

# Maimonides: Intellectual Biography

Readings for Classes 1-6

1. Sept 6	<b>Introduction</b>
	Letter to Samuel Ibn-Tibbon in Alexander Altman, "Texts by By and About Maimonides," JQR N.S. vol. 25 (1934-35) pp. 374-381. Twersky, <i>Reader</i> , 1-29.
2. Sept 11	<b>Letter on Martyrdom</b>
	Halkin and Hartman, <i>Epistles of Maimonides: Crisis and Leadership</i> (The Jewish Publication Society: Philadelphia, 1985), pp. 15-34. <b>(Packet)</b>
3. Sept 18	<b>Freewill</b>
	Mishneh Torah, Hilchot Teshubah ch 5-6 and Talmudic Sources. (English partly in Twersky pp. 77-78.) <b>(Packet)</b> Eight Cahpters, ch. 8 (Twersky, pp. 379-386). Commentary on Mishnah Abot 3:15 (Twersky, p. 395). Letter on Astrology (Twersky, pp. 469-472).
Sept 25 - No Class	<b>Introduction to Commentary on the Mishnah</b>
4. Oct 3 Conversion Day	Rosner, Fred, and Twersky, Aaron. <i>Maimonides' Introduction to His Commentary on the Mishnah</i> . (Northvale: Jason Aronson, 1995). On divisions of the Oral Torah, pp. 74-83. <b>(Packet)</b> Ibid., On the meaning of Life, pp. 118-131. <b>(Packet)</b> Halbertal, Moshe. "The History of Halakhah, Views from Within: Three Medieval Approaches to Tradition and Controversy." <b>(Packet)</b>
5. Oct 9 Makeup Class	<b>Eight Chapters</b>
	Twersky, <i>Reader</i> . pp. 361-379.
6. Oct 16	<b>Book of Commandments</b>
	Twersky, <i>Reader</i> , pp. 424-436. Davidson, Herbert. <i>Moses Maimonides: The Mand and His Works</i> (Oxford, Oxford University Press, 2005), pp. 168-178. <b>(Packet)</b>
	<b>Midterm Review</b>

A contemporary of mine<sup>1</sup> inquired regarding this persecution<sup>2</sup> in which he is forced to confess that that man<sup>3</sup> is God's messenger and that he is a true prophet. He addressed his query to one whom he calls a sage<sup>4</sup> and who was not touched by the tribulations of most of the Jewish communities in this violence, may it pass soon, and he wished to learn whether he should make the confession in order not to die, although his children will be lost among the gentiles, or should he die and not acknowledge what he demands, seeing that in this way he does what he is required by the Torah of Moses, and that the confession leads to the relinquishment of all the commandments.<sup>5</sup>

The man of whom the inquiry was made offered a weak and senseless reply, of foul content and form. He made statements in it distinctly harmful, as even light-minded women can realize.<sup>6</sup> Although his reply is weak, tedious, and confused, I thought I should quote him at length, but I spared the gift that God, blessed be He, bestowed on mankind. I mean speech, of which our sacred Torah states: *Who gives man speech? . . . Is it not I, the Lord?* [Exod. 4:11].<sup>7</sup> A man should be more sparing of his speech than of his money, and should not speak much yet do little. Indeed the Sage<sup>8</sup> has condemned verbosity with little content in his declaration: *Just as dreams come with much brooding, so does foolish utterance come with much speech* [Eccles. 5:2]. You know of course what Job's friends said as he talked on and on:<sup>9</sup> *Is a multitude of words unanswerable? Must a loquacious person be right?* [Job 11:2]; *Job does not speak with knowledge; his words lack understanding* [Job 34:35].<sup>10</sup> There are many such reflections.

Since I am well informed regarding this issue, and am not ignorant of it as this man is, I think it is proper to cite something of the gist of what he said, and omit the rest, which does not merit a response, although on close examination nothing of what he said deserves an answer. Such is his assertion that whoever acknowledges his<sup>11</sup> apos-

tleshship has *ipso facto* disavowed the Lord, God of Israel. In support he brings the statement of our sages, "Whoever professes idolatry is as if he denied the entire Torah."<sup>12</sup> Judging from this analogy, he apparently finds no distinction between one who turns to idolatry not under duress but voluntarily, like Jeroboam and his associates,<sup>13</sup> and one who will under compulsion say of someone that he is a prophet, because he is afraid of the executioner's sword.

When I read this first statement of his, I decided not to challenge him before I read all of it, heeding the instruction of the Sage: *To answer a man before hearing him out is foolish and disgraceful* [Prov. 18:13]. So, when I looked further into his remarks, I noted that he said the following: "Whoever utters that confession is a gentile, though he fulfills the entire Law publicly and privately."<sup>14</sup> This "clear-headed man"<sup>15</sup> evidently sees absolutely no difference between one who does not observe the Sabbath out of the fear of the sword and one who does not observe it because he does not wish to.<sup>16</sup> I read on: "If one of the forced converts enters one of their houses of worship,<sup>17</sup> even if he does not say a word, and he then goes home and offers his prayers, this prayer is charged against him as an added sin and transgression." His proof text is the comment of our sages on the verse, *For My people have done a twofold wrong* [Jer. 2:13]:<sup>18</sup> They bowed to the idol and they bowed to the Temple.<sup>19</sup> This interpretation again does not discriminate between one who bowed to the idol and the Temple because he is a heretic and wants to defile God's name and desecrate His holiness and one who comes to a house of worship in order to behave like someone zealous<sup>20</sup> for the glory of God,<sup>21</sup> but does not utter or say a word that is in any way contrary to our religion, yet he must of necessity go to that house.<sup>22</sup> I likewise found him saying that anyone who avows that that man is a prophet,<sup>23</sup> though he does it under compulsion, is a wicked person, disqualified by Scripture from serving as a witness, since the Torah rules: *You shall not join hands with the guilty* [Exod. 23:1], that is, do not make a wicked man a witness.<sup>24</sup>

Even as I read his abuses, his long-winded foolish babbling and nonsense, I still believed it was not correct to challenge him before I read all the rest; perhaps it might be an example of what Solomon described: *The end of a matter is better than the beginning of it* [Eccles. 7:8].<sup>25</sup> But I found him saying toward the end of his missive that

heretics and Christians likewise assume that they will choose death rather than grant his apostleship.<sup>26</sup> When I learned this I was struck with amazement and wondered: Is there no God in Israel? [2 Kings 1:3, 6].<sup>27</sup> If an idol-worshiper burns his son and daughter to his object of worship,<sup>28</sup> do we even more certainly have to set fire to ourselves for service to God? Alas for the question, alas for the answer! Considering that he began by finding support in something irrelevant to his argument, and concluded by approving the thinking of heretics and Christians, I decided that God's judgment is right: his talk begins as silliness and ends as disastrous madness.

You ought to know that no one has the right to speak in public before he has rehearsed what he wants to say two, three, and four times, and learned it; then he may speak. This is what the rabbis taught, and took their proof text from the verse: *Then He saw it and gauged it; He measured it and probed it.* And afterward: *He said to man* [Job 28:27].<sup>29</sup> So much for what a person is required to do before he speaks. But if a man legislates on his own, and puts it down in writing, he should revise it a thousand times, if possible. This man, however, did nothing of the kind. He reduced all this important advice to writing, and did not think it necessary to prepare a first draft and then revise it. Evidently he considered his remarks free from doubt, in no need of correction. He handed them to someone who was to convey them in every city and town, and in this way brought darkness into the hearts of men. *He sent darkness; it was very dark* [Ps. 105:28].<sup>30</sup>

## II

I shall now undertake to define the magnitude of the error that misled this poor wretch, and how he hurt himself unknowingly.<sup>31</sup> He thought he was doing one kind deed, but instead became guilty of many wrongs, marshalling much irrelevant evidence, spouting words, and becoming the slave of his pen. It is well known from the account of our rabbis that before the Israelites left Egypt, they corrupted their ways and violated the covenant of circumcision,<sup>32</sup> so that none of them save the tribe of Levi<sup>33</sup> was circumcised. Only when the Passover commandment was promulgated, in connection with which God instructed Moses: *No uncircumcised shall eat of it* [Exod. 12:43],<sup>34</sup> he ordered them to

perform the rite. Our rabbis described the performance: Moses did the cutting, Joshua the ripping, Aaron the sucking.<sup>35</sup> The foreskins were collected in heaps.<sup>36</sup> The blood of circumcision got mixed with the blood of the paschal lamb, and this made them deserving of the redemption.<sup>37</sup> This is the implication of God's narration through Ezekiel: *When I passed by you and saw you wallowing in your blood, I said to you: "Live by your blood," Yea, I said to you, "live by your blood" [Ezek. 16:6].*<sup>38</sup> Our rabbis added that they became degenerate with incest, deriving it from the the verse: *O mortal, once there were two women, daughters of one mother [Ezek. 23:2].*<sup>39</sup> Nevertheless, although they were corrupt as all this, God rebuked Moses for saying: *What if they do not believe me? [Exod. 4:1].*<sup>40</sup> And he retorted: They are believers, children of believers;<sup>41</sup> believers, as Scripture reports: *and the people . . . believed [Exod. 14:31]; sons of believers: because he believed, He reckoned it to his merit [Gen. 15:6].*<sup>42</sup> But you will end up not believing; it is told in Scripture: *Because you did not believe Me enough to affirm My sanctity [Num. 20:12].*<sup>43</sup> In fact, he was punished at once, as the rabbis understood:<sup>44</sup> "He who suspects the innocent suffers physically. What is the proof? Moses."<sup>45</sup>

Again, in Elijah's time, they were all sinfully deliberate idolaters, all but the *seven thousand—every knee that has not knelt to Baal and every mouth that has not kissed him [1 Kings 19:18].*<sup>46</sup> Notwithstanding, when he was about to hurl accusations against Israel at Mt. Horeb, the following dialogue was carried on between God and him. God: *Why are you here, Elijah?* Elijah: *I am moved by zeal for the Lord, the God of Hosts, for the Israelites have forsaken Your covenant.* God: *Is it your covenant by chance?* Elijah: *Torn down Your altars.* God: *Your altars perhaps?* Elijah: *And put Your prophets to the sword.* God: *But you are alive!?* Elijah: *I alone am left, and they are out to take my life [1 Kings 19:10].*<sup>47</sup> God: *Instead of hurling accusations against Israel, would it not have been more reasonable to direct them against the gentile nations? They have maintained a house of prostitution, a house of idol worship, and you plead against Israel! For the text reads: The towns of Aroer shall be deserted [Isa. 17:2]. Go back by the way you came, and on to the wilderness of Damascus [1 Kings 19:15].*<sup>48</sup> This is all explained by the sages in Midrash Hazita.<sup>49</sup>

Similarly in Isaiah's time, they indulged heavily in sin, as the text

accuses: *Ah, sinful nation! People laden with iniquity! [Isa. 1:4];*<sup>50</sup> they worshipped idols (*behind the door and doorpost you have directed your thoughts [Isa. 57:8];*)<sup>51</sup> they were also murderers (*Alas, she has become a harlot, the faithful city that was filled with justice, where righteousness dwelt—but now murderers [Isa. 1:21];*)<sup>52</sup> they even desecrated God's name (*Eat and drink, for tomorrow we die [Isa. 22:13];*)<sup>53</sup> and they disdained God's law (*Leave the way! Get off the path! Let us hear no more about the Holy One of Israel [Isa. 30:11].*)<sup>54</sup> Despite this, in punishment of his complaint: *And I live among a people of unclean lips, immediately one of the seraphs flew over to me with a live coal. . . . He touched it to my lips and declared: "Now that this has touched your lips, your guilt shall depart and your sin be purged away" [Isa. 6:5-7].*<sup>55</sup> According to the sages, his sin was not forgiven until Manasseh killed him.<sup>56</sup>

When the angel appeared<sup>57</sup> to plead against Joshua son of Jozadak because his sons married girls who were unworthy to be the wives of priests,<sup>58</sup> God silenced him, since the text continues: *The Lord rebuke you, O Accuser; may the Lord who has chosen Jerusalem rebuke you! For this is a brand plucked from the fire [Zech. 3:2].*

If this is the sort of punishment meted out to the pillars of the universe—Moses, Elijah, Isaiah, and the ministering angels<sup>59</sup>—because they briefly criticized the Jewish congregation, can one have an idea of the fate of the least among the worthless who let his tongue loose against Jewish communities of sages and their disciples, priests, and Levites, and called them sinners, evildoers, gentiles, disqualified to testify, heretics who deny the Lord God of Israel?<sup>60</sup> These are verbal quotations from his response; can you picture his punishment? They<sup>61</sup> did not rebel against God to seek satisfaction and delight, they did not abandon our faith to achieve status and worldly pleasures. *For they have fled before swords: before the whetted sword, before the bow that was drawn, before the stress of war [Isa. 21:15].*<sup>62</sup> This man did not realize that they are not rebels by choice. God will not abandon nor forsake them, *for He did not scorn, He did not spurn the plea of the lowly [Ps. 22:25].* It is as the sages, peace be upon them, interpreted the verse, *And he smelled his clothes [Gen. 27:27];*<sup>63</sup> and pronounced it "his traitors" not "his clothes."<sup>64</sup> But this person wrote only what he invented and concocted.

It is common knowledge that in the course of a persecution during which Jewish sages were executed, Rabbi Meir was arrested.<sup>65</sup> Some who knew him said: "You are Meir, aren't you?" and he replied: "I am not."<sup>66</sup> Pointing to ham they ordered: "Eat this if you are not Jewish." He responded: "I shall readily eat it," and he pretended he was eating, but did not in fact. In the view of this modest person who knows the true meaning of Torah, Rabbi Meir is undoubtedly a gentile, for so his responsum rules: He who acts openly as a gentile, although secretly he behaves like a Jew, is a gentile, since according to him worship of God is open,<sup>67</sup> and he<sup>68</sup> hides it, as Rabbi Meir did.

It is likewise well known that Rabbi Eliezer was seized for heresy, which is worse than idolatry.<sup>69</sup> The heretics—may God destroy them—mock religion, and call anyone who adheres to it a fool, anyone who studies it deranged. They reject prophecy utterly. Rabbi Eliezer was a celebrated scholar in the sciences.<sup>70</sup> They inquired: "How can you be at your level in learning and still believe in religion?" He answered them in a way that made them believe that he adopted their doctrine, whereas in his reply he was really thinking of the true religion and no other. This incident is recounted in the midrash on Ecclesiastes<sup>71</sup> as follows: Rabbi Eliezer was seized in order to be converted to heresy. The chief brought him to the capital and said to him: "Say, old man, is a person like you engaged in this stuff?" He replied: "I have faith in the judge." The chief thought he meant him, whereas he was really thinking of God, and the chief continued:<sup>72</sup> "Rabbi, in view of your having faith in me, I was indeed wondering, can he possibly have been misled by such stuff? By God, you are free!" It is clear that Rabbi Eliezer feigned before the chief that he was a heretic, although he was sincerely devoted to God. Now heresy is far more grievous than idolatry; it has been clearly expounded in the entire Talmud.<sup>73</sup> Yet according to this virtuous individual, Rabbi Eliezer is definitely disqualified. But in this persecution to which we are subjected we do not pretend that we are idolaters, we only appear to believe what they assert.<sup>74</sup> They fully understand that we do not mean it at all, and are simply deceiving the ruler. *Yet they deceived Him with their speech, lied to Him with their words* [Ps. 78:36].<sup>75</sup>

We know what happened to Israel in the reign of the wicked Neb-

uchadnezzar, when all the inhabitants of Babylon, except Hananiah, Mishael, and Azariah bowed before the molten image. The Lord, blessed be He, foretold it: *No more shall Jacob be shamed, no longer his face grow pale* [Isa. 29:22].<sup>76</sup> It may be that even the artisans and laborers<sup>77</sup> were among those who prostrated themselves in Babylon, if they were there at the time. Despite this, I have not come across anyone who named them wicked, gentiles, disqualified to give testimony. God did not charge them with the sin of idolatry, because they acted under duress. The sages put it this way, reflecting on the time of Haman: They only pretended, I also shall only pretend.<sup>78</sup> That man,<sup>79</sup> however, is undoubtedly God-fearing. *Shame on him who argues with his Maker, though naught but a potsherd of earth! Shall the clay say to the potter, "What are you doing?"* [Isa. 45:9].<sup>80</sup>

We likewise know of the evil, cruel decrees during the wicked rule of the Greeks,<sup>81</sup> including the order that none was to shut the door of his house, so he would not be alone, fulfilling a divine command. Nevertheless our sages did not label them gentiles, or sinful, but absolutely righteous. They prayed for them and added the thankful prayer—recited on Hanukkah—"for the Miracles,"<sup>82</sup> which one can read down to "and the wicked in the hands of the righteous."

If in my opening remarks I had not decisively stated that I would not repeat all of his prattle, I would let you read it *in extenso* how one can be fool enough to speak in this manner or let himself go and write or respond to irrelevant matter in answer to a simple question that was asked of him. He cited proof from "contradicted witnesses,"<sup>83</sup> one who reviles his father and mother,<sup>84</sup> the law of fringes,<sup>85</sup> one who plows with an ox and an ass together,<sup>86</sup> letting one's cattle mate with a different kind,<sup>87</sup> as if the man asked him to compose *azharot*,<sup>88</sup> in which all the precepts would be enumerated. He reported that the Muslims have an idol in Mecca and in other places; was he asked whether he should go on a pilgrimage to Mecca? He informed him that Muhammad<sup>89</sup> killed 24,000 Jews, as if he wished to know if Muhammad would share in the world-to-come, and many such unrelated items. He should have more properly paid much heed to Solomon's admonition: *Keep your mouth from being rash, and let not your throat be quick to bring forth speech before God* [Eccles. 5:1]. Had he heeded

this verse, he would have realized that whoever answered an inquiry or engaged in an analysis of the allowed and the forbidden was bringing forth speech before God, and he would not fail as he did.<sup>90</sup>

God knows and bears witness—"He is an adequate witness"<sup>91</sup>—that even if he rebuked and spoke more chattily than he did, it would not hurt me. I am certainly not seeking victory. On the contrary, I feel, *Let us lie down in our shame, let our disgrace cover us; for we have sinned against the Lord our God, we and our fathers* [Jer. 3:25].<sup>92</sup> I should have respected and esteemed him more, believed that his objective was to do God's bidding. Thank God, I know my personal worth very well. *We acknowledge our wickedness, O Lord—the iniquity of our fathers* [Jer. 14:20].<sup>93</sup> It would not have been right of me to find fault with him had he not written things that I have no right to overlook or disregard, like ruling that any victim of the persecution who prays receives no reward but is, on the contrary, guilty of committing a sin. I know that whatever is published in a book—correct or incorrect—will most certainly become public knowledge. This is why so many wrong ideas are popular among people. Only what is recorded in writing makes the difference between you and the wrong views,<sup>94</sup> and they will gain him a following. Therefore I was afraid that the response that turns people away from God would fall into the hands of an ignorant individual, and he would conclude that he will receive no reward for praying, so he will not pray. This, he will assume, is true of the other commandments; if he performs them, he will get no reward for performing any of them.

### III

I shall now expose what this ranter of nonsense went astray in. It is explicitly reported in the Bible that Ahab son of Omri who denied God and worshiped idols, as God attests: *Indeed there never was anyone like Ahab* [1 Kings 21:25],<sup>95</sup> had the decree against him rescinded after he fasted two and a half hours.<sup>96</sup> The Bible informs us: *Then the word of the Lord came to Elijah the Tishbite: "Have you seen how Ahab has humbled himself before Me? Because He has humbled himself before Me, I will not bring the disaster in his lifetime; I will bring the disaster upon his house in his son's time* [1 Kings 21:28–29].<sup>97</sup>

Eglon, king of Moab, who oppressed Israel, was handsomely rewarded by God because he honored Him and rose from his seat when Ehud said to him: *I have a message for you from God* [Judg. 3:20].<sup>98</sup> He had the throne of Solomon, which is a divine throne (*and Solomon sat on the divine throne* [1 Chron. 29:23]),<sup>99</sup> and the throne of the Messiah come from his descendants. For, as the rabbis teach us, Ruth the Moabite was his daughter.<sup>100</sup> God did not withhold his reward.

The wicked Nebuchadnezzar, who killed vast multitudes of Israel and burned the Temple that is the footstool of God,<sup>101</sup> was rewarded with a forty-year reign like King Solomon, because he ran a short distance to meet God for the sake of Hezekiah, as the rabbis state: "He ran after him a distance of four paces. God did not withhold his reward."<sup>102</sup>

Wicked Esau—God certified His rejection of him, as is written: *And I have rejected Esau* [Mal. 1:3]—had his outrages spelled out by the rabbis. That day he committed five crimes: murdered, worshiped idols, ravished an engaged girl, denied resurrection, and despised the rights of primogeniture. He then enwrapped himself in his cloak, came to his father Isaac, and asked him: "Father, is salt subject to the tithe?" His father reflected: "How strict my son is in religious observance."<sup>103</sup> Yet, as reward for the one commandment—honoring his father—which he fulfilled, God has granted him uninterrupted dominion until the Messiah the king arrives.<sup>104</sup> This is confirmed by the rabbis: David's descendant will not come before Esau receives his reward for honoring his father and mother, as the text reads: *He sent me after glory unto the nations* [Zech. 2:12].<sup>105</sup> Several times our sages repeat this principle: "The Holy One blessed be He, does not withhold the reward of any creature."<sup>106</sup> He always rewards everyone for the good deed that he performs, and punishes everyone for the evil he does, as long as he continues to do it."<sup>107</sup>

If these well-known heretics were generously rewarded for the little good that they did, is it conceivable that God will not reward the Jews, who despite the exigencies of the forced conversion perform commandments secretly? Can it be that He does not discriminate between one who performs a commandment and one who does not, between one who serves God and one who does not? So it appears from the writing of this man, nay, that when he prays he commits a sin, and he cites

the verse: *For My people have done a twofold wrong* [Jer. 2:13].<sup>108</sup> Now his error has been exposed to you and that he has not ceased to disparage his contemporaries, going so far as to speak against the sages, as we pointed out; nay, he even dared to ascribe to the Creator that He punishes for the performance of a commandment, as he expressed himself: The prayer of any of us is a sin. Indeed, it is of this that Solomon said: *And don't plead before the messenger that it was an error* [Eccles. 5:5].<sup>109</sup>

## IV

Realizing this amazing matter that hurts the eyes, I undertook to gather pharmaceuticals and roots from the books of the ancients, of which I intend to prepare medicine and salve helpful for this sickness, and heal it with the help of God.<sup>110</sup>

I think it right to divide what I have to say on this subject into five themes: 1. the class of the laws related to the time of forced conversion; 2. definitions of the desecration of God's name and the punishment; 3. the ranks of those who die a martyr's death, and those who are forcibly converted in a persecution; 4. how this persecution differs from others, and what is to be done in relation to it; and 5. a discussion of how advisable it is for one to be careful in this persecution, may God soon put an end to it. Amen.

Theme one, the distribution of the precepts during a time of duress, is divided into three classes: A. One class of precepts, those concerning idolatry, incest, and bloodshed, requires that whenever a person is forced to violate any of them, he is at all times, everywhere, and under all circumstances obliged to die rather than transgress. *At all times* means in a time of persecution or otherwise; *everywhere* means privately or publicly; *under all circumstances* means whether the tyrant intends to have him act against his faith or not; in these situations he is obliged to die rather than transgress.<sup>111</sup> B. All the other commandments, any of which an oppressor may compel him to transgress, he is to judge. If the tyrant does it for his personal satisfaction, be it a time of persecution or not, privately or publicly, he may violate the Torah and escape death.<sup>112</sup> Support of this procedure is found in the chapter on the wayward son:<sup>113</sup> "But the case of Esther was public!

Yes, but she was always passive."<sup>114</sup> Rava maintained: "If it is for his personal satisfaction it makes a difference; otherwise how do we allow ourselves to give them the censers and the coal-containers?"<sup>115</sup> Clearly, it is because it makes a difference when it is for their personal satisfaction. In the case of Esther the similar difference exists: It is for their personal satisfaction. Rava is following his own reasoning, for he rules that if a non-Jew orders a Jew to cut the alfalfa on a Sabbath day and throw it before his beasts or he will kill him, he is to cut it and not have himself killed. But if he orders him to cast it into the river, he is to prefer death to obeying him, since he wants him to commit a sin.<sup>116</sup> It is our principle to follow Rava's decision. It is clear that as long as the oppressor is doing it for his personal satisfaction he is to transgress and to shun death, even if it is in public and in the course of a persecution.<sup>117</sup> C. If it is the aim of the oppressor to have him transgress, it is for him to deliberate. If it is a time of persecution he is to surrender his life and not transgress, whether in private or in public, but if it is not, he should choose to transgress and not die if it is in private, and to die if it is in public.<sup>118</sup> This is how the sages formulate it: When R. Dimi arrived he ruled in the name of R. Johanan that even if it is not a time of persecution, he may transgress rather than die only in private; in public he may not violate even a minor rabbinic precept, even changing the manner of tying the shoes. In public is defined as a body of ten, all Israelites.<sup>119</sup>

The second theme covers the definitions of the profanation of God's name and the punishment. Profanation<sup>120</sup> divides in two classes, general and particular. The general has two subdivisions: Commission of a sin for spite, not for pleasure or any satisfaction to be derived from the act, but because one thinks little of it and scorns it. This individual has profaned God's name, for He warns: *You shall not swear falsely by My name, profaning the name of your God* [Lev. 19:12]; it is an act that yields no pleasure or satisfaction.<sup>121</sup> If he does it in public he is profaning God's name. It has been made clear that in public means before ten Israelites. The second subdivision is of people who are neglectful and do not improve their behavior, so that others grumble about them very critically.<sup>122</sup> They may not have committed a sin, but they have profaned God's name. In the matter of transgressions a person is required to be as heedful of human beings as he is of God.<sup>123</sup>

He, blessed be He, ruled: *You shall be guiltless before the Lord and before Israel* [Num. 32:22].<sup>124</sup> It is related in the tractate Yoma<sup>125</sup> that Rabbi Nahman ben Yitzhak pointed to the proverb people use: "May God forgive so-and-so."<sup>126</sup> Another expression is: "When friends are embarrassed by his reputation."<sup>127</sup>

The particular is of two kinds. The first is when a learned person does something that others may do without demur, but that a person like him ought not to do, because he enjoys a widespread reputation of piety, so that more is expected of him. He has profaned God's name. Rav offered this definition of profanation: "When I, for example, buy meat and do not pay at once."<sup>128</sup> In other words, a person of his stature should not purchase anything unless he can pay at once at the time of purchase, although it is a quite acceptable practice (to buy on credit). A similar point of view is reflected in R. Johanan's statement: "When I, for example, walk four ells without wearing my phylacteries,"<sup>129</sup> implying that it is not proper for a man like him to do this. Many times we find the explanation that it is different when the party concerned is an important individual.<sup>130</sup>

The second kind is when a learned man behaves disgustingly in matters of trade or negotiation, receives people sullenly and insolently, is not of a friendly disposition, and has relations with others that are not founded on respect and mutual regard. A person of this character has profaned God's name. This is what the rabbis, peace be upon them, say: "When a person is learned but does not deal creditably, and does not speak softly to people, how is he judged? 'Woe to so-and-so who is educated, woe to his father who had him study, woe to his master who taught him. How perverse his actions are! How ugly his ways!'"<sup>131</sup> Scripture speaks of him in this passage: in that it was said of them, these are the people of the Lord and they left His land.<sup>132</sup>

If I were not concerned about verbosity and rambling, I would outline in detail how an individual ought to deal with others, what all his actions and words should be like, and how he should receive people, so that anyone who spoke to him or had dealings with him would have only words of praise. I would explain what the rabbis mean by their expression "dealing creditably" or "speaking softly to people." But this would require a full-length book. So I resume.

Sanctification of God's name is the contrary of profanation. When

a person fulfills one of the commandments, and no other motive impels him save his love of God and His service, he has publicly sanctified God's name.<sup>133</sup> So also if he enjoys a good reputation he has sanctified God's name. The rabbis phrase it this way: "When a person has studied Bible and Mishnah, ministered to scholars, dealt gently with people, what is the general judgment of him? Happy is his father who taught him Torah, and woe to those who have not studied. See how lovely are the ways of so-and-so who is learned in Torah, how proper his deeds."<sup>134</sup> It is he who is meant by the verse: *And He said to me, 'You are My servant, Israel in whom I glory* [Isa. 49:3].<sup>135</sup> Similarly, if a great man shuns actions that others think ugly, even if he does not think so, he sanctifies God's name. Scripture counsels: *Put crooked speech away from you* [Prov. 4:24].<sup>136</sup>

Profanation of God's name is a grievous sin for which the inadvertent sinner and the deliberate sinner are equally punished. The rabbis rule that in the sin of the profanation of God's name it makes no difference whether it is accidental or purposeful.<sup>137</sup> A man is granted a delay in punishment of all sins, but not for the profanation of God's name. This is how the rabbis formulate it: "For the profanation of God's name no credit is extended. What does it mean? He is not treated as he is by the storekeeper who extends credit."<sup>138</sup> The rabbis also teach that whoever profanes God's name in secret is punished in the open.<sup>139</sup> It is a more serious sin than any other. Neither the Day of Atonement,<sup>140</sup> nor suffering, nor repentance procures forgiveness. This is the dictum of the rabbis: "He who is guilty of the profanation of God's name cannot find forgiveness by either repentance or the Day of Atonement, nor can suffering wash it away; they all suspend punishment until death provides the forgiveness, and its biblical support is: *Then the Lord of Hosts revealed Himself to my ears: 'This iniquity shall never be forgiven you until you die'*" [Isa. 22:14]."<sup>141</sup> The entire exposition is in reference to the person who voluntarily profanes God's name, as I shall elucidate.

As profanation of God's name is a grievous sin, so is sanctification of His name a most meritorious deed, for which one is generously rewarded. Every Jewish individual is required to sanctify God's name. It is stated in Sifra:<sup>142</sup> "I the Lord am your God, who brought you out of the land of Egypt, to give you the land of Canaan, to be your

God,"<sup>143</sup> that is, on condition that you sanctify My name publicly. In the chapter on the rebellious and defiant son we are told that Rabbi Ami was asked if a Noahide<sup>144</sup> is commanded to sanctify God's name. It may be concluded from this question that regarding an Israelite no similar doubt is raised; he is indeed bidden to sanctify His name, and this is what the verse implies: *That I may be sanctified in the midst of the Israelite people* [Lev. 22:32].<sup>145</sup>

Theme three is about the gradation of those who are martyrs for God's name and those whom persecution forces to convert. You have to realize that wherever the sages rule that one is to surrender his life and not transgress, one who was executed has sanctified God's name. If ten Israelites witnessed his death he has sanctified His name publicly. It includes Hananiah, Mishael, Azariah,<sup>146</sup> Daniel,<sup>147</sup> the ten martyrs by government order,<sup>148</sup> the seven children of Hannah,<sup>149</sup> and all the other victims of Israel, may God avenge their blood in the near future. It is to them that the verse refers: *Bring in My devotees, who made a covenant with Me over sacrifice* [Ps. 50:5].<sup>150</sup> To the rabbis this verse seemed appropriate: *I adjure you O maidens of Jerusalem, by gazelles or by hinds of the field* [Song of Songs 2:7],<sup>151</sup> which means—I adjure you, O maidens of Jerusalem, the persecuted generations; by gazelles, those who did for Me what I desired, so I did what they desired; by hinds of the field, those who shed their blood for Me<sup>152</sup> like the blood of the gazelles and the hinds.<sup>153</sup> To them this verse also refers: *It is for Your sake that we are slain all day long* [Ps. 44:23].<sup>154</sup>

A person to whom God grants the privilege of ascending to this high rank, in other words, to suffer a martyr's death, even if he is as sinful as Jeroboam ben Nebat and his associates,<sup>155</sup> is surely one of the members of the world-to-come, although he may not be learned.<sup>156</sup> The rabbis infer<sup>157</sup> this from the tradition that no creature is qualified to attain the status of the martyrs by government order: "Is it Rabbi Akiva and his colleagues? But of course not! They are beneficiaries of learning and good deeds.<sup>158</sup> No, it is the martyrs of Lydda."<sup>159</sup>

Now, if he did not surrender himself to death but transgressed under duress and did not die, he did not act properly, and under compulsion he profaned God's name. However, he is not to be punished by any of the seven means of retribution.<sup>160</sup> Not a single instance is found in

the Torah in which a forced individual is sentenced to any of the punishments, whether the transgression was light or grave. Only he who acts voluntarily is subject, as Scripture directs: *But the person . . . who acts defiantly . . . that soul shall be cut off* [Num. 15:30], but not of one who was forced.<sup>161</sup> The Talmud often says: The Torah rules that the forced individual is not culpable, *for this case is like that of a man attacking another and murdering him* [Deut. 22:26],<sup>162</sup> and frequently the ruling is repeated; a forced individual is excused by the Torah.<sup>163</sup> He is not dubbed a transgressor, nor a wicked man, nor is he disqualified from giving testimony, unless he committed a sin that disqualifies him from serving as a witness.<sup>164</sup> He simply did not fulfill the commandment of sanctifying God's name, but he can under no circumstance be named a deliberate profaner of God's name.<sup>165</sup>

Therefore, anyone who claims or thinks that a person who transgressed is to be condemned to death, because the sages established the principle that one must surrender himself to death and not transgress, is absolutely wrong. It simply is not so, as I shall explain. True, it is upon him to surrender to death, but if he does not he is not guilty.<sup>166</sup> Even if he worships idols under duress his soul will not be cut off, and he is certainly not executed by court order. This principle is clearly stated in the Sifra:<sup>167</sup> The divine Torah rules regarding one who gives of his seed to Molech: *I Myself will set My face against that man* [Lev. 20:5], not if he was forced, nor if it was unwittingly, nor if he was taught wrong. Plainly then, if he was forced or was taught wrong his soul will not be cut off, although it will be if he does it presumptuously and voluntarily. It is even plainer that if he forcibly committed sins that, if presumptuously and voluntarily committed, are punished by forty lashes, he is not at all subject to this punishment. The law against profanation is stated prohibitively in the declaration of God, blessed be He: *You shall not profane My holy name* [Lev. 22:32].<sup>168</sup>

Now it is known that a false oath is profanation, as we read in the Torah: *You shall not swear falsely by My name, profaning the name of your God: I am the Lord* [Lev. 19:12].<sup>169</sup> Yet the text of the Mishnah reads: "Men may vow to murderers, robbers, and tax-gatherers that what they have is heave-offering. . . ." <sup>170</sup> The school of Shammai qualifies that they may confirm this with a vow; the school of Hillel

broadens it to include even an oath. This is explicitly written. These matters are clear and in no need of supportive argument of any kind, for how can anyone suggest that the law with respect to a person who acted under duress and one who acted voluntarily is the same? And our sages ruled: "Let him transgress and surrender his life." So you see, this man<sup>171</sup> is of higher status than the sages, and more punctilious about the Law. By word of mouth and the use of his tongue, he surrenders himself to death and claims to have sanctified God's name. But by his actions he is a sinner and rebellious, and he makes himself guilty against his life, because God, exalted be He, established *by the pursuit of which man shall live* [Lev. 18:5], and not die.<sup>172</sup>

Theme four deals with the difference between this persecution and others, and what a person should do. Remember that in all the difficulties that occurred in the time of the sages, they were compelled to violate commandments and to perform sinful acts. The Talmud lists the prohibitions, that they may not study Torah, that they may not circumcise their sons,<sup>173</sup> and that they have intercourse with their wives when they are ritually unclean.<sup>174</sup> But in this persecution they are not required to do anything but say something, so that if a man wishes to fulfill the 613 commandments<sup>175</sup> secretly<sup>176</sup> he can do so. He incurs no blame for it, unless he set himself without compulsion to desecrate the Sabbath, although no one forced him.<sup>177</sup> This compulsion imposes no action, only speech. They<sup>178</sup> know very well that we do not mean what we say, and that what we say is only to escape the ruler's punishment and to satisfy him with this simple confession. Anyone who suffered martyrdom in order not to acknowledge the apostleship of "that man,"<sup>179</sup> the only thing that can be said of him is that he has done what is good and proper, and that God holds great reward in store for him. His position is very high, for he has given his life for the sanctity of God, be He exalted and blessed. But if anyone comes to ask me whether to surrender his life or acknowledge, I tell him to confess and not choose death. However, he should not continue to live in the domain of that ruler.<sup>180</sup> He should stay home and not go out, and if he is dependent on his work let him be the Jew in private. There has never yet been a persecution as remarkable as this one, where the only coercion is to say something. When our rabbis ruled that a person is to surrender himself to death and not transgress, it

does not seem likely that they had in mind speech that did not involve action. He is to suffer martyrdom only when it is demanded of him to perform a deed, or something that he is forbidden to do.<sup>181</sup>

A victim of this persecution should follow this counsel: Let him set it as his objective to observe as much of the Law as he can. If it happens that he has sinned much, or that he has desecrated the Sabbath, he should still not carry what it is not allowed to carry.<sup>182</sup> He must not think that what he has already violated is far more grievous than what he observes;<sup>183</sup> let him be as careful about observance as possible. Remember, a person must learn this fundamental principle. Jeroboam ben Nebat<sup>184</sup> is chastised for making the calves, and for disregarding the regulations regarding the Sabbath that come immediately after a holiday, or the like.<sup>185</sup> None can claim that he was guilty of a more serious sin.<sup>186</sup> This principle is applicable only in man-made laws in this world. God inflicts punishment for grievous sins and for minor ones, and He rewards people for everything they do. Hence it is important to bear in mind that one is punished for every sin committed and is rewarded for every precept fulfilled. Any other view of this is wrong.

What I counsel myself, and what I should like to suggest to all my friends and everyone that consults me, is to leave these places and go to where he can practice religion and fulfill the Law without compulsion or fear. Let him leave his family and his home and all he has, because the divine Law that He bequeathed to us is more valuable than the ephemeral, worthless incidentals that the intellectuals scorn; they are transient, whereas the fear of God is eternal.<sup>187</sup> Moreover, when two Jewish cities are at one's elbow, one superior to the other in its actions and behavior, more observant and more concerned with the precepts, the God-fearing individual is obliged to depart from the town where the actions are not at their best, and move to the better township.<sup>188</sup> We are guided by the admonition of the rabbis not to dwell in a city in which there are fewer than ten righteous residents.<sup>189</sup> They derive this from a dialogue between God and Abraham, which concludes the account of Sodom. *What if ten righteous people should be found there? And He answered: "I will not destroy, for the sake of the ten"* [Gen. 18:32]. This is the proper thing to do when both cities are Jewish. But if the place is gentile, the Jew who resides there must by all means

leave it and go to a more suitable location. He must make every effort to do so although he may expose himself to danger, so that he can get away from this bad spot where he cannot practice his religion properly, and strive to reach a comfortable place. Indeed, the prophets have spelled out that a person who resides among nonbelievers is one of them,<sup>190</sup> and so King David complained: *For they have driven me out today, so that I cannot have a share in the Lord's possession, but am told, "Go and worship other gods"* [1 Sam. 26:19]; he equated his dwelling among the gentiles with the worship of other gods. The pious and the God-fearing are required to despise evil and its doers, for so David declared: *O Lord, You know I hate those who hate You, and loathe Your adversaries* [Ps. 139:21].<sup>191</sup> He also announced: *I am a companion to all who fear You, to those who keep Your precepts* [Ps. 119:63].<sup>192</sup> Likewise, our father Abraham, we find, despised his family and his home and ran for his life to escape from the doctrines of the heretics.<sup>193</sup>

This is the effort he must make to separate himself from the heretics when they do not coerce him to do as they do; he should leave them. But if he is compelled to violate even one precept it is forbidden to stay there. He must leave everything he has, travel day and night until he finds a spot where he can practice his religion. The world is sufficiently large and extensive. The appeal of the person who pleads his duties to his family and his household is really no excuse. *A brother cannot redeem a man, or pay his ransom to God* [Ps. 49:8].<sup>194</sup> I do not think it is right to make this plea in order to avoid the obligation and not flee to a reasonable place. He must under no circumstance continue to reside in the land of persecution. If he does, he is a transgressor, profanes God's name, and is almost a presumptuous sinner.

Those who delude themselves to think that they will remain where they are until the king Messiah appears in the Maghreb, and they will then leave for Jerusalem<sup>195</sup>—I simply do not know how they will rid themselves of the present difficulties. They are transgressors, and they lead others to sin. The prophet Jeremiah's criticism: *They offer healing offhand for the wounds of My people, saying, "all is well, all is well," when nothing is well* [Jer. 6:14 and 8:11],<sup>196</sup> fits them and others like them very well. There is no set time for the arrival of the Messiah that they can count on and decide that it is close or distant. The incum-

bency of the commandments does not depend on the appearance of the Messiah. We are required to apply ourselves to study and to the fulfillment of the precepts, and we must strive for perfection in both. If we do what we have to, we or our children or grandchildren may be privileged by God to witness the coming of the Messiah, and life will be more pleasant. If he does not come we have not lost anything; on the contrary we have gained by doing what we had to do. But it is wicked and hopeless and a renunciation of the faith for anyone to stay on in these places and see the study of Torah cease, the Jewish population perishing after some time, he himself unable to live as a Jew, but continue to say: "I will stay here until the Messiah appears and then I shall be relieved of the situation I am in."

Theme five is concerned with how a person should regard himself in this persecution. Anyone who cannot leave because of his attachments, or because of the dangers of a sea voyage, and stays where he is,<sup>197</sup> must look upon himself as one who profanes God's name, not exactly willingly, but almost so.<sup>198</sup> At the same time he must bear in mind that if he fulfills a precept, God will reward him doubly, because he acted so for God only, and not to show off or be accepted as an observant individual.<sup>199</sup> The reward is much greater for a person who fulfills the Law and knows that if he is caught, he and all he has will perish. It is he who is meant in God's qualification: *If only you seek Him with all your heart and soul* [Deut. 4:29]. Nevertheless, no one should stop to plan to leave the provinces that God is wroth with, and to exert every effort to achieve it.<sup>200</sup>

It is not right to alienate, scorn, and hate people who desecrate the Sabbath. It is our duty to befriend them, and encourage them to fulfill the commandments. The rabbis regulate explicitly that when an evildoer who sinned by choice comes to the synagogue, he is to be welcomed and not insulted.<sup>201</sup> In this ruling they relied on Solomon's counsel: *A thief should not be despised for stealing to appease his hunger* [Prov. 6:30]. It means do not despise the evildoer in Israel when he comes secretly to "steal" some observance.

Ever since we were exiled from our land persecution is our unending lot,<sup>202</sup> because *from our youth it has grown with us like a father and from our mother's womb it has directed us* [Job 31:18].<sup>203</sup> But we frequently find in the Talmud, "a persecution is likely to pass."<sup>204</sup> May

God put an end to this one, and may the prediction be realized. *In those days and at that time—declares the Lord—the iniquity of Israel shall be sought, and there shall be none; the sins of Judah, and none shall be found; for I will pardon those I allow to survive* [Jer. 50:20]. May it be His will. Amen.

## NOTES

1. Maimonides employs the first person plural in most references to himself (literally, ours). This was the usage developed among speakers of Arabic in medieval times, especially in northwestern Africa. In the translation, English practice is followed.

2. The reference is to the Almohads (al-Muwahhidun) and their destructive conquest of North Africa and Spain (see Abraham ibn Ezra's poem: "Alas, calamity from heaven has struck Spain, an elegy for the victims of the persecution"). The Almohads (1130-1223) early in their history instituted forced conversion.

3. *That man* in this context is Muhammad, founder of Islam, whose name Maimonides avoids mentioning.

4. By qualifying the "sage" with "whom he calls," Maimonides indicates that he himself does not think so.

5. The question raised by the forced convert is either/or, as if there is no alternative, as Maimonides will point out.

6. It is to be noted that Maimonides begins with his opinion of the sage, and follows it with evidence that supports his judgment. His evaluation of women's capacity was common in the ancient and medieval world.

7. The verse from the Bible is used by Maimonides to support his thinking. This reflects the view, held by generations of rabbis and scholars, that Scripture is a storehouse of all knowledge and doctrine.

8. The reference is to King Solomon, recognized by tradition as the author of Song of Songs, Proverbs, and Ecclesiastes.

9. Maimonides may be referring to Job's response to his friends after every speech they made, or he may be thinking of the length of Job's answers compared with the briefer statements of the friends.

10. The first passage is Zophar's opening rebuke and the second is by Elihu.

11. I.e., Muhammad.

12. BT Nedarim 28a; BT Kiddushin 40a; and elsewhere.

13. See the relevant account in 1 Kings 12:20ff.

14. The rabbi's reasoning is that the person who pronounces the Muslim confession of faith thereby reads himself out of the Jewish religious community, so that his fulfillment of the Law, or any part of it, is no more efficacious than its fulfillment by any Muslim or gentile.

15. An ironical characterization, implying the opposite.

16. Maimonides' judgment of the case is very different from that of the

rabbi. Maimonides regards the utterance of the confession as insignificant because it was not spoken in sincerity. The question to be determined is why an individual in this critical situation refrains from observing Jewish laws. Is it because he does not want to, or because he is afraid? Maimonides is persuaded that the judgment of the issue is related to this difference.

17. I.e., he attends Muslim services in a mosque.

18. In JT Sukkah 5, section 5, the verse is applied to those who bow before the sun and also bow down before the Temple.

19. I.e., they play the role of the truly pious Muslim.

20. A pious Jewish individual.

21. Literally: the magnificence of God, the name of the declaration that the Muslim makes: Allah Akbar—God is most magnificent.

22. Namely, the mosque.

23. I.e., Muhammad. The avowal is part of the confession that the convert to Islam recites.

24. This is the meaning that the rabbis derive from the verse. Cf. BT Bava Kamma 72b and BT Sanhedrin 27a.

25. Maimonides renders the verse "the end may be better."

26. The suggestion in the rabbi's introduction of "heretics and Christians" is that the confession is such grievous betrayal of their convictions, that a Jew should certainly act the same way, and if he fails to, he excludes himself from the Jewish religion.

27. The protest is made by Elijah against King Ahaziah's inquiry of a foreign deity. The phrase is expressive of Maimonides' inner pain.

28. The Torah, Lev. 20:1-6, very vigorously condemns this act and behavior of those who disregard this hideous deed.

29. The caution Maimonides expresses is consistent with his own practice, and he explicitly declares in his Introduction to the *Guide of the Perplexed*: "The diction of this treatise has not been chosen haphazardly, but with great exactness and exceeding precision . . . and nothing has been mentioned out of place." He reads the advice in Job as it was explained by R. Aha in Genesis Rabbah 24:5: God would repeat every statement He made to Moses. See also BT Eruvin 54b.

30. The verse speaks of the plague of darkness inflicted on Egypt. Former generations did not hesitate to use any apt biblical passage, even though its original use was in a different context.

31. Maimonides is referring to the sin that he committed by hurling insults at Jews and naming them gentiles.

32. Exodus Rabbah 1:10 charges the Jews in Egypt with deliberately discontinuing the rite of circumcision because they wished to imitate the Egyptians.

33. Exodus Rabbah 19:6.

34. The verse occurs in the section that teaches the proper treatment of the Paschal lamb.

35. Numbers Rabbah 11:6, in which Song of Songs 3:7 is said to be a summary of the story of the Exodus.

36. Josh. 5:3 reports that Joshua circumcised the people at the "Hill of

## רמב"ם הלכות תשובה פרק ה'

הלכה א  
רשות לכל אדם נתונה אם רצה להטות עצמו לדרך טובה ולהיות צדיק והטות בידו, ואם רצה להטות עצמו לדרך רעה ולהיות רשע הרשות בידו, הוא שכתוב בתורה הן האדם היה כאחד ממנו לדעת טוב ורע, כלומר הן מין זה של אדם היה יחיד בעולם ואין מין שני דומה לו בזה הענין שיהא הוא מעצמו בדעתו ובמחשבתו יודע הטוב והרע ועושה כל מה שהוא חפץ ואין מי שיעכב בידו מלעשות הטוב או הרע וכיון שכן הוא פן ישלח ידו.

הלכה ב  
אל יעבור במחשבתך דבר זה שאומרים טפשי אומה"ע ורוב גולמי בני ישראל שהקב"ה גוזר על האדם מתחלת ברייתו להיות צדיק או רשע, אין הדבר כן אלא כל אדם ראוי לו להיות צדיק כמשה רבינו או רשע כירבעם או חכם או א סכל או רחמן או אכזרי או כילי או שוע וכן שאר כל הדעות, ואין לו מי שיכפחו ולא גוזר עליו ולא מי שמושכו לאחד משני הדרכים אלא הוא מעצמו ומדעתו נוטה לאי זו דרך שירצה, הוא שירמיהו אמר מפני עליון לא תצא הרעות והטוב, כלומר אין הבורא גוזר על האדם להיות טוב ולא להיות רע, וכיון שכן הוא נמצא זה החוטא הוא הפסיד את עצמו, ולפיכך ראוי לו לבכות ולקוין על חטאיו ועל מה שעשה לנפשו וגמלה רעה, הוא שכתוב אחריו מה יתאוון אדם חי וגוי, וחזר ואמר הואיל ורשותנו בידינו ומדעתנו עשינו כל הרעות ראוי לנו לחזור בתשובה ולעזוב רשענו שהרשות עתה בידינו הוא שכתוב אחריו נחפשה דרכינו ונחקורה ונשובה וגו'.

הלכה ג  
ודבר זה עיקר גדול הוא והוא עמוד התורה והמצוה שנאמר ראה נתתי לפניך היום את החיים, וכתוב ראה אנכי נותן לפניכם היום, כלומר שהרשות בידכם וכל שיחפוץ האדם לעשות ממעשה בני האדם עושה בין טובים בין רעים, ומפני זה הענין נאמר מי יתן והיה לבבם זה להם, כלומר שאין הבורא כופה בני האדם ולא גוזר עליהן לעשות טובה או רעה אלא הכל מסור להם.

הלכה ד  
אילו האל היה גוזר על האדם להיות צדיק או רשע או אילו היה שם דבר שמושך את האדם בעיקר ותולדתו לדרך מן הדרכים או למדע מן המדעות או לדעה מן הדעות או למעשה מן המעשים כמו שבזדים מלבם הטפשים הוברי שמים היאך היה מצוה לנו על ידי הנביאים עשה כך ואל תעשה כך הטיבו דרכיכם ואל תלכו אחרי רשעכם והוא מתחלת ברייתו כבר נגזר עליו או תולדתו תמשוך אותו לדבר שאי אפשר לזוז ממנו, ומה מקום היה לכל התורה כולה ובאי זה דין ואיזה משפט נפרע מן הרשע או משלם שכר לצדיק, השופט כל הארץ לא יעשה משפט, ואל תתמה ותאמר היאך יהיה האדם עושה כל מה שיחפוץ ויהיו מעשיו מסורים לו וכי יעשה בעולם דבר שלא ברשות קונו ולא חפצו והכתוב אומר כל אשר חפץ ה' עשה בשמים ובארץ, דע שהכל כחפצו יעשה ואף על פי שמעשינו מסורין לנו, כיצד כשם שהיוצר חפץ להיות האש והרוח כמנהגן שחפץ בו, ככה חפץ להיות האדם רשותו בידו וכל סובב בעיגול וכן שאר בריות העולם להיות כמנהגן שחפץ בו, ככה חפץ להיות האדם רשותו בידו וכל מעשיו מסורין לו ולא יהיה לו לא כופה ולא מושך אלא הוא מעצמו ובדעתו שנתן לו האל עושה כל שהאדם יכול לעשות, לפיכך דנין אותו לפי מעשיו אם עשה טובה מדרכיהם, ובענין זה אמר שלמה שמת בחור הוא שהתנבא אומר מידכם היתה זאת לכם, גם המה בחרו בדרכיהם, ובענין זה אמר שלמה שמת בחור בילדותך ודע כי על כל אלה ב יביאך האלהים במשפט, כלומר דע שיש בידך כח לעשות ועתיד אותה ליתן את הדין.

הלכה ה  
שמה תאמר והלא הקב"ה יודע כל מה שיהיה וקודם שיהיה ידע שזה יהיה צדיק או רשע או לא ידע, אם ידע שהוא יהיה צדיק אי אפשר שלא יהיה צדיק ואם תאמר שידע שיהיה צדיק ואפשר שיהיה רשע הרי לא ידע הדבר על בוריו, דע שתשובת שאלה זו ארוכה מארץ מדה ורחבה מני ים וכמה עיקרים גדולים והררים רמים תלויים בה אבל צריך אתה לידע ולהבין בדבר זה שאני אומר, כבר בארנו בפי שני מהלכות יסודי התורה שהקב"ה אינו יודע מדיעה שהיא חוץ ממנו כבני אדם שהם ודעתם שנים, אלא הוא יתעלה שמו ודעתו אחד ואין דעתו של אדם יכולה להשיג דבר זה על בוריו וכשם שאין כח באדם להשיג ולמצוא אמתת הברא שנאמר כי לא יראני האדם וחי אין כח באדם להשיג ולמצוא דעתו של בורא, הוא שהתנבא אמר כי לא מחשבתי מחשבותיכם ולא דרכיכם דרכי, וכיון שכן הוא אין בנו כח לידע היאך ידע הקב"ה כל הברואים והמעשים אבל ג נדע בלא ספק שמעשה האדם ביד האדם ואין הקב"ה מושכו ולא גוזר עליו לעשות כך, ולא מפני קבלת הדת בלבד נודע דבר זה אלא בראיות

ברורות מדברי החכמה, ומפני זה נאמר בנבואה שדין את האדם על מעשיו כפי מעשיו אם טוב ואם רע וזה הוא העיקר שכל דברי הנבואה תלויין בו.

+4/השגת הראב"ד/ וכיון שכן הוא אין בנו כח לידע היאך ידע הקב"ה כל הברואים ומעשה ידיהם. אי"א לא נהג זה המחבר מנהג החכמים שאין אדם מתחיל בדבר ולא ידע להשלימו והוא החל בשאלות קושיות והניח הדבר בקושיא והחזירו לאמונה וטוב היה לו להניח הדבר בתמימות התמימים ולא יעורר לבם ויניח דעתם בספק ואולי שעה אחת יבא הרהור בלבם על זה, ואע"פ שאין תשובה נצחת על זה טוב הוא לסמוך לו קצת תשובה ואומר, אם היו צדקות האדם ורשעתו תלויים בגזירת הבורא יתי' היינו אומרים שידעתו היא גזירתו והיתה לנו השאלה קשה מאד ועכשיו שהבורא הסיר זו הממשלה מידו ומסרה ביד האדם עצמו אין ידעתו גזירה אבל היא כידעית האצטגנינים שידועים מכח אחר מה יהיו דרכיו של זה והדבר ידוע שכל מקרה האדם קטן וגדול מסרו הבורא בכח המולות אלא שנתן בו השכל להיותו מחזיקו לצאת מתחת המול והוא הכח הנתון באדם להיותו טוב או רע והבורא יודע כח המול ורגעיו אם יש כח בשכל להוציאו לזה מידו אם לא וזו הידיעה אינה גזירה, וכל זה איננו שוה.+

### דמב"ם הלכות תשובה פרק ו

הלכה א  
פסוקים הרבה יש בתורה ובדברי נביאים שהן נראין כסותרין עיקר זה ונכשלין בהן רוב האדם ויעלה על דעתו מהן שהקב"ה הוא גזר על האדם לעשות רעה או טובה ושאין לבו של אדם מסור לו להסותו לכל אשר ירצה, והרי אני מבאר עיקר גדול שממנו תדע פירוש כל אותן הפסוקים, בזמן שאדם אחד או אנשי מדינה חוטאים ועושה החוטא חטא שעושה מדעתו וברצונו כמו שהודענו ראוי להפרע ממנו והקב"ה יודע איך יפרע, יש חטא שהדין נותן שנפרעים ממנו על חטאו בעולם הזה בגופו או בממונו או בבניו הקטנים שבניו של אדם הקטנים שאין בהם דעת ולא הגיעו לכלל מצות קנייניו הן וכתוב איש בחטאו ימות עד שיעשה איש, ויש חטא שהדין נותן שנפרעין ממנו לעולם הבא ואין לעובר עליו שום נזק בעולם הזה, ויש חטא שנפרעין ממנו בעולם הזה ולעולם הבא.

הלכה ב  
במה דברים אמורים בזמן שלא עשה תשובה אבל אם עשה תשובה התשובה כתרס לפני הפורענות, וכשם שהאדם חוטא מדעתו וברצונו כך הוא עושה תשובה מדעתו וברצונו.

הלכה ג  
ואפשר שיחטא אדם חטא גדול או חטאים רבים עד שיתן הדין לפני דיין האמת שיהא הפרעון מזה החוטא על חטאים אלו שעשה ברצונו ומדעתו שמונעין ממנו התשובה ואין מניחין לו רשות לשוב מרשעו כדי שימות ויאבד בחטאו שיעשה, הוא שהקב"ה אמר על ידי ישעיהו השמן לב העם הזה וגו', וכן הוא אומר ויהיו מלעיבים במלאכי האלהים ובוזים דבריו ומתעתעים בנביאיו עד עלות חמת ה' בעמו עד לאין מרפא, כלומר חטאו ברצונם והרבו לפשוע עד שנתחייבו למנוע מהן התשובה שהיא המרפא, לפיכך כתוב בתורה ואני אחזק את לב פרעה, לפי שחטא מעצמו תחלה והרע לישראל הגרים בארצו שנאמר הבה נתחכמה לו, נתן הדין למנוע התשובה ממנו עד שנפרע ממנו, לפיכך חזק הקב"ה את לבו, ולמה היה שולח לו ביד משה ואומר שלח ועשה תשובה וכבר אמר לו הקב"ה אין אתה משלח שנאמר ואתה ועבדיך ידעתי וגו' ואולם בעבור זאת העמדתך, כדי לחודיע לבאי העולם שבזמן שמונע הקב"ה התשובה לחוטא אינו יכול לשוב אלא ימות ברשעו שעשה בתחילה ברצונו, וכן סיחון לפי עונות שהיו לו נתחייב למונע מן התשובה שנאמר כי הקשה ה' אלהיך את רוחו ואמץ את לבבו, וכן הכנענים לפי תועבותיהן מנע מהן התשובה עד שעשו מלחמה עם ישראל, שנאמר כי מאת ה' היתה לחזק את לבם לקראת המלחמה עם ישראל למען חררימם, וכן ישראל בימי אליהו לפי שהרבו לפשוע מנע מאותו המרבים לפשוע תשובה שנאמר ואתה הסבות את לבם אחורנית כלומר מנעת מהן התשובה. נמצאת אומר שלא גזר האל על פרעה להרע לישראל, ולא על סיחון לחטוא בארצו, ולא על הכנענים להתעיב, ולא על ישראל לעבוד עכו"ם אלא כולן חטאו מעצמן וכולן נתחייבו למנוע מהן התשובה.

## Free Will in the Talmud and Midrash

### 1. תלמוד בבלי מסכת נדה דף טז עמוד ב

דדריש ר' חנינא בר פפא: אותו מלאך הממונה על ההריון לילה שמו, ונוטל טפה ומעמידה לפני הקב"ה, ואומר לפני: רבש"ע, טפה זו מה תהא עליה? גבור או חלש, חכם או טיפש, עשיר או עני? ואילו רשע או צדיק - לא קאמר, כדל' חנינא, דא"ר חנינא: הכל בידי שמים - חוץ מיראת שמים, שנאמר (דברים י') ועתה ישראל מה ה' אלהיך שואל מעמך כי אם ליראה וגו'.

R. Hanina b. Papa made the following exposition: The name of the angel who is in charge of conception is 'Night', and he takes up a drop and places it in the presence of the Holy One, blessed be He, saying, 'Sovereign of the universe, what shall be the fate of this drop? Shall it produce a strong man or a weak man, a wise man or a fool, a rich man or a poor man?' Whereas 'wicked man' or 'righteous one' he does not mention, in agreement with the view of R. Hanina. For R. Hanina stated: Everything is in the hands of heaven except the fear of God, as it is said, And now, Israel, what doth the Lord thy God require of thee, but to fear etc.

### 2.

#### בראשית רבה פרשה סג ד"ה (כב) ויתרוצצו הבנים

ויתרוצצו הבנים בקרבה ויתרצו בקרבה, עוברת על בני עבודה זרה ועשו מפרסם לצאת הה"ד זורו רשעים מרחם וגו' (תהלים נה:ד), עוברת על בתי כניסיות ובתי מדרשות ויעקב מפרסם לצאת הה"ד בטרם אצרך בבטן ידעתיך וגו' (ירמיה א:ז).

AND THE CHILDREN STRUGGLED TOGETHER WITH IN HER. They sought to run within her. When she stood near synagogues or schools, Jacob struggled to come out; hence it is written, Before I formed thee in the belly I knew thee (Jer. 1:5). While when she passed idolatrous temples, Esau eagerly struggled to come out; hence it is written, 'The wicked are estranged from the womb' (Ps. 58:4).

### 3.

#### תלמוד בבלי מסכת יומא דף לח עמוד א

אמר בן עזאי: בשמך יקראוך, ובמקומך ישיבוך, ומשלך יתנו לך. אין אדם נוגע במוכן לחבירו, אין מלכות נוגעת בהברחה אפילו כמלא נימא.

Referring to this 18 Ben 'Azzai said: By your name you will be called, to your place you will be restored and from what belongs to you will you be given. No man can touch what is prepared for his fellow and 'One kingdom does not interfere with the other even to the extent of one hair's breadth'.

### 4.

#### תלמוד בבלי מסכת חולין דף ז עמוד ב

ואמר ר' חנינא: אין אדם נוקף אצבעו מלמטה אלא א"כ מכריזין עליו מלמעלה, שנאמר: (תהלים ל"ז:כג) מה מצעדי גבר כווננו, (משלי כ"ד:ו) ואדם מה יבין דרכו.

R. Hanina further said: No man bruises his finger here on earth unless it was so decreed against him in heaven, for it is written: It is of the Lord that a man's goings are established. How then can man look to his way?

### 5.

#### קהלת רבה (וילנא) פרשה י ד"ה א [י"א] אם

א [י"א] אם ישך הנחש בלוא לחש, אמר ר' אבא בר כהנא לעולם אין הנחש נושך אלא א"כ נלחש לו מלעיל, ואין הארי טורף אלא א"כ נלחש לו מלמעלה, ואין המלכות מתגרה בבני אדם אלא אם כן נלחש לה מלעיל

IF THE SERPENT BITE BEFORE IT IS CHARMED (10:11): R. Abba b. Kahana said: Never does a serpent bite unless it has been incited from Above, nor does a lion rend [its prey] unless it has been incited from Above, nor does a government interfere with men unless it has been incited from Above.

### 6.

#### תלמוד בבלי מסכת סוטה דף ב עמוד א

אמר רב יהודה אמר רב: ארבעים יום קודם יצירת הולד, בת קול יוצאת ואומרת: בת פלוני לפלוני בית פלוני לפלוני שדה פלוני לפלוני!

Rab Judah has said in the name of Rab: Forty days before the creation of a child, a Bath Kol issues forth and proclaims, The daughter of A is for B; the house of C is for D; the field of E is for F!

I will explain it in its (proper) place, with Gods help.<sup>256</sup>

As a result, the classification of laws ordained in the Torah comprises five categories, according to the aforementioned principles.

THE FIRST CATEGORY (consists of) explanations which were received from Moses<sup>257</sup>, which are alluded to in Scriptures, and may be derived by deductive reasoning.<sup>258</sup> Here no difference of opinion exists; rather if someone states: "Thusly I have received it", one should not question it further.<sup>259</sup>

THE SECOND CATEGORY (consists of) laws which have been called Verbal Mosaic Tradition, and no support exists for them, as we have mentioned (above). This, too, is something without controversy.

THE THIRD CATEGORY (consists of) laws which are derived through methods of deductive reasoning<sup>258</sup>, and concerning which dispute occurs, as we have mentioned. The final ruling in these cases is according to (the opinion of) the majority. Such a (dispute) occurs because the understanding of the law changes. For this reason it is stated: "If this is a *Halacha*,<sup>260</sup> we shall accept it, but if it is only an inference, an

256) There are additional Verbal Mosaic Traditions in the Talmud which Maimonides does not enumerate here. One example is in Tractate Nedarim 37b where R. Isaac states: "Textual reading (of the Torah) and stylistic improvements as transmitted through the *Sofrim*; words read but not written and words written but not read are all Verbal Mosaic Traditions". There are also some additional ones that Maimonides describes in his *Mishneh Torah* (Code of Maimonides) but which he does not enumerate here. One example is found in the laws of the Sanctification of the New Moon, Chap. 5, Law 2, where Maimonides states: "The following is a Verbal Mosaic Tradition: At times when there is a Sanhedrin, declaration of the New Moon is based on visual observation whereas at times that no Sanhedrin exists, it is based on calculation . . ."

257) Lit: from the mouth of Moses.

258) Through one of the 13 principles of Rabbinic exegesis.

259) Lit: speak of it.

260) i.e. received by tradition.

objection may be raised".<sup>261</sup> However, (in reality), there is dispute and theorizing only in something that was not heard to be *Halacha*.<sup>260</sup> Thus we find throughout the Talmud that they (the Sages) delve into the reasons underlying a deductive derivation which is the cause for the argumentation among the disputants, and they (the Sages) state: "What are they arguing about?", or "What is the reason of Rabbi so and so?", or "What is (the point of difference) between them?" They approach (the problem) in this manner in most places, and then mention the reason which underlies the controversy, such as if they say: "Rabbi so and so employs such and such an argument whereas (Rabbi) so and so relies on such and such an argument", and the like.

However (there are) those who think that the laws which are in controversy were also received from Moses, and who (further) believe that the controversy arose by way of errors in the (traditionally received) *Halachoth*, or (because of) forgetfulness, or because one of the (Sages) received the correct tradition whereas the other<sup>262</sup> was mistaken in (the understanding of) what he received, or forgot, or did not understand all that which he was supposed to understand from his teacher. They<sup>263</sup> bring evidence for this (contention) with the statement "When the disciples of Shammai and Hillel who had insufficiently served (their teachers)<sup>264</sup> multiplied, controversy increased in Israel and the Torah became as two Torahs".<sup>265</sup> This type of contention is, by my life, an extremely depraved thing. These are words of someone without understanding, one

261) Tractate Yebamoth 76b. In other words, if this law is one of those received from Moses which is alluded to in Scripture, or a Verbal Mosaic Tradition, we will accept it. However, if it is a law derived only through logical reasoning, we can argue thereon.

262) Lit: the second.

263) The aforementioned thinkers.

264) i.e. insufficiently studied the Torah.

265) i.e. many conflicting rulings arose. Tractate Sanhedrin 88b.

who has no (knowledge of) fundamentals and who blemishes (the honor of those) people through whom the commandments were received. All this (type of reasoning) is false and void. That which brought one to believe in this depraved<sup>266</sup> conviction was a paucity of contemplation into the words of the Sages that are found in the Talmud. They found the sense of every explanation (of a law of the Torah) that was received from Moses to be true, as they did not differentiate between (traditionally) received fundamentals and the secondary teachings derived by deliberation.

Indeed, do not bring any doubt into your heart concerning the controversy between Beth Shammai and Beth Hillel<sup>267</sup> whether: "(After the meal) they sweep the floor"<sup>268</sup> and then wash their hands"<sup>269</sup>, or "They wash their hands and then sweep the floor";<sup>270</sup> (do not) think that one of these two views was not received by Moses at Sinai. The reason which is the basis for their argument is that which is mentioned in the Talmud,<sup>271</sup> namely, one of them (Beth Hillel) forbids the use of an unlearned attendant<sup>272</sup> (to remove bread crumbs), whereas the other (Beth Shammai) permits it. The same is true of all controversies similar to this, which are ramifications.

However, that which they (the Sages) stated: "When the disciples of Shammai and Hillel who had insufficiently served (their teachers)<sup>264</sup> multiplied, controversy increased in Israel", is a matter which can be simply explained. That is, wherever two people are equal in understanding, in deliberative capacity, and in knowledge of fundamentals (of the Torah) from which

266) i.e. faulty or damaging.

267) Tractate Berachoth 51b.

268) Lit: the house.

269) Referring to the latter water before Grace.

270) Beth Shammai hold the former, Beth Hillel the latter.

271) Tractate Berachoth 52b.

272) Hebrew: *Am Haaretz* or ignoramus.

to derive their deduced opinions, no controversy at all arises<sup>273</sup> in regard to their reasoning. Should this happen,<sup>274</sup> it will be minute indeed; and thus we do not find a difference of opinion between Shammai and Hillel, save in (a few) specific *Halachoth*. This is because the opinions of both are similar in all that they derive by way of deductive reasoning. The fundamentals, too, given to one are the same as the fundamentals given to the other. However, when the diligence of their disciples in (the search for) wisdom diminished, and when their power of correct deduction weakened, as compared with the reasoning of their teachers Hillel and Shammai, then controversy arose between them during deliberation of many subjects, as each one's opinion was molded by his understanding and the fundamentals with which he was familiar.

In spite of this, one should not condemn them, because we cannot compel two wise men who are discussing a theory to propound it with the understanding of Joshua or Pinchas.<sup>275</sup> We should not doubt (the validity of) what they<sup>276</sup> argue just because they are not as (capable as) Shammai and Hillel, or like one who is greater (in knowledge) than they.<sup>277</sup> The Holy One Blessed be He did not command us to serve Him in this manner<sup>278</sup>, but instructed us to listen to the Sages of our generation as it is stated: *To the judge who shall be in those days.*<sup>279</sup> It is in this manner that controversies arose, and not because they<sup>276</sup> erred in *Halacha*, and that one is saying the truth, the other a falsity. How much clearer this subject will

273) Lit: falls between them.

274) i.e. controversy and dispute between two such people.

275) Each can only discuss at a level of intelligence with which God endowed him.

276) The disciples of Hillel and Shammai.

277) Such as Joshua & Pinchas.

278) i.e. to think derogatorily of Sages because their predecessors were more learned than they.

279) Deut. 17, 9.

become to all who delve into it and what a precious and great principle of our commandments this is!

THE FOURTH CATEGORY (consists of) decrees ordained by the prophets and Sages of every generation in order to make a protective fence around the Torah.<sup>280</sup> In regard to these (Biblical laws), the Holy One Blessed be He commanded to make the (protective laws), and this is what is meant by the all inclusive statement: *And ye shall keep my charge*<sup>281</sup>, which is traditionally interpreted to mean, "Provide protection for my observances."<sup>282</sup> The Sages call these (restrictive measures) "decrees".<sup>283</sup> Sometimes controversy may arise therefrom, because one Sage may prohibit something for a specific reason, whereas the other Sage disagrees. This occurs frequently in the Talmud, where it is stated that Rabbi so and so decreed such (and such) because of such and such, whereas Rabbi so and so did not so decree. This, too, is one of the causes of controversies (among Sages in the Talmud).

Thus (for example, the prohibition of eating) flesh of fowl with milk is a Rabbinical decree to keep one far from transgression. However, the Torah only prohibits (milk with) flesh of cattle<sup>284</sup> and beasts<sup>285</sup>, whereas the Sages (decreed the additional) prohibition of flesh of fowl (with milk) to keep one far from (transgressing) an interdiction.<sup>286</sup> There are some who did not ordain this decree, like Rabbi Jose the Galilean

280) A Rabbinic prohibition to protect a person from transgressing a Biblical injunction.

281) Levit. 18, 30.

282) Tractate Yebamoth 21a; i.e. add restrictions to safeguard the original precepts. There is a play on words here. The Hebrew word *Shomor* means to observe but also means to protect.

283) Hebrew: *Gezeroth*.

284) Such as cows.

285) Such as a deer. Many manuscripts and some texts substitute flesh of clean animals for cattle and beasts.

286) i.e. one should not erroneously eat cattle flesh with milk by comparing it with flesh of fowl which is permitted in the Torah.

who permitted (the consumption of) flesh of fowl with milk, and all the inhabitants of his town ate this (combination), as is well publicized in the Talmud.<sup>287</sup>

Where complete agreement prevails regarding one of the decrees, no one argues thereon in any respect. If a prohibition has spread throughout Israel, then no one should dispute such a decree. Even the prophets themselves were not permitted to void it. Thus it is stated in the Talmud<sup>288</sup> that (even) Elijah, of blessed memory, could not abrogate one of the eighteen items which Beth Shammai and Beth Hillel decreed. The reason which is quoted<sup>289</sup> for this is that these prohibitions have spread among all of Israel.

THE FIFTH CATEGORY consists of laws based on (empirical) investigation regarding the social behavior of individuals in those matters which do not constitute an addition to or detraction from a (Biblical) commandment<sup>290</sup> - or regarding things which are efficacious for people<sup>291</sup> with respect to the observance of the laws<sup>292</sup> of the Torah. These are called "Ordinances"<sup>293</sup>, and customs. It is prohibited to transgress any one of these. (King) Solomon of blessed memory has already stated regarding him who transgresses any one of these ordinances<sup>294</sup>: *And whosoever breaketh through a fence will be bitten by a snake.*<sup>295</sup>

These decrees are extremely numerous and are described in the Talmud and Mishnah. Some are related to the topic of the forbidden and permitted (foods, marriages, etc.), and others

287) Tractate Shabbath 130a.

288) Tractate Aboda Zara 36a.

289) Lit: brought.

290) Both are prohibited in Deut. 4, 2.

291) Lit: for the children of man.

292) Lit: words.

293) Hebrew: *Takanoth*.

294) i.e. social reforms.

295) Eccles. 10, 8.

pertain to civil law.<sup>296</sup> Some of these decrees were ordained by the prophets, such as the decrees of Moses, Joshua and Ezra, as they (the Sages) have stated: "Moses ordained to the Israelites that they should discuss<sup>297</sup> the laws of Passover in the season of Passover".<sup>298</sup> They further stated: "Moses decreed (the benediction) 'Who feeds'<sup>299</sup> at the time when the Manna was descending for the Israelites".<sup>300</sup> The decrees of Joshua and Ezra, however, are many (and will, therefore, not be enumerated here). Yet other decrees (of this social reform type) are attributed to individual Sages as they stated: "Hillel instituted *Pruzbul*";<sup>301</sup> "Rabban Gamliel the Elder decreed";<sup>302</sup> "Rabbi Yochanan ben Zakkai ordained";<sup>303</sup> and often in the Talmud (it is stated) "Rabbi so and so decreed", or Rabbi so and so ordained". (Finally), there are some decrees attributed to a multitude of Sages<sup>304</sup>, as they stated: "(The Sanhedrin) in Usha decreed"<sup>305</sup>, or as it is written "The Sages ordained", or "A decree of the Sages". Similar instances are very common.

Thus, all the laws enumerated in the Mishnah are subdivided into these five categories; some are interpretations received

296) Lit: money matters.

297) Lit: ask and seek.

298) Tractate Megillah 4a.

299) The first benediction of the Grace after meals. Hertz *Prayer Book* (see footnote 55) p. 967.

300) Tractate Berachoth 48b.

301) Mishnah Shebi'ith, Chapter 10, Mishnah 3. *Pruzbul* is a device which prevents remission of debts in the Sabbatical year by entrusting the court with the collection of the debt. A complete discussion of *Pruzbul* can be found in Tractate Gittin 36a-37b.

302) Tractate Gittin 34b. A man should write his true name on a divorce document, and not an adopted name.

303) a) Tractate Betzah 5a. Testimony concerning the appearance of the New Moon is admitted the whole day, even in the evening.

b) Tractate Rosh Hashana 30b. During the whole day of the waving of the *Omer* (the sheaf of barley offered on the 16th of Nissan prior to which new cereals of that year were forbidden. Levit. 23, 10), the new corn is forbidden.

304) As opposed to an individual sage.

305) Tractate Kethuboth 49b. A man must sustain his sons and daughters while they are young.

from Moses which are alluded to in Scripture, or can be derived through deductive reasoning;<sup>306</sup> others are Verbal Mosaic Tradition (which cannot be proved either directly from Scriptures or by deduction); others yet are (laws) derived by comparisons<sup>307</sup> and reasoning concerning which differences of opinion may arise. Some of these (laws) are decrees<sup>308</sup>, and others are ordinances.<sup>309</sup>

I will now mention the reason he<sup>310</sup> saw necessary to record (both sides of) a controversy that arises between two viewpoints. If these legal decisions<sup>311</sup> were written as final rulings<sup>312</sup>, without the controversy, and if the opinion of the Sage whose view is not the finally accepted one were omitted, then it is possible that at a later time someone will come along who learned<sup>313</sup> the very opposite of the statement of the final ruling. (This he learned) from the Sage who disputes that view, or from someone who is inclined to agree with his<sup>314</sup> opinion. Thus a doubt is raised in our minds, and we might say: How could this person, a trustworthy man, have learned that such and such a thing is prohibited if the Mishnah (specifically) states that it is permitted, or vice versa? Because of this, if (all) these opinions will be written down for us, this danger will be averted<sup>314a</sup>, since when the receiver (of knowledge from his teachers) will say: "I have heard that such and such is prohibited", we can say to him: "You speak correctly, and it is the view of so and so, but many disagree with him", or "so and so disagrees with him, and the final ruling is according to the

306) Using the 13 principles of Rabbinic exegesis.

307) Hebrew: *Hekesh*.

308) Hebrew: *Gezereth*.

309) Hebrew: *Takanoth*.

310) Rebbe, compiler of the Mishnah.

311) Hebrew: *Halachoth*.

312) As in the Code of Jewish Law, the *Shulchan Aruch*.

313) Lit: received, by oral tradition.

314) the dissenting sage.

314a)lit: this breach will be fenced.

dissenting viewpoint", either because its deductive reasoning is more plausible, or because we have found proof that supports it.<sup>315</sup> On the other hand, the reason why he<sup>316</sup> found it necessary to record the opinion of a single person against the many is that it is possible that the final ruling should be according to (the opinion of) the single person and, therefore, he<sup>316</sup> teaches us that if an argument is convincing<sup>317</sup>, even if it be that of a single person, it is accepted<sup>318</sup>, although many may argue with him.<sup>319</sup>

There is a reason for recording the opinion of one man though he later withdrew from that opinion. One sees this, for example, when the (Sages) stated: "Beth Shammai say such and such whereas Beth Hillel say such and such, and Beth Hillel reconsidered and taught according to the opinion of Beth Shammai";<sup>320</sup> to demonstrate their love for the truth and that righteousness and honesty prevail. Thus, when these honored, pious, noble people of eminent scholarship<sup>321</sup> saw that the opinions of him who argues with them are better than their own and that his<sup>322</sup> deliberations are correct, they would admit to him and change to his viewpoint. All the more so should other people, when seeing the truth, lean toward their opponent, likewise turn to this truth (and accept it) without being stubborn.<sup>323</sup> This is the meaning of the Scriptural phrase *Justice, justice shalt thou follow*.<sup>324</sup> It is concerning this (matter) that the Sages stated, "Acknowledge the truth"<sup>325</sup>,

315) Mishnah Edduyoth, Chapter 1, Mishnah 6.

316) Rebbe, compiler of the Mishnah.

317) Lit: a viewpoint is simpler. i.e. logical and understandable.

318) Lit: listened to.

319) Mishnah Edduyoth, Chapter 1, Mishnah 5.

320) *ibid.* Mishnah 4 and Mishnah 12.

321) Such as Beth Shammai and Beth Hillel.

322) The dissenter.

323) Lit: hard-necked.

324) Deut. 16, 20.

325) Mishnah Aboth, Chapter 5, Mishnah 7.

meaning that even if you could save face<sup>326</sup> with (sophisticated) counterarguments, if you know that your friend's viewpoint is the correct one, although your argument may be clearer due to his weakness (in expressing himself), or because of your ability to pervert the truth, withdraw to his viewpoint and abandon the fight.<sup>327</sup>

When the author (of the Mishnah, Rebbe) considered the redaction of this book according to this pattern<sup>328</sup>, he saw fit to divide it (the Mishnah) into six sections.

THE FIRST SECTION (deals) with commandments pertaining to the plants of the land, such as (laws of) prohibited mixtures,<sup>329</sup> (laws of the) Sabbatical year, *Orlah*,<sup>330</sup> Heave Offerings, Tithes and other laws of (agricultural) gifts.<sup>331</sup>

THE SECOND SECTION (deals) with the divisions of the yearly cycle and the festivals, their requirements, their varying laws,<sup>332</sup> things permitted and prohibited therein, and those laws and commandments which are properly associated with each of these chapters.

THE THIRD SECTION (deals) with sexual relations, and the differences between the laws of men and women, such as the Levirate marriage, *Halitzah*,<sup>333</sup> the marriage settlement document,<sup>334</sup> betrothals and divorces, and all that is deemed necessary to be stated in each of these chapters.

THE FOURTH SECTION (deals) with (civil and criminal) laws, and disputes between man and his neighbor, trade,

326) Lit: save your soul.

327) i.e. admit defeat with dignity.

328) As described above.

329) Hebrew: *Kilayim*. Prohibitions of mixtures in plants, animals and garments.

330) Lit: Uncircumcised. Prohibition of the use of trees during the first three years after planting.

331) To the Priest, Levite, poor, stranger, etc. . .

332) Different for each holiday.

333) The ceremony of taking off the shoe of the brother of a husband who died childless who does not want or cannot fulfill the Levirate marriage. Deut. 25, 5-9.

334) Hebrew: *Kethuba*.

(of comprehension) to themselves, when they compared themselves to those (Sages) that preceded them. And this is what they (meant when they) stated:<sup>653</sup> "The hearts<sup>654</sup> of the ancients are like the door of the *Ulam*<sup>655</sup>, but those of the latter generations are not even <sup>656</sup>like the eye of a fine needle". How much more so (does this apply to) us, in whom wisdom has ceased and is lacking, as the Holy One Blessed be He told us:<sup>657</sup> *And the wisdom of their wise men shall perish, and the prudence of their prudent men shall be hidden.* This scriptural phrase has characterized each one of us with four things: weakness of intellect, strong lust (for worldly pleasures), laziness in the quest for wisdom, and diligence (in attaining) worldly profits, the "four bad judgements".<sup>658</sup> How can we not but attribute the lack (of knowledge and understanding) to ourselves when we compare ourselves to them?<sup>659</sup>

It is because the Sages of Blessed Memory knew that, in this matter, all their words are lucid and pure without any imperfections, and they commanded and warned that no man mock them. They also stated:<sup>660</sup> "He who mocks at the words of the Sages is punished with boiling hot excrement", and there is no greater boiling hot excrement than foolishness which leads to mockery. Therefore, there is never found a man who derides their words, save one who seeks lust, and attributes value to sensual pleasures, and who fails to enlighten his heart with any illuminating brightness (of Torah).

It is because they recognized the truth of their words that they filled all their days with this task (of learning Torah), and

653) Tractate Erubin 53a.

654) Intellectual powers.

655) A chamber in the Holy Temple whose door measured 20 cubits in width.

656) Some texts omit the words "not even". The meaning is unchanged.

657) Isaiah 29, 14.

658) See Ezekiel 14, 21.

659) The Sages of old.

660) Tractate Gittin 57a.

commanded (us) to be zealous in this regard every night<sup>661</sup>, and part of the day. They have made it<sup>662</sup> the ultimate in wisdom, and this is really so. They further stated:<sup>663</sup> "The Holy One, Blessed be He, considered nothing in this world save the four cubits of *Halachah*". One should delve discerningly<sup>664</sup> into this matter, because if one examines it superficially, one would find it far from the truth, as if the four cubits of *Halachah* alone represent the ultimate to be sought after, and the other teachings and viewpoints (in the Torah) are secondary.<sup>664a</sup> And during the time of Shem and Eber and after them when there was no *Halachah*,<sup>665</sup> can we then say that the Holy One Blessed be He had no part in the world at all? If one delves discerningly into this matter, however, one would observe therein wondrous wisdom and one would find that it comprises a collection of eternal truths. I will explain this for you so that it may serve as an example for you in all other matters which you come across. Therefore, pay close attention thereto as is proper.

Know that the ancients<sup>666</sup> made a profound investigation

661) Lit: the entire night. See also Maimonides' *Mishneh Torah*, Laws dealing with the study of Torah, Chapter 3, 13 where he states: "While it is a duty by day and by night, most of one's knowledge is acquired at night. Therefore, he who desires to merit the crown of the Torah should be heedful of all his nights and not waste even a single one of them in sleep, eating, drinking, idle talk and so forth. Rather (he should devote all of them) to the study of Torah and words of wisdom. The Sages have stated that the reservoir of Torah is the night as it is written (Lamentation: 2:19): *Arise, cry out in the night*, and whosoever occupies himself with (the study of) Torah at night—a mark of grace distinguishes him by day as it is written (Psalms 42:9): *By day the Lord will command His loving kindness and in the night His song shall be with me, even a prayer unto the God of my life.*

662) The learning of Torah.

663) Tractate Berachoth 8a.

664) Lit: turn one's heart.

664a) Lit: thrown behind one's back.

665) Although Shem and his descendant Eber were believed to have maintained schools (see Rashi's commentary on Gen. 25, 22 and Genesis Rabbah 63, 6), these schools preceded the giving of the Torah by God on Mount Sinai, and thus *Halachah* could not have been taught in the sense that we know it today.

666) Probably ancient philosophers and not Sages.

with wisdom and good thinking (powers), until the following general principle that they were given was firmly established in their minds: that everything that exists must of necessity have a purpose for which it was created, because things do not exist for naught. When this general principle became confirmed in their minds, they began to categorize all existing things in order to know the purpose for each variety of created being. They saw that every artificially-created object, meaning that which is made through workmanship, has a well-known and objective function. One need not deliberate over such a matter. For the craftsman will not perform his work if its goal is not clearly depicted in his mind. I will state an example of this. The blacksmith will not make a saw until after contemplating in his heart:—how can one split wood? When the idea of the saw appears in his mind, he begins to make it in order to cut therewith. Thus we know that the purpose of the saw is to fell trees, and the purpose of a spade is to dig therewith, and the purpose of a needle is to sew one garment to another, and similarly for all things which are found to be artificially made.<sup>667</sup> However, regarding those (things) whose existence is due to Divine workmanship and the wisdom of nature, such as various types of trees and grasses, various minerals of the earth, various stones and various animals—the purpose of the existence of some of them is obscure and is not understood at all, except

667) See also Maimonides' *Guide for the Perplexed*, Part 3, Chap. 25 where he states: "... The philosophers (probably referring to Aristotle) assume that in Nature there is nothing in vain, so that everything that is not the product of human industry serves a certain purpose..." Also see Maimonides' *Treatise on Logic*, Chapter 9 where he states:

"The causes of things are of four kinds: matter, form, agent and purpose. Let us take, for example, among artificial things, a chair; its matter is the wood, its agent is the carpenter, its form is a square if it is square... and its purpose is the sitting thereon... In the case of natural things one should seek the very same causes; for example, man belongs to the natural order, his matter is life, his form is the rational faculty, his purpose is the attainment of ideas, and his agent is the one who gave him his form or his rational faculty... and this is God, blessed be He..."

if it were made known through prophecy or through the power of prognostication. However, it is impossible to know their purpose through investigative reasoning. Thus, it is not within the power of man to ponder until he understands and knows the reason why nature made some ants with wings and some without wings; and also why it made (some) worms with many legs and others with few legs; or what is the purpose of this worm or that ant? However, regarding things which are larger than these, and whose functioning is more obvious—the greatness of wise people is revealed by the knowledge of the purpose of creation of these things. As (a man) becomes wiser and desirous of learning, and lucid in thought—so too will his knowledge become more complete.

Therefore, when the Holy One, Blessed be He, gave to Solomon the wisdom He promised him,<sup>668</sup> he understood the secrets of nature of those species (of animals mentioned above), as much as is possible for a person who is (only) human to understand. He (Solomon) speaks of the purpose of the creation of trees and grasses and varieties of life, as it is written in Scriptures:<sup>669</sup> *And he spoke of trees, from the Cedar that is in Lebanon even unto the hyssop that springeth out of the wall; he spoke also of beasts and of fowl and of creeping things and of fishes.* This testified that indeed the Divine Spirit was in him. It is stated later:<sup>670</sup> *And there came of all peoples to hear the wisdom of Solomon.*

However, in general, one must note that all things that exist under the lunar sphere exist for man alone. Of all the types of animals, there are some (which were created) to be eaten, such as sheep and cattle and the like. There are others whose value lies not in their consumption, such as the donkey, which is used

668) First Kings 3, 12: *Behold I have given thee a wise and understanding heart...* and First Kings 5, 26: *And the Lord gave Solomon wisdom.*

669) First Kings 5, 13.

670) First Kings 5, 14.

to transport that which (man) cannot carry by hand, and horses with which to traverse a great distance in a few days. There are also varieties (of creatures) whose function is not known to us; yet they are of benefit to man though he fails to recognize this. Similarly, there are among trees and plants some that can be consumed (as food), and others which can be used to heal one's sicknesses. The same applies to grasses and other species (of creation).

And know that if we find creatures and plants which do not have nutritional value and which have no apparent function according to our (way of) thinking, this reflects a limitation of our understanding. It is impossible for any grass or any fruit or any type of living being, from elephants to worms, not to have usefulness for man. We see as support for this the fact that in every generation (the values of) grasses and various fruits which were not apparent to our predecessors are revealed to us, and provide us with great benefits. It is not within the ability of man to completely encompass in his mind the values of all the plants on the earth. Nevertheless, their purposes become revealed through the passing generations by experience.

However, if one would ask: why were fatal poisons such as the herb called "Bayish" and "Blood grass"<sup>671</sup> created if man perishes by them and they are of no value? It is important for you to know that they do have usefulness. Though one may die by ingesting them, one does not die when one applies a compress (made therefrom) on the outside of the body. If one recognizes that man derives great benefit from vipers and snakes,<sup>672</sup> then all the more so (does man benefit) from those (things) which are less harmful.

671) A herb with red sap.

672) See Tractate Sabbath 77b. "Rab Judah said in Rab's name: Of all that the Holy One, blessed be He, created in His world, He did not create a single thing without purpose. Thus He created the snail as a remedy for a scab, the fly as an antidote to the hornet's sting, the mosquito for a serpent's bite, a serpent as a remedy for an eruption and a spider as a remedy for a scorpion's bite . . ."

Now when it is realized that the purpose of all these plants and animals<sup>673</sup> is for the survival of man, then one is led to investigate why man exists, and what was the intent behind his creation. When one delves into this matter at length, one finds that man has many productive activities. In fact, all the varieties of living beings and trees possess only a single activity or, perhaps, two activities. Thus we observe that date-palms have the sole capability of producing dates. The situation is analogous with other trees. Similarly, among animals, there are some, such as the spider, whose only skill is to weave, and some, such as the swallow (which is a small bird that makes its nest within houses during the warm season),<sup>674</sup> who build, and others, such as the lion, that prey. However, man can perform many differing tasks. His activities have been scrutinized, skill by skill, to know which of these activities was the object in (man's) creation. The other skills (man possesses) serve only the purpose of assuring his survival, to insure the (fulfillment) of that one activity. This (cardinal) activity is the following: to grasp in his mind<sup>675</sup> the secrets of the fundamental truths, and to understand the verities (in life) according to his ability.<sup>676</sup>

Common sense dictates that it is absurd (to consider) that man's major purpose is to eat and drink and engage in copulation, or to build a wall<sup>677</sup>, because these are all activities which automatically recur. They do not add to his internal strength.<sup>678</sup> Moreover, he shares these (activities)<sup>679</sup> with

673) Lit: matters.

674) Phrase in parenthesis is lacking in the Arabic original. edit. Hamburger.

675) Lit: draw or form in his soul.

676) See also Maimonides' *Guide for the Perplexed* Part I, Chapter 68 where he discusses the subject of intellectus, the ens intelligens and the ens intelligibile.

677) The original Arabic adds: or to be king.

678) His precious Divine gift i.e. intelligence. The Hebrew word *Penini* as found in Proverbs 3, 15 means ruby or coral or precious stone. Some Hebrew texts have the word *Penimi* meaning internal. The meaning of the phrase is the same with either interpretation.

679) i.e. eating, drinking, etc.

most (living) creatures. Wisdom, however, does add to his internal capacities and elevates him from a lower status to a level of honor, because he was (at first only) a potential human (in essence) and then became an actual human (in essence). Man, before he uses his intelligence and acquires knowledge, can be considered as (just another) animal. He is not different from other types of animals except in his reason; he is a rational animal, that is, (one) with reason which he applies to grasp the (eternal) verities.<sup>680</sup> The prime verity to grasp is the Unity of the Holy One, Blessed be He, and all that pertains to that Divine matter.<sup>681</sup> Other verities<sup>682</sup> serve only to exercise one toward the attainment of Divine knowledge. A complete discussion of this point would be extremely lengthy.

However, through grasping the verities, (man realizes that) he is obligated to spare himself from most physical pleasures, because the beginning of understanding will lead him to grasp that the destruction of the soul results from the improvement of the body, and perfection of the soul through containment of the body. Thus when man chases after lusts, and when sensual (desires) prevail over the conceptual<sup>683</sup> ones, and make his intelligence subservient to his lusts, so that he recedes to be like an animal which conceives only eating, drinking and copulation for itself, then the Divine capacity, that is intelligence, will not be recognized in him. Then he will be as a

680) See Maimonides' *Mishnah Torah*, Laws of the Fundamental Principles of the Torah. Chap. 4, 8 where he states: "The superior intelligence found in the human soul is the form of man complete with knowledge. To this form, the Torah refers in the text: *Let us make man in our image, after our likeness* (Gen. 1:26). This means that man should have a form which understands and grasps knowledges that have no form . . ."

681) That God is eternal, incorporeal, etc. See Maimonides' *Mishnah Torah*, Laws of the Fundamental Principles of the Torah, Chap. I. See also Maimonides' *Mishnah Commentary* on Tractate Sanhedrin, Chap. 10, where he enunciates and expounds upon the thirteen articles or principles of the Jewish faith.

682) Sciences.

683) Lit: intellectual.

stunted creature stooping in the primeval sea. The meaning of primeval sea is emptiness.<sup>684</sup>

It seems clear from these introductory remarks that the purpose of this world, and all that is contained therein, is (to help make) a wise and good man.<sup>685</sup> It will also be made clear to man that the human attributes are intelligence<sup>686</sup> and deeds; by intelligence is meant the perception of truths about things and the attainment of all (knowledge) that it is possible for a man to attain. Deeds refer to the improvement and perfection of natural matters.<sup>687</sup> One should not be addicted to worldly pleasures, nor should one partake therefrom, save that which is required to improve one's body and to improve one's character.<sup>688</sup> Therefore, the man who is in this category is the goal and the object (for whom the world was created).

And this fact is not only known from the prophets; the bygone Sages of different peoples, (Sages) who never saw the prophets nor heard their wisdom, were already aware that man is not perfect unless there is comprised in him intelligence and good deeds. The words of the renowned Sage in philosophy<sup>689</sup> who said "God desires of men that they be discerning and righteous"<sup>690</sup> should suffice for us. For if man is wise and discerning, but desires (to satisfy his) passions, then he is not truly wise. For the beginning of wisdom dictates that man not partake of physical delights, save that which is required for the maintenance of his body. When we will comment upon Tractate Aboth we will complete (the discussion on) this matter and

684) See Genesis 1, 2. *And the earth was wasteness and emptiness.*

685) Wise in intellect and good in morals and ethics.

686) Lit: knowledge. Some texts have wisdom.

687) Proper eating and drinking habits, honesty in business dealings, etc.

688) A healthy soul can only exist in association with a healthy body.

689) Aristotle.

690) Discerning in wisdom and righteous in deeds.

elucidate it properly.<sup>691</sup>

Similarly, we find that the prophet rebukes and considers sinful one who praises himself, (claiming) that he is wise, for then he actually rebels against the laws (of the Torah) and seeks the lust of his soul. This is what is meant by<sup>692</sup> : *How do you say 'we are wise and the law of the Lord is with us'?*<sup>693</sup> Conversely, if a person is a worshipper (of God) and a Nazarite and one who abstains from worldly delights,—save that which is required for the maintenance of his body, and follows an ideal<sup>694</sup> path in all natural habits and maintains pleasant traits, but has no wisdom,—this (person) is also lacking in perfection. However, he is more complete than the former<sup>695</sup>, but his deeds are not performed in a proper manner, nor for the sake of truth.<sup>696</sup> Therefore did the Sages of blessed memory, state:<sup>697</sup> “A boorish person cannot be a sin-fearing man, nor can an ignorant person be truly pious”, as we have just explained. And whoever says that an ignorant person is pious contradicts the aforementioned definitive statement that the Sages declared. He also contradicts common sense.<sup>698</sup> And therefore, we first find the commandment in the Torah: *that you may learn them* and afterwards *to perform them*.<sup>699</sup> Understanding is mentioned

691) See also Maimonides' “Eight chapters” or Introduction to his Commentary on Tractate Aboth, where in Chapter 5, he states “man must keep his eye constantly fixed upon one goal, namely the attainment of the knowledge of God, may He be blessed, as far as it is possible . . . man's only purpose in eating, drinking, cohabiting, sleeping, waking, moving about and resting should be the preservation of bodily health, while, in turn, the reason for the latter is that the soul and its agencies may be in sound and perfect condition so that he may readily acquire wisdom, and gain moral and intellectual virtues . . .”

692) Jeremiah 8, 8.

693) Jeremiah continues: *Lo, they have rejected the word of the Lord, and what wisdom is in them?*

694) Lit: on the equator.

695) Who is wise and discerning but who lusts for worldly pleasures.

696) His deeds are not performed because of a clear understanding and basic comprehension of his purpose in life.

697) Tractate Aboth 2, 5.

698) In that piety without wisdom, understanding and knowledge is incomplete.

699) Deut. 5, 1.

before the performance (of the commandment) because, through understanding, man will be led to the action, but through the performance man will not attain the understanding. This is what the Sages, of blessed memory, (meant when they) said:<sup>700</sup> “study leads to action”.

There remains in this matter the following question which one might ask. It has been said that there is nothing purposeless in Divine wisdom; rather (everything created has) a specific goal. Furthermore, of all the creations that are below the lunar sphere, man is the most important, and the purpose behind man's being is for him to apply himself to wisdom.<sup>701</sup> If so, why did the Holy One, Blessed be He, place (in the world) all those people who do not apply themselves to wisdom? We observe that most people are completely lacking (in cleverness) and devoid of intelligence, and desire only to satisfy their lusts. The wise man who despises worldly (pleasures) is alone among many; there is found only one in each generation.

The answer to this (question) is that those people (who do not apply themselves to wisdom) were created for two reasons. One purpose is for them to serve that (unique) individual. For if all people sought wisdom and philosophy, the functioning of the world would be undermined, and all living beings would perish from the world in a short time, since man lacks much and has many needs. He would have to learn ploughing and harvesting, to thresh and to grind, to bake and to make utensils for the aforementioned tasks, in order to fulfill therewith his alimentary needs. Similarly, he would have to learn spinning and weaving in order to weave his clothing. (He would also have) to learn to build in order to construct a place of shelter, and to manufacture tools for all these labors. Not even the lifetime of a Methusaleh<sup>702</sup> would suffice to learn all these

700) Tractate Kiddushin 40b.

701) Lit: to depict for his intelligent soul.

702) Who lived 969 years, Genesis 5, 26-27.

tasks which a person necessarily requires for his sustenance. When would he find spare time to study and acquire wisdom? Therefore, all those people were created to perform these acts which are needed in a community, in order that the Sage find his needs prepared before him, that the land be settled and wisdom found therein.

How well was it stated: "were it not for madness, the world would be desolate". For there is no folly in the world comparable to the folly of man. For man has a feeble soul and a weak constitution; yet he travels from the beginning of the second region of the seven inhabitable districts<sup>703</sup> until the end of the sixth. He traverses oceans in the winter, and travels through lands of drought<sup>704</sup> in both drought and summer. He endangers himself (by exposure to) beasts of the field and reptiles in order to increase his wealth. When he has assembled a minute quantity of gold coins for which he sold his three souls,<sup>705</sup> and, if he wishes to enjoy them, he commences to distribute them to laborers to build for him a foundation in the depths of the earth with lime and stones, in order to construct a wall to last for many years. Yet he knows that there do not remain in his lifetime enough years to even survive a structure made of reeds. Is there a greater folly or lunacy than this?

Similarly, all the delights of the world are complete mockery and madness. However (at the same time), they are a factor for the settlement of the functioning world. Therefore the Sages, of blessed memory, called a person who has no wisdom an *Am Ha'aretz*,<sup>706</sup> that is, the purpose they serve is the settlement

703) The ancient Greeks divided the earth into seven regions or the seven different climates, the first and seventh are uninhabitable. Therefore, Maimonides states from the 2nd to the 6th.

704) Deserts.

705) In the first chapter of his "Eight Chapters", Maimonides speaks of five parts to the human soul: the nutritive, the perceptive, the imaginative, the appetitive and the rational.

706) Lit: people of the land or of the earth.

of the earth. Therefore they<sup>707</sup> associated their<sup>708</sup> name with the earth.

A man might say: "behold, we observe a foolish and stupid man who lives in tranquility in the world without toiling therein. Others serve him and engage in his business dealings for him. Is it not possible that one of those who ministers to his needs is a wise and discerning man?" But the matter is not as this individual thinks. The tranquility of that foolish man also serves to prepare goodness for that man to whom the Creator wishes to give it. Though while he is satisfied with his great wealth and possessions,<sup>709</sup> he instructs his servants to build a paragon of beauty, and to plant a large vineyard just as kings and the like do. It is possible that this palace will be ready for a righteous man who might come in later days and seek refuge one day in the shade of one of the walls (of the palace), and this will be the cause that saves him from death as it is written: <sup>710</sup> *He may prepare it, but the just shall wear it.* There may be taken one day from that vineyard a cup of wine to make therewith a remedy called theriac which will spare from death a complete and perfect man who was bitten by a (poisonous) viper. <sup>710a</sup> Such is the conduct of the Holy One, Blessed be He, and His wisdom, by which nature serves (to fulfill) *counsels of old, in faithfulness and truth.*<sup>711</sup> This idea was expounded by the Sages of blessed memory when they stated: <sup>712</sup> "Ben Zoma was once standing on the Temple Mount and saw a crowd of Israelite festival pilgrims. And he said:

707) The Sages.

708) The unwise people.

709) Kapach translates position. (See note 747).

710) Job 27, 17.

710a) See Maimonides' *Treatise on Poisons*, S. Muntner edit. Phila. J. B. Lippincott Co., 1966.

711) Isaiah 25, 1.

712) Tractate Berachoth 58a.

'Blessed is He who has created all these to serve me' ".<sup>713</sup> For he (Ben Zoma) of blessed memory, was unique in his generation.

The second reason for the existence of people who have no wisdom pertains to the fact that wise people are extremely few, a matter which was decreed by Divine intelligence. One may not ask "Why was this necessary?" regarding the matters of ultimate wisdom (of creation). Similarly, one cannot ask "Why are there nine spheres?<sup>714</sup>, why are there seven planets, and four essential elements?"<sup>715</sup> All these, and the customary workings of things, were decreed to be so from the beginning of creation. The Sages, of blessed memory, have expressed (this isolation of the wise) in the statement of Rabbi Simeon Bar Yohai regarding those of his generation, although most of them were worthy:<sup>716</sup> "I have seen people of merit <sup>717</sup> and they are but few. (If there be a thousand, I and my son are among them; if a hundred, I and my son are among them); and if only two, they are I and my son."

Therefore the masses were created to provide company for the wise, so that the latter not remain desolate. You may consider this to be of small value, but it still is necessary and more significant than the first.<sup>718</sup> For the Holy One, Blessed be He, left (remnants of) the wicked in the land of Israel, in order

713) The Talmud continues. "For Ben Zoma used to say: What labors Adam had to carry out before he obtained bread to eat! He plowed, he sowed, he reaped, he bound, he threshed and winnowed and selected the ears; he ground and sifted, he kneaded and baked and then at last he ate; whereas I get up and find all these things done for me. And how many labors Adam had to carry out before he obtained a garment to wear! He had to shear, wash (the wool), comb it, spin it, weave it . . ."

714) The Moon, Mercury, Venus, Sun, Mars, Jupiter, Saturn and the East to West spheres. See Maimonides' *Mishnah Torah*, Laws of the Fundamental Principle of the Torah. Chapter 3.

715) Fire, air, water, earth. *Ibid.* Chapter 4.

716) Tractate Succah 45b.

717) Those destined to go to Heaven.

718) More important than the first reason for the creation of the masses, namely to provide sustenance for the wise.

to provide company for and remove the desolation from the righteous. This is what (is meant when it) is written: <sup>719</sup> *I will not drive them out from before thee in one year lest the land become desolate*. This subject was also explained by the Sages who said: <sup>720</sup> "What is meant by *For this is the whole man* <sup>721</sup> . . . the whole world was created as a companion for him?" It means to remove the sadness and desolation of his solitariness.

Therefore, from all that we have said, it becomes clear that the purpose in the creation of everything in this existing imperfect world <sup>722</sup> is (that they serve) a perfect man full of wisdom and good deeds, as we have stated. If you delve into and learn these two things, namely, wisdom and good deeds, from the explicit or only alluded-to teachings of the Sages, of blessed memory, then you will know the correctness of their statement that "the Holy One Blessed be He in His world has only the four cubits of *Halachah*."<sup>723</sup>

We have digressed from the (original) subject matter with which we were concerned. However, I have discussed these things because they strengthen one's faith and stimulate the quest for wisdom. They are not simple, in my opinion. I will now return to my (original) subject matter.

When Rav Ashi completed the redaction of the Talmud as we know it today, the immensity of his composition and its superlative value served as true testimony that (*He is one*) in whom is the spirit of the Holy God.<sup>724</sup> Within Rav Ashi's

719) Exodus 23, 29.

720) Tractate Berachoth 6b.

721) Eccles. 12, 13.

722) See Maimonides' *Mishnah Torah*, Laws of the Fundamental Principles of the Torah. Chapter 4, 3-4.

723) Tractate Berachoth 8a. *Halachah* refers not only to practical deeds but also to spiritual matters.

724) Daniel 4, 5.

# The History of Halakhah, Views from Within: Three Medieval Approaches to Tradition and Controversy

by **Moshe Halbertal**

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## **Introduction**

Few texts within halakhic literature attempt to describe the history of halakhah. The ones that do, vary from short comments focusing on a particular period to comprehensive and ambitious attempts to structure a chain of knowledge leading from Sinai down to the author's own time. Prominent examples of such text include: Igeret R. Shriria Gaon, the introduction by R. Nissim Gaon to his Sefer ha-Mafteach le-Manulei ha-Talmud, Shmuel ben Hofni's Mavo la-Talmud, Abraham ibn Daud's Sefer ha-Kabbalah, Maimonides' introduction to Perush ha-Mishnah and the Mishneh Torah, Meiri's introduction to Avot and to Berachot, Sh'arei Zion by Yitzchak di-Letas, the Introduction by R. David ha-Kokhavi to Sefer ha-Batim, Chisdai Crescas' introduction to Or ha-Shem, Meggilat Yochasin of Abraham Zakut, Maharshal's introduction to his commentary on Hullin, Naziv's Hakdem Sheelah - his introduction to his commentary on Sheiltot, and few others. Among the concerns expressed in these texts are: establishing an order of transmission of knowledge; analyzing crises within those complicated chains; understanding and describing the emergence of debates and controversies within the body of halakhic knowledge; establishing relations of authority between different generational layers of the tradition. My aim in this essay is not to examine these texts in constructing a history of halakhah, although many of them would be of great value in such an endeavor. My question, is rather: how is the history of knowledge viewed by such texts themselves, and what guides them in their description of the history of the body of halakhic knowledge? The aim of this essay is thus an analysis of certain moments of self-reflection articulated by halakhic authorities concerning the history of halakhic learning, focusing not on the history of this body of knowledge per-se, but as it is viewed from within.

There is yet another more basic question which bears far-reaching implications on our analysis. The history of halakhah is not a traditional subject treated within the framework of halakhic learning [this statement may be true about any historical writing within traditional Jewish sources], and for that reason, moments of self-reflection on history of halakhah in the writings of halakhic authorities are both rare and precious. Since articulating any view whether partial or comprehensive of the history of halakhic learning is not part and parcel of halakhic study itself,

in addition to understanding the substantive picture outlined by an author, we must address a more fundamental issue: i.e., why the author is engaged in such an attempt in the first place, and what connection might be between the way an author structures the history of halakhah and his own work.

I would like to examine three radically different models of the history of halakhah as they are presented from within by medieval authors: Abraham ibn Daud, who follows Geonic tradition; Maimonides who diverts from this tradition; and Nachmanides, who does not offer a complete account of the problem but does seem to have made some important comments leading in a new direction, to be developed further by his students. This controversy concerning structuring the history of halakhic knowledge is rooted in alternative theological concerns, which in turn help to recreate the histories of knowledge. I will like to show how the various methods of structuring the history of halakhah as told from within, affect basic notions of the halakhic process such as the role of legal reasoning, notions of authority, the conception of halakhic "truth" and the place of controversy and its status. The models sketched by each author shape and reformulate the fundamental aspects of the system in a completely different manner.

## **A. The Retrieval View**

Let us turn, first of all, to the view I will entitle the 'retrieval model' held by Abraham ibn Daud, who follows a long tradition among the Geonim. According to this model, the halakhic process is understood as a orally transmitted ody of revealed halakhah from generation to generation. Moses received the entire written and oral Law, and at its source, tradition was complete and perfect. The entire halakhah was revealed and transmitted to us through a continuous unbroken chain of scholars who received from one another. Through time, forgetfulness and carelessness (due also to harsh political circumstances) caused this knowledge to erode. Halakhic reasoning became essential, not merely to organize, justify and transmit given knowledge, but as a vital tool in the desperate attempt to reconstruct, through argumentation, the lost portions of a once complete body of knowledge. The main advantage of such a view lies in the elimination of human creativity in the halakhic process and the grounding of the oral Law in God's revelation. From that perspective, there is no difference between the source of authority - both the oral and the written Torah are founded on direct revelation. It is no wonder that the birthplace of some of the most important articulations of this picture are created in the context of anti-Karaite polemics.[1]

This view of the history of halakhic knowledge, also determines the aim of writing a history of halakhah. The task of such an undertaking is to establish the chain of transmission as continuous with no lapses from Moses to the author's own days. It thus retraces the present halakhah to its source and grounds it in God's revelation to Moses. This aim is expressed in the programmatic statement made by Abraham ibn Daud in his introduction to *Sefer ha-Kabbalah*:

The purpose of this Book of Tradition is to provide students with the evidence that all the teachings of our rabbis of blessed memory, namely, the sages of the Mishnah and the Talmud, have been transmitted: each great sage and righteous man having received them from a great sage and righteous man, each head of an academy and his school having received them from the head of an academy and his school, as far back as the men of the Great Assembly, who received them from the prophets, of blessed memory all. Never did the sages of the Talmud, and certainly not the sages of the Mishnah, teach anything, however trivial, of their own invention, except for the enactments which were made by universal agreement in order to make a hedge around the

Torah.

Sefer ha-Kabbalah seeks to establish the chain of transmission beyond any doubt, and to prove that besides from some takanot, there is no human component in the halakhah. Ibn Daud's view which is certainly connected to anti Karaite polemics continues a long trend in Geonic writings; all of them subscribe to the same view of structuring the history of halakhah and perceive the project of writing such a history as a confirmation of the ongoing chain of transmission.

R. Shrirra Gaon structured the history of halakhah on the same model, although his account is more complex than the mere mention of the links in the chain of tradition. The question posed to R. Shrirra Gaon by Kiruan community articulates the problem: the overwhelming presence of R. Akiba's students in the Mishnah and the fact that the Mishnah was written only in the days of R. Yehudah the Prince, would seem to support the Karaite challenge that the Mishnah is a late invention of the rabbis. In essence, the question troubling the Kiruan community was: If the Mishnah is a received tradition, why did the early sages leave so much of the task of formulating and presenting it in the hands of later generations? In his response, R. Shrirra Gaon cannot merely refer to a chain of transmission, but must address the troubling challenge of Karaism to such a view; the model he formulates is thus complex. Although he adheres to the contention already voiced by Sa'dia that the Mishnah is a received tradition,[2] he claims that the particular halakhot were ordered and formulated in different versions by different schools and that R. Yehudah the Prince based his Mishnah on R. Akiba's version. The halakhot taught by different sages were essentially identical but each had his own manner of presenting and ordering them. The presence of Akiba's students in the Mishnah is not a proof that the halakhot are their own invention but that their version of the Mishnah serves as the basis of R. Yehuda's Mishnah. According to R. Shrirra Gaon, there is a human component to the oral tradition of halakhah, but this component affects only the version of the norms and the method of their organization, but not their content.[3] This variation on the strict notion of tradition enables R. Shrirra to explain the presence of relatively late generations in the Mishnah. In his introduction to Maftiach le-Man'ulei ha-Talmud, R. Nissim Gaon follows the same line of argument: "...We have no need to bring evidence which proves the authenticity of the sages' tradition (kabbalah) ...since our predecessors made it clear, but I will clarify the time in which the Mishnah and the Talmud were written and I will show that the preserved kabbalah and tradition never faded from the nation." R. Nissim then describes the Mishnah in the following terms: "He (R. Yehudha the Prince) made up his mind to gather everything they had in their hands from the tradition ...".

The main problem with such a model is the presence of controversy within the body of halakhic knowledge. If halakhah is independent of the fluctuations of human legal reasoning which naturally produce controversy, why are there controversies in the Mishnah and Talmud? This problem is immediately raised by Ibn Daud, and his answer is that neglect on the part of a certain segment in the chain gave rise to controversy:

Now should anyone infected with heresy attempt to mislead you, saying: "It is because the rabbis differed on a number of issues that I doubt their words," you should retort bluntly and inform him that he is "a rebel against the decision of the court"; and that our rabbis of blessed memory never differed with respect to a commandment in principle, but only with respect to its detail; for they had heard the principle from their teachers, but had not inquired as to its details since they had not waited upon their masters sufficiently. As a case in point they did not differ as to whether or not it is obligatory to light the Sabbath lamp; what they did dispute was "with what it may be lighted and with what it may not be lighted." Similarly, they did not differ as to whether

we are required to recite the Shema evenings and mornings' what they differed on was "from when may the shema' be recited in the evenings" and "from when may the Shema' be recited in the mornings." This holds true for all of their discussions.[4]

In other words, ibn Daud argues, all halakhic knowledge was available and explicit in the earliest stages of tradition, and it is the students, who did not clarify the complete details of all the rules from their teachers, who are to blame for the crisis in the transmission of tradition and for the rise of controversy. . From then on halakhic reasoning evolved as an attempt to uncover a lost body of knowledge due to students' neglect.

The existence of controversy obligates authors who hold such a model to recognize some sort of crisis within the chain of transmission. It includes an implicit dangers as well. Demonstrating the presence of crisis, threatens to cast doubt on the credibility of the process of transmission as a whole. If both neglect and forgetfulness eroded a given body of knowledge transmitted from Moses onwards, what guarantees the credibility of the core of tradition itself? Authors who hold such a view naturally tend to marginalize the extent of controversy within halakhah in order to preserve the credibility of the chain of transmission. Ibn Daud claims that no controversy exists concerning the main body of halakhah: "...Our rabbis of blessed memory never differed with respect to a commandment in principle, but only with respect to its detail".

The picture of the history of halakhah presented by the Geonim reappears in later constructions of the history of halakhah. In Nieto's *Mate Dan (ha-Kuzari ha-Sheni)*, the main elements of *ibn Daud's account are repeated*. Nieto cites the talmudic passage which accounts for the emergence of controversy: "When the disciples of Shammai and Hillel who had insufficiently studied , increased in number, disputes multiplied in Israel and the Torah became as two Torah (T.b. Sanhedrin 88b). He offers the following explanation: "'They studied insufficiently' i.e., they didn't stay with their teachers long enough to receive the interpretation of the principles and thus controversy emerged" (p. 63) One innovative element in Nieto's account - although it naturally follows the internal logic of the scenario - is his conception of the authority of the ancients. According to such a model, the source of the authority of early generations of sages over sages of later generations is in the proximity of the earlier generations to the first stages of the transmission before the process of erosion was enhanced. Karo's argument that the authority of the Mishnah stems from the legally binding agreement made by the Amoraim not to argue with the Tanaim, is explicitly rejected by Nieto. He contents instead that: " ..since they [the Amoraim] thought that all the words of the Tanaim are received (kabbalah) and because the Tanaim had received from earlier generations there was no controversy in what they said" (ha-Kuzari ha-Sheni p. 67). [5]

The retrieval picture of the history of halakhah raised by the Geonim, and articulated by ibn Daud and later authors, thus shapes basic elements of the halakhic process: the account of the emergence of controversy, a clear conception of authority and a definite secondary role for halakhic reasoning. All these are challenged by Maimonides, who presents a different structure of the history of halakhic knowledge.

## **B. The Accumulative View**

Maimonides departed from the Geonic picture of the history of halakhah and from ibn Daud's formulation.[6] He was the first to claim that alongside the received tradition from Moses, the

sages introduced new interpretations of the Torah of their own invention. The halakhic process in Maimonides' eyes, is therefore accumulative, each generation adding substantive norms derived by their own reasoning to the given, revealed body of knowledge.[7] In the previous model, the relation between halakhic reasoning and revelation was that of an attempt to uncover lost data, or to attach received oral material to its source in the written Torah. In Maimonides' view, the relation is one of derivation. The sages, equipped with rules of derivation, deduce from the given material of revelation - both oral and written- new norms which in turn become part of the accumulative material of halakhic knowledge. Only in relation to the newly derived halakhot controversy emerges, since these hermeneutical inferences are not strictly logical inferences where a deduction necessarily follows from given premises.[8] In the received normative material transmitted by the sages of each generation controversy according to Maimonides never occurs. In his view, the phenomenon of controversy is therefore restricted to the normative material which is newly derived by hermeneutical inferences.[9] On this point, in addition to his unique view of the accumulative nature of the history of halakhah and the power of derivation inherent in hermeneutical meta-norms, Maimonides diverts from ibn Daud's account of the emergence of controversy. Maimonides issues a direct and blunt attack on ibn Daud's conception:

"But the opinion of one who thought that also the laws wherein there is disagreement are received from Moses, and that disagreement took place due to an error in receiving the tradition or due to frightfulness, i. e., that one [disputant] is correct in his tradition and the second errs in his tradition, or he forgot or he did not hear from his teacher all that he should have; and he [who holds this opinion] offers as evidence for this what they said, "When the disciples [of Shammai and Hillel] who had insufficiently studied, increased in number, disputes multiplied in Israel and the Torah became as two Torot" . Behold this, as God knows, is a despicable and very strange position, and it is an incorrect matter and not compatible to principles. And he {who holds this position} suspects people from whom we received the Torah and this is falsehood." .

Controversy, as Maimonides explains in the next passage, actually arises due to the inherent limitations of legal reasoning, while he describes the ibn Daud's model in harsh terms as 'despicable and very strange'. The students of Hillel and Shammai are not to blame for neglect in transmission of tradition:

And when the study of their students became less and the methods of argument became weakened for them in comparison to Shammai and Hillel, their teachers, disagreement befell them during the give-and-take on many issues, because each one of them reasoned according to the power of his intellect and according to the principles known to him...And in this manner befell disagreement, not that they erred in their receiving of tradition and one's tradition is true and the other's false...

It seems that the problem which concerns Maimonides is that by the attempt to ground the Mishnah and the Talmud in the solid foundation of revelation and tradition, tradition itself is put into question. By explaining controversy as neglect and forgetfulness in the process of transmission, proponents of the retrieval model thus cast doubt on the reliability of tradition. In Maimonides own words one who make such a claim "suspects people from whom we received the Torah". Paradoxically, ibn Daud's minimization of human inventiveness in the history of the halakhic process results in the undermining of the authority of tradition. On the other hand, Maimonides' attempt to guard the purity of the process of transmission in the history of halakhah, detaches a major portion of the legal material from its direct grounding in revelation

and gives rise to a contingent foundation for the authority of the oral law.

According to Maimonides, while no argument can be raised against the received material of halakhah, a later generation can in principle debate the newly derived halakhot of previous ones. The authority of the Mishnah cannot rest solely on tradition, since in those areas of debates there is no tradition; its authority, rather, rests on the fact that the Mishnah and the Talmud were widely accepted by the nation of Israel as a whole. Theoretically Amoraim could have argue with Tanaim, and Geonim with Amoraim, concerning the newly derived halakhot which constitutes most of the material of the Mishnah. The Mishnah's and Talmud's authority is thus founded on the historically contingent fact of acceptance, a ground for authority that was rejected by later adherents to the geonic approach. The Maimonidean accumulative model, which opposes the geonic tradition, provides an alternative understanding of legal reasoning and its role both in controversy and intergenerational authority. According to the Maimonidian accumulative view, the role of legal reasoning is not to retrieve but to derive; controversy arises in the process of derivation rather than through a crisis in transmission, and the authority of the Mishnah and Talmud is based not only in manifesting an ongoing chain of tradition but also in the historically contingent fact of widespread acceptance. These two variant accounts of the history of halakhah especially the emergence of controversy, provide completely different understandings of its fundamental aspects.

It is important to stress, that according to both ibn-Daud's and Maimonides' accounts, the spread of controversy is viewed as a fall, since both - for completely different reasons - assume a notion of truth in halakhah. Ibn Daud's conception, can be described as a simple correspondence theory of halakhic truth. An halakhic opinion is defined true or false relative to the complete revelation of Sinai. For example, in a controversy concerning the proper time to recite the Shema at the evening, the determination of the true opinion or the false one is dependent on the question which opinion corresponds to the rule which was given at Sinai and was lost in the process of transmission. As we saw Maimonides rejected this correspondence theory of halakhic truth, since he asserts that in case of controversy there was never a prior received tradition which can serve as a criterion to examine the correctness of the matter. Nevertheless, Maimonides does assume a conception of halakhic truth which is analogous not to correspondence theory of truth but to what in modern philosophy is called coherence theory of truth. According to Maimonides, a margin of debates is inevitable in human legal reasoning, since such a reasoning is not conducted within the framework of strict logical deductions. Yet, in principle, a high quality of deductive powers combined with shared premises and methods of deduction, a correct and agreed upon answer can be reached. Such an answer will be correct in the sense that it successfully coheres with the earlier premises which this new conclusion has been derived from. Its correctness is not a function of its not in the sense of corresponding to a prior given halakhic tradition grounded in the complete revelation. According to Maimonides, it is for this reason that Hillel and Shammai who shared the deductive method and high quality of deductive powers had only very few halakhic disputes:

...for when two people are identical in understanding and in study and knowledge of the principles from which they learn, there will not occur at all between them disagreement in what they learn by one of the hermeneutic principles, and if there will disagreements they will be few just as we have never found disagreements between Hillel and Shammai other than in a few laws, for their methods of study in all they would lean by one of the principles were similar to one another, and also the correct general principles which were held by one were held by the other

Maimonides then proceeds to explain why in the period of the students of Hillel and Shammai disputes increased: "And when the study of their students became less and the methods of argument became weakened for them in comparison to Shammai and Hillel, their teachers, disagreement befell them during the give-and-take on many issues,...". Maimonides claims that the students of Shammai and Hillel cannot be blamed for the increase in disputes, in the way ibn Daud implies. Unfortunately there is a natural gap between intellectual skills of different scholars and no one can be blamed for not reasoning above his skills. Yet, in case of high quality of intellectual capabilities with the application of correct legal reasoning, disputes could be significantly minimized. The retrieval view of ibn Daud and the accumulative approach of Maimonides imply a different conception of what counts as a true correct halakhic opinion.[10] Let us turn to the third model which altogether breaks with the very conception of a correct halakhic answer.

### **C. The Constitutive View**

Although less developed, the third model can be traced to the writings of Nachmanides and his students, the fourteenth century Catalanian scholars Yom Tov Ishbili (Ritba) and Nissim Gerondi (Ran). This approach, which I will call the constitutive model, has its source in the explanation Nachmanides provides for obeying every legal ruling made by the court even if it says "of the right that is left and of the left that is right": "...Scripture, therefore, defined the law that we are to obey the Great Court...For it was subject to their judgment that He gave them the Torah, even if it appears to you to exchange right for left". This explanation does not recognize an a-priori right and left; rather, the court itself defines what is right and what is left. In other words, the court cannot be mistaken about the halakhah, because it has the privilege granted by the author, to constitute the very meaning of the text.[11] According to the constitutive view, legal reasoning does not retrieve a given lost body of knowledge, nor does it derive new norms from a fixed body of transmitted tradition, but rather it constitutes those norms. Nachmanides' explanation - "For it was subject to their judgment that He gave them the Torah" reappears in his students' work who provide new account for controversy. While both ibn Daud's and Maimonides' attempt to explain the rise of controversy focused on the story of the students of Hillel and Shammai which describes controversy as a sign of decline Ritba comments instead, on a talmudic statement with a different orientation to the problem:

"These and these are the words of the living God'. The French Rabbis of blessed memory asked how it were possible that both positions could be the words of the living God when one prohibits and the other permits, and they answered: When Moses ascended to heaven to receive that Torah they have shown him forty nine reasons for prohibition and forty nine reasons for permission concerning each rule. He asked God about this and God answered that the matter will be given to the sages of Israel in each generation and the ruling will be as they decide.[12]

The same question is raised by Nissim Gerondi in his *Derashot ha-Ran*, and his answer explicates in fullness the constitutive account of the history of halakhah:

It is a known fact that the entire Torah, written and oral, was transmitted to Moses, as it says in the tract *ate Meggilah*, R. Hiyva bar Abba said in the Name of R. Yohanan: The verse:...and on them was written according to all the words.." teaches that the Holy One blessed be He showed Moses the details prescribed by the Torah and by the Sages, including the innovations they

would later enact. And what are those? the reading of Meggila. The 'details' provided by the rabbis are halakhic disputes and conflicting views held by the sages of Israel. Moses learned them all by divine word with no resolution every controversy in detail. Yet [God] also gave him a rule whose truth is manifest, i.e., 'Favor the majority opinion'....as the sages of that generation saw fit, for the decision had already been delegated to them as it is written: 'And you shall come to the priest the Levites , and to the judge that shall be in those days' and 'You shall not deviate....."

Unlike ibn Daud's explanation that controversy arises through a crisis in the process of transmission and unlike Maimonides who claimed that controversy begins with the introduction of the human component in the creation of halakhah, both Ritba and Nissim Gerondi describe controversy as rooted in the very structure of revelation. The body of knowledge transmitted to Moses was not complete and final as ibn Daud described it, but rather open-ended, including all future controversies as well. Moses passed on this multifaceted body of knowledge and left it to the court in each generation to constitute the norm. The process of the dissemination of knowledge is thus perceived as the inverse of ibn Daud's model. Ibn Daud represents a complete and a clear cut body of knowledge at tradition's starting point, which gradually erodes and becomes open-ended through neglect. In the Ritba and Ran's account open-endedness and multifacedness is the starting point while in time this open-ended body of knowledge becomes definitive, each generation constituting - out of the multiplicity of options transmitted to them - clear-cut norms. In this respect the constitutive model differs as well from the Maimonidean accumulative approach, and in his argument that controversy arose through the attempt to derive newly reasoned norms from a clear-cut body of knowledge.[13] In addition to a completely different account of controversy and history of knowledge, this approach offers an alternative view of legal reasoning. Legal reasoning is not used to reconstruct and restore a lost, perfect moment, nor is it used to derive new norms by way of induction from given clear premises. Instead, it constitutes and shapes an open-ended body of material. This model affects notion of authority as well. The authority of the scholars in matters of halakhah, does not rest on proximity to the source, which is open-ended in any case. It is based on a privilege given by the Torah itself that norms should be constituted by the sages. A challenge to the interpretative process through an appeal to true 'true' meaning of the text is ruled out, since it is the court that constitutes this meaning out of the multiplicity of given options. It comes as no surprise, then, that in the constitutive view generational gaps are in theory not crucial. Indeed, the Ran continues to say: "Permission has been granted to the rabbis of each generation to resolve disputes raised by the Sages as they see fit, even if their predecessors were greater or more numerous. And we have been commanded to accept their decisions, whether they correspond to the truth or to its opposite".

Nachmanides was the first halakhist to introduce the bold conception that the Torah was given: 'subject to their [the sages] judgment that He gave them the Torah'. As was shown above, this statement provided the foundation for the constitutive approach among his school. Yet, it is important to stress that the statement was understood differently by Ritba and the Ran. In addition it received a third explication by another author who belonged to Nachmanides school the anonymous author of Sefer ha-Chinukh. Ritba understood revelation as completely open-ended and pluralistic, attributing from God's point of view equal weight to each side of the debate. The sages have in such a case a strong constitutive power to determine and shape the law out of multiple equal options. In contrast, the Ran argues that although God revealed the Torah with different opposing options, from God's own perspective there is a right answer. Such a right answer can even be accessed for example by a prophet, or expressed directly by God through a

'bat kol' a heavenly voice. The Ran argues innovatively that although there is a right answer, from God's point of view, and although the sages are aware of that right answer, they have to follow their own understanding since 'Torah is not in heaven'. The Ran's position is manifested in his explanation of the famous story of 'Tanuro shel Achnai', where the sages refused to follow the heavenly voice which ruled according to their opponent R. Eliezer:

..they all saw that R. Eliezer follows the truth more than them, and his mirales were all true and right and it was ruled from heaven according to his [R. Eiezer's] opinion, nevertheless they acted according to their ruling. Since their reason tended to declare [the oven] impure, even though they knew that they rule opposite the truth they did not want to purify, because if they ruled [the oven] pure they would have transgressed the words of the Torha. This is the case because their reason tended to [rule the oven as] impure and the ruling was granted to the sages of the generation - whatever they decide it is what God commanded.

According to the Ran, the sages who argued with R. Eliezer knew God's contrary opinion on the matter through the heavenly voice induced by R. Eliezer, nevertheless they followed their own understanding. The rule that the 'Torah is not in heaven', grants the sages a constitutive privilege, even against God's own choice. The sages constitute the truth of the matter from the human point of view aided by their reasoning, autonomously from their knowledge of God's opinion. Thus, the Ran differs from the Ritba in understanding the constitutive privilege of the sages as formulated by Nachmanides (both use Nachmanides own terminology). Ritba, on the one hand grants a greater constitutive power to the sages, since they shape the truth of the matter out of a completely open-ended revelation. On the other hand, although the sages constitutive power - according to the Ran - is more limited in its scope, it is more daring in its application. Since, according to the Ran, the sages constitute halakhic answers even against what they know to be God's view of the matter. Yet, inspite of their differences the Ritba and the Ran share the constitute approach. Both describe controversy as rooted in revelation itself, and both assume a constitutive power of the sages.[14] In that respect they deeply differ from the retrieval and the accumulative models of Ibn-Daud and Maimonides.

Each of these three 'histories' has a history of its own in the writings of halakhic authorities after the Middle Ages which needs further exploration. Among them I would like to present a fascinating responsum of R. Yair Bakhrakh. In this responsum which appears in Bakhrakh Havot Yair, all three models are juxtaposed. Through his attempt to find his own way among the different alternatives, Bakhrakh sheds light on internal problems inherent in each model, and his discussion is of great value for further explication of what is at stake in the way the history of halakhah is perceived.

In the first part of his responsum Bakhrakh marshals an impressive amount of counter-evidence, to Maimonides view that on laws that were given to Moses at Sinai there is no controversy. Through his long and detailed criticism of Maimonides' position, R. Yair Bakhrakh shows that the Talmud is full of controversies concerning such norms. Among the interesting talmudic material Bakhrakh uses are not only the actual controversies that exist throughout the Talmud on 'halakhot le-Moshe me-Sinai', but aggadic material as well that attests to the pervasiveness of forgetfulness. Three thousands halakhot were forgotten after Moses' death, and even Moses himself forgot halakhot that were given to him at Sinai. Forgetfulness is imminent from the very moment of reception and tradition can only erode further in each subsequent stages of transmission. Bakhrakh's explanation for the rise of controversy is thus similar to ibn Daud's and the motif of forgetting is present throughout his responsum. He concludes: 'It is clear that forgetfulness and controversy are present in halakhah le-Moshe me-Sinai'. (Havot Yair, 192)

After refuting Maimonides position, Bakhrakh has a wonderful formulation of what is at stake in this debate:

Behold, the Rav [Maimonides] built a fortified wall around the oral law - in writing that concerning [the received traditions from Moses] forgetfulness never exists. Would that we could strengthen and rebuild such a wall! What in my [Bakhrakh's] opinion is impossible. Indeed, all that was gained [in Maimonides' position that there are no controversies concerning the norms Moses received] was lost, through his declaration that the remainder of the Sages' controversies - which constitute most of the oral Torah and almost all of the Mishnah- are not from Sinai.

Bakhrakh points out that the price paid by Maimonides' position, which strengthens the credibility of tradition by ruling out the possibility of controversy, is to exclude most of the oral Torah, replete as it is with controversies, from its divine source at Sinai. Bakhrakh, supported by massive evidence from the Talmud itself, opts for a counter-Maimonidean history of knowledge which roots the entirety of oral law in revelation. He thus arrives at a position very similar to that of ibn Daud's. But in the heat of his debate with Maimonides, Bakhrakh distanced himself from the retrieval model on an important point. As I mentioned earlier this model typically marginalizes the place of controversy. Bakhrakh's affirmation - central to his argument against Maimonides - that most of the Mishnah and the oral Torah is replete with controversies - is a diversion from the retrieval model . This argument, used so skillfully against Maimonides, seems, in fact to undermine Bakharakh's own position. If Bakharakh is right in simultaneously asserting two positions i.e., that all of the oral law was given at Sinai and that the Mishnah is composed almost entirely of debates, it follows that most of the oral law was forgotten. It makes sense to base the authority and meaning of the oral law in revelation at Sinai if we marginalize the place of controversy, as ibn Daud and Nieto asserted. If most of the oral Law was indeed forgotten, not much is gained by claiming that it was all given at Sinai. Under the pressure of this problem, Bakhrakh explores the constitutive approach - that all of the oral law was given at Sinai including controversies. His examination of this view reveals other internal conflicts in the attempt to portray an ideal structure of the history of knowledge:

And concerning the statement in the first chapter of tractate Berakhot, that the Mishnah and Talmud were given to Moses from Sinai, there is yet a vital issue demands investigation: Does that mean that all the opinions mentioned in the Mishnah and Talmud and their counterparts were revealed to Moses? As it is said in the tractate Hagigah, the verse "all were given by one Shepherd", refers to the opinions of those who defile and those who purify, those who disqualify and those who approve, those who prohibit and those who permit, those who obligate and those who acquit. And the Ritba said that the expression "These and these are the words of the living God" means that God told Moses that ruling should be handed over to the generation's sages....

Bakhrakh then proceeds to criticize the constitutive view:

..This is questionable, since what advantage could come from the sages' decision that something is pure if it is truly impure and that [truly impure thing] has the power to arouse the Kelippah and defilement and the Sitra Akhra? Of what good is a physician's contention that poison is the elixir of life? We could content ourselves with what, in truth, is an unsatisfactory explanation, saying that impurity and the evil husks do not gain strength with every instance of contact or eating or intercourse or any loathsome act, but only because certain acts are evil and despicable in the eyes of God; and if God would say that the court can decide the matter as they wish, no harm would be done...

Bakhrakh's discussion of the constitutive model links the view of the history of halakhah with the problem of the meaning and effect of the *mizvot*. According to Bakhrakh, the claim that the Torah was given open-ended and left to the sages' future decisions is incompatible with a strict ontological conception of the commandments. According to such a conception, halakhic categories such as pure and impure do not reflect mere legal concepts. They are, rather, causally connected to the very nature of reality. The proper analogy to impurity is poison. This view of halakhic categories defines a strict notion of truth in the legal process. Something is truly impure if it affects reality in a negative manner and vice versa. Therefore, such a view of the causal impact of halakhic categories makes those categories completely independent from human decisions. Just as a physician's pronouncement that a poison is curative is devoid of sense so the sages' ruling that something truly impure is pure has no meaning [15] The constitutive approach is thus completely foreign to a strict ontological conception of *mitzot*. The problem of the place of human creativity in halakhah, as reflected in opposing accounts of its history, is thus connected to a deeper issue of the ontological status of halakhic legal categories.

Bakhrakh, who adheres to the ontological view, attempts to reconcile it with the constitutive approach. According to his reformulation, reconciling the two, the ontological impact of halakhic categories ought to be mediated through God's will. There is nothing in the nature of impurity as such that affects reality. Rather, it is because impurity is despicable in God's eyes that it has a negative impact on reality. Therefore, if God grants the court the privilege to distinguish pure from impure, that will in turn bear a causal impact on reality. According to this reformulation of the causal connection, there is nothing "truly" impure as such, but only through God's will. Bakhrakh's discussion of the constitutive view introduces the tension between the ontological qualities he attributes to halakhic categories, and the open-endedness of revelation, which depends on future human decisions. Although he formulates an ontology that seems to solve the problem, Bakhrakh is dissatisfied with the solution. In the continuation of the responsum he returns to explore the Ritba's formulation and rejects it:

Concerning what is written in the first chapter of Erubin, "These and these are the words of the living God", and in the fourth chapter of Hagigah "all of them [conflicting opinions] were spoken by one God": The Ritba wrote that God gave Moses forty nine arguments for [a ruling of] impure, and forty nine for [a ruling of] pure, and that the final decision should be left to the sages of Israel....How very strange it is to say that God did not express His true opinion and will concerning the halakhah and the interpretation of scripture. In fact, the opposite is more reasonable - that in apprehension of controversy God should have clarified the norms and made His will known. ....Therefore on what basis can one fabricate the contention that God pronounced a mistaken opinion along with the true opinion? Perhaps He said only the truth but it was forgotten...

In a pattern very similar to his criticism of Maimonides' accumulative history of halakhah, Bakhrakh criticizes Ritba's constitutive approach. The Ritba's attempt to ground all of the oral Law, including contradictions, in open-ended revelation undermines the element of truth in revelation. It is interesting to note that R. Yair Bachrach faces a tension inherent to his kabbalistic background. On the one hand, the theology of Kabbalah that pictures God as a multi-dimensional organic being, allows for a conception of an open-ended revelation filled with many contrary opinions mirroring God's own inner multiplicity; and indeed many formulations of an open-ended pluralistic revelation are cast in kabbalistic terminology. [16] On the other hand, the ontological view is at the center of kabbalistic conceptions of halakhah. Bachrach opts for the strict ontological view, and claiming that open-ended conceptions of revelation undermine the

ontological causal effect of halakhah. Faced with this dilemma, Bakhrakh returns to the retrieval model: truth was given in complete and definitive form at Sinai but it was forgotten. By juxtaposing all three models Bakhrakh's fascinating discussion reveals the internal tensions inherent in all three of them. Do we have to safeguard tradition at the expense of the exclusion of debates from revelation, debates which make up most of the Mishnah? Must we include controversies in the open-ended revelation at the expense of the very idea of halakhic truth and the ontological effect of legal categories? The alternative to the accumulative and constitutive models - the retrieval model - is what Bakhrakh chooses. Yet the undeniable impression remains that the pervasive presence of forgetfulness in the retrieval model troubles Bakhrakh all through the responsum. At times he seems to be less like a proponent of any one position, than a juggler who would like to keep all three of them in the air at the same time.

We have examined three different histories of halakhah and especially the emergence of controversy as they are described from within. Each structures the basic conceptions of the halakhah in its own way through the story it tells about its history.[17] The role of legal reasoning, the emergence and account of controversy, and notions of authority - elements that are fundamental to any legal system - are shaped differently in each of the three versions. In addition essential to each model is a different understanding of truth in halakhah. Ibn Doubt's retrieval model assumes a correspondence theory of halakhic truth, Maimonides' accumulative model implies a coherence notion of halakhic truth, and the constitutive model as presented by the Ritba, undermines the very idea of an a-priori criterion for examining such an issue. In R. Yair Bakhrakh discussion a fourth conception of halakhic truth was introduced, that of ontological causal affect on the state of the world. As told from within these histories attempt not to uncover the past for its own sake, but to organize the complex legal reality into a coherent structure. In this respect, they function like mythologies which account for the most fundamental aspects of human reality - death, birth, labor, evil and so on. The complex matrix of life cannot be reduced to one story, and for that reason the body of halakhic literature present us with multiple ones.

*The Book of Commandments.* Judah the Prince's Mishna corpus recognizes a distinction between laws and rituals that carry the sanction of the "Torah" and others that carry the lesser sanction of "the rabbis."<sup>184</sup> In the Babylonian Talmud, the contrast between the two levels is ubiquitous, and as the distinction is drawn there, the higher level, the category of "Torah," includes both what is explicit in the Written Torah as well as the interpretation and supplementation provided by oral tradition.<sup>185</sup> The line is drawn between the laws and rituals of the Written Torah together with their Oral Torah enhancement, on the one hand, and laws and rituals instituted by the rabbis, on the other.

The Babylonian Talmud introduces a further notion, namely, that exactly 613 commandments were communicated to Moses. The pivotal passage in the Babylonian Talmud credits the notion to a certain R. Simlai, a Palestinian rabbi who was active about the end of the third and the beginning of the fourth century, a man whose reported expertise lay in aggada, not halaka, and consequently someone who stood outside the circle of rabbinic figures wielding authority in the ritual and legal sphere. R. Simlai, according to the key passage, "taught [*darash*]: 613 commandments were stated to Moses, 365 negative commandments, paralleling the number of days of the solar year, and 248 positive commandments, paralleling the number of discrete segments [*evarim*] in [the body of] a human being."<sup>186</sup> Negative commandments are those prohibiting something, typically taking the form "thou shalt not." Positive commandments are those dictating something, typically taking the form "thou shalt."

The statement recorded in the name of R. Simlai leaves a good deal open. The intent could be that all of the 613 commandments stated to Moses are explicit in the Written Torah but it could also be that some are known only through the Oral Torah enhancement. The statement does not even indicate whether the 613 were all preserved and handed down to posterity. The Babylonian Talmud itself asserts that hundreds or even thousands of "halakot" and dialectical inferences were lost when Moses died. When the matter is considered entirely from the rabbinic standpoint, it would therefore be quite possible that some of the commandments given to Moses were forgotten and lost forever at his death or later.<sup>187</sup>

<sup>184</sup>Mishna, *Yadayim* 3:2. Other instances: Mishna, *Shebi'it* 10:3; *Yebamot* 2:4; *Gittin* 4:2-9; *Tohorot* 4:11; *Tebul Yom* 4:6.

<sup>185</sup>See the passages cited by Bacher, *Die bibel- und traditionsexegetische Terminologie der Amoräer* (n. 38 above) 2.

<sup>186</sup>BT *Makkot* 23b. For variants, cf. Maimonides, *Sefer ha-Miṣvoth*, ed. Ch. Heller, 2nd ed. (Jerusalem 1946) 5, note 1.

<sup>187</sup>BT *Temura* 15b-16a. Maimonides quotes the passage for a different purpose in his *Book of Commandments* (n. 27 above), rule 2, p. 15. He reasons that since the dialectical inferences made by Moses numbered in the thousands, they could not be what the Babylonian Talmud has in mind when it speaks of 613 commandments given to Moses. The point he wants to make is that a regulation validated only by being deduced from Scripture through the canons of rabbinic dialectic does not qualify for inclusion in the 613.

The dictum ascribed to R. Simlai looks, indeed, as if he, or the tradition transmitted in his name, did not reach the figure empirically and a posteriori, so to speak, that he—or it—did not painstakingly seek out all the commandments communicated to Moses, count them, and discover that the number came to exactly 613. The figure looks as if it was fixed a priori, by adding the days of the solar year to the number of segments of the human body.<sup>188</sup> The object of the dictum would accordingly be hortative. Every Jew, the preacher would be exhorting his listeners, must observe God's prohibitions each day of the year. Every Jew must mobilize each part of his body in fulfilling God's positive commands.<sup>189</sup>

The pivotal passage, as already said, appears in the Babylonian Talmud. No mention of, or allusion to, 613 commandments received by Moses is found in the Mishna. The number is not mentioned or alluded to in other preserved rabbinic compositions belonging to the same stratum of rabbinic literature as the Mishna and dating from roughly the same period—the corpus of mishnaic material known as the *Tosefta* and the compilations of midrashic material of a halakic character which represent themselves as the work of rabbis who lived in the period up to the publication of Judah the Prince's Mishna.<sup>190</sup> The Palestinian Talmud knows nothing of the notion.<sup>191</sup> Three other passages within the Babylonian Talmud do refer to a total of 613 commandments, all in nonhalakic contexts, and each time, the number is treated as something commonly known and accepted.<sup>192</sup> References to 613 commandments appear as well in compilations of midrashic material which are contemporaneous with, or later than, the Babylonian Talmud.<sup>193</sup> Neither the Babylonian Talmud nor the midrashic compilations that speak of 613 commandments ever list them or suggest what, exactly, they comprise.

Centuries later, in the Middle Ages, a question would be posed from the standpoint of rabbinic jurisprudence. It would be asked whether the opinion of the Palestinian rabbi who set the number of Mosaic commandments at 613 should be taken as normative. His could be a minority opinion, whereas the majority or

<sup>188</sup>Mishna, *Oholot* 1:8, distinguishes 248 segments of the human body.

<sup>189</sup>BT *Makkot* 23b-24a cites a midrashic argument in the name of another rabbi in order to corroborate the number 613.

<sup>190</sup>Printed editions of *Mekilta: Ba-Hodesh-Yitro* §5 have the number 613, but that is apparently an interpolation, since the manuscripts do not have it. See *Mekilta d'Rabbi Ismael*, ed. H. Horowitz (Jerusalem 1960) 222. Printed editions of *Sifre: Deuteronomy* §76, speak of "305 negative commandments of the Torah," but the best sources have instead: "300 positive commandments." See *Sifre on Deuteronomy*, ed. L. Finkelstein (Berlin 1939) 141, and note.

<sup>191</sup>The Palestinian Talmud, *Ta'anit* 4.8 (5), has a version of the passage that appears in BT *Yebamot* 62a and *Shabbat* 87a (see next note), but whereas the version in the two Babylonian Talmud tractates gives 613 as the number of the commandments, the version in the Palestinian Talmud gives no number. That strongly suggests that the number was not originally part of the passage and was added by the redactors of the Babylonian Talmud.

<sup>192</sup>BT *Shabbat* 87a; *Yebamot* 47b; 62a (identical with *Shabbat* 87a); *Nedarim* 25a; *Shebu'ot* 20a (virtually identical with *Nedarim* 25a).

<sup>193</sup>See *Sefer Enayim* on BT *Makkot* 23b; A. Rabinowitz, *Taryag* (Jerusalem 1967) 40.

consensus, and hence authoritative, position could be that the commandments enjoying Mosaic sanction add up to a different number. Or perhaps they are not reducible to any definitive number at all.<sup>194</sup>

If Maimonides had thought that a difference of opinion obtained within the classic rabbinic sources regarding the number of Mosaic commandments, he would have had to rule out the possibility of ascertaining what the normative position is. For when he encounters differences of opinion among the ancient rabbis regarding matters of belief, he departs from his practice of determining which among the diverse recorded positions on an issue is authoritative. In his words: "Where differences occur between the rabbis regarding opinions involving no action, the halakic norm cannot be affirmed to be in accordance with the opinion of so-and-so" over against the opinion of those who disagree.<sup>195</sup> In effect, he is saying, the rules that evolved in talmudic and posttalmudic times for deciding between opposing positions recorded in the classic rabbinic texts are designed for legal and ritual matters. Inasmuch as the exact number of the laws and rituals given to Moses is not itself a ritual or legal issue, if a difference of rabbinic opinion obtained regarding the number, Maimonides' guideline would preclude the possibility of determining which opinion is normative and which is not.

Despite the questions that might be raised, the notion of exactly 613 commandments' having been given to Moses struck root in rabbinic circles. It consequently became inevitable that efforts would be made to determine precisely what they are. What is generally considered to be the oldest attempt to identify them is made in the preface to *Sefer Halakot Gedolot*, a comprehensive and influential code of rabbinic law, which Maimonides and historians today ascribe to a little-known ninth-century rabbinist named Simeon Kayyara.<sup>196</sup> The preface enumerates concisely and without elaboration 613 commandments that, in its formulation, "Israel"—rather than Moses—"received on Mount Sinai."<sup>197</sup> Other rabbinic writers as well as authors of liturgical poetry followed with their

<sup>194</sup>Nahmanides, Critique of Maimonides, *Sefer ha-Miṣwot*, first rule; S. Duran, *Zohar ha-Raqi'a* (Vilna 1879) 117; English translation of the Duran passage: E. Urbach, *The Sages* (Jerusalem 1979) 1.343–44. As we shall see, multiple obligations can sometimes be construed as a single commandment.

<sup>195</sup>Commentary on the Mishna, *Shevu'ot* 1:4. Similarly in Commentary on *Soṭa* 3:3, and *Sanhedrin* 10:3.

<sup>196</sup>Maimonides mentions Simeon Kayyara in *Book of Commandments* (n. 27 above) rule 10, 43, in a manner showing that he takes him to be the author of *Halakot Gedolot*. It has been argued that the commandments were enumerated in liturgical pieces preceding *Halakot Gedolot*; see M. Guttmann, *Behinat ha-Miṣwot* (Breslau 1928) 9–10. The argument is strongest in the case of the liturgical composition beginning with the words *Atta hinhalta Torah le-ʿammeka*.

<sup>197</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer (Jerusalem 1971–1987) 3, appendix, 112, and the alternate version, *Sefer Halakot Gedolot*, ed. A. Traub (Warsaw 1875), introduction, 6. At an earlier point, the version published by Traub, introduction, p. 4, quotes R. Simlai's statement in a different form. The matter is discussed in the Hildesheimer edition, 3, appendix, note 324.

enumerations. Scholars in medieval and modern times have found the list in *Halakot Gedolot* to be fraught with problems, and some of the problems have a bearing on our subject.

The preface to *Sefer Halakot Gedolot* does not divide the commandments into the two categories, 365 negative commands and 248 positive commands, which the seminal statement reported by the Babylonian Talmud in the name of R. Simlai would require. Instead, it muddies the picture by introducing additional categories. It starts by distinguishing six types of capital punishment, treating each as a category in its own right, and classifying under them 71 sins and crimes that, by divine Law, entail a death penalty of one type or another. It goes on to enumerate 277 negative and 200 positive divine commandments. And it arrives at the figure 613 with the help of still another category, which it calls the 65 "scriptural sections of statutes and ordinances for which the community is responsible," in other words, sections of the Pentateuch containing commandments incumbent on the community rather than on the individual.<sup>198</sup> Some of the "scriptural sections" in this last category contain subheadings. One section, for instance, comprises the regulations for establishing a high court (the Great Sanhedrin), for establishing intermediate courts, for judging cases in which the punishment is monetary in character, for judging cases in which the punishment is a whipping, and for judging cases in which the punishment is the death penalty. Those look like not one, but multiple commandments, and the enumerating of sections for which the community is responsible therefore looks like a device for squeezing extra commandments into a nominal enumeration of 613.

The problematic nature of the scheme is compounded when items crop up more than once. Sometimes what seems to be the same item occurs more than once within the very same category,<sup>199</sup> and sometimes an item appearing in one category reappears in a second. Thus a half dozen transgressions that are included under one or another of the types of capital punishment reappear in the category of negative commandments: "Desecration" of the Sabbath is listed among the sins punishable by death through stoning, while the divine prohibition against doing "any manner of work" on the Sabbath is listed separately in the category of negative commandments; murder is listed among sins punishable by beheading and again as a negative commandment; and so on.<sup>200</sup> Then, eighteen items from the earlier categories reappear in the list of scriptural sections for which the community is responsible.<sup>201</sup> Commentators on *Halakot Gedolot* have long taken up the challenge of showing why the apparent doublets are not doublets at all but represent

<sup>198</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, 25–112.

<sup>199</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 126, 231, 267, 446, 468.

<sup>200</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 47, 52, 61, 62, 1, 225, 360.

<sup>201</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 408, 424, 434, 442, 453, 454, 456, 466, 469, 470, 473, 476, 477, 478, 481, 482, 483, 486.

distinct items. The classifying of "desecration" of the Sabbath among sins punishable through stoning side by side with the listing of a negative commandment prohibiting "any manner of work" on the Sabbath has been resolved as follows: The desecration punishable by stoning comprehends most forms of labor on the Sabbath, whereas the negative commandment prohibiting "any manner of work" is concerned with labor not punishable by death, such as driving an animal on the Sabbath.<sup>202</sup> While that particular explanation may work after a fashion, many of the attempts to interpret away doublets—such as the murder doublet—stretch ingenuity beyond the breaking point.<sup>203</sup>

There is yet a further problem. The Babylonian Talmud had characterized the commandments in question as laws "stated to Moses," and *Halakot Gedolot* described them as commandments that "Israel received on Mount Sinai." Yet the list contains items that are clearly post-Mosaic.<sup>204</sup> In the two most blatant instances, *Halakot Gedolot* includes within its enumeration of positive commandments received at Sinai the reading of the Esther scroll on the Purim holiday and the lighting of candles on the Hanukkah holiday.<sup>205</sup> The Purim holiday commemorates events that are dated a millennium after the revelation at Sinai. The Hanukkah holiday commemorates events that took place still later. How could ceremonies attached to those two holidays be commandments stated to Moses, in the language of the Babylonian Talmud, or given to Israel at Sinai, in the language of *Halakot Gedolot*?

When we turn to Maimonides, we find him accepting without a second thought that, as he puts it: "613 commandments were stated to Moses at Sinai, 365 paralleling the days of the solar year, and 248 paralleling the segments in [the body of] a human being." Again: "The totality of commandments that are contained in the Book of the Torah and that God ordered us to observe is 613." The dictum is reported by Maimonides not as the opinion of an individual rabbi but as a "text of the Talmud" and a doctrine that "they," that is, the rabbis of the Babylonian Talmud in general, espoused.<sup>206</sup> We saw earlier that legal traditions transmitted from the time of Moses and making up the Oral Torah are, so Maimonides understands, characterized by the absence of any recorded difference of opinion concerning them in the classic rabbinic texts. Perhaps the handful of references to 613 commandments in the Babylonian Talmud, with no suggestion of a dissenting opinion, convinced him that here too he was in the presence of an ancient and authoritative tradition.

<sup>202</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 47.

<sup>203</sup>See the notes in Hildesheimer's edition which I have cited above.

<sup>204</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 324.

<sup>205</sup>*Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, notes 378, 420.

<sup>206</sup>Maimonides, *Book of Commandments* (n. 27 above), introduction, p. 7; rule 1, p. 9. *Mishneh Torah*, introduction.

Maimonides' *Book of Commandments* is the composition that he devoted to the enumeration of the 613 commandments. In the introduction, he writes that he was drawn to the subject after completing what he calls his "well-known" Commentary on the Mishna. As his next major work, he contemplated a comprehensive code of Jewish law, and he wanted to ensure that he would overlook nothing pertinent, neither legal and ritual obligations prescribed by the Torah nor obligations instituted by the rabbis. To that end, he needed an exhaustive list of the commandments given to Moses and carrying the sanction of the Torah.

As he considered possible ways of proceeding, the "grief" from which he "had already suffered for years" was reawakened. He was familiar with the influential list of commandments in the introduction to *Sefer Halakot Gedolot* and also with the enumeration, only small portions of which survive today, done subsequently by a scholar named Ḥefeṣ ben Yaṣṣīah. He had "listened to" numerous Spanish liturgical compositions that enumerate the Mosaic commandments. All those endeavors, he laments, were not merely inadequate. They contained mistakes "the enormous odiousness of which I cannot describe." The more he reflected on the errors that had been made and the way in which "one [writer on the subject] would follow another without thinking, the greater our misfortune appeared to" him. He saw his predecessors' failure to handle the issue properly as a fulfillment of the doleful biblical prophecy: "And the vision of all this is become unto you as the words of a writing that is sealed, which men deliver to one that is learned, saying 'Read this, I pray thee,' and he saith 'I cannot, for it is sealed.'"<sup>207</sup> Maimonides plainly regarded the correct enumeration of the 613 commandments as a weighty matter.

At first, he thought that he might merely draw up a concise list of the 613 commandments as a preface to his code of Jewish law much like, he might have added, the preface to *Sefer Halakot Gedolot*. But the calamitous situation prevented him from furnishing "the correct enumeration . . . without elaboration and proof." If he did, the first person to examine it would dismiss it out of hand as erroneous, "the evidence of its erroneousness" being Maimonides' departure from "what so-and-so and so-and-so had said. For that is the mentality of most of the better class of people today. The correctness of a statement is judged not by its content, but by the extent to which it agrees with some predecessor's statement, without any effort's being made to judge the earlier statement. And [if that is how things stand with the better class] how much more so with common people."

Before undertaking his code of Jewish law, Maimonides accordingly decided to make a detour and compose a comprehensive work on the 613 commandments. He would begin by establishing rules (*uṣūl*) for what the list of commandments given to Moses at Sinai must and must not contain and then he would give the actual enumeration of positive and negative commandments. He would justify the

<sup>207</sup>*Book of Commandments*, introduction, pp. 1, 4-5. The scriptural verse cited by Maimonides is Isaiah 29:11.

positions that he took "through the texts of the Torah and through the statements of the rabbis in interpreting them."<sup>208</sup>

Maimonides thus tells us that after the Commentary on the Mishna, his next large literary project was to be a code of Jewish law, and he wrote his *Book of Commandments* as a prolegomenon to it. A statement he makes on a subsequent occasion repeats that the *Book of Commandments* was written before the law code.<sup>209</sup> The Commentary on the Mishna was completed in 1167–1168, and Maimonides indicates that he began work on the code either immediately, or very soon, afterwards.<sup>210</sup> Virtually no time is thus left for the composition of the *Book of Commandments*. And yet a good deal of thought and labor went into it.

A possible explanation would be that he wrote the *Book of Commandments* while already engaged in the preliminary stages of his code of law, and the two overlapped. Another possibility would be that, despite what he said, he thought out the *Book of Commandments* and prepared material for it while still working on his Commentary on the Mishna. At a certain juncture in the Commentary, he makes a remark that can be translated as either: The matter under consideration here "will be explained [yubayyan] in my book on the enumeration of the commandments"; or: the matter under consideration "is explained. . ."<sup>211</sup> Maimonides is referring to one of the general rules that he in fact spells out in the introduction to the *Book of Commandments* and on which his enumeration of the commandments rests. If the second of the two possible renderings of the sentence reflects his meaning, the sentence would most likely be an addition that he made to the Commentary on the Mishna after the work was complete.<sup>212</sup> If, however, it is the first rendering that captures his meaning—and that is the way the remark has been understood by translators of the *Book of Commandments*—he already had a conception of the book when still writing the Commentary on the Mishna. It may also be pertinent that when the Commentary on the Mishna classifies the varieties of ritual impurity, Maimonides invests considerable energy in distinguishing between impurity regulations carrying the sanction of the Torah and those instituted by the rabbis. The distinction between what is legislated by the Torah and what by the rabbis lies at the heart of the *Book of Commandments*. At that stage in the composition of the Commentary on the Mishna, he was, therefore, in effect doing spade-work for the other book.

Whatever the case may be, he was about thirty years old when he started writing the *Book of Commandments* and he apparently completed it with dispatch. There

<sup>208</sup>*Book of Commandments*, introduction, pp. 4, 6–7.

<sup>209</sup>Maimonides, *Responsa* (n. 3 above) §447.

<sup>210</sup>Below, p. 206.

<sup>211</sup>Commentary on the Mishna, *Hullin* 1:5.

<sup>212</sup>Commentary on the Mishna, *Menahot* 4:1, has the remark ". . . as I have demonstrated in my book on the enumeration of the commandments." Those words, according to the editor's apparatus to the *Menahot* 4:1 passage, are absent in the original version of the Commentary and belong to a later revision.

is evidence that he went back and made corrections after completing it,<sup>213</sup> as he is known to have done to his Commentary on the Mishna.

Maimonides' fondness for general rules finds ample expression in the introduction to his *Book of Commandments*, where he formulates fourteen rules for determining what should and should not be included in the enumeration of 613 Mosaic commandments.<sup>214</sup> We have seen him say that he based the *Book of Commandments* on "the texts of the Torah" and "the statements of the rabbis in interpreting them." In justifying his fourteen rules he does indeed draw upon the Pentateuch and the classic rabbinic works,<sup>215</sup> particularly upon the implications of the key passage which affirms, in the version he had, that 613 commandments were communicated to Moses at Sinai.<sup>216</sup> He relies equally, however, on something that he does not mention—on what we would call ordinary common sense. At one spot, for instance, he contends: It is not "possible for anyone of intelligence to say" that each of the seven occasions where Scripture prohibits consuming animal blood constitutes a separate commandment;<sup>217</sup> it does not stand to reason that Scripture would be imposing a distinct and separate commandment every time it happens to repeat the same prohibition.

Maimonides' fourteen rules serve in actuality as criteria not so much for identifying what should be included in the list of 613 commandments given to Moses as for determining what should be excluded; almost all of the rules are designed for the latter purpose. Ten have *Sefer Halakot Gedolot* as at least a partial target, each of the ten criticizing the earlier work for having included inappropriate items.<sup>218</sup>

A few more rays of light are shed on Maimonides' procedure by a letter that he wrote at least a decade after he completed the *Book of Commandments*. There he states that virtually every commandment he identified as one of those given to Moses is "explicit [*meforash*] in the Torah," and in the "three or four" exceptions, a regulation not explicit in the Pentateuch is expressly designated as a commandment.

<sup>213</sup>*Book of Commandments*, negative commandment #179, p. 266, note 88; Kafah's introduction to his edition of *Book of Commandments* 11–12; Maimonides, *Sefer ha-Miṣvoth*, ed. Heller (n. 186 above), editor's introduction, p. 18.

<sup>214</sup>Saadia, *Sefer ha-Miṣvoth*, ed. Y. Perla (Warsaw 1914)) 1.15–16, attempts to trace some of Maimonides' rules back to Abraham Ibn Ezra's *Yesod Mora* but he overstates the case for Ibn Ezra's influence on Maimonides. Ibn Ezra makes dozens of ill-organized remarks on the different characters of different kinds of commandments, and, at most, a few of those remarks may be echoed in Maimonides' rules.

<sup>215</sup>For example, rule 11.

<sup>216</sup>Rule 3.

<sup>217</sup>See *Book of Commandments*, rule 9, p. 34. Rules 7, 10, and 12 are also based on common-sense considerations.

<sup>218</sup>Rules 1, 2, 3, 4, 5, 7, 8, 10 (where Maimonides explicitly names Simeon Kayyara, the author of *Halakot Gedolot*, as the target of his criticism), 12, 14.

“of the Torah” by the transmitters of the oral tradition.<sup>219</sup> If the sentence is combined with what we saw previously, the implication will be that Maimonides searched out everything commanded by the Pentateuch and the rabbis, whereupon he brought his fourteen rules into play in order to determine which items in the Written Torah and rabbinic literature pass the test and qualify for inclusion among the privileged 613. The elimination of the inappropriate items produced exactly the desired number of 248 positive and 365 negative commandments. And of these, the vast majority turned out to be commandments enunciated in the Written Torah.

The first of Maimonides' fourteen rules asserts that the 613 commandments can include no laws and rituals enacted after the time of Moses. So much, he writes, should have gone without saying, and articulating a rule to the effect should have been otiose. Since the commandments are defined as having been stated to Moses at Sinai, they plainly contain nothing of post-Mosaic provenance. Only because *Sefer Halakot Gedolot* and writers following in its wake had been blind to the obvious and incorporated post-Mosaic legislation in their lists was it necessary to promulgate a rule excluding everything post-Mosaic.<sup>220</sup>

Maimonides' second rule explains how he identified the three or four instances where regulations not explicit in Scripture nevertheless qualify for enumeration in the select list. He writes: When “there is no verse” in Scripture explicitly prescribing a certain law or ritual, yet “the transmitters” of the tradition going back to Moses deduce the law or ritual from what Scripture says using their canons of dialectical reasoning, and when they moreover mark the regulation as “part of the body of the Torah” (*guf Torah*) or as “from the Torah,” then the regulation “must be enumerated” among the 613. By contrast, when the transmitters of the tradition fail to mark a regulation lacking a verse in Scripture as being *from* the Torah, it is “rabbinic” in status (*mi-de-rabbanan*) and is not to be enumerated—this, even if they should derive it from Scripture by the use of one or another of their hermeneutic tools.<sup>221</sup> What is decisive in every instance is therefore the presence or absence of an explicit statement by the ancient rabbis to the effect that a given regulation is “from” the Torah or “part” of the Torah. Regulations that are not marked lack the sanction of the Torah.

The position that Maimonides takes here stirred up a small tempest in rabbinic circles. The chief critic of the *Book of Commandments* rejected the proposition that commandments derived by the ancient rabbis from Scripture through their canons of dialectical reasoning or through some other hermeneutic tool, such as the discovery of signposts in the text of Scripture, lay no claim to reflecting Scripture's

<sup>219</sup>*Responsa* §355. When he enumerates the commandments in the *Book of Commandments*, Maimonides writes that negative commandments #76, #135, #194, and #336 have no explicit biblical verse and are known to be commandments only through Mosaic tradition, supported either by the dialectic device of *gezera shawa* or by a hint embedded in the biblical text.

<sup>220</sup>*Book of Commandments*, rule 1.

<sup>221</sup>*Book of Commandments*, rule 2, pp. 12–13; English translation 2.373–74.

intent except when the classic rabbinic texts expressly mark them as such.<sup>222</sup> As that critic put it, the proposition should be inverted. The presumption should always be that what the rabbis infer from Scripture is genuinely present there, and rabbinic inferences from Scripture hence identify commandments with Mosaic status unless the rabbis expressly label them as *not* doing so.<sup>223</sup> Maimonides had no lack of defenders, and they countered, in good rabbinic style, with a subtle distinction. They explained that although regulations deduced by the ancient rabbis but not marked as part of the Torah are characterized by Maimonides as “rabbinic” in status, he was not—paradoxical though it might sound—denying that such regulations reflect the intent of the Written Torah. He was only saying that despite reflecting Scripture's intent, they do not qualify for enumeration among the critical 613 commandments.<sup>224</sup>

In additional rules, Maimonides asserts that when a positive and a negative commandment cover the same ground, both are to be counted, the positive one—for instance, the obligation to rest on the Sabbath—being enumerated with the positive commandments, and the negative one—the prohibition against working on the Sabbath—with the negative commandments.<sup>225</sup> He posits that unspecific scriptural exhortations to obey God, such as the biblical injunction “be not stiff-necked,” do not belong in the list.<sup>226</sup> When a command has components, such as instructions for the several steps in performing a given sacrifice, the subordinate instructions are not to be counted as distinct commandments side by side with the overall command.<sup>227</sup> Thus the regulations governing the slaughtering of a sacrificial animal, receiving its blood in a bowl, carrying the blood to the altar, putting it in designated places there, burning portions of the animal on top of the

<sup>222</sup>Nahmanides, Critique of Maimonides, *Book of Commandments*, rule 2; Saadia, *Sefer ha-Misivot*, ed. Perla (n. 214 above) 1.18–20; Rabinowitz, *Taryag* (n. 193 above) 26–28.

<sup>223</sup>Nahmanides, Critique of Maimonides, *Book of Commandments*, rule 2.

<sup>224</sup>Duran, *Zohar ha-Raqi'a* (n. 194 above) 14–15; I. de Leon, *Megillat Esther*, on Maimonides, *Book of Commandments*, rule 2; Malachi ha-Kohen, *Yad Malachi* (Przemisl 1877) 2, rules regarding Maimonides, §7. Maimonides, Commentary on the Mishna, *Kelim* 17:12, and *Mishneh Torah: H. Ishut* 1.2–3, can be read as giving credence to their interpretation.

<sup>225</sup>*Book of Commandments*, rule 6.

<sup>226</sup>*Book of Commandments*, rule 4. See *Sefer Halakot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 204. The verse is Deuteronomy 10:16.

<sup>227</sup>*Book of Commandments*, rule 10; see *Sefer Halakot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 432. Rule 11, which apparently is not directed specifically against *Halakot Gedolot*. Rule 12, with undisguised criticism of *Sefer Halakot Gedolot*, although not by name; see *Sefer Halakot Gedolot*, 3, appendix, notes 411, 454.

Rule 10 addresses the preparations that Scripture requires for the performance of a commandment, such as baking showbread to place in the Temple; Maimonides insists that the placing of the showbread is the commandment. Rule 11 is concerned with separate objects that together form a single commandment, such as the holding of a citron, a palm branch, branches of willow, and branches of myrtle on the Tabernacles holiday. Rule 12 is concerned with the details of performing a commandment, such as the steps in offering a sacrifice; Maimonides' position is that each type of sacrifice as a whole, not the steps in offering it, constitutes a commandment.

altar, and so on, are not separate commandments but components making up a single whole. When Scripture gives alternative instructions for handling a given issue—as when it prescribes different death penalties for different classes of adulteresses—the alternative instructions are, similarly, not to be enumerated as distinct and separate commandments.<sup>228</sup> Regulations with temporary applicability, such as those in force only as long as the Israelites wandered through the wilderness and had not yet entered the Promised Land, are likewise to be excluded.<sup>229</sup> Commandments extending over a number of days, as the requirement that Jewish men dwell in booths during the seven days of the Tabernacles festival, are to be counted only once.<sup>230</sup> With the help of two of his fourteen rules, Maimonides does away with the extra categories—the categories of death penalties and the category of scriptural sections incumbent on the community—that *Sefer Halakot Gedolot* added to the original talmudic dichotomy of positive and negative commandments.<sup>231</sup> In a further rule, he again makes established tradition the ultimate criterion: When Scripture repeats itself and dictates or prohibits the same act in a number of passages, the presumption must be that only a single formal commandment is involved. But there is an exception. Should the Mosaic tradition transmitted by the rabbis state or imply that the repetitions delineate more than one commandment, then more than one must be enumerated.<sup>232</sup> For whatever the rabbinic “interpreters” who “transmit” the Mosaic tradition report must be taken as “the truth,” and that is the case even if the “straightforward sense” of Scripture points in another direction.<sup>233</sup> The Mosaic tradition entrusted to the ancient rabbis is once more the decisive factor.

After expounding his rules for determining which laws and rituals should or, in most of the instances, should not be included among the 613 commandments given to Moses at Sinai, Maimonides lists first the 248 positive and then the 365 negative commandments that, in his judgment, qualify. On one occasion, he indicated that he arranged the commandments in the *Book of Commandments* in accordance with a plan.<sup>234</sup> He usually does group related items together within the lists of positive and of negative commandments. Positive commandments relating to the festivals, the justice system, the Holy Temple, sacrifices, and so on form blocks, as do negative commandments having to do with the festivals, forbidden food stuffs, forbidden sexual relations, the nazirite, and other topics. Maimonides also carefully chose the commandments with which the lists of positive and negative

<sup>228</sup>*Book of Commandments*, rule 7. See *Sefer Halakhot Gedolot*, ed. E. and N. Hildesheimer, 3, appendix, note 7.

<sup>229</sup>*Book of Commandments*, rule 3.

<sup>230</sup>*Book of Commandments*, rule 13.

<sup>231</sup>*Book of Commandments*, rules 7 and 14.

<sup>232</sup>*Book of Commandments*, rule 9.

<sup>233</sup>*Book of Commandments*, rule 9, p. 33. See above, pp. 124, 130–31.

<sup>234</sup>Maimonides, *Responsa* (n. 3 above) §447.

commandments open, as well as the commandments with which his entire enumeration closes. Otherwise, it is hard to unearth any overall plan that he may have had in view.<sup>235</sup>

The first item in the positive list is the obligation to “believe that a cause exists which produces all existent things, as embodied in God’s saying [at the beginning of the Decalogue]: ‘I am the Lord your God’”<sup>236</sup>—in other words, the obligation to believe in the existence of God. The commandments that follow are the obligations to believe in God’s unity, to love God, to fear Him, and to worship Him. The first item in Maimonides’ list of negative commandments is the prohibition against “believing that divinity pertains to any other being, as embodied in God’s saying [in the second of the Ten Commandments] . . . ‘thou shalt have no other gods before Me,’”<sup>237</sup> and it is followed by commandments prohibiting various types of idolatry. Each list thus begins with fundamentals of religious belief.

The final three commandments in the *Book of Commandments*, the 611th, 612th, and 613th, are instructions to the king not to “multiply horses to himself,” not to “multiply wives to himself,” and not to “greatly multiply to himself silver and gold.” Scripture explains that the first of the three is designed to prevent anyone who occupies the office of king from sending his people back to Egypt, where the best horses are raised, and that the second has the purpose of ensuring that the king’s heart will not turn away from the Lord. Maimonides understands that the last of the three is likewise designed to ensure that the king’s heart will not turn away from God.<sup>238</sup> The three commandments are scarcely distinctive in themselves, but Maimonides places them at the very end because they provide a transition to the thought with which he wished to conclude the book.

He takes note of a rabbinic tradition according to which King Solomon sinned by undertaking to observe the intent of the three commandments without observing the commandments themselves.<sup>239</sup> Solomon multiplied horses, being confident that he could do so without sending his subjects back to Egypt, and he multiplied wives and silver, being confident that he would remain true to the Lord. The example of Solomon, who was the wisest of men, reveals—Maimonides writes—why God has kept the specific purposes of most of His commandments hidden from mankind: When someone knows the purpose of a commandment, he may be tempted like Solomon to concern himself only with the intent and make light of the commandment itself. Whereupon Maimonides signs off with the declaration toward which he had been maneuvering for a couple of pages, namely, that although Scripture has a solid rationale for not disclosing the purposes of the divine.

<sup>235</sup>An attempt to discover Maimonides’ plan is made by A. Hillvitz, “*Seder ha-Miṣvot be-Minyano shel ha-Rambam*,” *Sinai* 10 (1946) 258–67.

<sup>236</sup>Exodus 20:2 and Deuteronomy 5:6. Regarding the term “believe,” see below, pp. 134–35.

<sup>237</sup>Exodus 20:3 and Deuteronomy 5:7.

<sup>238</sup>Deuteronomy 17:16–17. See *Book of Commandments*, negative commandment #365.

<sup>239</sup>BT *Sanhedrin* 21b.

