמיה לאו לכללות אימא מודה ליה לאביי ואי תנא נזיר התם אמ' אביי אין לוקין על לאו שבכללות דלא קדים לאו לכללות אבל הכא אימא מודה ליה לרבא צריכה דאי אשמעין דאי תנא, like MS Columbia X893 and JTS Rab. 1623/2 (EMC 271).

¹²²⁷ MS. Hunt. 185, 148a-150b; *Ma'aseh Nissim*, 30-31 (§4).

¹²²⁸ MS. Hunt. 185, 151b, 152b; *Ma'aseh Nissim*, 33, 34 (§4). Thus, “anything obtained from the grapevine” prohibits unmentioned grape products, and “but roasted over fire” eating the paschal sacrifice in non-roasted form.

shebe-khlalot, and he held that the Amoraim debated whether or not a verse containing a *lav shebe-khlalot* imposes punishments beyond the explicitly named prohibitions.¹²²⁹ This perspective led Daniel to reject Maimonides' claim that a Sinaitic tradition had served to divide (*le-ḥaleq*) certain verses and to mandate the consequent imposition of multiple punishments. Daniel explained that the Talmud assumes that the verses prohibiting the consumption of animal fats (Lev. 7:23) and grain of the new crop (Lev. 23:14)¹²³⁰ are examples of a *lav shebe-khlalot*, not because each contains a single *do not*, but because the prohibited objects in each of the verses share a “name” (*ism*). Although each of the prohibitions should incur a distinct punishment by dint of having been mentioned explicitly in the Pentateuch, Daniel asserted that their grouping under an overarching “name” means that each constitutes just one commandment. Here too, Daniel emphasized conceptual relationships over the role of Scripture in the enumeration.¹²³¹

(3) Lastly, Daniel ha-Bavli rejected Maimonides' descriptions of the *puṭita*, *nemalah*, and *ṣir 'ah*, writing that Maimonides' view “is neither found among any of the early ones, nor established truthfully.”¹²³² Daniel asserted that by ignoring the “unrestricted denotation” (*muṭlaq*) meanings of these terms and defining them as specific types of ants and hornets, Maimonides needlessly narrowed the import of the talmudic discussion.¹²³³

¹²²⁹ MS. Hunt. 185, 151a-152b; *Ma'aseh Nissim*, 31-34 (§4).

¹²³⁰ See bKer 4a-5a.

¹²³¹ MS. Hunt. 185, 153a-154a; *Ma'aseh Nissim*, 34-36 (§4).

¹²³² והד'א ראי לם יוגד לאחד אלמתדקמין ולם ית'בת עלי אלמחאקקה; MS. Hunt. 185, 146b-147a; *Ma'aseh Nissim*, 27 (§4). Maimonides himself proclaimed the novelty of his interpretation; see above, n1128.

¹²³³ MS. Hunt. 185, 146a-146b; *Ma'aseh Nissim*, 26 (§4). On *muṭlaq* in Islamic legal theory, see Weiss, *The Search for God's Law*, 382-88, 434-38; Hallaq, *A History of Islamic Legal Theories*, 46-47; and Sherman Jackson, “*Taqlīd*, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative

Daniel's close reading of *Sefer ha-Miṣvot* led him to make a surprising polemical charge. Maimonides had asserted that a prohibition can only apply to something which already exhibits its characteristic,¹²³⁴ but Daniel argued that this claim violates the principle that an already forbidden object cannot be the locus of additional prohibitions (*ein isur ḥal 'al isur*).¹²³⁵ In what may be his harshest jab, he exclaimed that Maimonides had, in effect, adopted the view of “some Qaraites” (*ba 'd madhāhib al-qarāyīn*), who claimed that consumption of the *jāmūs* (water buffalo) is forbidden because it rests in water, thus exhibiting characteristics of a fish, but lacks the signs of a kosher fish!¹²³⁶ Daniel therefore accepted the view of earlier jurists, as framed by Maimonides; they had asserted that repeated verses impose multiple punishments and that “general” (*āmma*) verses (e.g., Lev. 11:43; “*Anything that swarms*”) apply to all relevant creatures.¹²³⁷

Daniel added that the fact that the Talmud associates Abaye's comment that fish “are created from water” (*mi-maya ivru*; b'Eiruv 27b) with the *puṭita*, proves that the

Theory: *Muṭlaq* and *Āmm* in the Jurisprudence of Shihāb Al-dīn Al-Qarāfi,” *Islamic Law and Society* 3, no. 2 (1996): 165-92.

¹²³⁴ See Maimonides, *Sefer ha-Miṣvot*, ed. Kafih, 267-68 (Neg. 179). Abraham Maimonides accepted this as the “apparent” (*zāhir*) meaning of Maimonides' words; MS. Hunt. 185, 185a; *Ma'aseh Nissim*, 40 (§4).

¹²³⁵ MS. Hunt. 185, 146a-146b; *Ma'aseh Nissim*, 26 (§4). On this concept, see above, n851.

¹²³⁶ MS. Hunt. 185, 146b; *Ma'aseh Nissim*, 27 (§4). I have not identified any Qaraites who adopted this view; I thank Daniel Frank for his assistance on this matter. The geonim debated how to classify the *jāmūs*; Sa'adya considered it a *beheimah* (“domesticated animal”), but Hayya a *ḥayah* (“wild animal”); see Greenbaum, *Peirush ha-Torah le-Rav Shmuel ben Hofni*, 516 and n7; Abramson, “*Sefer ha-Tanḥūm* (‘ha-Šimud’),” 120-21; Zucker, *Peirushei Rav Sa'adya Gaon le-Bereishit*, 48; and Sa'adya ben Joseph, *Ha-Egron*, ed. Neḥemya Allony (Jerusalem: Ha-Aqademyah le-Lashon ha-‘Ivrit, 1969), 311. See also Mordechai Kislav, “Behinat ha-Zihuyim shel ‘Aseret Minei Ma‘alei-ha-Gerah ha-Teḥorim ‘al-pi ha-Taḥsonomyah,” *Sinai* 125 (2000): 218-19. For Abraham Maimonides' view of the *jāmūs*, see also David, “Qeta'im Ḥadashim,” 18 line 19. For other seemingly incongruous references to Qaraites in the exchange between Daniel and Abraham, see MS. Hunt. 185, 93b, 211b; *Bikrat Avraham*, 51 (§38); *Ma'aseh Nissim*, 105 (§13). I hope to return to this subject.

¹²³⁷ MS. Hunt. 185, 147b; *Ma'aseh Nissim*, 28 (§4).

puṭita is born in water; this was in contradiction with the Maimonidean position recorded in Daniel's version of *Sefer ha-Miṣvot*.¹²³⁸

Abraham Maimonides' Response to Daniel ha-Bavli

Abraham was acutely aware of the significance of Daniel's challenges and of their potential impact on Maimonides' image. He twice apologized for his own lengthy refutations. The first of these, comprising almost twenty lines in the manuscript, praises Daniel as, "without doubt, one of the noble ones occupied with the study of the Talmud and speculative investigation regarding it,"¹²³⁹ but suggests that Daniel requires additional "transmission from the sages" (*naql min al-'ulamā*)" in order to properly analyze the "principles of [Maimonides'] speculation."¹²⁴⁰ Abraham wrote that "one who is unaware [of the truth] may stumble due to the ostensible meaning (*zawāhīr*) of [Daniel's] statements,"¹²⁴¹ leading the ignorant to ascribe errors to Maimonides. Switching to rhyming prose, he cautioned Daniel to take extreme care, as many might misunderstand Daniel's words.¹²⁴² At the end of this responsum, Abraham defended his lengthy rebuttal as necessary "in order that these doubts do not cause error," in fulfillment of the verse "*Remove the obstacle in the way of My people*" (Isa. 57:14).¹²⁴³

As was his wont, Abraham steadfastly defended his father, offering a point-by-point rebuttal of Daniel's claims. Like Maimonides, Abraham insisted that the explicit

¹²³⁸ MS. Hunt. 185, 147a; *Ma'aseh Nissim*, 27 (§4); see above, n1138.

¹²³⁹ נכלא ויאן כנת מן נבלא אלמשתגלין בקראה אלחמוד ואלנט'ר פיה בלא שך

¹²⁴⁰ פי תחציל אצול נט'רה.

¹²⁴¹ פיגת'ר בטואהר תלך אלאקאול מן לא יתנבה; on the exchange of 'ayn and ghayn in Judeo-Arabic texts, see Blau, *Diqduq ha-'Aravit-ha-Yehudit*, §24.

¹²⁴² MS. Hunt. 185, 164a-164b; *Ma'aseh Nissim*, 48-49 (§4).

¹²⁴³ חתי לא תגלט הד'ה אלשכוך; MS. Hunt. 185, 172b; *Ma'aseh Nissim*, 59 (§4).

nature of particular prohibitions overrides other considerations for the purposes of enumeration. Therefore, he explained, although pruning and gathering grapes could each be “derived (*tastamidd*) ... through *qiyās* (here: reasoning),” and although “their concepts are not distinct” (*ma ‘ānīhuma ghayr munfašila*), explicit mention of each activity serves as a “specification” (*takhšīš*),¹²⁴⁴ which renders them as two discrete commandments. Abraham further cited the rule that “a biblical verse does not leave the realm of its *peshat*,” along with Principle Two in the Introduction to *Sefer ha-Mišvot*, in order to argue that repeated prohibitions against the consumption of blood constitute a single commandment.¹²⁴⁵ This, he argued, is because Scripture’s “*peshat*” governs the enumeration, and not rabbinic interpretations.

Abraham firmly rejected several of Daniel’s claims. He censured Daniel for associating Maimonides’ words with Qaraism, asserting that Daniel’s accusation would lead to “mockery [in the eyes of] one whose mind is too feeble to achieve understanding of [Maimonides’] words.”¹²⁴⁶ These “bad manners” (*sū’ adab*), he reminded Daniel, “are not proper for us; ... we are forbidden from responding to such [accusations],” he wrote.¹²⁴⁷ Regarding Daniel’s view of *lav shebe-khlalot*, Abraham exhorted Daniel to “know the remote depths of the statements of the masters of knowledge, accurately render their utterances, toil in examining them, and be assiduous in clarifying their

¹²⁴⁴ On *takhšīš*, see above, n649.

¹²⁴⁵ MS. Hunt. 185, 163b-164a; *Ma’aseh Nissim*, 47-48 (§4); תסתמר ... באלקיאס. Abraham used the tenth form of *m-d-d* throughout; Goldberg repeatedly transcribed the *dalet* as a *reish*, reading תסתמר and אסתמר, etc. Note that Maimonides did not invoke Principle Two in this regard. Compare Abraham’s mention of Principle Nine in another context; MS. Hunt. 185, 202a; *Ma’aseh Nissim*, 95 (§10).

¹²⁴⁶ פלא אעלם פיה מעני סוי אלתהכס במן גבי אלד'הן ען אלוצול לפהם קולה.

¹²⁴⁷ והד'א סו אדב לא יליק בנא נחן אלמקאבלה עליה לאנה קד נהי ען אלג'ואב עלי מת'לה; MS. Hunt. 185, 159a; *Ma’aseh Nissim*, 42 (§4).

meaning before hurriedly responding to them.”¹²⁴⁸ Similarly, he dismissed Daniel’s assumption that it is biblically prohibited for a priest to marry a woman who has been released from the obligation to perform levirate marriage,¹²⁴⁹ as well as his claim that this prohibition, and the prohibition against a priest marrying a divorcée, constitute a single “category” (*sheim*). Abraham wrote that this “baseless” challenge was due to the “paltriness of [Daniel’s] transmission from the sages (‘*ulamā*’).”¹²⁵⁰

Elsewhere, Abraham defended his father but nevertheless praised Daniel. He labeled Daniel’s claim that the term *lav shebe-khlalot* denotes “non-explicit” prohibitions as “sound” (*ṣahīḥ*) but incomplete, describing it as one that reflects only part of the “proper” definition.¹²⁵¹ He similarly labeled Daniel’s proof about the term “violates” (*‘over*), “a good challenge, and only a stubborn person would deny its excellence. However,” continued Abraham, “despite its excellence, it does not compel doubt about his Principle,” because Maimonides had cited other evidence.¹²⁵² Elsewhere, he admitted that the “apparent” (*zāhir*) meaning of Maimonides’ words is in contradiction with a specific rabbinic text; his father’s words, he wrote, require careful consideration.¹²⁵³ He also recognized one of Daniel’s readings of *Sefer ha-Miṣvot* as “a good challenge and an excellent examination.”¹²⁵⁴ Nevertheless, Abraham declared that Maimonides’

¹²⁴⁸ ואעלם בעד גור אקאויל ד’וי אלעלם באלחקיקה ותחריר עבארן[א]תהם ואדאב עלי אלבחת פיהא ואמען פי תצפח MS. Hunt. 185, 167b; *Ma’aseh Nissim*, 52 (compare 166a; 50-51; §4).

¹²⁴⁹ See Yiṣḥaq Gilat, “Ḥaluṣah de-Rabanan Hi?” in *Peraqim be-Hishtalshelut ha-Halakhah* (Ramat Gan: Bar Ilan University Press, 1992), 273-80; and *Encyclopedia Talmudit*, s.v. *ḥaluṣah le-kohen*. 15:374-75.

¹²⁵⁰ ולעלמא ען אלעלמא; MS. Hunt. 185, 162a; *Ma’aseh Nissim*, 45 (§4).

¹²⁵¹ MS. Hunt. 185, 169a; *Ma’aseh Nissim*, 55 (§4). See above, n1229.

¹²⁵² אערתראצ’א גידא ולא ינכר גודתה אלא מעאנר אלא אנה מע גודתה לא ילזם אצלה ד’ל בה שך MS. Hunt. 185, 155a; *Ma’aseh Nissim*, 37 (§4). See above, n1215.

¹²⁵³ MS. Hunt. 185, 162b-163a; *Ma’aseh Nissim*, 46 (§4); see also above, n1234.

¹²⁵⁴ פיעלם אללה אן ד’לך לאערתראץ’ חסן ותנקיב גיד.

“speculation (*nazarahu*) surpasses this speculation, and his statements are accurate – he [i.e., Maimonides] is not among those who are ignorant of such things to such an extent.”¹²⁵⁵ Abraham also used the *Mishneh Torah*, completed after *Sefer ha-Miṣvot*, to reread the earlier work, and he conceded that Maimonides’ formulations in *Sefer ha-Miṣvot* could indeed “lead to suspicion” (*muwahhima*).¹²⁵⁶

Abraham also invoked formal logic to defend his father. Daniel had cited the talmudic statement that fish “are created from water” (b’Eiruv 27b) in order to show that the *puṭita* is a water insect, but Abraham described this statement as “indesignate” (*muhmal*), i.e., it refers to a particular but unspecified class of fish, not all fish. Echoing his father’s *Treatise on Logic*, he asserted that “indesignate statements have the force of the particular (*jazā’*),” and concluded that this talmudic declaration refers only to kosher fish.¹²⁵⁷

For apparently apologetic reasons, Abraham placed little emphasis on Maimonides’ claim that punishments are linked to the project of enumeration. He wrote that his father never claimed that one cannot receive multiple punishments for violating a single commandment; indeed, his father counted as a single commandment the

¹²⁵⁵ יג'ב אן תעלם אן נט'רה ז"ל פוק הד'א אלנט'ר ואקאוילה מחררה וליס ממן יגפל מת'ל הד'א אלקדר.

¹²⁵⁶ Goldberg translated this as “unclear” (*einah brurah*); MS. Hunt. 185, 157b-158b; *Ma'aseh Nissim*, 39-41 (§4). Daniel had asserted that traits of forbidden creatures cannot appear at different times (above, n1235), but *Hilkhot Ma'akhalot Asurot*, 2:23, reads: הרי שהיתה הבריה משרץ העוף ומשרץ המים ומשרץ הארץ. In Abraham’s words, these animals possess these attributes in their “nature” (*tabī'a*).

¹²⁵⁷ ואלמהמל קותה קוה אלגזאי; MS. Hunt. 185, 160a; *Ma'aseh Nissim*, 43 (§4); Goldberg made the connection to the *Treatise on Logic*. See Efron, “Maimonides’ *Treatise on Logic*,” 36 (English pagination): “If however no sign is attached to the subject of the proposition, as when we say ‘Men are animals’ or ‘Men write’, we call this proposition indesignate. . . . We regard it always as a particular proposition, whether affirmative or negative. Thus when we say ‘Men write’, it has for us the same force as if we said ‘Some men write’; and when we say ‘Men do not write’, it is as if we said ‘Not every man writes’.” I do not know why Abraham’s view of the *puṭita* ignored Maimonides’ later claims; above, n1138.

prohibition banning blemished priests from service in the Temple, even though each and every disqualifying blemish within a group of one hundred forty-four makes a priest liable for punishment (see *Hilkhot Bi'at ha-Miqdash*, 8:14). Rather, claimed Abraham, Maimonides simply meant that a single punishment for numerous acts serves as evidence that these acts constitute a single commandment. Therefore, one may incur an obligation to bring two atoning sacrifices for the performance of two forbidden labors on the Sabbath.¹²⁵⁸ While Abraham correctly noted that his father did not explicitly reject the possibility of incurring multiple punishments for violating a single commandment, his larger argument ignores many of Maimonides' claims.¹²⁵⁹

In addition to these substantive disagreements, Daniel and Abraham disagreed about the accurate reading of several texts. Abraham insisted that texts of *Sefer ha-Miṣvot* should be corrected to read that it was the amora Rava who held that violation of a *lav shebe-khlalot* incurs one, or no, punishment.¹²⁶⁰ Abraham conceded uncertainty about the views adopted by Abaye and Rava, given the conflicting evidence. Still, he wrote, “we preferred” (*rajjahñā*) the conclusion of Maimonides because it is consistent with various principles of adjudication.¹²⁶¹ Abraham also disagreed with a number of Daniel's

¹²⁵⁸ MS. Hunt. 185, 171b-172b; *Ma'aseh Nissim*, 58-59 (§4); see above, n1220. See similarly, above, n1190.

¹²⁵⁹ For various reasons, priestly blemishes and forbidden Sabbath labors were more likely exceptions to Maimonides' claim that violating one commandment incurs one punishment; for this and other criticism of Abraham's assertions here, see Perla, *Sefer ha-Miṣvot le-Rasag*, 1:35.

¹²⁶⁰ MS. Hunt. 185, 164b-165a; *Ma'aseh Nissim*, 49 (§4). See above, nn1153, 1197, 1205, 1222.

¹²⁶¹ MS. Hunt. 185, 165a; *Ma'aseh Nissim*, 50 (§4). Abraham, in fact, showed tremendous flexibility regarding principles of adjudication, writing that he could defend texts of *Sefer ha-Miṣvot* that associate this view with Abaye by suggesting that the rule that Abaye is followed over Rava only in six cases (see bQid 52b, etc.) does not apply when Abaye's view is shared by others. He similarly remarked that one of Daniel's claims could be dismissed by invoking the principle “one cannot learn from general rules” (*ein lemedin min ha-kelalot*; b'Eiruv 29a etc.); MS. Hunt. 185, 169a; *Ma'aseh Nissim*, 55 (§4). And he described the rule that the law follows the second version of a statement (*lishna batra*) as not

readings of specific *sugyot*, even preferring a reading that varied from one adopted in *Sefer ha-Miṣvot*.¹²⁶²

Conclusion

From several perspectives, the relationship between the Pentateuch and the enumeration of the commandments constitutes *Sefer ha-Miṣvot*'s most sustained concern. Maimonides' attempt to provide a systematic and consistent map of this relationship – perhaps the most daunting and multifaceted problem in this work – forced him to ask novel questions, to draw on diverse bodies of knowledge, and to struggle with the impact of numerous talmudic passages. As many scholars have observed, medieval Jews who accepted the authority of the Talmud were usually hesitant to derive new laws from readings of Scripture that do not appear in rabbinic literature (though there are some

“systematic” (*munazzam*; on this principle, see Brody, *Teshuvot Hilkhatiyot*, 83-85) but subject to exceptions, just like the rule that the law follows the majority (bBer 9a etc.); MS. Hunt. 185, 167b; *Ma'aseh Nissim*, 53 (§4). On principles of adjudication, see Brody, *Geonim of Babylonia*, 165; idem, *Teshuvot Hilkhatiyot*, 78-87; Tsvi Groner, *The Legal Methodology of Hai Gaon* (Chico, California: Scholars Press, 1985), 44-116; Assaf, *Tequfat ha-Geonim*, 224-45; and Jonathan S. Milgram, “Methodological Musings on the Study of ‘Kelalei Pesak’: ‘Hilkheta ke-Rav be-issurei ve-khi-Shemuel be-dinei,’” *JJS* 61, no. 2 (2010): 278-90.

¹²⁶² He asserted, thus, that bTem 7b does not render the view that violating a *lav shebe-khlalot* incurs no punishment “fully rejected” (*teyuvta de-X teyuvta*) but “difficult” (*qashya*; unlike the reading offered in *Sefer ha-Miṣvot*); MS. Hunt. 185, 168b; *Ma'aseh Nissim*, 53-54 (§4); see above, nn1186, 1223. Various versions of this text are recorded even in standard printings of the Vilna Talmud. Abraham also rejected Daniel's reading of bPes 41b; MS. Hunt. 185, 165b-166b; *Ma'aseh Nissim*, 51-52 (§4; see above, n1225); and bKer 3a; MS. Hunt. 185, 150b-151a, 169a-169b; *Ma'aseh Nissim*, 32, 54-55 (§4); on the latter, see Yoav Rosenthal, “Masekhet Keritut (Bavli): Le-Heiqer Masoroteha,” (PhD diss., Hebrew University, 2003), 155, 170n123, 171-73, 215, 219-22, 225-30. Abraham further asserted that Daniel's claims about when the two explanations (*ika de-amrei*) of the view that violating a *lav shebe-khlalot* does not incur punishment appear in the Talmud is incorrect; MS. Hunt. 185, 165b-167b; *Ma'aseh Nissim*, 50-52 (§4).

Both Daniel ha-Bavli and Abraham Maimonides used the Arabic word *dars* to denote “the correct textual reading”; on this term, see Adam Gacek, *The Arabic Manuscript Tradition: A Glossary of Technical Terms and Bibliography—Supplement* (Leiden: Brill, 2008), 23, and idem, *The Arabic Manuscript Tradition* (Leiden: Brill, 2001), 67. I thank Joseph Lowry for his assistance with this matter. Abraham used this word in a similar sense in *Sefer ha-Maspiq*, ed. Dana, 247; and *High Ways*, ed. Rosenblatt, 2:319.

notable exceptions).¹²⁶³ This makes Maimonides' willingness to do so – in the context of enumerating the commandments – all the more striking. In his eyes, it was Scripture that determined which acts incur punishments and that was the source of the 613 “concepts” that structure the law.

Diachronic analysis of Maimonides' writings, and of *Sefer ha-Miṣvot* in particular, opens a window onto Maimonides' thought process and reveals his ongoing, and occasionally incomplete, editing of this work.¹²⁶⁴ The fact that Maimonides continued to rethink the implications of Principle Nine, in *Sefer ha-Miṣvot* itself, in his edits to the *Commentary on the Mishnah*, and in the *Mishneh Torah* underscores this Principle's importance.

Daniel ha-Bavli's careful analysis of the Talmud and emphasis on different concepts in rabbinic literature showed that many of Maimonides' conclusions in Principle

¹²⁶³ For treatment and examples, see Yiṣḥaq Gilat, “Midrash ha-Ketuvim be-Tequfah ha-Batar-Talmudit,” in *Mikhtam le-David: Divrei Torah, Meḥqarim, ve-Ḥinukh le-Zikhro shel ha-Rav Dr. David Oks*, eds. Yiṣḥaq Gilat and Eliezer Stern (Ramat Gan: Bar Ilan University Press, 1978), 210-31, repr. in idem, *Peraqim be-Hishtalshelut ha-Halakhah*, 374-93; Gerald Blidstein, “Who is Not a Jew? – The Medieval Discussion,” *Israel Law Review* 11, no. 3 (1976): 379, 383, 384n56, 385, 389n74; Abraham Grossman, *Hakhmei Ashkenaz ha-Rishonim* (Jerusalem: Magnes, 1981), 87, 155-57, 188, 324, 430-31, 434n92; idem, “Ziqatah shel Yahadut Ashkenaz el Eres-Yisrael,” *Shalem* 3 (1981): 70-73; David Berger, “Heiqer Rabbanut Ashkenaz ha-Qedumah,” *Tarbiz* 53, no. 3 (1984): 484n6; idem, “Jacob Katz on Jews and Christians in the Middle Ages,” in *The Pride of Jacob: Essays on Jacob Katz and His Work*, ed. Jay M. Harris (Cambridge: Harvard University Press, 2002), 49n21; Brody, *Teshuvot Hilkhatiyot*, 65, 69; Oded Irshai, “Mumar ke-Yoresh be-Teshuvot ha-Geonim – Yesodoteha shel Pesiqah u-Maqbiloteha be-Mishpaṭ ha-Nokhri,” *Shenaton ha-Mishpaṭ ha-‘Ivri* 11-12 (1984-1986): 442-43; Elon, *Ha-Mishpaṭ ha-‘Ivri*, 1:326-33; Jeffrey R. Woolf, “Between Law and Society: Mahariq's Responsum on the ‘Ways of the Gentiles’ (*ḥuqqot ha-‘akkum*),” *AJS Review* 25, no. 1 (2000): 51n30; Michael Rosensweig, “Reflections on the Conceptual Approach to Talmud Torah,” in *לומדות: The Conceptual Approach to Jewish Learning*, ed. Yosef Blau (New York: Yeshiva University Press, 2006), 228n55; Ḥayim Sabbato, “Ha-Im Yesh Reshut li-Drosh Derashot Hilkhatiyot min ha-Pesuqim af she-lo Ne'emru be-Talmud?” in *Teshurah le-‘Amos*, 499-519; and Soloveitchik, *Collected Essays*, 2:85-103. Two examples that I do not believe have been mentioned are Abraham ben David of Posquières, *Temim Dei'im* (Jerusalem, 2006), 68 (Heb. pagination; §237; note the comments of Nissim of Gerona in bShev 7b [Alfasi pagination]); and Lewin, *Oṣar ha-Geonim, Masekhet ‘Eirubin, Ḥeileq ha-Teshuvot*, 27 (§70).

¹²⁶⁴ In addition to the discussions of the definition of *lav shebe-khlalot* and the grape products prohibited to the nazirite, see above, nn1093, 1099, 1125, 1134, 1137-1138.

Nine were vulnerable to criticism. Daniel missed few opportunities to attack Maimonides or to challenge many of Maimonides' innovative claims. Even Abraham Maimonides, who valiantly defended his father, accepted the strength of many of Daniel's arguments.

Conclusion

Rabbanite jurists in the Islamic world were deeply concerned with questions of legal theory. This interest was manifest in their ongoing discussions of supra-legal topics and in the complexity and nuance of the ideas that they developed in order to place the talmudic legal system on firm theoretical footing. Maimonides may well have been the Rabbanite author most concerned with problems of jurisprudence; more of his systematic writings on legal theory survive than those of any other Rabbanite.¹²⁶⁵ His statements of Rabbanite legal theory, particularly in his *Commentary on the Mishnah* and *Sefer ha-Miṣvot*, reframed age-old questions and posed new ones. Earlier Rabbanites who embraced the idea that God gave precisely 613 commandments had used this number to consider abstract legal problems, but Maimonides, by contrast, wedded legal theory to the enumeration of the commandments, and was thus able to bring together a variety of epistemological, interpretive, and conceptual themes under a single rubric.

This dissertation seeks, in part, to widen the scope of scholarly understanding of Rabbanite legal theory by subjecting Rabbanite ideas to synchronic and diachronic analysis. In so doing, it aims to demonstrate that Rabbanite writings were engaged in a multilayered conversation, one that involved their talmudic and post-talmudic past, Rabbanite and non-Rabbanite coreligionists, and elements of the Islamic intellectual tradition that were most helpful for the explanation and reconsideration of their own tradition. Foremost among these were *uṣūl al-fiqh*, qur'ānic exegesis, logic, and linguistics. By investigating, interpreting, and manipulating talmudic concepts,

¹²⁶⁵ Compare above, n378. Future research, particularly on David ben Sa'adya al-Ger's *Kitāb al-Hāwī*, will likely fill in the picture of pre-Maimonidean jurisprudence.

Rabbanites articulated legal theory that addressed the needs of medieval Judaism and its ideologues. Though cloaked in rabbinic garb, this project was innovative and profoundly contemporary.

Rabbanite jurisprudential writings underscore the dynamism of medieval Jewish thought and its ability to embrace new challenges. Theoretical reflections on the enumeration of the 613 commandments were largely detached from those aspects of Jewish law that Jews encountered on a regular basis; in my view, it was precisely this distance from the practical elements of law that made this project attractive to jurists as an entry point into meta-halakhic thinking.

Rabbanite jurists elaborated their legal theory in the shadow of Islamic thought. Its most extreme manifestation is discussed in Chapter One, where I suggest that the geonic presentation of revelation, particularly that of Sa'adya, was informed by broader societal emphasis on prophetic authority. But the primary reason for Rabbanite adaptation of modes of thinking and terminology from contemporaneous Muslim legal texts may have been quite simple: the concepts and terms current in wider society were helpful in the articulation of Rabbanite ideas. The commonalities between Rabbanite Judaism and Sunni Islam in this period facilitated Rabbanite engagement with ideas in contemporary Islamic law, allowing them to apply these ideas to their own legal system. These common features included the affirmation of a two-fold written and oral revelation; the assumed closure of foundational legal canons (i.e., the Talmud and *ḥadīth*); and the emphases on the study and performance of religious law as a crucial vehicle of religious expression.

Post-talmudic legal theory was not limited to the topics addressed in this study and it did not conclude in the mid-thirteenth century, the chronological endpoint of this

dissertation, which focuses on specific aspects of Rabbanite legal theory within a discrete timeframe. Certain themes discussed in the Fourteen Principles in Maimonides' *Sefer ha-Miṣvot* have been excluded from this project and demand further scholarly attention.

These include the eternality of the law (Principle Three) and the interpretation of legal language (Principles Five and Eight, and, to a certain extent, Four and Six). It would be fruitful to examine these and other subjects in conjunction with Qaraite legal thought in order to examine the ways that Jews of different orientations in the Islamic world developed systematic legal theory.

Jewish jurists outside of the Islamic context also continued to explore legal theory. The writings of later Spaniards such as Naḥmanides and his school were the first to engage Maimonides' jurisprudential legacy beyond the Arabic-speaking world.¹²⁶⁶ The medieval legacy as a whole loomed large in the theoretical writings of rabbis Nafatli Zvi Yehuda Berlin (1816-93) and Zadok ha-Kohen of Lublin (1823-1900), among many others.¹²⁶⁷

¹²⁶⁶ The approaches of Naḥmanides' successors, other than Nissim of Girona, remain understudied; for now, see the discussion in Gerald Blidstein, "Lo Masran ha-Katuv ele le-Ḥakhamim: le-Gilgulei ha-Niv u-Mashma'uto," *Netu'im* 14 (2006): 9-29; and David Weiss Halivni, "On Man's Role in Revelation," in *From Ancient Israel to Modern Judaism*, 2:45-47.

¹²⁶⁷ On Berlin, see Yaakov Elman, "History, Halakhah, and Revelation: The Historicization of the Sinaitic Revelation in 'Ha'ameq Davar'," in *Mishpetei Shalom: A Jubilee Volume in Honor of Rabbi Saul (Shalom) Berman*, ed. Yamin Levy (Riverdale: Yeshivat Chovevei Torah Rabbinical School), 157-78. On Zadok ha-Kohen, see Amira Liwer, "Torah shebe-'al Peh be-Khitvei R. Zadoq ha-Kohen mi-Lublin," (PhD diss., Hebrew University, 2006). On modern Zionist thinkers, see Alexander Kaye, "The Legal Philosophies of Religious Zionism 1937-1967," (PhD diss., Columbia University, 2012).

Rabbanite Legal Theory in the Shadow of Islamic Thought

S.D. Goitein's characterization of the relationship between Judaism and Islam as marked by "creative symbiosis" is one of the most enduring scholarly notions pertaining to Jewish life in the Islamic world. Goitein borrowed the term "symbiosis" from the field of biology, defining it, in an early article, as "the coexistence of two organs in such a way as to benefit from the proximity, in the sense that one party benefits while the other does not suffer."¹²⁶⁸ In his magnum opus, *A Mediterranean Society*, Goitein applied the idea of symbiosis primarily to economic and other modes of interpersonal relations between Jews and Muslims.¹²⁶⁹ But in his earlier, programmatic work, *Jews and Arabs*, Goitein took a broader view, speaking of "the influence of Islam on Jewish thought" and "the impact of Muhammadan spiritual life on the Jewish mind," and asserting that "traditional Judaism received its final shape under Muslim-Arab influence."¹²⁷⁰ While Goitein himself paid considerably less attention to the "spiritual" aspects of symbiosis, Steven Wasserstrom has noted that scholars have tended to view the impact of symbiosis most acutely in the "efflorescence of freethinking, ... interreligious tolerance, [and] the

¹²⁶⁸ S.D. Goitein, "Al Simbiozah Yehudit-Aravit," *Molad* 2, no. 11 (1949): 259; translation in Gideon Libson, "Hidden Worlds and Open Shutters: S.D. Goitein Between Judaism and Islam," in *The Jewish Past Revisited: Reflections on Modern Jewish Historians*, eds. David N. Myers and David B. Ruderman (New Haven: Yale University Press, 1998), 175.

¹²⁶⁹ S.D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkeley: University of California Press, 2000), 2:289-99; see also 5:9, speaking of "physical and educational symbiosis."

¹²⁷⁰ Goitein, *Jews and Arabs*, 11, 140 (see similarly, 127), 10. He emphasized that "the first and most basic aspect of Jewish-Arab symbiosis is the simple fact that the great majority of the Jews ... adopted the Arabic language" (131), and described Maimonides' *Guide* as "a great monument of Jewish-Arab symbiosis, not merely because it is written in Arabic by an original Jewish thinker and was studied by Arabs, but because it developed and conveyed to large sections of the Jewish people ideas which had long occupied the Arab mind" (146-47). For treatment of Goitein's approach, see Wasserstrom, *Between Muslim and Jew*, 3-12, 222-32; idem, "Recent Works on the 'Creative Symbiosis' of Judaism and Islam," *Religious Studies Review* 16, no. 1 (1990): 43-47; and Libson, "Hidden Worlds and Open Shutters," 175-79.

enlightened character of ... interfaith relations.” Reflecting something of a scholarly consensus, Wasserstrom explained that “it is difficult to avoid positing Jewish-Muslim philosophy as the intellectual end product of symbiosis.”¹²⁷¹ In a somewhat broader formulation, Sarah Stroumsa concluded that:

In the sciences, in philosophy, and in theology, the Jews became an integral part of Islamic culture. Judeo-Arabic works on these subjects are often indistinguishable from Muslim or Christian compositions on the same topics. ... The prevalent Arabic terminology, the *topoi*, the concerns and the mentality of their non-Jewish neighbors, all became internalized by Jewish authors.¹²⁷²

While many of the philosophers and theologians who penned exemplary texts of symbiosis in the realm of Jewish thought were also prominent jurists (e.g., Sa’adya, Maimonides, and Abraham Maimonides, to name figures central to this dissertation), the field of law was obviously less inter-confessional than that of philosophy. As a result, “symbiosis” of Jews and Muslims within the field of law necessarily had different contours.¹²⁷³ Nevertheless, as David Friedenreich noted, significant elements of non-

¹²⁷¹ Wasserstrom, *Between Muslim and Jew*, 225; see there, 225-35; and idem, “The Islamic Social and Cultural Context,” in *History of Jewish Philosophy*, eds. Daniel Frank and Oliver Leaman (New York: Routledge, 2005), 73-75. On the encounter of Judaism and Sufism as the “epitome” of symbiosis, see Russ-Fishbane, *Judaism, Sufism, and the Pietists of Medieval Egypt*, 32-39. Wasserstrom, *Between Muslim and Jew*, 9, pointedly rejected Goitein’s rosy picture of symbiosis: “Symbiosis, as a thinly happy and monovalently positive benefit, did not happen. Its complexity is reduced to *mere* benefit only by a tendentious dilution” (emphasis in original).

¹²⁷² Stroumsa, *Freethinkers of Medieval Islam*, 218.

¹²⁷³ See David Friedenreich, “Fusion Cooking in an Islamic Milieu: Jewish and Christian Jurists on Food Associated with Foreigners,” in *Beyond Religious Borders*, 145. On this issue, scholars have generally distinguished between the formative and post-formative periods of Islamic law. Concerning the “origin and early develop of Islam in its Jewish environment,” Goitein described “Islam [as] an Arab recast of Israel’s religion”; *Jews and Arabs*, 11. For his more measured statements, see idem, “The Interplay of Jewish and Islamic Laws,” in *Jewish Law in Legal History and the Modern World*, ed. Bernard Jackson (Leiden: Brill, 1980), 65-66; and idem, “The Birth Hour of Islamic Law,” in *Studies in Islamic History and Institutions* (Leiden: Brill, 2010), 132-34. Libson, *Jewish and Islamic Law*, 7, affirmed this chronological distinction: “During ... the first phase, ... it was generally Judaism that influenced Islam. Only in the second phases, during the 8th and 9th centuries, did the nature of the contacts between the two religions begin to change.” For criticism of this approach, see Lena Salaymeh, “‘Comparing’ Jewish and Islamic Legal Traditions: Between Disciplinarity and Critical Historical Jurisprudence,” *Critical Analysis of Law* 2,

Muslim legal works, such as the structure of legal compendia, the selection of topics, and certain modes of legal reasoning,¹²⁷⁴ would have been recognizable to Muslim jurists and *unique to the Islamic world*. Yet Friedenreich added that while scholars might label such ideas “Islamic” – due to their origin (when this can be ascertained), or because they are predominantly found in works of Islamic (in the narrow sense) law, or because they flourished in the Islamic world – non-Muslim jurists would never have considered these elements to be “Islamic” in nature.¹²⁷⁵ I would suggest that Jewish jurists engaged the “terminology, *topoi*, and concerns” in question because they were the predominant means of legal expression; these constituted central issues that any jurist was expected to address, especially in light of the overlap in the content of legal traditions that was a legacy of late antiquity.

Reading Jewish law in concert with other legal traditions is a scholarly imperative when seeking to understand Jewish law in the Islamic world. Ultimately, scholars must balance the contradictory truths contained in the aphorisms “people resemble their contemporaries more than their own ancestors” (*al-nās bi-azmānihim ashbah minhum bi-aslāfihim*) and “they are more like their ancestors than their contemporaries” (*annahum ashbah bi-abā`ihim minhum bi-azmānihim*).¹²⁷⁶

no. 1 (2015): 158. For application of “symbiosis” to later legal history, see Goitein, “The Interplay of Jewish and Islamic Laws,” 62. For a review of scholarship in Goitein’s wake, see Phillip Ackerman-Lieberman, *The Business of Identity: Jews, Muslims, and Economic Life in Medieval Egypt* (Stanford: Stanford University Press, 2014), 4-41. On comparative Jewish and Islamic law, see above, n8.

¹²⁷⁴ Friedenreich, “Fusion Cooking in an Islamic Milieu,” 148-50, 155-56.

¹²⁷⁵ *Ibid*, 160.

¹²⁷⁶ On these maxims, see S.D. Goitein, “Changes in the Middle East (950-1150) as Illustrated by the Documents of the Cairo Geniza,” *Islamic Civilization, 950-1150*, ed. D.S. Richards (Oxford: Cassirer, 1973), 19; and Ackerman-Lieberman, *The Business of Identity*, 332n79.

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