

THE UNIVERSITY OF CHICAGO

CATALOGING REVELATION: ECHOES OF ISLAMIC LEGAL THEORY IN  
MAIMONIDES' *SEFER HA-MITSVOT* [BOOK OF COMMANDMENTS]

A DISSERTATION SUBMITTED TO  
THE FACULTY OF THE DIVINITY SCHOOL  
IN CANDIDACY FOR THE DEGREE OF  
DOCTOR OF PHILOSOPHY

BY

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CHICAGO, ILLINOIS

AUGUST, 2019

For Adina

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## Acknowledgements

This dissertation represents the culmination of a process throughout which I have benefited from guidance, support, advice, and assistance from numerous people. I am delighted to have the chance to thank some of them here.

My doctoral advisor, James Robinson, has been a source of invaluable wisdom and unwavering encouragement throughout my time in graduate school. His patience with me and generosity with his time was matched only by the depth of his insight in our many conversations about my work, and it has been a privilege to work with so fine an exemplar of both scholarly achievement and personal character.

I am similarly grateful to the rest of my committee. This dissertation would not have gotten off the ground without the assistance of Ahmed El Shamsy, whose questions, suggestions, and corrections proved critical as I navigated the vast world of Islamic legal literature. David Nirenberg joined my committee in the later stages of the dissertation process, and I am most appreciative of the perspective he brought to my work, a perspective I found both helpful and refreshing.

In addition, I would like to thank others who have read or listened to my ideas for this dissertation at various points along the way. As I began, Bernard Septimus made sure my research stayed grounded. Michael Fishbane and Michael Sells read and provided important feedback on some early chapter drafts. Albert Friedberg gave me access to his considerable expertise in *Sefer ha-Mitsvot* through reading a chapter and discussing it with me.

I am blessed with friends who have supported me in a variety of crucial ways. Marc Herman, aside from providing wonderful friendship, also provided wonderful feedback on

almost every part of this dissertation and constantly made himself available to discuss my ideas. Menachem Butler continuously encouraged me and showed an interest in my work, but beyond that, his efforts at making Jewish Studies scholarship more easily available online proved critical to me as I did most of my research far from a well-stocked academic library. The entire field of Jewish Studies owes Menachem a debt of gratitude, but I can only speak for myself when I say thank you.

A number of fellowship awards helped support my time at University of Chicago. I am grateful to have received a Fuerstenberg Fellowship twice, and also a dissertation completion fellowship from the Greenberg Center for Jewish Studies. I am also thankful to have been given the opportunity to serve as a Junior Fellow at the Martin Marty Center. That fellowship gave me the chance to have my work read by a cohort of talented friends and colleagues, and also to benefit from the camaraderie and intellectual stimulation of the seminars.

This dissertation required substantial time at a number of different libraries. In Chicago, Anne Knafl always contributed friendly, timely, and valuable assistance. In Jerusalem, the librarians at the Institute for Microfilmed Hebrew Manuscripts at the National Library of Israel were helpful in a variety of ways over the course of the two summers I spent conducting research there. And in Cleveland, I am grateful to the staff at the Beachwood branch of the Cuyahoga County Public Library for providing an environment in which I could write productively on a daily basis.

Americia Huckabee, Josh Feigelson, and Teresa Hord Owens worked to make the logistics of studying at the Divinity School as smooth and efficient as possible, and I thank them for that.

As with any accomplishment of mine, I owe this one to my parents—*avi mori* and *immi morati* in the full sense of the expression. I am fortunate to have a father whose expertise in my field of study far surpasses my own, and this dissertation benefits significantly from his help and suggestions. But I am most grateful to both my parents for their unwavering support, encouragement, and advice. I simply could not have done this without them. My children, Ora and Avi, provided their own form of support and encouragement as well, and did so to a degree which easily outweighed their distractions.

Finally, I cannot adequately convey my appreciation for my wife, Adina. Without her strength, dedication, friendship, humor, commitment, and courage this never would have been possible. With gratitude and admiration, I dedicate this dissertation to her.

## Abstract

Maimonides' *Sefer ha-Mitsvot* comprises his attempt at identifying the 613 commandments which the Talmud reports Moses received at Sinai. He opens this book with an introduction in which he lays out fourteen principles he used to guide his enumeration of the commandments. This study focuses on that introduction, and particularly on six of these principles: the first five and the eighth. These principles offer opportunities to probe, among other things, Maimonides' conception of the relationship between divine and rabbinic law, his methods of scriptural exegesis, and his enlistment of Aristotelian logic in mining the text of the Torah for its legislative units. While previous studies have looked at many important features of the introduction, the majority of this study is dedicated to examining an element of *Sefer ha-Mitsvot* which has not received the attention it merits; namely, the manner in which Maimonides incorporates elements of Islamic legal literature in framing the overall project of the book. We can see the imprint of Maimonides' Islamic milieu on the way he formats and structures his introductory principles, as well as on the substance of the principles themselves. This dissertation by no means ignores the diachronic perspective which has dominated studies of *Sefer ha-Mitsvot* for generations, as that perspective proves indispensable in appreciating Maimonides' work. This study, though, does seek to show the importance of a synchronic, cross-cultural outlook in understanding Maimonides' goals for this book and the methods he employed to accomplish those goals. He adapts the tools and techniques with which Muslim jurists built Islamic law upon the foundation of its canonical sources to his project of extracting divine commandments from the text of the Torah. This study demonstrates the ways in which that adaptation manifests itself in *Sefer ha-Mitsvot*. It also includes a new critical edition of the Judeo-Arabic text of the

introduction to *Sefer ha-Mitsvot* and original annotated English translations of the six principles discussed in the dissertation.

## Preface

The title of this dissertation, “Cataloging Revelation: Echoes of Islamic Legal Theory in Maimonides’ *Sefer ha-Mitsvot*,” makes two implicit claims, separated by the colon. First, Maimonides used the project of commandment enumeration to identify the units of legislative revelation God passed to Moses at Mt. Sinai. That argument will be spelled out a bit more in various places below but most directly in the conclusion. The second part of the title speaks to the primary contention of this dissertation; that *Sefer ha-Mitsvot*, and particularly its introduction, draws from Maimonides’ Islamic milieu in crucial ways.

The subject of Judeo-Arabic literature and its relationship with Islamic culture has been investigated and assessed by numerous scholars, as has the specific matter of the connections between Judeo-Arabic works of halakhah and Islamic legal writings.<sup>1</sup> Regarding general observations of the modes of interaction between Jewish and Islamic works, some have proposed explaining this relationship using metaphors. Sarah Stroumsa describes a “whirlpool effect,” since “the flow of ideas was never unilateral or linear, but rather went back and forth...when an idea falls, like a drop of colored liquid, into the turbulence, it eventually colors the whole body of water.”<sup>2</sup> David Freidenreich offers an alternative metaphor when looking two non-Muslim jurists living in the medieval Islamic world.<sup>3</sup> His case studies revolve around the topic of laws relating to food, so, while he acknowledges the whirlpool image as useful, he suggests we “shift our metaphorical vocabulary from the realm of water to that of food,” describing the scholars he

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<sup>1</sup> See more on this, see below, 42.

<sup>2</sup> Sarah Stroumsa, *Maimonides in his World: Portrait of a Mediterranean Thinker* (Princeton: Princeton University Press, 2009), xiv.

<sup>3</sup> One happens to be the subject of this dissertation, Moses Maimonides, and the other is the Christian jurist Gregorius Barhebraeus.

studies as “cooks who employ a wide range of locally available ingredients and draw on both ancestral and regional recipes to create their own brand of intellectual fusion cuisine.”<sup>4</sup>

Each of these metaphors represent an attempt at explaining the complex manner in which Jewish writers worked within their own tradition while simultaneously engaging in some way with the culture of the Islamic world in which they lived and worked. Of course, the relationship with this Islamic milieu displayed by Jewish authors was not consistent across the range of personalities who wrote in Judeo-Arabic, and even within the works of a single scholar, Islamic culture may manifest itself differently, if it does at all, from one work to another. Each piece of literature deserves evaluation in its own right, so it is simply not possible to use one metaphor to reasonably portray this moment in Jewish intellectual history. Metaphors, though, can still be helpful in trying to understand how, or if, a particular Jewish work can be seen as part of the larger cultural setting of the Islamic world.

To return to the title, I refer to the traces of Islamic legal thought on *Sefer ha-Mitsvot* as “echoes,” reflecting the notion that there is some distortion between their development in Islamic literature and their appearance in Maimonides’ work. He did not, as some other Jewish writers in the Islamic world did,<sup>5</sup> transfer elements of Islamic legal thought whole-cloth or explicitly ask the same questions in the same way his Muslim counterparts did. Maimonides adapted, rather than completely adopted, aspects of Islamic legal theory. He took some features and techniques of *uṣūl al-fiqh* and altered them to fit his needs. Despite this adaptation and modification, though, a reader acquainted with Islamic literature will certainly be able to see its reverberations in the

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<sup>4</sup> David Freidenreich, “Fusion Cooking in an Islamic Milieu: Jewish and Christian Jurists on Food Associated with Foreigners,” in *Beyond Religious Borders: Interaction and Intellectual Exchange in the Medieval Islamic World*, eds. David Freidenreich and Miriam Goldstein (Philadelphia: University of Pennsylvania Press, 2012), 145.

<sup>5</sup> See some of the works mentioned below, 46, n. 112.

introduction to *Sefer ha-Mitsvot*. Thus the “echo” metaphor; we can indeed perceive the arguments and concerns of Islamic scholars in Maimonides’ introduction, but they are reflected off the particular contours of the Jewish exercise of commandment enumeration. These echoes have gone largely unnoticed, or at least unremarked upon, to this point. Maimonides’ introduction contains fourteen principles which he thinks should guide someone trying to identify the 613 commandments the Talmud reports that Moses received at Mt. Sinai.<sup>6</sup> The second of these principles has attracted the attention of scholars who look to place it in its Islamic context,<sup>7</sup> but for the most part, the other principles discussed below have not been scrutinized in the same way.

This dissertation, then, can fill a perplexing lacuna in Maimonidean studies, which has become a scholarly field in and of itself. Maimonides’ stature ensures that none of his writings will be completely ignored, but compared to some of his other works, *Sefer ha-Mitsvot* remains understudied. Perhaps the reason for this oversight is that Maimonides himself seems to downplay the importance of this work in its introduction, implying that it should be seen as a simple preamble to *Mishneh Torah*.<sup>8</sup> However, the introductory fourteen principles contain important elements not explored in *Mishneh Torah* at all; namely, aspects of legal theory including explorations of various facets of the relationship between law and scripture.

Furthermore, beyond its specific benefit for Maimonidean studies, the cross-cultural focus of this dissertation will prove useful for scholars of the medieval Islamic world in general. At the very least, we can now locate *Sefer ha-Mitsvot* as another important data point in the constellation of Jewish-Muslim intellectual interaction of the medieval period. Beyond just a

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<sup>6</sup> See Appendix C, below, for a list of these fourteen principles.

<sup>7</sup> See below, 115-118.

<sup>8</sup> See below, 12-14.

simple data point, though, this study sheds light on a particular form of cultural adaptation in this era, one in which we can see the Islamic backdrop even through a uniquely Jewish exercise like commandment enumeration. Genres such as philosophy, *kalām*, exegesis, legal codes, and others appear in both Judaism and Islam, so we would anticipate finding interesting parallels between Jewish and Islamic works of these genres. In contrast, the correspondence of *uṣūl al-fiqh* to commandment enumeration is not, *a priori*, something to be expected. It is noteworthy to find, then, that even when there is no clear Islamic parallel to this work, Maimonides draws from Islamic legal thought in constructing and formulating his principles of enumeration.

More on *Sefer ha-Mitsvot* itself, and on the tradition that God gave Moses 613 commandments, can be found below, in the first chapter. That chapter also lays out the methodology used in this dissertation, arguing, against the hesitancy of some historians of medieval Jewish law, that we can, indeed should, examine Maimonides' legal works like *Sefer ha-Mitsvot* in light of the surrounding Islamic culture. The second chapter outlines the parallels between, on one side, the formal structure and purposes of Maimonides' introduction, and those of the "legal maxim" genre of Islamic scholarship on the other. In the third chapter, the first five principles of enumeration, along with the eighth, are analyzed with an eye on the marks of Islamic legal theory [*uṣūl al-fiqh*] they bear. The fourth chapter dives deeper into the third principle, showing how Maimonides pulls from Islamic discussions of abrogation [*naskh*] to inform his discussion of temporary commandments while simultaneously attempting to avoid the attendant dangers for a Jewish writer dealing with the polemically loaded concept of abrogation of the law. These four chapters are followed by a brief conclusion and three appendices, the first of which comprising a new edition of the Judeo-Arabic text of the introduction to *Sefer ha-Mitsvot*. The second contains annotated original translations of the six principles (the first

through fifth and the eighth) most discussed in the dissertation, while the third presents a paraphrased list of all fourteen principles.

*Sefer ha-Mitsvot* emerges as a product of its cultural environment. The language it uses, the form its introduction takes, and the ideas contained therein bear the marks of its Islamic background. By listening carefully, we can identify the echoes of that background as they resonate in this Jewish work.

## An Introduction to *Sefer ha-Mitsvot* and Methodological Notes for its Study

In the work known as *Sefer ha-Mitsvot* [*The Book of Commandments*], Maimonides offers his list of the 613 commandments which, according to rabbinic tradition, God gave to Moses at Sinai.<sup>1</sup> He precedes the list of commandments itself with another list, this one consisting of fourteen principles that directed him in deciding whether a particular law should count as one of the commandments or not. While earlier Jewish writers had already made several attempts to catalog these 613 commandments, Maimonides' introduction, with its guiding principles of commandment enumeration, has no precedent; they represent, as Isadore Twersky writes, "the real novum of" *Sefer ha-Mitsvot*.<sup>2</sup> These principles sought, at least explicitly, to introduce rigor and consistency into the exercise of identifying, classifying, and categorizing the commandments. They describe the types of laws to be included in the count of 613, how to determine if a passage in the Torah constitutes a commandment, and how to divide and individuate among the commandments.

As will be discussed below, his treatment of these questions provides opportunities to glean crucial information about Maimonides' views on a variety of topics. Nevertheless, *Sefer ha-Mitsvot* is generally considered a relatively minor work in the entirety of Maimonides' oeuvre. Even when limiting our gaze to his legal writings, it certainly does not rank as his most important contribution; that distinction must go to his fourteen-volume *Mishneh Torah*. One of the few works he wrote in Hebrew, *Mishneh Torah* consisted of an extraordinary systemization of Jewish law. Navigating the often bewildering and crisscrossing legal discussions in the Talmud, this composition reorganizes the body of halakhah, categorizing and laying out every

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<sup>1</sup> See below, 14-16, for more on this tradition.

<sup>2</sup> Twersky, *Introduction to the Code of Maimonides* (New Haven: Yale University Press, 1980), 3, n. 3.

detail of Jewish law in a concise and straightforward manner. As such, it represents the best example of not only Maimonides' organizational skills, but also his considerable legal ingenuity and creativity. Similarly impressive, Maimonides' first major foray into legal writing, the *Commentary to the Mishnah*, consists of an extensive and comprehensive commentary to all six orders of the Mishnah, the foundational text of Jewish law.

The short treatise that came to be known as *Sefer ha-Mitsvot* has never enjoyed the same consideration from scholars as have the above two monumental works, especially since, as we will discuss below, some have dismissed its apparent goal as rather trivial. *Sefer ha-Mitsvot*, though, and especially its introduction, certainly deserves more attention than it has received. Maimonides' account of his guiding principles constitutes a rich resource for determining his views on matters of law, exegesis, philosophy, and other disciplines. The field of Maimonidean studies has obviously not completely ignored this work, and we will survey some scholarly treatments of it, but many aspects of *Sefer ha-Mitsvot* remain woefully understudied; particularly, its relationship to the Islamic context in which Maimonides worked.

### **The Language and Name of *Sefer ha-Mitsvot***

Maimonides seems to have originally conceived this work to be something of a prolegomenon to his code of law, *Mishneh Torah*.<sup>3</sup> Despite that, he did not write *Sefer ha-Mitsvot* in the same language as his great legal masterpiece, choosing to compose it in Judeo-Arabic as opposed to the Hebrew of *Mishneh Torah*. It is worthwhile to question why he decided to write this work in Arabic, and what that decision can tell us about the purpose of the book itself.

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<sup>3</sup> See Judeo-Arabic text, below, 210.

At first glance, that question seems out of place. Surely it is no surprise that he wrote *Sefer ha-Mitsvot* in Arabic; after all, Arabic was his first language and the language of almost everything he wrote. In truth, it makes more sense to ask why he wrote *Mishneh Torah* in Hebrew. Nevertheless, because of the relationship he describes between these two works, those questions are necessarily bound up in each other, such that an investigation of one has important ramifications for the other.

In his introduction to *Sefer ha-Mitsvot*, Maimonides discusses the languages he considered for *Mishneh Torah*, identifying three possibilities: biblical Hebrew, talmudic Aramaic, and rabbinic Hebrew. He rejects the language of the Bible [*lisān kutub al-tanzīl*] because “today, that holy language is too narrow for us to complete all matters of the law in it.” He cast aside the language of the Talmud due to its opacity, as “only a few of our coreligionists [*ahl millatinā*] understand it,” and even “those who are distinguished by Talmud study [*al-mubarrizīn fī-l-talmud*]” have trouble managing its vocabulary. He settles on rabbinic Hebrew [*lughat al-mishnah*], as that has the linguistic range necessary for his purposes and “it is easy for most people.”<sup>4</sup> Conspicuously absent from this discussion is Arabic, which Twersky dubbed the “missing option” in this list.<sup>5</sup> It seems that not only did Maimonides not write *Mishneh Torah* in Arabic, but, at least according to the introduction to *Sefer ha-Mitsvot*, he never even considered doing so.

Multiple scholars have proposed explanations for Maimonides’ commitment to Hebrew, and not Arabic, for *Mishneh Torah*. Sarah Stroumsa suggests that he chose the language of the Mishnah not simply for the reasons stated in the introduction to *Sefer ha-Mitsvot*, but also “as a

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<sup>4</sup> See Judeo-Arabic text, below, 210.

<sup>5</sup> Twersky, *Introduction to the Code*, 333.

clear indication of his aspirations to follow the example of Rabbi Judah ‘the Prince.’”<sup>6</sup> Others argue that the grand ambitions he harbored for *Mishneh Torah* demanded that his work be universally available to the entire Jewish world, not merely the Arabic-speaking section.<sup>7</sup>

The question of the language of *Sefer ha-Mitsvot* can then be resolved according to both these suggestions. For Stroumsa, it is a work like any other of his works. *Mishneh Torah* is the great exception to the rule, but when Maimonides was not trying to draw comparisons between himself and the compiler of the Mishnah, he wrote in Arabic. In other words, the fact that *Sefer ha-Mitsvot* is in Arabic can tell us little about the book itself, aside from indicating its independence from *Mishneh Torah* even if Maimonides presents it as a companion piece to his code.

Stroumsa’s solution calls to mind a statement by Moshe ibn Tibbon, who wrote one of the three medieval translations into Hebrew and was the first to address this issue of the difference in language between *Sefer ha-Mitsvot* and *Mishneh Torah*. He maintains that Maimonides wrote the former work in Arabic specifically in order to separate it from the latter and to make sure that it would not be included with that comprehensive code. Maimonides, he reminds us, wanted to keep *Mishneh Torah* free of any mention of disputes and dissenting opinions, and presumably the grappling with rabbinic sources that occurs in *Sefer ha-Mitsvot* would spoil that.<sup>8</sup>

Twersky, a proponent of the notion that Maimonides wrote his code in Hebrew for the sake of universality, reads much into the fact that *Sefer ha-Mitsvot* was not in Hebrew.

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<sup>6</sup> Stroumsa, *Maimonides in his World*, 20.

<sup>7</sup> See Twersky, *Introduction to the Code*, 336, and also Simon Hopkins, “The Languages of Maimonides,” in *The Trias of Maimonides*, ed. Georges Tamer (Berlin: De Gruyter, 2005), 98-99.

<sup>8</sup> See the translator’s introduction of Moshe ibn Tibbon, in Maimonides, *Sefer ha-Mitsvot le-Rabbenu Moshe ben Maimon*, ed. Hayim Heller (Jerusalem: Mossad Harav Kook, 2006), 26 in introductory pagination.

“Initially,” Twersky writes, “Maimonides wrote the book for a limited audience, for his immediate countrymen; the thought of a world-wide or intercontinental audience...never apparently crossed his mind.” He points out that Maimonides himself, in the introduction to *Sefer ha-Mitsvot*, implies that he is merely writing a “talmudic enchiridion, a manual preparatory and auxiliary to the *Mishneh Torah*.”<sup>9</sup> *Sefer ha-Mitsvot*, then, was not only written in the shadow of *Mishneh Torah*, it was expected to remain there, to never achieve the distinction and renown of its big brother.

Complicating this discussion is a certain responsum in which Maimonides discusses *Sefer ha-Mitsvot*. “I very much regret [*ve-nihamti harbeh*] that I wrote it in the Arabic language since everyone needs to read it,” he writes, “and I now anticipate translating it into the holy language with God’s help.” In this responsum, Maimonides no longer describes *Sefer ha-Mitsvot* as being ancillary to *Mishneh Torah*, instead presenting it as its own entity, full of crucial lessons which would ensure that the reader would not count incorrectly; a necessary exercise given that “many have counted who have not grasped the standards [*middot*] which should be relied upon [for counting commandments].”<sup>10</sup> Twersky sees this as a sign that Maimonides recognized, perhaps to his surprise, that *Sefer ha-Mitsvot* achieved widespread popularity and actually did represent an important contribution to Jewish scholarship, a contribution which should have been universally available.<sup>11</sup>

Stroumsa’s explanation of this responsum differs from that of Twersky. She does not see the shift from Maimonides writing *Sefer ha-Mitsvot* in Arabic to his wishing in hindsight that he

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<sup>9</sup> Twersky, *Introduction to the Code*, 335.

<sup>10</sup> Maimonides, *Teshuvot ha-Rambam*, ed. and trans. Joshua Blau (Jerusalem: Meqitse Nirdamim, 1960), vol. 2, 725; responsum 447.

<sup>11</sup> Twersky, *Introduction to the Code*, 336.

had written it in Hebrew as an indication that his own appreciation of the book had changed. Rather, it represents a sign of the time in which he was living. According to Stroumsa, over the course of Maimonides' life, Arabic moved from being the dominant language of Mediterranean Jewry to playing a more localized role, limited to certain communities, allowing Hebrew to take over as the leading Jewish language. Maimonides knew all along that *Sefer ha-Mitsvot* would be an important work, and when he wrote it, Arabic was a viable language for disseminating it to a widespread audience. However, he realized later in life that its language was holding it back in the new cultural reality in which Hebrew dominated.<sup>12</sup>

Whatever the reason for his choice of Arabic, the fact that he wrote it in that language might imply that the name of this work, at least originally, was not the Hebrew title *Sefer ha-Mitsvot*. Maimonides himself does actually use that formulation to refer to this work when writing in Hebrew,<sup>13</sup> but the Arabic title, if there was one, is not immediately apparent. Maimonides does not mention a title in his introduction, though he does refer to the enumeration of commandments by Ḥefets b. Yatsliḥ as *Kitāb al-Sharā'i*,<sup>14</sup> perhaps indicating that this was the term Maimonides used for books of this genre and might apply to his own work as well. However, as Neubauer has pointed out, unlike Maimonides, Ḥefets used the word *sharī'a* to refer to each individual commandment he discussed, so his work would have been more appropriately titled *Kitāb al-Sharā'i* than would Maimonides' book.<sup>15</sup>

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<sup>12</sup> Stroumsa, *Maimonides in His World*, 21.

<sup>13</sup> "I have a book that I composed...and I called that book *Sefer ha-Mitsvot*..." ed. Blau, vol. 2, 725. However, he does not always use that title. In another letter (ed. Blau., vol. 2, 632; responsum 355), he writes that he has a "composition [*hibbur*] in Arabic on the subject of the enumeration of commandments" and does not use any title for it.

<sup>14</sup> See Judeo-Arabic text, below, 211.

<sup>15</sup> See Jacob Neubauer, *Ha-rambam 'al divre sofrim: shitato ve-shitat mefareshav* (Jerusalem: Mossad Ha-Rav Kook, 1957), 95, and for a more detailed treatment of the name of Maimonides' work, see Neubauer's whole section on this, pp. 91-100.

In fact, there is no evidence for the existence of an original Arabic title for this book at all, to the extent that in the correspondence between Maimonides' son Abraham and Daniel ha-Bavli in which the former tried to answer the latter's challenges to this work, both disputants refer to it by its Hebrew title. Despite the fact that they were writing to each other in Arabic and were referencing the Arabic text of the book, they called it *Sefer ha-Mitsvot*.<sup>16</sup> Ibn Ayyub, another of the medieval translators, states that Maimonides "named this book *Sefer ha-Mitsvot*." He tells us that he first received a copy of this work in "the year 5000 from creation, in the month of Tishrei [autumn of 1239],"<sup>17</sup> so this title seems to have achieved popularity by then.

### **The Place of *Sefer ha-Mitsvot* in Maimonides' Oeuvre**

Moving on from the language and name of *Sefer ha-Mitsvot*, let us turn to the substance of the work itself. In his introduction, Maimonides outlines a dual-purpose for undertaking the task of enumerating the commandments. First, he considered it to be the logical extension of his halakhic project. His first major foray into halakhic writing took the form of a commentary to the Mishnah. Maimonides reminisces about that commentary, remarking that "our goal in that composition was to be content to explain the meaning of each law of the Mishnah, and it was not our intention for it to contain the laws of each commandment<sup>18</sup> and to include all that is necessary regarding what is forbidden and permitted, or liable and exempt."<sup>19</sup>

Maimonides wrote this commentary over the course of ten years, beginning in Fez at the age of twenty and finishing in Egypt when he was thirty. As limited as he makes the work sound

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<sup>16</sup> See Neubauer, 93. Bloch sees the fact that they used this title as evidence for it actually being the original title even though it is in Hebrew; see *Le Livre des Préceptes*, ed. M. Bloch (Paris: Bouillon and Viewag, 1888), vi-vii.

<sup>17</sup> Maimonides, *Sefer ha-Mitsvot*, ed. Heller, 27. Compare this, however, with ibn Tibbon, who not only does not use the title *Sefer ha-Mitsvot*, he does not refer to it as a *sefer* at all, instead using the term "*ma'amar*" (ed. Heller, 26).

<sup>18</sup> *Sharī'a*.

<sup>19</sup> See Judeo-Arabic text, below, 209.

in his introduction to *Sefer ha-Mitsvot*, the commentary was an extraordinary accomplishment, and actually included far more than simple explanations of mishnaic passages. He outlines his positions on such topics as the nature of prophecy and the relationship of rabbinic (“oral”) law to that of the Torah (the “written law”) in the introduction to the work. His introduction to the final chapter of tractate *Sanhedrin* contains his thoughts on eschatology and religious dogma, while the introduction to tractate *Avot*, known as the “Eight Chapters,” consists of Maimonides’ treatment of ethics, characteristically drawing from ancient Greek, contemporary Arabic, and traditional rabbinic literature. Yet, despite (or maybe because of) the vast scope of this work, Maimonides is correct in saying that it does not include every necessary detail of Jewish law. For that, he needed to write another work.

His introduction to *Sefer ha-Mitsvot* continues with his description of his next important halakhic contribution, *Mishneh Torah*. “I saw fit,” he writes, “to compile a compilation including all laws of the Torah, and its [prescribed] actions, until nothing was left out.”<sup>20</sup> Indeed, it is hard to find an aspect of halakhah not thoroughly covered in *Mishneh Torah*, which he wrote while in his thirties following the completion of his commentary to the Mishnah. The organization of the work was unprecedented; Maimonides purposely eschewed the Talmud’s categorization of Jewish law and constructed an entirely new method of cataloguing the halakhic corpus. He divided his work into fourteen books, each one focused on an area of law (i.e., “Damages,” “Festivals,” “Agriculture,” etc.), and then separated each book into more specific subsections (within the book on damages, for example, he includes sections on property damage, personal damage, theft, and murder, among other things). Each of those sections is split into several

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<sup>20</sup> See Judeo-Arabic text, below, 209.

chapters, and each chapter is comprised of a number of particular laws pulled from all sections of the Babylonian Talmud, the Jerusalem Talmud, and midrashic literature.

His explains his ambitious goal in writing this comprehensive guidebook in the introduction to it. “I have entitled this work *Mishneh Torah* (Repetition of the Law), for the reason that a person who first reads the Written Law [the Torah] and then this compilation, will know from it the whole of the Oral Law [rabbinic law] without having to consult any other book between them.”<sup>21</sup> In order to ensure that he would not miss a single law, he decided to compile a list of all of the commandments. He would put this list at the beginning of *Mishneh Torah*, and he would also preface each subsection with a list of the commandments to be discussed therein. “All this,” he says, was to “guard against leaving anything out without speaking about it.”<sup>22</sup> While it seems this enumeration of the commandments developed almost as an afterthought, simply as a convenient method to guarantee that he would not miss anything, he apparently saw this list as the necessary next step in his project. Before completing his sweeping halakhic handbook, he needed to tether it to a general directory of commandments. Yet, according to his report, upon compiling this list, “agonies which had pained me for years were roused in me.”<sup>23</sup> These “agonies” account for the other reason he wrote *Sefer ha-Mitsvot*. They also explain why he felt that a simple list would not suffice and that it was necessary to write an entire book on the subject.

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<sup>21</sup> Maimonides, “Introduction to *Mishneh Torah*,” in *A Maimonides Reader*, ed. Isadore Twersky (Springfield, NJ: Behrman House, 1972), 40.

<sup>22</sup> Judeo-Arabic text, below, 210.

<sup>23</sup> Judeo-Arabic text, below, 211.

## The Place of *Sefer ha-Mitsvot* in its Genre

To understand what was causing him so much pain, it is necessary to look at the history of the genre, as Maimonides was far from the first to undertake this exercise of enumeration. The Talmud records the opinion of R. Simlai, who remarks that Moses received 613 commandments on Mt. Sinai;<sup>24</sup> these include 248 requirements to perform certain actions (positive commandments) and 365 prohibitions (negative commandments). The Talmud states that the numbers of positive and negative commandments correspond to the number of parts in the human body and the number of days in a year, respectively.<sup>25</sup> It is not at all clear that this passage was meant to be anything other than a homily on the importance of performing God's will with all of one's body every day. The actual legal import of this statement, if it was meant as a legal statement at all, is certainly questionable; nowhere else in the Talmud's voluminous corpus does it show any concern for accounting for this, and even if this does represent an accepted position, it is hard to see what legal ramifications it would have.<sup>26</sup> Jewish law contains far more than 613 directives, and they are all binding, whether or not they are technically part of the 613 commandments that Moses received at Sinai.

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<sup>24</sup> Maimonides' citation of this passage consistently reads "613 commandments were said to Moses at Sinai." Printed editions of the Talmud, though, leave out the clause "at Sinai." This becomes significant when Maimonides reads quite a bit into the mention of Sinai, as he does in a number of these principles; see, especially, below, 167-170.

<sup>25</sup> Babylonian Talmud, *Makkot*, 23b.

<sup>26</sup> It is possible to find tannaitic sources which mention "the 613 commandments," but Ephraim Urbach has affirmed that the manuscript evidence indicates that instead of "the 613 commandments," these texts should read "all the commandments;" see Urbach, *The Sages: Their Concepts and Beliefs* [Hebrew] (Jerusalem: Magnes Press, 1969), 301-302. David Henshke offers a methodological warning on this point. Even if we do not find evidence of the notion of a fixed number of commandments in tannaitic literature, we cannot say definitively that it is an amoraic innovation. Henshke is only comfortable stating that "the idea [of there being 613 commandments] was not central in the tannaitic heritage, and if it was accepted, that acceptance was marginal, whereas in the amoraic period, this motif became a prominent view;" see Henshke, "The View of the Tannaim on the Number of Commandments" [Hebrew], *Sinai* 116 (1995): 58. We should note, though, that even in the rabbinic sources, whether tannaitic or amoraic, which might refer to "the 613 commandments," there is never any discussion about whether or not a particular law belongs in the list. These texts seem to simply use the number 613 as a symbol representing the entirety of the corpus of Jewish law.

In the 12<sup>th</sup> century, Abraham ibn Ezra wrote dismissively that “by way of true investigation, there is no limit to the number of commandments...and if we count only the general principles...the commandments would not equal 613.”<sup>27</sup> Nahmanides, the great 13<sup>th</sup> century scholar, opens his commentary/criticism of Maimonides’ *Sefer ha-Mitsvot* by questioning whether the notion that the tally of commandments must reach 613 reflects a universally accepted view or if it is the subject of a rabbinic dispute in the Talmud. He also attempts to determine the source of this number and the level to which it might, or might not, be binding.<sup>28</sup> Ibn Ezra and Nahmanides were certainly not alone in questioning whether it was actually worthwhile to speak of 613 commandments, but aside from these dissenting, or at least inquisitive, voices, most medieval Jews seem to have accepted that the list of commandments should total 613, and several applied themselves to the task of identifying these commandments in dedicated monographs.<sup>29</sup>

Before looking at to the pre-Maimonidean enumerators referenced explicitly or obliquely in *Sefer ha-Mitsvot*, we should note that all the scholars to be mentioned were Rabbanite. This should not be surprising; since the number 613 originated in the Talmud, we would expect that only those who submit to the Talmud’s authority would concern themselves with this tradition. So, for example, while some Karaites, including Karaism’s foundational figure Anan b. David (eighth century), wrote books called *Sefer ha-Mitsvot*, these are legal compendiums intended to

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<sup>27</sup> Abraham Ibn Ezra, *Yesod Moreh ve-Sod ha-Torah*, eds. Joseph Cohen and Uriel Simon (Ramat Gan: Bar Ilan University Press, 2002), 92.

<sup>28</sup> Nahmanides, *Sefer ha-Mitsvot ‘im Hasagot ha-Ramban*, ed. Charles Chavel (Jerusalem: Mossad ha-Rav Kook, 2000), 1-7.

<sup>29</sup> Some medieval writers who did accept this number traced this tradition of enumeration back quite far. Saadya Gaon, for example, is quoted as saying that Joshua wrote down the 613 commandments to be publicly displayed after defeating the city of Ai in battle; see the commentary of David Qimḥi (Radak) to Joshua 8:32. For more on the history of commandment enumeration, see Zvi Stampfer, “Rabbanite *Sifre Mišvot*” section of the entry “*Sifre Mišvot*,” in *Encyclopedia of Jews in the Islamic World*, ed. Norman Stillman (Leiden: Brill, 2010), vol. 4, 370-375.

offer practical instruction, not attempts at enumerating a set number of commandments.<sup>30</sup>

Nevertheless, we can find examples of non-Rabbanites who seem to take seriously the notion that God revealed 613 commandments at Sinai. It appears that some Samaritans adopted this tradition as well, and while this work of Maimonides itself may have fostered its spread among Samaritan writers,<sup>31</sup> it appears that belief in the existence of 613 commandments predated Maimonides in the Samaritan tradition.<sup>32</sup> These exceptions notwithstanding, commandment enumeration remained squarely within the domain of Rabbanite scholarship.

The *Halakhot Gedolot*, usually attributed to the early 8<sup>th</sup> century geonic writer Simon Qayyara,<sup>33</sup> contains the earliest and, at least before Maimonides wrote his own work, the most influential example of such a monograph.<sup>34</sup> The introduction to *Halakhot Gedolot* presents a list of the commandments sorted into positive commandments, negative commandments, and within the negative ones, the commandments are organized according to their respective punishments.<sup>35</sup> While many scholars have concluded that this introduction represents a later composition that

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<sup>30</sup> For more on this genre of Karaite literature, see Judith Olszowy-Schlanger, “Karaite *Sifre Misvot*” section of “*Sifre Misvot*,” in *Encyclopedia of Jews in the Islamic World*, 375-377, and idem, “Karaite Legal Documents” in *Karaite Judaism: A Guide to its History and Literary Sources*, ed. Meira Polliack (Leiden: Brill, 2003), 255-273.

<sup>31</sup> See A. S. Halkin, “*Taryag Mitsvot Etsel ha-Shomeronim*,” in *Ignace Goldziher Memorial Volume*, eds. Samuel Löwinger and Joseph Somogyi (Budapest: 1948-58), vol. 2, 86-100, and Menaḥem Haran, “*Shirat ha-Mitsvot le-Aharon ben Manir: Piyyuṭ Shomeroni le-Yom ha-Kippurim ‘al Taryag Mitsvot ‘al-pi ha-Rambam*,” *Divrei ha-Aqademyah ha-Le’umit ha-Yisra’elit le-Mada’im* 4 (1971): 229-80. Maimonides’ works seems to have similarly fostered interest in the 613 commandments among Christians; see Diana Di Segni, “La table des préceptes dans le ‘Dux neotorum’ de Moïse Maïmonide,” in *Das Gesetz—The Law—La Loi*, eds. Andreas Speer and Guy Guldentops (Berlin: De Gruyter, 2014), 229-262. And for a reference to Muslim traditions about a specific sum of commandments in Islam, see below, 104, n. 5.

<sup>32</sup> See Ayala Loewenstamm, “Remarks on 613 Precepts in Samaritan Exegesis” [Hebrew], *Tarbiz* 41.3 (1972): 306-312.

<sup>33</sup> For a discussion of the authorship and history of attribution of *Halakhot Gedolot*, see Hildesheimer’s introduction to Simon Qayyara, *Halakhot Gedolot*, ed. Ezriel Hildesheimer (Jerusalem: Meqitse Nirdamim, 1972), vol. 1, 28-45. For a more updated summary of scholarship on the *Halakhot Gedolot*, see Aharon Shweka, “Studies in Halakhot Gedolot: Text and Recension” [Hebrew] (PhD diss., Hebrew University, 2008), 1-10.

<sup>34</sup> This may have been the earliest monograph, but we should point out that some *azharot*, liturgical poems which listed the 613 commandments and were designed to be included in communal prayer services, predated the *Halakhot Gedolot*. See below, 19, n. 42, for more on these poems.

<sup>35</sup> See Qayyara, *Haqdamat Sefer Halakhot Gedolot*, ed. Naftali Hildesheimer (Jerusalem: Meqitse Nirdamim, 1984), 25-112

was appended to the *Halakhot Gedolot* itself at some point,<sup>36</sup> it is clear that Maimonides thought that this list did indeed originate with Qayyara. As such, despite Maimonides' objections to the *Halakhot Gedolot*, we can note one organizational similarity; Maimonides, like the version of the *Halakhot Gedolot* with which he was familiar, uses the list of commandments as an introduction to a larger halakhic work. Nevertheless, despite the structural comparisons possible to be drawn between the respective works of Maimonides and Qayyara, the former was indeed pained by the mistakes he saw in the *Halakhot Gedolot*, prompting him to write his own *Sefer ha-Mitsvot*.

The positive reception Qayyara's work received compounded his misery. "All who interest themselves in counting [the commandments]... follow the author of the *Halakhot Gedolot*," Maimonides laments.<sup>37</sup> Making reference to the geonic writer Ḥefets ben Yatsliḥ,<sup>38</sup> he goes on to declare that "the author of the famous book of commandments" did well to make some corrections to the *Halakhot Gedolot*'s list in a few instances where Qayyara wrote things which were "outrageous [*'azim*]." Nevertheless, this author himself wrote things even "more outrageous than [the *Halakhot Gedolot*], and followed him in more abominable things" than that which the author corrected.<sup>39</sup> Though Maimonides castigates Ḥefets' work at this stage of his career, it seems he did not always have such a negative opinion of it, as a passage from his

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<sup>36</sup> For more on this issue, see the works cited in Marc Herman, "Systematizing God's Law" (PhD diss., University of Pennsylvania, 2016), 17, n. 55.

<sup>37</sup> See Judeo-Arabic text, below, 211.

<sup>38</sup> Though we know Ḥefets lived in the geonic period, it is difficult to more precisely date his life and career. See Ḥefets ben Yatsliḥ, *A Volume of the Book of Precepts*, ed. B. Halper (Philadelphia: 1915), 10-15, and Moshe Zucker, "Qeta'im Ḥadashim mi-Sefer ha-Mitsvot le-Rav Ḥefets ben Yatsliḥ, u-Birurim be-Va'ayat Zemano Shel Rav Hefets," *PAAJR* 29 (1960-1961): 1-68.

<sup>39</sup> See Judeo-Arabic text, below, 211. Interestingly, Judah ibn Bal'am makes a similar remark about how disappointed he is in Ḥefets for correcting some things but leaving other mistakes he should have corrected. Like Maimonides (see below, 105-107), he is bewildered that some lists of the 613 commandments count certain rabbinic laws when the Talmud states that 613 commandments were given to Moses at Sinai, obviously precluding later rabbinic dicta. Ibn Bal'am states that "Rav Ḥefets uttered nonsense [*laghā*]," in counting commandments not given at Sinai, and that he should have known better because he correctly left out other rabbinic rules his predecessors had introduced into the list. See his commentary to Deuteronomy 30, in Salomon Fuchs, *Studien über Abu Zakaria Jachja (R. Jehuda) ibn Bal'am* (Berlin: H. Itzkowski, 1893), xxiii in the commentary section.

responsa demonstrates. Maimonides was sent a question asking him to clarify his stance on a certain legal issue about which the questioner noticed a contradiction between the respective treatments of the topic in *Mishneh Torah* and in Maimonides' commentary to the Mishnah. He responds that "what we wrote in [*Mishneh Torah*] is correct without a doubt," and explains that the questioner is in possession of a previous version of the commentary to the Mishnah which Maimonides had since corrected. His initial error, he writes, was due to the fact that "on this statement, we followed what the author of the book of commandments, Rabbi Ḥefets, wrote, and the mistake is his. And for us, in following him, it was without verification [*bi-dūn taṣḥīḥ*]."40 In any event, Maimonides seems to have repented from whatever youthful naiveté caused him to blindly follow Ḥefets' example, and he offered his own count in order to prevent others from making that same mistake.

When Maimonides states that he is frustrated with the way the *Halakhot Gedolot* and its followers have come to dominate the field of commandment enumeration, he is not only referring to the scholarly elite. Medieval Jewish liturgy included *azharot*,<sup>41</sup> poems consisting mainly of versed renderings of lists of the 613 commandments.<sup>42</sup> Synagogue regulars would have been thoroughly familiar with these poems, which enumerated the commandments in ways Maimonides deemed unacceptable.<sup>43</sup> "Whenever I have heard the numerous *azharot* that are composed among us in the lands of al-Andalus," he moans, "'my pains come over me'<sup>44</sup> due to

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<sup>40</sup> Maimonides, *Teshuvot ha-Rambam*, ed. Blau, 383; responsum 217.

<sup>41</sup> The rabbinic term for verses in the Torah which promulgate prohibitions.

<sup>42</sup> For a brief historical investigation into the origins of these poems, see Meir Havzelet, "*Qeriyat 'Azharot' be-Hag ha-Shavu'ot be-Yeme ha-Benayim*," *Ha-doar* 54 (1975): 409. See also Stampfer, "Rabbanite *Sifre Mišvot*," 370-371, and Avraham Israel, "Introduction to the Commentary to the '*Azharot* of R. Solomon ibn Gabirol" [Hebrew], in *The Writings of R. Moshe Ibn Tibbon*, eds. Howard Kreisel, Colette Sirat, Avraham Israel (Beer Sheva: Ben Gurion University Press, 2010), 261-266.

<sup>43</sup> Indeed, Saadya Gaon writes that worshippers have become accustomed to hearing the 613 commandments liturgically recited in the prayer service; see Saadya Gaon, *Siddur Rav Saadya Gaon*, eds. Davidson, Assaf, Yoel (Jerusalem: Meqitse Nirdamim, 1941), 156.

<sup>44</sup> Daniel 10:16.

what we see of the publicizing of the situation [i.e., wrong counts of commandments] and its spread.” Despite his frustration, Maimonides does not blame the authors of the *azharot* themselves, as they “are poets and not scholars.” Instead, he implicates those whose work the poets rely on; namely, “the author of the *Halakhot Gedolot* and others of the later scholars.”<sup>45</sup>

His casual dismissal of figures like Saadya Gaon and Solomon ibn Gabirol, authors of some of the most well-known examples of the *azharot* genre, as mere “poets and not scholars,” speaks to the difficult road Maimonides predicted he would need to take in order to correct the prevalent views on this issue.<sup>46</sup> He was not only clashing with the *Halakhot Gedolot* and Hefets b. Yatsliaḥ; he was, in fact, combating other accomplished writers whose work, whether in poetry or prose, had long since shaped public opinion regarding the 613 commandments.<sup>47</sup>

We should note that all the previous enumerators mentioned above were Rabbanite, which is not surprising. Since the number 613 originated in the Talmud, we would expect that

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<sup>45</sup> See Judeo-Arabic text, below, 211.

<sup>46</sup> In this passage, Maimonides seems to object to the way poetry has influenced people’s conceptions of the list of commandments through its “sweetness of speech and beauty of arrangement [‘*adhūbat al-qawl wa-hassan al-naẓām*].” This may relate to his general opinion about poetry. For an overview of the type of treatment of poetry to which Maimonides would have been exposed, see Deborah Black, *Logic and Aristotle’s Rhetoric and Poetics in Medieval Arabic Philosophy* (Leiden: Brill, 1990). For a statement about poets which may be relevant here, see *Guide of the Perplexed* I:59; see also his commentary to *Sanhedrin* 10:1, *Mishnah ‘im Perush Rabbenu Moshe ben Maimon, Maqor ve-Targum*, ed. Joseph Kafih (Jerusalem, Mossad ha-Rav Kook, 1963), vol. 4, 209, in which he lists books of poetry among those genres of literature “of the Arabs” which have no value whatsoever. On the other hand, it appears he wrote poetry himself; aside from poems he inserts into his writings, like his introductory poem to his commentary to the Mishnah, he seems to have penned some stand-alone poems; see Hayyim Schirmann, “Maimonides and Hebrew Poetry” [Hebrew], *Moznayim* 3 (1935): 432-436. Additionally, see Josef Stern, *The Matter and Form of Maimonides’ Guide* (Cambridge: Harvard University Press, 2013), 59-61; Joel Kraemer, “The Influence of Islamic Law on Maimonides: The Case of the Five Qualifications” [Hebrew], *Te’udah* 10 (1996): 236-238; David Gillis, *Reading Maimonides’ Mishneh Torah* (Oxford: Littman Library of Jewish Civilization, 2015), 20-27. Twersky sums up Maimonides’ complex attitude toward poetry by suggesting that he “had little use for poetry of any kind,” though he modifies that sweeping statement in a footnote, explaining that, in fact, “Maimonides evaluated poetry in the light of the criterion which he applied to all human discourse: the extent to which it contributed to the attainment of the goal of perfection;” see Twersky, *Introduction to the Code*, 250, n. 29. At any rate, despite their place in the liturgy, it is possible that Maimonides saw the *azharot* poems as representing a negative aspect of poetry: its power, due to its beauty, to convince people of wrong ideas.

<sup>47</sup> For more examples of other medieval scholars who dismissed the halakhic authority of the *azharot*, see Israel, “Introduction to the Commentary,” 263-264.

only those who submit to the Talmud's authority would concern themselves with this tradition. Nevertheless, we can find examples of non-Rabbanites who seem to take seriously the notion that God revealed 613 commandments at Sinai. It appears that at least some Samaritans adopted this tradition as well, and while this work of Maimonides itself may have fostered its spread among Samaritan writers,<sup>48</sup> it appears the notion of the Sinaitic revelation containing

Maimonides understood the uphill battle he faced. He acknowledged that he expected fierce opposition to his list of commandments due to his deviation from the path of previous enumerators. He predicted that people would consider his work mistaken because it is the “opposite of what so-and-so mentioned. For thus is the discernment of most of the elite [*al-khawāṣṣ*] in our time, that the truth of a statement's matter is only considered by its comparison to the statement of one who preceded without considering the previous statement, and all the more so in the case of the masses [*al-jumhūr*].” Knowing that readers, scholars and laymen alike, would likely be as critical of him as he would have liked them to be of previous works, he decided to include proofs from biblical and rabbinic sources and to preface his list with fourteen principles describing what can and cannot be counted as one of the 613.<sup>49</sup>

### **Some Suggested Objectives for *Sefer ha-Mitsvot***

Why was Maimonides so concerned with his predecessors' errors? What is at stake in this question of the enumeration of commandments? To put this question differently, why did Maimonides really need to write *Sefer ha-Mitsvot*, and what did he accomplish by this undertaking?

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<sup>48</sup> See above, 17.

<sup>49</sup> See Judeo-Arabic text, below, 211-212.

The genre of commandment enumeration would seem to belong primarily to the realm of legal literature. By definition, the notion of a commandment, whether prescribing or proscribing a certain action, represents a legal matter, and Maimonides, according to his own account, first decided to write about this topic in the context of *Mishneh Torah*, his halakhic guidebook. It would appear, then, that Maimonides' principal contribution in writing *Sefer ha-Mitsvot* would be in the field of law. Moshe Halbertal certainly sees it that way, expressing skepticism about whether perceived failures of his predecessors in this genre would truly have been enough to motivate Maimonides to write this work. Addressing "intellectual challenges for their own sake," Halbertal asserts, "does not characterize his work."<sup>50</sup> Maimonides saw far more in the enumeration of the 613 commandments than a mere "riddle," as Halbertal puts it. *Sefer ha-Mitsvot* became an important project for him because he could advance his theory on the structure of Jewish law as a whole by demonstrating that the 613 commandments make up "part of the general, systematic organization of halakhah."<sup>51</sup> Halbertal maintains that Maimonides' primary contribution in *Sefer ha-Mitsvot*—indeed, the very reason he wrote this work at all—was to outline an overarching theory of the halakhic system whose particulars he would later detail in *Mishneh Torah*. Recall that each subsection of *Mishneh Torah* is prefaced with a list of the commandments to be discussed therein. Halbertal adduces this as evidence that Maimonides viewed the commandments as subject-headings under which the niceties of the individual laws relating to the subject described in the commandment can be catalogued.<sup>52</sup> He codifies all the laws in *Mishneh Torah*, but "Maimonides' halakhic project concerns itself not only with the codification of halakhah, but with the creation of a theory of halakhah which stands up to the test

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<sup>50</sup> Halbertal, "Sefer ha-Mitsvot la-Rambam, ha-'Arkitektura shel ha-Halakhah ve-ha-Te'oriyah ha-Parshanit Shelah," *Tarbiz* 59.3-4 (1990): 458.

<sup>51</sup> Halbertal, "Sefer ha-Mitsvot la-Rambam," 462.

<sup>52</sup> Halbertal, "Sefer ha-Mitsvot la-Rambam," 461.

of the halakhic material in front of him.”<sup>53</sup> That “theory of halakhah” is the work of *Sefer ha-Mitsvot*.<sup>54</sup>

Hanina Ben-Menahem similarly sees *Sefer ha-Mitsvot*, and the introductory principles in particular, as a presentation of Maimonides’ views on legal theory. Ben-Menahem looks beyond Jewish literature, bringing Maimonides’ work into conversation with theories of norm-individuation discussed by figures of general legal philosophy such as Bentham, Kelsen, and Raz. He argues that the fourteen principles with which Maimonides begins his book show that Maimonides was “unusually alert” to the issue of individuation. “Usually the principles of individuation underlying jurisprudential theories,” Ben-Menahem explains, “are not immediately apparent and must be extracted cautiously.” In contrast, Maimonides makes them explicit, and in doing so “demonstrates to those in doubt that the individuation of laws is not an abstract, barren construction of interest only to the philosopher.”<sup>55</sup> Ben-Menahem grants that not all of the fourteen principles can be called rules of individuation; some serve other functions such as clarifying what can be counted at all, but he identifies five as individuating principles (specifically, the fourth, sixth, ninth, thirteenth, and fourteenth). The other principles act as background, clearing up certain other issues and paving the way for his theory of individuation.

It is not wrong to suggest that part of Maimonides’ project was to offer guidance for individuating the commandments. Yet Ben-Menahem’s need to reorganize these principles in order to explain his theory should alert us to the fact that there is much more happening here than

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<sup>53</sup> Halbertal, “*Sefer ha-Mitsvot la-Rambam*,” 480.

<sup>54</sup> In chapter three, we will revisit Halbertal’s position in the context of Maimonides’ second principle.

<sup>55</sup> Hanina Ben-Menahem, “Maimonides’ Fourteen Roots: Logical Structure and Conceptual Analysis,” *Jewish Law Annual* 13 (2000): 13-14. Ben-Menahem does not adequately explain the practical import of Maimonides’ individuating principles; perhaps Maimonides, in outlining these rules, was in fact wearing his legal philosopher hat and not his practical codifier hat.

simply an explanation of norm-individuation, and that while this element of jurisprudence may have been an important part of Maimonides' purpose, it is difficult to say that it is definitely the primary reason he wrote down his introductory principles, much less the work as a whole. In fact, it is difficult to say that any one issue represents Maimonides' principle motivation for writing *Sefer ha-Mitsvot*, as its contributions are many and varied, extending beyond the realm of law into other areas of interest for Maimonides.

Recently, another suggestion has been forwarded to answer the question of why Maimonides would bother listing his own count of the commandments. Albert Friedberg rejects the notion that a list of 613 commandments could possibly serve as an organizational framework for Jewish law. Maimonides might contend that the reason he compiled his list was to avoid leaving anything out of *Mishneh Torah*, but, as Friedberg notes, "for one thing, the *Mishneh Torah* has a number of treatises that only cover rabbinically-ordained laws...no list of scriptural commandments could have prevented the omission of these *halakhot*."<sup>56</sup>

In fact, Friedberg does not believe that Maimonides really cared about the exercise of enumerating commandments at all, and that the whole book was essentially a prolonged excuse to introduce matters of theology into a normative context. Friedberg's dismissal of the task of commandment enumeration is worth quoting at length:

Maimonides stretched the meaning of *mitsvat 'aseh* well beyond its common rabbinic usage, relying uncharacteristically on an aggadah of questionable legal worth, a homiletic creation with didactic aims and no pretensions of being precise, and resorted to a contrived and hardly compelling logic to arrive at the numerical target, likely fully aware of the variant results that could be legitimately obtained.<sup>57</sup>

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<sup>56</sup> Albert Friedberg, *Crafting the 613 Commandments* (Boston: Academic Studies Press, 2014), 24.

<sup>57</sup> Friedberg, *Crafting*, 327-328.

According to Friedberg, Maimonides, despite his loud protestations about the agony inflicted upon him by inaccurate counts of the commandments, was at least as haphazard in his own enumeration. The only matter that truly concerned Maimonides was that previous lists of the 613 left out two principles of faith; namely, God's existence and God's oneness.

The talmudic source in *Makkot* for God giving Moses 613 commandments at Sinai includes a prooftext (of sorts) involving a calculation of the numerical value of the word "Torah." After mentioning R. Simlai's declaration that there were 613 commandments given to Moses at Sinai, the Talmud records the statement of R. Hamnuna, who offers a homiletical reading of Deuteronomy 33:4: "Moses commanded us a law [*torah*]." "[The word] 'Torah' in *gematria* [numerical valuation] is six hundred and eleven," R. Hamnuna notes. "'I am [the Lord your God]' and 'You shall not have [other gods before me]'"<sup>58</sup> they heard from the Mouth of Mightiness [i.e., directly from God, not through Moses]."<sup>59</sup> This constitutes R. Hamnuna's source for there being 613 commandments; 611 (the numerical value of the word "Torah") were given to the Israelites by Moses, plus the first two which were heard directly from God.<sup>60</sup>

Friedberg sees R. Hamnuna's statement as the opening for Maimonides to throw his hat into the ring of commandment enumeration; this was his opportunity to insist that the intellection of God's presence, as represented by "I am the Lord your God," and God's unity, as represented by "You shall not have other gods before me," must be considered legally binding commandments. The rest of *Sefer ha-Mitsvot* was, in effect, a flimsy framework developed in order to house these two theological obligations and present them as legal directives to his

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<sup>58</sup> Meaning, the first two of the ten commandments that were given at Sinai.

<sup>59</sup> Babylonian Talmud, *Makkot*, 23b-24a.

<sup>60</sup> For two medieval treatments of this assertion that the first two commandments were given by God to the Israelites directly, while the next eight of the Ten Commandments were communicated through Moses, see Ibn Ezra, commentary to Exodus 20:1 and Nahmanides, commentary to Exodus 20:7.

readership. In Friedberg's words, Maimonides "disingenuously engaged in an enumeration that he knew full well could not be incontrovertible."<sup>61</sup>

Friedberg's analysis is quite thorough and much of it is truly groundbreaking, but at the end of the day, the idea that Maimonides insincerely went through the motions of developing a comprehensive system of commandments, not to mention his fourteen principles of enumeration, is just not tenable. Perhaps the introduction of those two principles of theology into a legal context was an important factor in convincing Maimonides to pick up his pen, but to dismiss the rest of the work as "disingenuous" does not do justice to the work Maimonides does in compiling the other 611 commandments, not to mention his introductory principles which are laden with important elements critical to understanding Maimonides contribution (or, more accurately, contributions) in *Sefer ha-Mitsvot* to various aspects of Jewish scholarship.

Another function of *Sefer ha-Mitsvot*, found primarily in the introductory principles, relates to Maimonides' exegetical methodology. Maimonides did not write a comprehensive commentary on any part of the Bible, though his many writings contain numerous explanations of biblical verses, to the point that it is possible to retroactively synthesize a fairly thorough Maimonidean commentary to all parts of the Bible.<sup>62</sup> In several places, especially in the *Guide of the Perplexed*, he offers instruction for understanding various themes and passages in the Bible. Yet however useful these passages are for determining Maimonides' theories of biblical interpretation (some of the many examples of programmatic statements in the *Guide* which speak

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<sup>61</sup> Friedberg, *Crafting*, 29.

<sup>62</sup> In fact, several attempts have been made to do just that; see Shraga Cohen, *Rambam 'al ha-Torah* (Jerusalem: R. Mas, 1984) and David Makover, *Moreh Nevukhim la-Rambam 'al ha-Torah* (Jerusalem: Mossad ha-Rav Kook, 2005) to name just two examples. If the multiple attempts to construct a Maimonidean biblical commentary teach us anything, it is that the dangers of taking his comments out of context are often overlooked in the quest to study the Bible with one of the most revered figures in the Jewish tradition.

to a broader exegetical strategy can be found in the introduction, as well as in II: 25 and 29) they are by their nature limited. He restricts his comments on biblical passages to those which have a direct bearing on the topics addressed in the *Guide*, severely checking that work's utility for a reader trying to determine Maimonides' general methodology for studying and interpreting the Bible.<sup>63</sup>

*Sefer ha-Mitsvot*, despite its brevity, represents a much better opportunity in this regard. Scholars have recognized this, focusing mostly on the second of Maimonides' principles of enumeration. In particular, Mordechai Cohen uses that principle, among others, to help build a theory of Maimonides' views on important exegetical questions like clarifying the relationship between the plain sense of the biblical text and the transmitted interpretations of the rabbis. We will consider Cohen's work in more detail in chapter three, but for our purposes here, we should note that his use of *Sefer ha-Mitsvot* for determining Maimonides' methods of exegesis points to the fact that its ramifications for biblical interpretation are strong enough to warrant its consideration as a work of exegesis. Maimonides may have concerned himself with the exercise of commandment enumeration not only to delineate the structure of Jewish law, as outlined in various ways by Halbertal and Ben-Menahem, or to emphasize important theological tenets, as Friedberg suggests, but also because enumerating the commandments can act as a helpful vehicle for offering guidelines on how to interpret Scripture.

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<sup>63</sup> For more on Maimonides' exegesis as found in the *Guide* and his other works, see Sara Klein-Braslavy, *Maimonides as Biblical Interpreter* (Boston: Academic Studies Press, 2011); Arthur Hyman, "Maimonides as Biblical Exegete," in *Maimonides and his Heritage*, eds. Idit Dobbs-Weinstein, Lenn Goodman, James Allen Grady (Albany: SUNY Press, 2009), 1-12; and Jacob Dienstag, "Bibliyografiah 'al ha-Rambam Parshan ha-Miqra," in *Haim M.I. Gevaryahu Memorial Volume* [Hebrew section], ed. B.Z. Luria (Jerusalem: Ha-Hevra le-Heqer ha-Miqra be-Yisra'el, 1989), 346-366, for other treatments.

The conclusion to this dissertation will take this suggestion in a slightly different direction. There, I revisit the question of Maimonides' motivation I submit that one of Maimonides' purposes in writing *Sefer ha-Mitsvot* was to reattach the substance of the divine Mosaic revelation, as manifested in the text of the Torah, to Jewish law. However, to understand that point, it is helpful to look at this work in its cultural context. Specifically, examining the marks of Islamic legal literature on *Sefer ha-Mitsvot* can illuminate much that Maimonides writes in this work and may similarly help uncover his intentions for it. This dissertation will focus particularly on that aspect—the links between *Sefer ha-Mitsvot* and medieval Islamic writings. Of course, Islamic literature does not concern itself with the project of commandment enumeration.<sup>64</sup> Its relevance to *Sefer ha-Mitsvot*, at least as explored in this dissertation, manifests itself in the form and content of the introduction; the ideas Maimonides' adapted to his enumeration principles from Muslim discussions of the law and legal hermeneutics.

### **Maimonides and Islamic law: A Methodological Note**

Of course, before exploring the connections between Islamic literature and *Sefer ha-Mitsvot*, a methodological reflection is in order. After all, Maimonides presents his legal works, including *Sefer ha-Mitsvot*, as simple representations of previously decided Jewish law and, ostensibly, that does accurately describe their nature. Consequently, the burden of proof necessarily lies on those wishing to see his work as, even partially, arising from other factors, including the Islamic milieu in which he lived.

Though others, as we will shortly see, have addressed this issue, it is worth examining this methodological question with an eye toward the benefit of paying attention to Islamic works

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<sup>64</sup> Though see below, 104, n. 5, for an account of a little-discussed legend in Islamic literature which parallels this Jewish tradition of a sum of commandments.

in understanding the writing of this great Jewish halakhist. In a correspondence regarding his legal code, *Mishneh Torah*, Maimonides proclaims that

every unspecified statement in it reflects a plain, explicit passage in the Talmud—either Babylonian or Palestinian—or from the Sifra and Sifre, or a plain passage in the Mishnah or Tosefta. I relied on these and I compiled [my work] from them. About anything derived from a responsum of the Geonim, I say explicitly “the Geonim taught” or “the decree of the later scholars is,” or something similar. And about anything derived from my own reasoning, I say explicitly “it seems to me that the matter is thus,” or I say “from this you can learn that the matter is thus.”<sup>65</sup>

*Mishneh Torah*, according to this description, does not introduce innovations into the substance of Jewish law. Even if Maimonides would agree that his organization represents a novel arrangement of the laws, he seems to maintain that the laws themselves contain few rulings not expressed in earlier Jewish sources, all of which he explicitly marks as such. This, his most forceful declaration to this effect, appears as a defense to a correspondent questioning the traditionalism of *Mishneh Torah*, so it is possible to read this as an apologetic remark, deflecting criticism from Maimonides’ work in order to preserve its legal authority. Twersky observes that this letter “fudges the originality of interpretation—both the extent and intensity of the originality,”<sup>66</sup> but Maimonides makes other, similar statements regarding *Mishneh Torah* and his other legal works. In *Sefer ha-Mitsvot*, for instance, Maimonides insists that while his count of the commandments might look unfamiliar to someone accustomed to other lists, it is, in truth, supported by, and derived from, rabbinic precedents. He explains that he will marshal earlier sources in support of his opinions, something he does not do in *Mishneh Torah*, in order to mitigate the controversy he anticipates will arise from his apparently innovative list. Again, at

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<sup>65</sup> Maimonides, “Letter to R. Pinḥas ha-Dayyan,” in *Igrot ha-Rambam*, ed. Isaac Shailat (Jerusalem: Ma’aliyot, 1988), vol. 2, 443.

<sup>66</sup> Twersky, *Introduction to the Code*, 31.

least outwardly, he bows to the authority of Jewish tradition in constructing his legal compilation.

As noted above in connection to his letter defending *Mishneh Torah*, Maimonides' claims of unadulterated fealty to previous halakhic sources need not be accepted uncritically. Nevertheless, methodologically speaking, viewing Maimonides' juridical efforts solely in the context of rabbinic—and Rabbanite—precedent represents a useful starting point for analyzing his legal writings. This approach to studying the history of halakhah has been described and promoted by, among others, Haym Soloveitchik. As Soloveitchik writes in connection to legal change in Ashkenaz, in determining the extent to which a work of halakhah was impacted by non-halakhic matters, one must identify the “crucial angle of deflection that is necessary for any demonstration that extraneous factors were impinging upon the course of immanent developments.”<sup>67</sup> That is to say, if we can fully, unreservedly explain a legal statement by a Jewish scholar as stemming organically from Talmudic teachings or the rulings of previous Jewish jurists, it would be injudicious to attribute it to other factors. Given the weighty standing Soloveitchik's writings enjoy with regard to the study of the history of halakhah, his methodological advice warrants a more extended look. As will be clarified below, this method will serve us well in our study of the imprint of Maimonides' Islamic setting on *Sefer ha-Mitsvot*, though it requires certain important modifications.

Soloveitchik, in requiring a noticeable “angle of deflection” before attributing legal reasoning to non-halakhic factors, sharpens and clarifies the model of his teacher, Jacob Katz, a pioneer in the field of history of halakhah.<sup>68</sup> Katz advocated this methodology as well, arguing,

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<sup>67</sup> Haym Soloveitchik, “Can Halakhic Texts Talk History?” *AJS Review* 3 (1978): 176.

<sup>68</sup> The respective approaches of Katz and Soloveitchik to the development of halakhah are not completely identical; see Aviad Stollman, “Writing the History of Halakhah: Positivists and Contextualists,” 17-23

as Jeffrey Woolf describes, “that the scholar who seeks to utilize halakhic texts must read such twice. The first time he must examine it with the eyes and mindset of a traditional halakhist. Only then...should he reexamine it with the eyes of the historian.”<sup>69</sup> Katz employs this method in several of his case studies on the historical development of halakhic topics,<sup>70</sup> and his approach has had such an effect on the field that “it may easily be said that almost all contemporary halakhic historiography constitutes ‘footnotes to Katz.’”<sup>71</sup>

Of course, some “footnotes” to the methodology presented by Katz and honed by Soloveitchik have taken the form of criticism.<sup>72</sup> When Katz’s *Tradition and Crisis* first appeared

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[[https://www.academia.edu/12030319/Writing\\_the\\_History\\_of\\_Halakhah\\_Positivists\\_and\\_Contextualists](https://www.academia.edu/12030319/Writing_the_History_of_Halakhah_Positivists_and_Contextualists)], retrieved March 21, 2018. Nevertheless, they both subscribe to the same general historiographical methodology for studying halakhic material.

<sup>69</sup> Jeffrey Woolf, “Methodological Reflections on the Study of Halakhah,” *European Association for Jewish Studies Newsletter* (2001): 9-10. Bernard Cooperman offers a similar summary of Katz’s approach in Cooperman, “Afterword: *Tradition and Crisis* and the Study of Early Modern Jewish History,” in Jacob Katz, *Tradition and Crisis: Jewish Society at the End of the Middle Ages*, ed. and trans. Bernard Cooperman (New York: NYU Press, 1993), 248.

<sup>70</sup> See, for example, Katz, “*Maḥloqet ha-Semikhah ben Rabbi Ya’aqov Berav ve-ha-Ralbah*,” *Zion* 16:3/4 (1951): 41-44. He also demonstrates this methodology in his criticism of historians (he names Heinrich Graetz and Ephraim Urbach in particular) who seek to find the “real” reason a jurist arrives at a decision without evaluating the halakhic argumentation that jurist employed; see Katz, *Halakhah ve-Qabbalah: Mehqarim be-Toledot Dat Yisra’el ‘Al Medoreha ve-Ziqatah ha-Hevratit* (Jerusalem: Magnes Press, 1984), 2-3.

<sup>71</sup> Woolf, “Methodological Reflections,” 9.

<sup>72</sup> Katz himself briefly acknowledges that those who subscribe to the theories of thinkers such as Michel Foucault would likely take exception to his approach. Indeed, postmodernists would reject Soloveitchik’s description of non-halakhic influences as “extraneous factors...impinging on the course of immanent developments.” Foucault argues for the need to rid ourselves of notions such as “development and evolution,” since those ideas imply—falsely, according to Foucault—that it is “possible...to discover, already at work in each beginning, a principle of coherence and the outline of a future unity;” see Michel Foucault, *The Archaeology of Knowledge*, trans. A.M. Sheridan Smith (New York: Vintage Books, 1972), 21-22. According to this view, the history of halakhah should not be understood as a unified continuum presenting a “course of immanent developments,” albeit a continuum which often exhibits contradiction and divergence, and searching for Maimonides’ sources in previous Jewish legal works becomes a useless and misleading exercise. In truth, though, a Foucaultian perspective would similarly devalue attempts at identifying non-halakhic, historical factors influencing a jurist’s work. In the section just cited, in addition to rejecting “tradition” and “development and evolution,” Foucault also calls for the jettisoning of the concept of “influence...which refers to an apparently causal process...which links...such defined unities as individuals, *oeuvres*, notions, or theories.” Again, Katz explicitly addresses the thought of Foucault, Derrida, and other postmodernists, though he remains unimpressed with their theories and unconvinced that their work can be helpfully applied to historical research; see Katz, *‘Et la-Haqor ve-‘Et le-Hitbonen* (Jerusalem: Zalman Shazar Center, 1998), 37-42.

in 1958,<sup>73</sup> it generated some debate. In particular, Haim Hillel Ben-Sasson's review of that book challenged Katz's use of halakhic materials. Ben-Sasson, a fellow historian of early modern Judaism, offered alternative readings of the sources cited in *Tradition and Crisis*, but the resulting exchange between Ben-Sasson and Katz touched on more general methodological matters as well. In brief, Ben-Sasson argued that Katz downplayed the effects that contemporaneous events or movements have on decisions a jurist makes. He was not swayed by Katz's warnings regarding the need to read halakhic literature as stemming first and foremost from the existing halakhic system, at least as pertains to the writings discussed in *Tradition and Crisis*.<sup>74</sup>

Recently, the methodology of Katz and Soloveitchik has faced more direct challenges. Ivan Marcus, in critiquing Soloveitchik, asserted that the latter's "method assumes that Jewish law as a historical fact operates only the way it is supposed to. If there are no uniform set of rules and practices in historical fact, there can be no meaning of the word 'deviation.'" Marcus dismisses what he refers to as Soloveitchik's "rule of inferring historical realia in 'deviations' from a universal halakhic norm."<sup>75</sup> Adiel Schremer has leveled a similar criticism of Katz and Soloveitchik, but he formulates his challenge in the terminology of legal theory. In evaluating Soloveitchik's demand for an "angle of deflection," Schremer contends that "his principle rests—perhaps unknowingly—on a specific view of halakhic thinking that resembles Legal

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<sup>73</sup> I refer to the original, Hebrew version, *Masoret u-Mashber: Ha-Hevra ha-Yehudit be-Motsa'e Yeme ha-Benayim* (Jerusalem: Mossad Byalik, 1958). The book has since been translated into English twice, first as Jacob Katz, *Tradition and Crisis: Jewish Society at the End of the Middle Ages* (New York: Free Press of Glencoe, 1961). An improved translation was then done by Cooperman in the volume cited above.

<sup>74</sup> See the exchange between Ben-Sasson and Katz; Ben-Sasson, "Concepts and Reality in Jewish History in the Late Middle Ages" [Hebrew], *Tarbiz* 29:3 (1960): 297-312; Katz, "On Halakhah and Derush as Historical Sources" [Hebrew], *Tarbiz* 30:1 (1960): 62-68; Ben-Sasson, "Reply" [Hebrew], *Tarbiz* 30:1 (1960): 69-72.

<sup>75</sup> Ivan Marcus, "Israeli Medieval Jewish Historiography: From Nationalist Positivism to New Cultural and Social Histories," *Jewish Studies Quarterly* 17:3 (2010): 280.

Formalism.” Formalists, according to Schremer’s description, “subscribe to the view that judges derive their judicial opinions from the rules of the law, and they describe the judicial process as a process of learning and interpretation of texts.” Schremer points out that formalism represents only one theory of adjudication.<sup>76</sup> Another theory, realism, contends that a judge arrives at a decision in response to the particular case at hand, and then retroactively rationalizes the decision using the applicable laws.<sup>77</sup> Schremer advocates studying Jewish law with a realist outlook, thereby obviating Soloveitchik’s “angle of deflection” requirement. According to Schremer, “there is no need for such a deflection in order to make room for the claim that the judge considers the needs of the community, because this is how a judge’s thinking is portrayed in the first place.”<sup>78</sup>

Schremer’s realist interest lies particularly in a jurist’s accounting for “the needs of the community” as an alternative to abstract interpretation and implementation of established legal literature. Perhaps, though, we can apply his critique of Soloveitchik’s “angle of deflection” to attempts at uncovering other types of factors which might enter into legal writing, factors like a

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<sup>76</sup> Adiel Schremer, “Halakhah, History, and Legal Theory: The ‘Angle of Deflection’ and the Historical Study of Jewish Legal Texts,” 7-8, [[https://www.academia.edu/29778369/Halakhah\\_History\\_and\\_Legal\\_Theory\\_The\\_Angle\\_of\\_Deflection\\_and\\_the\\_Historical\\_Study\\_of\\_Jewish\\_Legal\\_Texts](https://www.academia.edu/29778369/Halakhah_History_and_Legal_Theory_The_Angle_of_Deflection_and_the_Historical_Study_of_Jewish_Legal_Texts)], retrieved March, 21 2018.

<sup>77</sup> Schremer, “Halakhah,” 9.

<sup>78</sup> Schremer, “Halakhah,” 10. For a more extensive treatment of Schremer’s argument for a shift to a Realist perspective, see his “Toward Critical Halakhic Studies,” Tikvah Center Working Paper no. 4/2010 [<http://www.law.nyu.edu/sites/default/files/TikvahWorkingPapersArchive/WP4Schremer.pdf>], retrieved March, 21 2018. Schremer models this approach in a study of a halakhic topic to which Soloveitchik himself has devoted considerable attention, the status of wine produced or handled by non-Jews; see Schremer, “History, Halakhah, and Religious Identity in the Halakhic Discourse of Rabbinic Sages in Medieval Ashkenaz” [Hebrew], *Zion* 81.1 (2016): 31-65. For some of Soloveitchik’s work on the topic of gentiles and wine, see his *Principles and Pressures: Jewish Trade in Gentile Wine in the Middle Ages* [Hebrew] (Tel Aviv: Am Oved, 2003), and idem, *Wine in Ashkenaz in the Middle Ages: Yeyn Nesekh—A Study in the History of Halakhah* [Hebrew] (Jerusalem: Zalman Shazar Center, 2008). For more on some challenges to the Formalist conception of law, and Jewish law in particular, see Daniel Reifman, “The Role of Rationales in Halakhic Adjudication: A Semiotic Approach” (PhD diss., Bar-Ilan University, 2015), 18-23. Aside from the sources Reifman cites in that section, see also Yair Lorberbaum, “Halakhic Realism” [Hebrew], *Shenaton ha-Mishpat ha- Ivri* 27 (2013): 61-130.

familiarity with Islamic legal works.<sup>79</sup> Similarly, if Marcus is right to doubt the existence of a “universal halakhic norm” from which identifiable deviations could occur, maybe we should immediately turn to the historical context of a Jewish legal text to determine its author’s motivations and reasoning. To bring this discussion back to our case, in looking for evidence of the effect Maimonides’ Islamic milieu had on his *Sefer ha-Mitsvot*, need we find an “angle of deflection” in his writing in order to allow us to point to the relevance of Islamic literature?

We will return to that question, but first, let us more deeply examine Soloveitchik’s theory. Soloveitchik himself has responded to critiques like those described above, explaining that he is not arguing that, if no deflection can be detected, the jurist “was not influenced by extraneous force, only that the historian has no basis for claiming that he or she was.”<sup>80</sup> Indeed, this methodology does not deny that non-halakhic factors significantly contribute to the development of halakhah, to the extent that, contrary to Schremer’s presentation, Aviad Stollman actually lists Katz and Soloveitchik among those whose theories resemble the realist approach.<sup>81</sup> Rather, Katz and Soloveitchik simply insist that a historian ask whether a source under consideration can be comfortably explained as an outgrowth of the existing halakhic literature without engaging other, extra-halakhic matters. If so, it is difficult to prove that those “external”

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<sup>79</sup> To be sure, accounting for Islamic works can sometimes help uncover how Maimonides was indeed responding to the “needs of the community.” The third principle of enumeration can provide an example. An exploration of Islamic literature on the topic of legal abrogation can demonstrate that Maimonides was aware of that literature’s relevance to his discussion of temporary commandments, and that he embedded in that third principle implicit responses to the charge that Judaism in its entirety had been abrogated by Islam. This will be explored in chapter four of this dissertation, but it is worth noting here that in including these implicit responses, Maimonides is motivated by one of the intellectual “needs” of his community; that is, defending Judaism from a common polemical attack.

<sup>80</sup> Soloveitchik, “Halakhah, Hermeneutics, and Martyrdom in Medieval Ashkenaz (Part I of II),” *JQR* 94.1 (Winter, 2004): 77-78.

<sup>81</sup> Stollman, “Writing the History,” 17-23. As mentioned above, 30, n. 68, Stollman sees some differences between respective presentations of Katz and Soloveitchik. Moshe Halbertal similarly describes Katz’s principle contribution to scholarship as calling attention to the manner in which local communal conditions can contribute to the overall development of halakhah; see Halbertal, “Jacob Katz on Halakhah, Orthodoxy, and History,” in *The Pride of Jacob: Essays on Jacob Katz and His Work*, ed. Jay Harris (Cambridge: Harvard University Press, 2002), 166-167.

matters truly impacted the text in question. As will be discussed below, Soloveitchik may be overstating this position in asserting that “no basis” exists for such a claim, but it is important to keep in mind that, in Soloveitchik’s words, the “‘angle of deflection’ . . . is not a principle of legal theory but of rules of proof for a historian.”<sup>82</sup>

If a historian wishes to follow this methodology, the traditional commentaries to, and critics of, the legal works of Maimonides make for a worthwhile starting point. Those commentaries generally did not pay attention to the historical circumstances of the author, so their work proves useful in determining the presence of an “angle of deflection.”<sup>83</sup> That is to say, evaluating the legal work of Maimonides solely in light of previously established halakhah describes the extent of the analysis in most of those traditional responses to Maimonides. Some of Rabad’s harshest criticism in his glosses to *Mishneh Torah*, for example, takes the form of dismissive exclamations like “I do not know his source for this; rather it is his own reasoning.”<sup>84</sup> In response, Maimonides’ defenders, reluctant to ascribe any innovation to the content *Mishneh Torah*, come to his support by attempting to identify his halakhic sources.<sup>85</sup> In this literature, consistency with, or at least plausible interpretation of, previous rabbinic sources represents essentially the only criterium for appraising Maimonides’ writing.

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<sup>82</sup> Soloveitchik, “Drawing Historical Conclusions from Halakhic Sources: Approaches and Limitations” [Hebrew], in *Milestones: Essays in Jewish History Dedicated to Zvi (Kuti) Yekutiel*, eds. Etke, Assaf, Kaplan (Jerusalem: Zalman Shazar Center, 2015), 112.

<sup>83</sup> Mark Cohen provides an example of how to exploit this technique in his discussion of a ruling in *Mishneh Torah* about business agency to which ibn Adret (Rashba) objected; see Cohen, *Maimonides and the Merchants* (Philadelphia: University of Pennsylvania Press, 2017), 102.

<sup>84</sup> Rabad, gloss to *Hilkhot Gerushin* 8:21. For just a few of the many similar statements in Rabad’s glosses, see *Hilkhot Tum’at Met* 17:3, *Hilkhot Mekhirah* 7:3 and 24:8, and *Hilkhot Malveh ve-Loveh* 20:2. Additionally, see Rabad’s gloss to the introduction to *Mishneh Torah* in which he denounces Maimonides’ decision to avoid citing his sources. For more on this type of criticism, see the section “Critical Glosses and Animadversions” in Twersky, *Rabad of Posquières: A Twelfth-Century Talmudist* (Philadelphia: Jewish Publication Society, 1980), 157-178.

<sup>85</sup> For examples, see the commentaries traditionally printed with *Mishneh Torah* as they respond to the criticisms of Rabad cited in the previous note.

We should not be surprised to find this approach in traditional treatments of Maimonidean law. After all, as Mark Cohen has written, with respect to the law, “originality in premodern religious societies was deemed a vice, not a virtue.” That outlook finds expression, he states, in the fact that “virtually the entire, vast literature of commentary on the Code took (and takes) as its purpose to establish the Talmudic and post-Talmudic basis for his rulings, to defend the Code against claims against it on the grounds of innovation.”<sup>86</sup> Of course, distrust of originality continued past the era of “premodern religious societies,” something Cohen seems to acknowledge with his present-tense parenthetical comment “(and takes).” In fact, Mark Shapiro has shown that what he dubs the “hagiographic approach” has, if anything, only become more prevalent in the modern period. According to this approach, “the traditionalist commentator must struggle to find an answer” to explain a ruling of Maimonides which does not appear to conform to earlier authoritative sources, “either by providing a new source or a new conceptualization of the halakhah in question.”<sup>87</sup>

Shapiro goes on to mention a significant number of exceptions to this rule, offering examples of traditionalist commentators who eschew this “hagiographic” view of Maimonides and suggest that some problematic rulings are in fact simply products of mistakes Maimonides made. Mostly, though not exclusively, living in the medieval period, these commentators suggest that Maimonides sometimes overlooked or inaccurately cited rabbinic passages, resulting in incorrect rulings.<sup>88</sup> Nevertheless, even in these examples, though the particular stance on how to study Maimonidean law differs from the more common “hagiographic approach,” we find the same overarching methodology. Fidelity to halakhic precedent acts as the only lens through

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<sup>86</sup> Cohen, *Maimonides and the Merchants*, 147.

<sup>87</sup> Mark Shapiro, *Studies in Maimonides and his Interpreters* (Scranton: University of Scranton Press, 2008), 3-5.

<sup>88</sup> See Shapiro, *Studies*, 5-11. For a list of passages from Maimonides’ legal works in which Shapiro has concluded that Maimonides erred, see 11-55.

which to view Maimonides' work; if a ruling seems to conflict in any way with a rabbinic passage, the interpreter can either work to find a way to harmonize this conflict or dismiss the ruling as a mistake in applying rabbinic law. No external, non-halakhic motivations which might explain Maimonides' decision enter the discussion.

Given this traditionalist approach in the work of Maimonides' commentators, their writings can provide one potential method for uncovering an "angle of deflection;" if they struggle to understand how a statement of Maimonides aligns with previously established halakhic sources, a historian might infer that other factors could be at play.<sup>89</sup> Of course, the commentators' traditionalist approach also presents a problem, in that they will sometimes pave over nuanced innovations Maimonides includes in his writings if a similar-enough rabbinic source presents itself.<sup>90</sup> Thus, a historian looking to ascertain what marks, if any, Maimonides' historical setting left on his writings should not rely on these commentators excessively.

A number of historians have indeed convincingly demonstrated that Maimonides' various presentations of halakhah bear the imprint of his historical environment. Maimonides' concern regarding Karaism in his legal works represents one example. He sometimes directly addresses the extent to which Karaites are legally considered heretics, with implications for the modes of interaction with them permitted or required for Rabbanites,<sup>91</sup> and at times he also explicitly

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<sup>89</sup> Cohen demonstrates the value of using these traditionalist sources in finding an "angle of deflection" in his work on Maimonides' codification of laws relating to types of business partnerships; see Cohen, *Maimonides and the Merchants*, 150-151.

<sup>90</sup> Again, Cohen's work on commercial law in *Mishneh Torah* can provide a useful example; see Cohen, *Maimonides and the Merchants*, 38.

<sup>91</sup> Maimonides explicitly refers to them in many places, and Daniel Lasker has shown that Maimonides' stance on the status of Karaites shifted over time; see the chapter "Maimonides and Karaism – Mutual Influences," in Lasker, *From Judah Hadassi to Elijah Bashyatchi: Studies in Late Medieval Karaite Philosophy* (Leiden: Brill, 2008), 155-189, and especially 159-162. For some clear references to Karaites and their status in *Mishneh Torah*, see *Hilkhot Avadim*, 6:6, in which Maimonides mentions the "Sadducees of this time," and *Hilkhot Mamrim*, 3:3, where his discussion of the precise heretical status of those who deny the authority of the Oral Law due to their having been raised from childhood in a community with that blasphemous belief must be describing the Karaite population. In

addresses Karaite arguments related to particular laws.<sup>92</sup> However, more relevant to our discussion are instances in *Mishneh Torah* or his other legal works in which Maimonides counters Karaite views without obviously indicating he is doing so. It is these cases which provide a better glimpse of the way unmentioned historical factors—in this case, the presence of a prominent Karaite population—affected his presentation of halakhah. Twersky, for instance, calls attention to the postscript to the introduction to *Mishneh Torah*, in which Maimonides explains how rabbinic legislation does not violate the prohibition of adding to the Law, as an instance of Maimonides implicitly addressing Karaite claims.<sup>93</sup> And Soloveitchik himself has suggested that Maimonides organized the section of *Mishneh Torah* dealing with the laws of Sabbath in a particular way in order to subtly respond to unmentioned Karaite opinions.<sup>94</sup>

Given that Maimonides explicitly mentions the Karaites and their opinions in a few places in *Mishneh Torah*, it makes sense to look for other passages in which he only implicitly responds to them. Yet other, more hidden, historical factors can also be shown to have affected Maimonides' legal writing. Mark Cohen's examination of Maimonidean law through the prism of Geniza documents, for example, identifies the many laws codified in *Mishneh Torah* which bear the marks of the society in which Maimonides worked. Cohen points out that the section of

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the example from *Hilkhot Mamrim*, the standard printed editions of *Mishneh Torah* contain the phrase “those who have been born among the Karaites,” but it seems that this formulation is incorrect and Maimonides may not have explicitly named “the Karaites” here. Yet even if he does not name them, he is quite obviously referring to them; for a thorough exploration of this passage, see Gerald Blidstein, *Authority and Dissent in Maimonidean Law* [Hebrew] (Tel Aviv: Hakibbutz Hameuchad, 2002), 168-20. Blidstein mentions the textual issue of the explicit naming of “the Karaites” on 185, n. 2.

<sup>92</sup> See, for example, *Hilkhot Shabbat*, 2:3, and *Hilkhot Temidin u-Musafin*, 7:11.

<sup>93</sup> See Twersky, *Introduction to the Code*, 234. Maimonides may have also had Muslim arguments about abrogation in mind. At least one Muslim polemicist, al-Samaw' al al-Maghribī, used the existence of rabbinic legislation as an example of how Jewish law already allows for abrogation; the rabbis must have abrogated the prohibition of adding to God's commandments in promulgating their own. See below, chapter four of this dissertation.

<sup>94</sup> See Soloveitchik, “*Mishneh Torah: Polemic and Art*,” in *Maimonides after 800 Years*, ed. Jay Harris (Cambridge: Harvard University Press, 2007), 327-343. Some have contended that Maimonides wrote *Mishneh Torah* primarily as an anti-Karaite work, but both Twersky and Soloveitchik correctly reject such a broad suggestion; see Twersky, *Introduction to the Code*, 86, and Soloveitchik, “*Mishneh Torah*,” 332.

*Mishneh Torah* dealing with the laws of charity seems to have been heavily influenced by contemporary issues related to poverty and charity, issues which Maimonides does not explicitly invoke but become apparent via Geniza research.<sup>95</sup> Elsewhere, Cohen has demonstrated how Maimonides incorporated novel rulings into *Mishneh Torah* as a response to the dynamic mercantile economy of the Mediterranean Islamic world. Prevailing halakhah could not account for some elements of this economic system, and Jewish merchants were consequently turning to Islamic courts to adjudicate their cases. Without explicitly saying so, Maimonides worked to adapt Jewish law to the economic conditions of his day in order to uphold the relevance of halakhah.<sup>96</sup> Cohen's work provides important case studies for understanding the effect that non-halakhic factors had on Maimonidean legal works.

Let us now turn from general reflections on extra-halakhic factors in Maimonidean law to our specific concern, the value of consulting Islamic literature to understand Maimonides' legal works. The overarching methodological advice of Katz and Soloveitchik remains useful, though as we will shortly explore, some qualifications are in order for the purposes of studying the introduction to *Sefer ha-Mitsvot*. Gideon Libson makes a similar methodological statement in expressly discussing potential comparisons between Maimonides' writings and Islamic law. Explicitly, Libson takes a cautious stance along the lines of the Katz-Soloveitchik approach, contending that

the halakhic rulings in *Mishneh Torah* must be regarded as deriving from Tannaitic and Amoraic sources, the Geonic literature and Maimonides' teachers... It is only after the failure of all attempts to reveal Maimonides' sources in accordance with these criteria that one may conjecture the existence of some non-Jewish legal influence upon Maimonides himself or upon his teachers. However, here again caution is necessary, for mere parallels do not necessarily

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<sup>95</sup> See Cohen, "Maimonides and Charity in the Light of the Geniza Documents," in *The Trias of Maimonides*, ed. Georges Tamer (Berlin: De Gruyter, 2005), 65-81.

<sup>96</sup> See Cohen, *Maimonides and the Merchants*.

provide proof of mutual interaction between two legal systems...Location of such parallels should be accompanied by some additional evidence, be it only circumstantial, such as an indication of possible channels of communication and influence. The Jewish and Muslim legal systems may be likened to two boundless seas; whoever walks between them is treading a narrow bridge, and much care is necessary if one is not to stumble and fall.<sup>97</sup>

Libson's conservatism here, while sound to a degree, is not entirely incontrovertible. His argument contains two different points, both of which require a closer look.<sup>98</sup>

Libson begins by making the claim, familiar to us by now, that one needs to exhaust potential precedents in previous rabbinic writings before turning to the possibility of "non-Jewish legal influence" on Maimonides. We will return to Libson's second claim—that parallels alone do not suffice and that "possible channels of communication" are additionally necessary—but this first point demands some examination. Libson's argument here certainly has merit; if a passage in one of Maimonides' legal works seems to be a straight transcription of preexisting halakhah, it would be wrong to claim Muslim scholarship as its source. However, it would be similarly wrong to disregard automatically the relevance of Islamic literature in a case where Maimonides' writing can plausibly be seen as an extension of preceding Jewish works. Jurists, like all people, form opinions and fashion ideas on the basis of complicated networks of motivations and stimuli, some acknowledged and some unconscious.

Specifically, it is possible to identify at least three reasons Muslim scholarship should not be categorically ignored even in cases in which Maimonides' writing seems to simply echo established rabbinic legal presentations. First, even if a passage in one of Maimonides' legal

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<sup>97</sup> Libson, "Parallels between Maimonides and Islamic Law," in *The Thought of Moses Maimonides: Philosophical and Legal Studies*, eds. Ira Robinson, Lawrence Kaplan, Julien Bauer (Lewiston: Edwin Mellen, 1990), 232-233.

<sup>98</sup> To be fair, elsewhere in Libson's writing, he demonstrates an awareness that this blanket methodological statement cannot be taken as a hard and fast rule in all cases. In fact, if anything, at times he gives Islamic law too much credit in shaping Maimonidean law; see below, 44-45, for example, with regard to his mention of Maimonides' opinion on polygamy.

works appears simply to transmit documented halakhah, it may contain more than meets the eye. Because medieval writers and readers of Jewish law generally disdained, at least outwardly, innovation in that traditional system, Maimonides made sure to express his originality through formulations familiar from rabbinic texts and embedding his novel ideas in the content of established halakhah. Maimonides, no less skilled a writer than he was a thinker, often succeeded in framing his legal innovations as natural extensions of rabbinic law, and it is quite possible that he himself considered these modifications to be true, unoriginal representations of the precedent of the rabbis.<sup>99</sup> As referenced above, this sometimes led to Maimonides' commentators uncritically identifying certain rabbinic statements as his sources even if Maimonides introduces subtle changes into the passage. Mark Cohen, in the course of his exploration of the reflections of the realia of Maimonides' time in *Mishneh Torah*, calls attention to several such instances. Sometimes, he demonstrates, Maimonides' modifications only become visible when light is shed on their historical context.<sup>100</sup>

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<sup>99</sup> This is an important question about this phenomenon, and Mark Cohen briefly asks it. He wonders if, in cases where Maimonides expresses his innovations as seamless transmissions of previously decided halakhah, he thought he was introducing novel ideas into the legal tradition or if he truly saw what he was writing as actual extensions of that tradition. While understandably reticent to take a definitive stand on the mindset of a medieval writer, Cohen suggests that "prima facie, we may hypothesize that, at least on a conscious level, Maimonides did not believe that he was prescribing new law but rather, expanding what he believed (and wanted others to believe) to be the intention of the old law;" Cohen, *Maimonides and the Merchants*, 148.

<sup>100</sup> The example of the obligation of a traveler to contribute, when asked, to the charity of the city in which he finds himself might be such a case. In *Hilkhot Mattenot Aniyyim*, 7:14, Maimonides codifies this law, writing that "when a person travels for commerce [*bi-shorah*]" that person needs to contribute to the charitable funds in the town he is visiting. Cohen points out that even if this formulation almost exactly parallels a passage in the Talmud (Megillah, 27a-b), the commentators on *Mishneh Torah* who simply point to that passage as Maimonides' source do not tell the whole story. Maimonides adds a word, "for commerce," not found in the Talmud, reflecting the widespread practice of Geniza-era Jewish merchants whose business took them all around the Mediterranean and beyond. Cohen even speculates that Maimonides may have been specifying that *only* these merchants would be subject to this law and not others, a significant modification of the Talmud's ruling, as a leniency for another category of visitors common in Maimonides' time; "itinerant travelers...[who] traveled from city to city...[and who] were entered into the local dole and were even expected to defray some fraction of the poll tax." Maimonides, Cohen suggests, may have understood that even if the poor are generally required by Jewish law to contribute some funds, however meager, to charity, these travelers who were already paying a part of the local poll tax could not also donate to the local charity; see Cohen, *Maimonides and the Merchants*, 38-39.

Cohen deals particularly with economic factors and not Islamic law, but the same could be said for the latter. Joel Kraemer's study of how Maimonides uses the five qualifications of Islamic law to describe various halakhic topics can illustrate this point. Briefly, Islamic law describes every action as falling into one of five categories: required, recommended, neutral, discouraged, or forbidden. These categories of possible activities are not foreign to Jewish law, and Kraemer discusses the possibility raised by some scholars that rabbinic law represents, at least partially, a source for that scale in Islam.<sup>101</sup> As such, when Maimonides refers to these categories and even, in his Arabic works, uses the same terms found in Islamic texts, a reader might understandably see Maimonides as simply applying recognizable halakhic concepts to the legal topic in question. However, Kraemer shows that Maimonides appears to be drawing from the systematized structure of the five categories within Islam. That systematization does not exist with the same rigor in halakhic texts, so even if his writing seems to be fully explainable using only Jewish sources, a reader would be misguided in ignoring Islamic law and its framing of these five categories.

Kraemer's research illustrates one reason we should be cautious in following Libson's words of caution. While Libson warns against turning to Islamic law if Maimonides' legal writing can be understood in light of established halakhah, sometimes stopping our analysis with Jewish texts would be a mistake even if those texts apparently suffice as a source. Legal writings, perhaps especially those by Maimonides, are not always what they seem. Knowledge of Islamic law can shed light upon his work even if someone unfamiliar with Islam would not necessarily

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<sup>101</sup> Kraemer, "The Influence," 231-232.

notice anything unusual. In other words, sometimes the “angle of deflection” is slight or hard to notice, but it exists nonetheless.

Of course, sometimes Maimonides’ writings truly do represent simple transcriptions of previous Jewish works. Yet even in those cases, his Islamic milieu should not be automatically discounted, as Sarah Stroumsa points out in response to Libson’s methodological note. “In cases [for which there exists a Jewish legal precedent],” she writes, “Islamic influence can be manifested in emphasizing the importance of a particular topic or in choosing a direction of adjudication from among the existing Jewish precedents.”<sup>102</sup> In these cases, detecting the marks of Islamic literature on Maimonides’ work might prove more difficult and their importance harder to prove. Nevertheless, we should not discount the way the culture of Maimonides’ environment impacted his interpretive and adjudicative choices. Gerald Blidstein, describing Maimonides general approach in *Mishneh Torah*, remarks that “as codifier, then, Maimonides decides which view to accept as authoritative, how to interpret it, and when and how to deploy it.” Therefore, Blidstein asserts, “even literary structure and the recapitulation of Talmudic materials are frequently not neutral or fortuitous. Rather than expecting broad jurisprudential announcements, we should be prepared for delicate textual excavation.”<sup>103</sup>

Blidstein highlights what most readers of Maimonides know: even when he seems to simply quote the Talmud or copy a longstanding position, careful examination of his writing and analysis of other scholars’ work on that topic will sometimes reveal creativity and innovation not

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<sup>102</sup> Stroumsa, “Was Maimonides an Almohad Thinker? [Hebrew],” in *Alei Asor: Proceedings of the Tenth Conference of the Society for Judeo-Arabic Studies*, eds. Daniel Lasker and Haggai Ben-Shammai (Beer Sheva: Ben-Gurion University Press, 2008), 153-154, n. 12.

<sup>103</sup> Blidstein, “The ‘Other’ in Maimonidean Law,” *Jewish History* 18:2-3 (2004): 174.

immediately apparent without this “delicate textual excavation.”<sup>104</sup> In a given passage, Maimonides may simply echo earlier rabbinic writings, but familiarity with Islamic thought could help us excavate under that quote as we question why Maimonides decided on that ruling and probe the rationale behind his application and interpretation of it.

Libson himself, certainly aware of this possibility, sees Islamic influence in Maimonides’ citation of a rabbinic ruling regarding polygamy.<sup>105</sup> Maimonides rules that a man may marry as many women as he likes provided he is able to meet the halakhically required level of support for each one.<sup>106</sup> In allowing a man to marry multiple wives, Maimonides rejects the opinion of one sage in the Talmud who prohibits polygamy and sides with another who permits it. Yet, in Maimonides’ time, the Jewish world did not universally accept polygamy, with most scholars who lived Christian Europe prohibiting it. Beginning as early as the medieval period, some Jewish writers actually explained Maimonides’ ruling as stemming from his Muslim environment; the 13<sup>th</sup>-14<sup>th</sup> century Spanish scholar Yom Tov b. Abraham Asevilli (Ritva) remarks that “it seems to me that Maimonides only permitted marrying many wives today [*bazeman ha-zeh*] due to the custom of the land of the Ishmaelites who practice [polygamy].”<sup>107</sup> Libson, then, is not the first to point to Maimonides’ Islamic environment in explaining this ruling which, again, is taken directly from the Talmud.

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<sup>104</sup> We should note that elsewhere, Blidstein expresses some skepticism about the relevance of Islamic legal writings to Maimonides’ works, and we will shortly return to his doubts in this regard.

<sup>105</sup> Libson, “Maimonides’ Halakhic Writings Against the Background of Muslim Law and Jurisprudence of the Period” [Hebrew], in *Maimonides: Conservatism, Originality, Revolution*, ed. Aviezer Ravitzky (Jerusalem: Zalman Shazar Center, 2008), vol. 1, 258.

<sup>106</sup> Mishneh Torah, *Hilkhot Ishut* 14:3.

<sup>107</sup> Ritva, Commentary to Babylonian Talmud, *Yevamot* 44a. Ritva might not have been the only one to make such a claim; a comment attributed to his teacher, Solomon ben Abraham ibn Adret similarly points to the “custom of the Ishmaelites” as an influence on Maimonides’ stance on polygamy, though this attribution to ibn Adret may be inaccurate; for more on this question of ibn Adret’s stance on polygamy, see the articles by S.Z. Havlin cited in the following note.

We should note, though, that the controversy among medieval Jewish scholars about polygamy did not relate to the Talmudic dispute. It seems everyone agreed that the law should be decided according to the opinion permitting a man to marry multiple women. Rather, those scholars in Christian Europe who prohibited polygamy were following a decree traditionally ascribed to Gershom b. Judah (960-1040) which became authoritative in Ashkenaz and surrounding lands;<sup>108</sup> this is probably what Ritva refers to in mentioning “today.” Perhaps, then, it would be more accurate to say that Maimonides permitted polygamy not because of his Muslim environment, but because he did *not* have the pressure of Christian society pushing him to prohibit it, as his Christian counterparts did. As Goitein writes, when it comes to the practice of polygamy, “the influence of the Islamic environment might have been operative in so far as it perpetuated the license granted by Talmudic legal theory and practice.”<sup>109</sup> Nevertheless, even if Maimonides’ ruling on polygamy in particular does not represent the most telling example of the effect of Islamic norms on his thinking, Ritva, and Libson in following him, is right to acknowledge that Maimonides’ cultural background could influence his decisions, even if those decisions take the form of verbatim quotes from rabbinic literature.<sup>110</sup>

Furthermore, even in cases in which Maimonides does simply quote from his Geonic or Andalusian predecessors, those predecessors themselves could have been drawing, consciously or not, from their Islamic environments. In cases like this, it would still be fair to present

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<sup>108</sup> For more on this decree, and its spread to Provence and Spain in particular, see S.Z. Havlin, “The Enactments of Rabbenu Gershom Me’or ha-Golah” [Hebrew], *Shenaton ha-Mishpat ha-’Ivri* 2 (1975): 200-257, and idem, “New Light on the Enactments of Rabbenu Gershom Me’or ha-Golah” [Hebrew], *Shenaton ha-Mishpat ha-’Ivri* 11-12 (1984-1986): 317-335.

<sup>109</sup> S.D. Goitein, “The Interplay of Jewish and Islamic Laws,” in *Jewish Law in Legal History and the Modern World*, ed. Bernard Jackson (Leiden: Brill, 1980), 72.

<sup>110</sup> For more on polygamy in the Geniza world, see Mordechai Akiva Friedman, *Ribuy Nashim be-Yisrael* (Jerusalem: Mosad Bialik, 1986); idem, “Menahem ben Aaron ibn Zemaḥ’s Anti-Polygyny Torah Commentary from the Geniza,” in *Minhah le-Nahum: Biblical and Other Studies Presented to Nahum M. Sarna in Honour of his 70<sup>th</sup> Birthday*, eds. Marc Brettler and Michael Fishbane (Sheffield: Journal for the Study of the Old Testament, 1993), 103-116.

Maimonides' work as being informed by Islamic law, albeit filtered through Jewish writings. Many of Maimonides' intellectual forebears living in Islamic lands display an undeniable knowledge of Islamic law and a willingness to borrow elements of its structure and content in their compilations. The markings of Islamic legal writing can indeed be seen in particular rulings made by Geonic or Andalusian jurists who preceded Maimonides.<sup>111</sup> And beyond individual rulings, some Jewish writers living under Islam seemed to have adopted and adapted notions of Islamic legal theory (*uṣūl al-fiqh*) in their thinking about the overarching structures and methods governing Jewish jurisprudence.<sup>112</sup> Consequently, even if it can be shown that a passage in Maimonides' legal works represents a direct adoption of a previous Jewish scholar's work, Islamic law and culture remain relevant in studying the passage in question.<sup>113</sup>

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<sup>111</sup> Libson himself has done quite a bit of work on this; for some examples, see his *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period* (Cambridge: Islamic Legal Studies Program, Harvard Law School, 2003); idem, "Betrothal of an Adult Woman by an Agent in Geonic Responsa: Legal Construction in Accord with Islamic Law," in *Esoteric and Exoteric Aspects in Judeo-Arabic Culture*, eds. Benjamin Hary and Haggai Ben-Shammai (Leiden: Brill, 2006), 175-189; idem, "Legal Status of the Jewish Woman in the Gaonic Period: Muslim Influence—Overt and Covert," in *Developments in Austrian and Israeli Private Law*, eds. Herbert Hausmaninger, et al (Vienna: Springer Verlag, 1999), 213-243; idem, "The Custom of Supplement to the Ketubah Based on 'Appropriate Mohar' for a Wife Who Has Lost Her Ketubah" [Hebrew], *Sefunot: Studies and Sources on the History of the Jewish Communities in the East* 5 (20) (1991): 71-94.

<sup>112</sup> For some examples, see Moshe Zucker, "Fragments of the *Kitāb Taḥṣīl al-Sharā'ī 'al-Sama'iyya*" [Hebrew], *Tarbiz* 41:4 (1972): 373-410; idem, "The Rabbanite-Karaite Controversy Regarding 'aseh doheh lo ta'aseh" [Hebrew], *Dine Yisrael* 6 (1975): 181-194; Libson, *Jewish and Islamic Law*; David Sklare, *Samuel ben Hofni Gaon and his Cultural World: Texts and Studies* (Leiden: Brill, 1996), 55-56; Gregor Schwarb "'Uṣūl al-fiqh im jüdischen kalam des 10. und 11. Jahrhunderts: Ein Überblick," in *Orient als Grenzbereich? Rabbinisches und außerrabbinisches Judentum*, eds. Annelies Kuyt and Gerold Necker (Wiesbaden: Harrasowitz Verlag, 2007), 77-104; Miriam Goldstein, "Abū l-Faraj Hārūn (Jerusalem, 11<sup>th</sup> c.) on *Majāz*, between *Uṣūl al-Nahw*, *Uṣūl al-Fiqh*, and *I'jāz al-Qur'ān*," *Der Islam* 90:2 (2013): 376-411.

<sup>113</sup> In fact, Blidstein argues that probing Maimonides' connections to the Islamic world should be seen "in a way...[as] partly an aspect" of studying "Maimonides as part of the geonic tradition." He makes that case because, in regard to the notion of contextualizing Maimonides in his Muslim milieu, Blidstein submits that "the basic issue is not really Maimonides and his environment but rather the geonic movement as a whole, Jewish life in the orbit of Islam as a whole, and its non-Jewish environment;" see Blidstein, "Where Do We Stand in the Study of Maimonidean Halakhah?" in *Studies in Maimonides*, ed. Isadore Twersky (Cambridge: Harvard University Center for Jewish Studies, 1990), 28. Blidstein may be overstating this point; though he correctly connects the question of Maimonides' Islamic context to the question of Islam's mark on previous Jewish scholarship, he is unnecessarily reluctant to study the effects of the Islamic environment on Maimonides in particular. We will shortly address Blidstein's hesitation on this matter.

In summary, Libson's first methodological point—that if a Jewish precedent for Maimonides' writing exists, a historian should not introduce Islamic law into the discussion—requires three qualifications. First, Maimonides may not be adopting that precedent as precisely as it might seem. At times, his wording subtly differs from the source he ostensibly is quoting, and the significance of those differences can sometimes only be appreciated if we account for other factors, such as Islamic law. Second, even when Maimonides does copy previous rabbinic literature exactly, there might have been alternative options available to him; the effects of his Islamic milieu could have played a part in guiding his adjudicatory or interpretive decisions. Finally, Maimonides may indeed simply be following the example of a Jewish predecessor, but that predecessor himself may have been drawing from Islamic thought.

Libson's second point also deserves a closer look. He argues that even if a parallel to Islamic law reveals itself, in order to posit the existence of “interaction” between Jewish and Islamic law, it is necessary to identify “possible channels of communication” between the particular Jewish and Muslim writers in question. There is little reason to quibble with this; demonstrating that Maimonides' legal writing displays the marks of Islamic scholarship requires questioning how Maimonides came to be familiar with that scholarship.

Nevertheless, contrary to Libson's implication, we are not confronted by a dire need to find particular evidence of any “channels of communication” for each individual parallel. This is not to say that Libson, when he wrote his methodological advice, was unnecessarily cautious. Libson wrote those words in 1990, and while scholarship comparing Maimonidean and Islamic law certainly existed then, the almost three decades since have seen this field expand to a significant degree. Blidstein, in an article also published in 1990, acknowledged that comparing the Maimonidean and Islamic legal writing could be a fruitful enterprise, but insisted that “it is a

delicate issue. We do not know, to begin with, the extent of Maimonides' involvement with broader Islamic culture." Blidstein seems to be implicitly making the same point we saw in Libson's writing; to posit connections between Maimonides and Islamic law, we would need to be sure that Maimonides could plausibly have been aware of such Muslim legal scholarship. Blidstein is unsure if we can assume he would have been familiar with Islamic law, and Libson insists on identifying possible points of contact that can explain a particular parallel.

Again, in 1990, this position made sense. Yet to hold the same methodological stance now would be to ignore about thirty years of scholarship which has demonstrated Maimonides' keen awareness of Islamic culture and literature. In a more recent publication, Sarah Stroumsa pushes aside Blidstein's hesitancy, arguing that "quite contrary to this cautious scholarly stand, however, we do know the extent of Maimonides' involvement in the wider culture." Stroumsa points out that with regard to fields like science and philosophy, "we know he was deeply immersed in this culture, and did his best to remain abreast of the developments that occurred in it. The reluctance to acknowledge his familiarity with Muslim law is therefore puzzling, particularly since there is no evidence for such reluctance on Maimonides' part."<sup>114</sup> Stroumsa may be correct to dismiss Blidstein's hesitation, but again, she has the benefit of decades of research that was unavailable to Blidstein when he wrote that. Much of that research has actually been done by Libson, who perhaps has done the most to call attention to the relevance of Islamic law on medieval Jewish law in general and Maimonides' writings in particular. Stroumsa herself has also worked to show Maimonides' awareness of Islamic law, focusing in particular on what she saw as connections to Almohad legal writings by Ibn Tumart. And even some critiques of

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<sup>114</sup> Stroumsa, *Maimonides in His World*, 65.

Stroumsa's position only question the connection to the Almohads in particular, but confirm Maimonides' familiarity with other strands of Islamic legal literature.<sup>115</sup>

Additionally, the scholarly debate about whether or not Maimonides outwardly lived as a Muslim for a time seems to have tipped to one side over the last few decades, with possible ramifications for this question of his knowledge of Islamic law. While one can certainly find dissenting voices,<sup>116</sup> it appears that the balance of the evidence indicates that during his time in North Africa, before he emigrated to Egypt, he presented himself as a Muslim in order to escape the potentially fatal Almohad persecution of non-Muslims.<sup>117</sup> During this time, he apparently publicly studied Islamic religious literature, and there is no reason to assume that those studies did not include legal works. In fact, Ibn Abi Uṣaybi'a, a Muslim physician in Cairo who knew Maimonides' son, Abraham,<sup>118</sup> records a report that prior to his arrival in Cairo, Maimonides had converted, memorized the Quran, and "engaged in the study of Islamic law [*ishtaghala bi-l-fiqh*]," only to revert to Judaism upon moving to Egypt.<sup>119</sup> Of course, Maimonides' familiarity

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<sup>115</sup> Marc Herman, for example, has made a convincing case for looking to Andalusian Maliki sources to explain certain elements of Maimonides' legal thought instead of turning to the Almohads; Herman, "Maimonides' Presentations of the Oral Torah in their Islamic Contexts," presented at the conference of the Association of Jewish Studies, 2018. This paper will form the basis of a chapter in Herman's forthcoming monograph, *Imagining Revelation: The Oral Torah in an Islamic Key*; my thanks to the author for sharing this chapter draft.

<sup>116</sup> See, for example, Herbert Davidson, *Moses Maimonides: The Man and His Works* (Oxford: Oxford University Press, 2005), 17-28.

<sup>117</sup> See Kraemer, *Maimonides: The Life and World of One of Civilization's Greatest Minds* (New York: Doubleday, 2008), 116-124; Amir Mazor, "Maimonides' Conversion to Islam: New Evidence" [Hebrew], *Pe'amim: Studies in Oriental Jewry*, 110 (Winter, 2007): 5-8; Mordechai Akiva Friedman, *Ha-Rambam, ha-Mashiah be-Teman, ve-ha-Shemad* (Jerusalem: Ben Zvi Institute, 2002), 31-37. It should be noted that none of the above works makes the claim that Maimonides unquestionably did convert; rather, they either lean to that side or, in the case of Friedman, simply point out some flaws in the arguments of those who think Maimonides did not convert without definitively stating that he did so.

<sup>118</sup> Ibn Abi Uṣaybi'a, *Kitāb 'Uyūn al-Anbā' fī Tabaqāt al-Aṭbā'*, ed. 'Āmir al-Najjār (Cairo: al-Hay'ah al-Miṣrīyah al-Āmmah lil-Kitāb, 2001), vol. 3, 460.

<sup>119</sup> Ibn Abi Uṣaybi'a, vol. 3, 458. Davidson does not give this source much credence, arguing that, with regard to the Quran and Islamic law, "Maimonides never reveals familiarity with either subject;" see Davidson, *Moses Maimonides*, 19. Davidson's assertion about Maimonides' lack of familiarity is hard to support; as mentioned above, there is, at the very least, significant circumstantial evidence that Maimonides' legal writings bear the occasional marks of Islamic law.

with Islamic scholarship need not be confined to the short period he presented himself as a Muslim convert, and even if those scholars skeptical he ever feigned conversion are correct, Maimonides would likely still have become acquainted with Islamic law. Given his intellectual appetite and connections to Islamic society, it is certainly reasonable to assume that if a work of Islamic law would have been studied by an educated Muslim in Maimonides' time, Maimonides himself would likely have been aware of it.

To return to Libson's desire for evidence of "channels of communication" between Jewish and Muslim jurists when deciding if a legal parallel truly constitutes an interreligious connection, we can state that at least in Maimonides' case, his knowledge of Islamic law can essentially be presumed. Again, his intellectual energy and his well-established relations to the Islamic scholarly world make it difficult to doubt his familiarity with Islamic legal thought. To use an example discussed at length in chapter four, if there exists a parallel between the way Ibn Ḥazm and Maimonides write about temporary commandments, it is fair to operate under the supposition that Maimonides was familiar with Ibn Ḥazm's works, either directly or indirectly, or that the two drew from similar sources, or that this parallel reflects other common environmental influences. That is to say, even if we cannot find specific evidence that Maimonides had read the legal writings of a particular Muslim writer, that writer's opinions still prove important in exploring the work of Maimonides if similarities between the two authors appear.

In fact, though Stroumsa refers to the methodological hesitancy of Blidstein as a "cautious scholarly stance," given what we know about Maimonides' familiarity with Islamic scholarship, it seems that it would be rather *incautious* to overlook this important factor in Maimonides' intellectual career. This is not to say that we should abandon entirely

Soloveitchik's general methodological guidance when studying the impact of Islamic law on Maimonides' writings. Rather, we need to expand the criteria for what qualifies as an angle of deflection. For instance, if Maimonides is the first to write an opinion or frame an issue in a particular way, it is worth looking into the possibility of his Islamic milieu playing a role in that. This holds true even if a Jewish scholar living outside the Islamic world *could* have taken the same position. Just because a jurist in Ashkenaz could conceivably have written something similar, if no such jurist actually *did*, it is worth questioning if Maimonides was the first because of his particular environmental factors. The chapter following this one provides a good example. Maimonides structured his principles of enumeration in a particular format; he offers a succinct phrasing of each principle, then proceeds to explicate it more fully with examples and test-cases. There is no reason a Jewish legal scholar in Christian lands who had an eye for rigorous organization could not have done something similar, but, at least according to the material that has survived, it seems none actually did. *Prima facie*, nothing about this format binds it to an Islamic context. But since it was someone living in that context who introduced it into Jewish literature, it is worth examining whether literature from that milieu can provide a model explaining whence this format of *Sefer ha-Mitsvot* came. Again, Maimonides being the first to write like this may not represent a sufficient angle of deflection according to Soloveitchik's standards given that there is no reason a Jewish writer, in any environment, *shouldn't* use this structure. Nevertheless, the fact that no such writer before him employed this format in any work can indeed push us toward the Islamic context in trying to explain why he did so.<sup>120</sup>

Some might wish to disregard all the above indications that Maimonides did indeed draw from a familiarity with Islamic law. Or, to put this more fairly, some might insist that the

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<sup>120</sup> See the following chapter for much more on this question.

conservatism of halakhah, especially as it stood in Maimonides' time, dictates that in the absence of a glaring, unmistakable angle of deflection, Jewish tradition should be seen as the only source from which he extracted his rulings. Even so, the present study of *Sefer ha-Mitsvot* would still be justified in viewing Islamic legal writing as an important factor in this work of Maimonides. The conservatism of halakhah in particular manifests itself primarily in the content of the law and less in the form of its presentation or in underlying questions of legal theory. For our purposes, in exploring the marks of Islamic literature on *Sefer ha-Mitsvot*, we will largely focus on aspects of Maimonides' organization of his introduction,<sup>121</sup> the way he frames certain principles,<sup>122</sup> and his description of issues of legal theory.<sup>123</sup> Such matters had a less established, and less rigid, position in pre-Maimonidean Jewish literature than did the substance of the law itself—its specific obligations, prohibitions, and rulings. Naturally, then, some of the factors which contributed to Maimonides' presentation and discussion of matters of legal theory might more conceivably be found in “outside” sources than would his sources for a particular ruling.<sup>124</sup> The methodological warnings of Katz and Soloveitchik may well still apply, but at the very least, the degree of the angle of deflection need not be as great when merely the presentation of the law, and not the law itself, is at issue.

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<sup>121</sup> For example, the next chapter will discuss his choice to present his introductory principles in the form he did.

<sup>122</sup> Such as the way he implicitly responds to Muslim arguments about abrogation in his discussion of temporary commandments in principle three, as will be explored in chapter four.

<sup>123</sup> To be dealt with most extensively in chapter three.

<sup>124</sup> Of course, as is clear from some of the examples above, his rulings on specific areas of halakhah do certainly bear the marks of his Islamic society at times. I mean only to say that even were one to demand an eye-catching angle of deflection due to the conservatism of medieval halakhah, that conservatism does not present itself to the same extent for most of the issues this study of *Sefer ha-Mitsvot* explores.

### The Cultural Context of *Aṣl/Uṣūl* as Used by Maimonides in *Sefer ha-Mitsvot*

We have seen that Maimonides' inclusion of guiding principles as an introduction to his count of the 613 commandments represents a noteworthy and innovative contribution to the genre of commandment enumeration. Given that he was the first to organize his book of enumeration in this way, it is worthwhile to investigate the import of his presentation of these principles. He lists his fourteen principles in a distinctive manner, beginning each with a concise statement of the rule, introduced by the word *al-aṣl*, and he follows each statement with a longer discussion of the principle in question. As it characterizes and organizes his fourteen rules for enumeration, the word *aṣl*, so ubiquitous in Maimonides' introduction, carries some significance. It would seem reasonable to simply render *aṣl* in this context as "principle," as these are in fact principles and that is a reasonable translation of the word *aṣl*.<sup>1</sup> But if we were to let a basic translation suffice in explaining the place of that term here, we would miss an important aspect of Maimonides' introduction. When we look at the cultural environment in which he worked, we will see the implications of presenting these principles by using the word *aṣl* in the way he did.

This chapter explores the ways in which the introduction to *Sefer ha-Mitsvot* seems to be modeled after a genre of Islamic legal writing dedicated to identifying and explaining what eventually came to be called the *qawā'id fiqhīyya*, legal principles. These principles were, in Maimonides' time, marked as *uṣūl*, and since the form of Maimonides' introduction bears an unmistakable resemblance to works of this genre that would have been available to him, his use of *aṣl* here should be seen in this context. Additionally, the appearances of the word *aṣl* in Maimonides' other legal works further attest to his awareness of Muslim treatments of the

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<sup>1</sup> See below in the appendix to this chapter for a survey of how this word has been rendered in the Hebrew translations of *Sefer ha-Mitsvot*.

*qawā'id fiqhiyya*, lending support to the notion that he consciously drew from this genre in constructing his introduction. Muslim writers ascribed enormous importance to legal principles, and viewed identifying them as serving several critical functions. The frequency at which such principles appear in Maimonides' works, the language he uses to mark them, and the functions he ascribes to them all suggest that he was no stranger to Islamic discussions of the *qawā'id fiqhiyya*. Just as works of Islamic legal theory in his time carved out a particular role for such *uṣūl* in the overall legal system, Maimonides saw the existence of legal principles as a critical element in the system of halakhah.

While previous Judeo-Arabic works also described legal principles as *uṣūl*, they did not display any consistency in doing so. The word *aṣl* was only sparingly used in this way, and we can attribute the few cases where it is used that way to the fact that a *aṣl* can literally mean "principle." For Maimonides, though, *aṣl* became a technical term of art, referring to a particular and defined item within the Jewish legal system. It would seem, then, that Maimonides drew from Islamic notions of legal principles in his other works, but he actually adopts the form and structure of the early works of the *qawā'id fiqhiyya* genre in his introduction to *Sefer ha-Mitsvot*. As we will see, it makes sense that he would fashion his introduction in the style of those Islamic works, as the purposes Muslim jurists identified for the *qawā'id* seem to match Maimonides' reasons for listing his principles of enumeration.

### **A Possible Source in Jewish Literature: *Uṣūl* for Resolving Rabbinic Disputes**

Even if no previous commandment enumerator had specified principles of enumeration, it would be advisable to search for any type of Jewish precedent for these introductory *uṣūl*. At the very least, this exercise would demonstrate whether turning to Islamic sources is in fact worthwhile. Perhaps our best chance for finding something in Judeo-Arabic literature which resembles these

principles lies in compilations of rules of adjudication, which predated Maimonides by centuries and appear prominently in the enigmatic geonic work *Seder Tanna'im ve-Amora'im*. That work, which was excerpted, copied, and commented on throughout the geonic period and beyond, presents the chronology of the generations of sages whose opinions are recorded in the Mishnah and Talmud, explains certain ubiquitous rabbinic terms, and offers other information helpful to one studying these texts. In addition, it sets down rules about how to resolve the many disputes that make up the majority of the Talmud. For instance, “any time the House of Hillel disagrees with the House of Shammai, the law is according to the House of Hillel...and any time R. Aqiba or R. Jose or Rabbi [Judah the Prince] disagrees with any other sage, the law is according to them.”<sup>2</sup> These rules found their way into other works inspired by *Seder Tanna'im ve-Amora'im* and became something of a feature of geonic writing.<sup>3</sup>

These principles could bear some significance for our study for two reasons. First, and most basically, these rules, like Maimonides' enumeration principles, are characterized, at least once, by the term *ašl*.<sup>4</sup> In and of itself, this might not be so significant, but there may be more to the comparison than a simple semantic parallel. These general principles were designed to help decide how to rule in a specific case, and when Maimonides wanted to lay out principles to help decide how to count specific commandments, it is possible he saw these *uṣūl* of adjudication as a possible model. The second reason these rules in *Seder Tanna'im ve-Amora'im* deserve our attention relates to the form in which they are presented. Specifically, they are organized in list form. While passages naming specific exceptions or adding clarification do often break up the

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<sup>2</sup> See Shraga Abramson, “*Le-Toledot Nusah 'Seder Tanna'im ve-Amora'im'*,” in *Studies in Rabbinic Literature, Bible, and Jewish History: In Honor of Prof. E. Z. Melamed*, eds. Gilat, Levine, Rabinowitz (Ramat Gan: Bar Ilan University, 1982), 230.

<sup>3</sup> For more on this anonymous composition and its influence, see Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven: Yale University Press, 1998), 274-282, and Abramson, “*Le-Toledot*,” 215-229.

<sup>4</sup> See Abramson, “*Le-Toledot*,” 234.

list, the structure of this section is simply a catalog of page after page of rules for deciding between particular sages. Maimonides may have seen this list of *uṣūl* as a handy template for his introduction.

This connection between the introduction to *Sefer ha-Mitsvot* and the rules of adjudication in *Seder Tanna'im ve-Amora'im*, though, seems undeniably tenuous for various reasons. Chiefly, while both can indeed be described as “lists,” they do not truly appear similar in any significant way. Maimonides begins each principle with “*al-aṣl al-awwal...al-aṣl al-thānī... , etc.,*” an organizational strategy not found in the geonic work which simply states each rule without any introduction, one after the other. As mentioned above, the word *aṣl* is used to describe these rules, but even that is only done in passing. And, aside from using “*al-aṣl*” as a demarcating introduction to each principle, Maimonides’ structure differs radically in another way. He states each principle concisely and in general terms, and then follows each succinct statement with at least a paragraph, and sometimes multiple pages, of explanations and illustrative cases which elucidate and defend the principle. While *Seder Tanna'im ve-Amora'im* does frequently interrupt its list in order to clarify a particular rule, it is generally only to qualify it, not illustrate it. For example, after the above principle about the law following the opinion of the House of Hillel, we are told of a specific case which represents an exception and also, more generally, that “where the House of Hillel concedes to the House of Shammai, obviously the law is according to [the latter].” The purpose of these short interjections seems vastly different from that of Maimonides’ explanations of his enumeration principles.

These differences can, perhaps, be explained away if we take into account Maimonides’ penchant for organizational creativity and innovation. That is to say, maybe the list of guiding principles of adjudication inspired his own list of guiding principles of enumeration, and he then

created a new structure and style to suit his particular goals and organizational preferences. If so, *Seder Tanna'im ve-Amora'im* might represent a Judeo-Arabic precedent for Maimonides' introduction, but, admittedly, this geonic compilation only seems relevant for a study of *Sefer ha-Mitsvot* if we insist on finding a precedent in Jewish sources. Yet, as was just mentioned, Maimonides' writings routinely exhibit revolutionary or inventive thought, giving us little reason to demand a precedent at all. Having said that, if we broaden our search and look outside Jewish sources, we do indeed find a genre of literature which we can far more plausibly view as a model for Maimonides' introductory *uṣūl*.

### **“*Aṣl*” as a Technical Term in Maimonides' Islamic Milieu**

In the first chapter, we looked at the importance of accounting for the Muslim milieu in which Maimonides worked for evaluating his writings, and the matter of the term *aṣl* in his introduction is no exception. When examining possible Islamic influences on Maimonides' use of this word in particular, we should acknowledge the work of Sarah Stroumsa, who has offered a compelling account of Maimonides' tendency to include *uṣūl* in all aspects of his writing.<sup>5</sup> She describes the inclination on the part of ibn Tūmart and other Almohad writers to return to the basic foundations [*uṣūl*] of Islam and to reject the “study of casuistics (*furū*).”<sup>6</sup> Maimonides lived under the Almohads between the time they conquered Cordoba, when he was ten years old, and the point at which he left Fez, at about age twenty-seven.<sup>7</sup> Stroumsa outlines the mark they left on his thinking and on his writing, and with regard to the law, she points out that Maimonides

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<sup>5</sup> See the chapter entitled “An Almohad ‘Fundamentalist?’” in Stroumsa, *Maimonides in his World*, 52-83.

<sup>6</sup> Stroumsa, *Maimonides in his World*, 55. Stroumsa sees ibn Tūmart as pushing back against the Mālikī legal tradition in al-Andalus which, she explains, was focused more on the study of the *furū*.

<sup>7</sup> His whereabouts between his family's flight from Cordoba and their arrival in Fez are not completely accounted for, nor are the reasons his family chose to emigrate to the Almohad capital; see Kraemer, *Maimonides: The Life and World*, 41, 83-124.

saw the importance of returning “to the primary sources of legislation (*uṣūl*) and to avoid casuistics (*furū*) as much as possible.”<sup>8</sup>

However, Stroumsa’s treatment of Maimonides’ use of *aṣl* fails to completely satisfy. She categorically states that “wherever Maimonides employs the term *uṣūl* he intends it in the precise technical meaning that this term had in his milieu.”<sup>9</sup> That is something of a vague assertion given the range of meanings which we will shortly see that *aṣl* has, so even if it were true that Maimonides always intends the “precise technical meaning,” there exist enough technical meanings to effectively render Stroumsa’s argument of limited use. She mentions in passing that he “uses the term *uṣūl* to denote the guiding principles of legislation,” referencing the *uṣūl* in the introduction to *Sefer ha-Mitsvot*,<sup>10</sup> but does not explain how that use fits into his milieu. It is certainly true, though, that in order to get a sense of what Maimonides meant by a word, it is crucial to uncover what that word meant at the time he was writing. Stroumsa has given us a good start, and she does demonstrate the link between Maimonides’ desire to return to the sources of law and that of the Almohads. Yet, for our purposes, we need to look closer at the meaning to which she only nods, the “guiding principles of legislation” as reflected in *Sefer ha-Mitsvot*.

In Islamic legal literature, *aṣl* has a number of denotations. Perhaps the most well-known legal sense of *aṣl*, and the one Stroumsa seems to have had in mind in her treatment of this topic, appears in the phrase *uṣūl al-fiqh*. This term collectively refers to the canonical texts or traditions and their attendant hermeneutical devices through which a legal scholar can determine the content of positive law. These are the sources of the law, and the laws themselves are

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<sup>8</sup> Stroumsa, *Maimonides in his World*, 64.

<sup>9</sup> Stroumsa, *Maimonides in his World*, 82.

<sup>10</sup> Stroumsa, *Maimonides in his World*, 82, n. 53.

considered branches, *furū`*. We will have the opportunity to explore *uṣūl al-fiqh* more deeply in the next chapter, in which we will look at some possible connections between various aspects of *Sefer ha-Mitsvot* and this science of Islamic jurisprudence, and we will see that several of these rules of enumeration display parallels to principles of Islamic legal theory. However, not all of them do; some have nothing to do with establishing or mining the sources of law, even to the extent that this field pertains to the exercise of commandment enumeration, so it would be difficult to argue that when Maimonides writes “*al-aṣl...al-aṣl...etc.*” to begin each principle, he is referring to the sense of *aṣl* in the phrase *uṣūl al-fiqh*.<sup>11</sup>

*Aṣl*, though, had another important meaning in Maimonides’ era; namely, “a legal principle that covers several individual cases,”<sup>12</sup> and it is this meaning which demands our attention in a study of the introduction to *Sefer ha-Mitsvot*. These legal principles came to be known as *qawā`id fiqhiyya*, often translated as “legal maxims,” and in the two or three centuries before Maimonides’ lifetime, these *qawā`id* began to be identified and collected in dedicated works.<sup>13</sup> We will soon survey the history of this genre, but for now, it is enough to state that in

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<sup>11</sup> It is worth briefly touching on another common meaning of *aṣl*, one that Maimonides also utilizes in *Sefer ha-Mitsvot*. Besides referring to a source of jurisprudence itself, *aṣl* carries a particular sense in the context of *qiyās*, an important legal exercise in *uṣūl al-fiqh*. As will be discussed in the next chapter, *qiyās* (usually translated as “analogy”) represents the technique of deriving a new law from a comparable case for which the law is already known. The original, known case is considered the “root [*aṣl*]” from which the ruling for the similar but unknown case, the “branch [*far`*],” is derived. Maimonides himself explicitly uses this meaning of *uṣūl* and *furū`* in his second principle to describe what he classifies as the Jewish form of *qiyās*. Obviously, though, despite his evocation of this sense of the word in one of the principles in the introduction to *Sefer ha-Mitsvot*, this sense of *aṣl* cannot fit the meaning the term in introducing each enumeration principle.

<sup>12</sup> Wolfhart Heinrichs, “*Qawā`id* as a Genre of Legal Literature,” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 374. Heinrichs writes that *aṣl* has three meanings, identifying its sense of “source of the law” and its use in *qiyās* as the other two. In truth, though, this does not exhaust the number of meanings *aṣl* has in Islamic law. For example, it can also refer to an assumed status quo (like a person’s state of ritual purity). Additionally, *uṣūl al-fiqh*, at least in an earlier period of Islam, could refer to the areas of law considered fundamental to religious life. This meaning, though, seems to have fallen out of common use before Maimonides was born; see Ahmet Temel, “Uṣūl al-Sunna: The Tenets of Islamic Orthodoxy and Orthopraxy According to Traditionalists (Ahl al-ḥadīth),” in *The Sunna and its Status in Islamic Law: The Search for a Sound Hadīth*, ed. Adis Duderija (New York: Palgrave Macmillan, 2015), 43.

<sup>13</sup> Heinrichs’ article cited in the previous note was among the first English language discussions of the *qawā`id fiqhiyya* and, therefore, was necessarily broad and inconclusive. Nevertheless, it was a marked improvement over

its early stages, writers more commonly used the term *uṣūl* to represent these maxims instead of calling them *qawā'id*, the word by which such principles would ultimately come to be known after Maimonides' time, when this genre began to truly flourish.<sup>14</sup>

Eventually, the relationship between the *uṣūl* in the sense of *uṣūl al-fiqh* and the *uṣūl* in the sense of *qawā'id fiqhiyya* became a topic of debate among Islamic jurists. Shihāb al-Dīn al-Qarāfī (1228-1285), for instance, explains that “the great Muhammadan *sharī'a* includes roots and branches [*uṣūl wa-furū'*]. Its *uṣūl* are of two types; one of them is what is called *uṣūl al-fiqh*...and the other type, magnificent comprehensive legal maxims [*qawā'id kulliyya fiqhiyya jalīla*].”<sup>15</sup> Al-Qarāfī characterizes the *qawā'id* as one of the two types of *uṣūl* of the *sharī'a*, the other being *uṣūl al-fiqh*, apparently indicating that these two are equally important to the system of Islamic law. In the 16<sup>th</sup> century, ibn Nujaym went even further by calling the *qawā'id* the “true *uṣūl al-fiqh*,”<sup>16</sup> a statement which his commentator, al-Ḥamawī, felt compelled to explain

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the scant attention the *qawā'id* received from Joseph Schacht in both *Introduction to Islamic Law* (Oxford: Clarendon Press, 1965) and *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1967), and Heinrichs' contribution remains one of the best resources for exploring this genre. For several useful Arabic treatments produced in the modern era on the *qawā'id* genre, see his citations on p. 366. In addition to the ones Heinrichs mentions, I have found Ṣidqī bin Aḥmed al-Būrṅū, *Mawsū'at al-Qawā'id al-Fiqhiyya* (Beirut: 1995) to be a valuable work. Subsequent to Heinrichs' article, there have been more treatments in English on this topic; for some examples, see Rashed Saud al-Amiri, “Legal Maxims in Islamic Jurisprudence: Their History, Character, and Significance,” (PhD diss., University of Birmingham, 2003); Khaleel Mohammed “The Islamic Law Maxims,” *Islamic Studies* 44:2 (2005): 191-207; Mohammad Hashim Kamali, “Legal Maxims and Other Genres of Literature in Islamic Jurisprudence,” *Arab Law Quarterly* 20:1 (2006): 77-101; Fawzy Shaban Elgariani, “*Al-Qawā'id al-Fiqhiyya* (Islamic Legal Maxims): Concept, Functions, History, Classifications and Applications to Contemporary Medical Issues,” (PhD diss., University of Exeter, 2012); Khadiga Musa, “Legal Maxims as a Genre of Islamic Law,” *Islamic Law and Society* 21 (2014): 325-365; Luqman Zakariya, *Legal Maxims in Islamic Criminal Law: Theory and Applications* (Leiden: Brill, 2015); Intisar Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (New York: Cambridge University Press, 2015).

<sup>14</sup> See below, in the section entitled “The *Qawā'id Fiqhiyya*: History and Form.” I should note that throughout this chapter, I refer to these early works which employ the term *aṣl*, and not *qā'ida*, as “*qawā'id* works” or similar designations. To avoid anachronism, these formulations should be understood as “works which identify the legal principles which would later be termed *qawā'id*” and not “works which call these principles *qawā'id*.”

<sup>15</sup> Al-Qarāfī, *Kitāb al-Furūq* (Cairo: Dār al-Salām, 2001), vol. 1, 70. For more on al-Qarāfī, to whom we will return, see Sherman Jackson, *Islamic Law and the State* (Leiden: Brill, 1996), and Diego R. Sarrió Cucarella, *Muslim-Christian Polemics across the Mediterranean: The Splendid Replies of Shihāb al-Dīn al-Qarāfī (d. 684/1285)* (Leiden: Brill, 2015).

<sup>16</sup> Ibn Nujaym, *Al-Ashbāh wa-l-Nazā'ir fī Qawā'id wa-Furū' Fiqh al-Hanafiyya*, ed. Khālid Muḥammad Sa'īd (Cairo: Al-Maktaba al-Azhariyya li-l-Turāth, 2012), 10.

away.<sup>17</sup> And five centuries after ibn Nujaym’s declaration, the relationship between *uṣūl al-fiqh* and the *qawāʿid fiqhiyya* remains a complicated subject.<sup>18</sup> However, for our purposes, we can leave that issue to Islamic legal scholars and suffice with the simple observation that one obvious difference between works of *uṣūl al-fiqh* and early *qawāʿid* works is that the former did not generally present their discussions of the tools and techniques of legal theory as a list of principles each beginning with “*al-aṣl...*” In contrast, as we will shortly see, *qawāʿid* works did do this. As the sense of *aṣl* as a legal principle seems a likely candidate to be behind Maimonides’ use of that term in *Sefer ha-Mitsvot*, let us explore these *qawāʿid fiqhiyya* in more depth.

The 14<sup>th</sup> century scholar Tāj al-Dīn al-Subkī classifies a *qāʿida* as a “generally valid rule with which many particular cases agree, whose legal determinations can be understood from it [i.e., the *qāʿida*].”<sup>19</sup> Muslim legal writers have, to a large degree, accepted al-Subkī’s definition, though there is some disagreement over how exactly to characterize the *qawāʿid*.<sup>20</sup> This disagreement stems from differing opinions on the extent to which these maxims are valid; some demand that for a rule to qualify, it needs to always apply to all relevant cases, while others allow for a *qāʿida* to be only predominantly valid.<sup>21</sup> That debate notwithstanding, some *qawāʿid* did achieve universal acceptance. For instance, all Sunni legal scholars have agreed upon the five *qawāʿid al-kubra* (major principles) which cover the most number of individual cases across

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<sup>17</sup> Heinrichs, “Qawāʿid,” 368.

<sup>18</sup> See Al-Amiri, “Legal Maxims,” 55-60. Additionally, the references below in note 38 regarding the *qawāʿid usūliyya* bear relevance to this issue.

<sup>19</sup> Heinrichs, “Qawāʿid,” 367.

<sup>20</sup> See Mohammed, “The Islamic Law Maxims,” 193, for three common definitions of a legal *qāʿidah* suggested by Islamic scholars in the modern period.

<sup>21</sup> Al-Amiri, “Legal Maxims,” 8-13; Elgariani, “*Al-Qawāʿid al-Fiqhiyya*,” 41-42; Musa, “Legal Maxims,” 328-330.

all spheres of the law.<sup>22</sup> In fact, one of these five, *al-yaqīnu lā yazūlu bi-l-shakk*, certainty is not countermanded by doubt, was said by one 15<sup>th</sup> century writer to encompass three quarters of all legal rulings.<sup>23</sup> To mention one illustration of this principle in the realm of financial transactions, if a debtor is sure that he or she borrowed money but is not sure whether or not the loan has been repaid, the certainty a loan exists overrules the doubt that it has already been repaid, and the debtor would still be required to pay back the loan. Another application of this principle, from a completely different area of the law, occurs if someone is praying and knows that one *rak‘a* [part of the prayer service] has been completed, but is in doubt about whether a second has also been completed, the person praying must proceed on the assumption that only one *rak‘a* has been performed.<sup>24</sup> Like this principle about certainty and doubt, the other *qawā‘id al-kubra* are also fairly abstract and general, and they have ramifications for rulings in all spheres of Islamic law.

However, not all *qawā‘id* are so broadly applicable. Some can only apply to a few areas of the law, and some are even specific to one particular legal matter. Al-Amiri offers an example of a principle with limited applicability: “in contracts, effect is given to meaning and intention, not to words and forms.” This principle applies to many different types of contracts, but its relevance is obviously restricted to contract law.<sup>25</sup> While the principles with the narrowest

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<sup>22</sup> The five are “a matter is determined by the intention behind it,” “harm should be eliminated,” “hardship begets facility,” “certainty is not countermanded by doubt,” and “custom can be the basis of a ruling.” For more on this category of *qawā‘id*, including comprehensive treatments of each of these five, see Kamali, “Legal Maxims,” 82-90, and Elgariani, 208-270.

<sup>23</sup> See Elgariani, “*Al-Qawā‘id al-Fiqhiyya*,” 234, for al-Suyūfī’s statement.

<sup>24</sup> See Elgariani, “*Al-Qawā‘id al-Fiqhiyya*,” 234-235 for these and other examples from various areas of Islamic law.

<sup>25</sup> Al-Amiri, “Legal Maxims,” 15.

scopes are sometimes called *ḍawābiṭ*, they are at least very closely related, if not actually a subsection, of the *qawā'id*.<sup>26</sup>

### **The *Qawā'id Fiqhiyya*: History and Form**

In order to see the relevance of this genre to *Sefer ha-Mitsvot*, it is worth taking some time to look at the history of the *qawā'id fiqhiyya*. Some scholars have argued for setting the starting point of the *qawā'id* at Muhammad himself, as certain statements in the Quran and in *ḥadīth* literature can be read as legal maxims.<sup>27</sup> Indeed, some *qawā'id* are commonly expressed using formulations taken from the Quran or quotations from a *ḥadīth*.<sup>28</sup> Yet even if one is inclined to see the origins of *qawā'id* in those early Islamic texts, it must be acknowledged that they only crystalized into set concepts and reached their full utility later, “in the era in which legal development flourished.”<sup>29</sup>

Legal maxims, to the extent they existed in the nascent period of Islam, only took on real significance when Islamic law became more systematized. This is also when the *qawā'id* received the focused attention of legal scholars, though that did not happen immediately either. Muḥammad ibn Idrīs al-Shāfi'ī (d. 820), for instance, long considered the father of *uṣūl al-fiqh*<sup>30</sup> and a “foundational figure in the history of Islamic law, both in the eyes of posterity and in the

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<sup>26</sup> See Heinrichs, “Qawā'id,” 373-374, and al-Amiri, “Legal Maxims,” 14-18, for more on the extent to which *ḍawābiṭ* and *qawā'id* can be seen as distinct or related.

<sup>27</sup> See al-Amiri, “Legal Maxims,” 88; cf. Elgariani, “*Al-Qawā'id al-Fiqhiyya*,” 121-127, who is skeptical as to whether we can truly say that *qawā'id* were established that far back.

<sup>28</sup> Kamali, “Legal Maxims,” 80-81, divides the *qawā'id* into two groups, those whose formulations consist of quotes or close paraphrases of the Quran or Sunna and those whose language is constructed by jurists. The *qawā'id* in the former category, he states, “carry greater authority” than those in the latter. See Musa, “Legal Maxims,” 342, who cites some modern scholars who argue that principles based on the Quran or *sunna* should not be called *qawā'id fiqhiyya* at all, but rather *qawā'id tashri'yya* [legislative principles] since there can be no disagreement about their validity.

<sup>29</sup> “*Fī asr izdihār al-fiqh*,” Al-Bürnū, *Mawsū'at*, vol. 1, 50.

<sup>30</sup> See below, 102, n. 1, for more on whether al-Shāfi'ī truly deserves this designation.

estimation of modern scholarship,”<sup>31</sup> never authored a dedicated work on *qawāʿid fiqhīyya*.

Considering al-Shāfiʿī’s formidable talent and interest in organizing and formulating the law, some have wondered why he did not write one; the same powers of induction that allowed him to pioneer the study of *uṣūl al-fiqh* could also have been used to gather and communicate the *qawāʿid*.<sup>32</sup>

Yet, while al-Shāfiʿī did not write any works devoted solely to the *qawāʿid*, his writings, and those of other early jurists, include formulations which would later become mainstays of the *qawāʿid* genre. For instance, his pronouncement “*lā yunsabu ilā sākitīn qawl* [a statement is not attributed to one who is silent],” used to explain the mechanism of finding consensus [*ijmāʿ*] among legal scholars—an important concern in the science of *uṣūl al-fiqh*—was adapted by later writers to function as a *qāʿida* for other points as well.<sup>33</sup> So while the *qawāʿid* were not yet completely systematized, early scholars of *fiqh* seem to have made use of them to some extent.

It is generally accepted that the Ḥanafī school<sup>34</sup> was the first to undertake the collection of legal maxims. Traditionally, the tenth-century Iraqi scholar Abū Ṭāhir al-Dabbās is credited

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<sup>31</sup> Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʿī* (Leiden: Brill, 2007), 2.

<sup>32</sup> See al-Amiri, “Legal Maxims,” 98, with his account of, and response to, al-Bāḥsayn’s surprise at the absence of a *qawāʿid* work by al-Shāfiʿī. On this topic, those who write about the *qawāʿid* genre often ask a variation of the question posed by Elgariani, “*Al-Qawāʿid al-Fiqhīyya*,” 135: “Why did compiling *qawāʿid* in separate dedicated books commence later than other law-related disciplines?” This is an important question with regard to the history of Islamic law, but it may sometimes betray a view that this genre was inevitable. It is not at all apparent that dedicated *qawāʿid* works were always an unavoidable development in Islamic legal literature. To illustrate this, we can point to the fact that the Talmud includes a large number of rules that could easily parallel future Islamic *qawāʿid fiqhīyya*, including one very common one, for example, which is quite similar to the principle cited above about certainty and doubt—*en safeq motsi mi-yede vaday* (doubt does not overrule certainty). Yet it has never been a prevalent practice among Jewish jurists to compile all of these principles in books specific to that purpose; for more on this issue, see below, in the section entitled “‘*Aṣl*’ as Legal Principle in Judeo-Arabic Literature.” It seems, then, that we can largely credit the vantage of hindsight with influencing such expressions of surprise at the relatively late development of the *qawāʿid* genre.

<sup>33</sup> Elgariani, “*Al-Qawāʿid al-Fiqhīyya*,” 134. Cf. Mohammed, “The Islamic Law Maxims,” 196, who echoes Joseph Schacht’s skepticism and warns that attributions of *qawāʿid* formulas to these early legal scholars may not be accurate; see Schacht, *Origins*, 180-189.

<sup>34</sup> For more on the “schools” of Islamic jurisprudence, see the section entitled “The Purposes and Functions of the *Qawāʿid*,” below, 69-73.

as the first to compile a list of *qawā'id*, though the proof for that claim lies in an almost certainly apocryphal story.<sup>35</sup> In fact, it seems the first *qawā'id* work was written by a contemporary of al-Dabbās, Abū al-Ḥasan al-Karkhī (d. 951/2), also a Ḥanafī.<sup>36</sup> *Uṣūl al-Karkhī* consists of a simple list of 38 principles, and as the title implies, the word he uses for “principle” or “maxim” is not *qā'ida*, as would become the norm in later works of this genre, but rather *aṣl*. He formulates each principle as a concise phrase,<sup>37</sup> every one beginning with the word *al-aṣl*. The *Uṣūl al-Karkhī* include principles related to the enactment of positive law (which would become known as *qawā'id fiqhiyya*) and also some regarding *uṣūl al-fiqh*, general legal theory, and the proper way for a Ḥanafī to navigate the sources of law (*qawā'id uṣūliyya*).<sup>38</sup>

Chronologically, the next *qawā'id* work to consider is something of an outlier in this early period. Muḥammad al-Ḥarīth al-Khushanī (d. 971), unlike al-Karkhī and the two other writers to be discussed shortly, al-Samarqāndī and al-Dabbūsī, lived in the Islamic west. Probably born in Kairouan, he relocated to Cordoba and became a prominent jurist in al-

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<sup>35</sup> Al-Dabbās purportedly organized the entire Ḥanafī *madhhab* into seventeen *qawā'id*, and would recite them privately in a mosque after everyone else had gone and he had locked the door. One day, a Shāfi'ī from Herat, Abū Sa'd al-Harawī, concealed himself in the mosque so that he could hear al-Dabbās recite his maxims. Al-Harawī heard seven of these maxims before he began to cough, alerting Al-Dabbās, who was blind, to his presence. The Ḥanafī scholar found him, beat him, threw him out, and never again recited the *qawā'id* out loud. See Heinrichs, “Qawā'id,” 370-371; Al-Amiri, “Legal Maxims,” 99-100; Mohammed, “The Islamic Law Maxims,” 196; Elgariani, “*Al-Qawā'id al-Fiqhiyya*,” 141-142; and Zakariyah, *Legal Maxims*, 29, for examples of those who doubt this story's historical veracity. See Musa, “Legal Maxims,” 344, for a counter-argument to this widespread skepticism.

<sup>36</sup> Al-Karkhī can arguably be considered the “the first teacher of the classical Ḥanafī school” given his many students and how he “finally established a system of transmitting authoritative doctrine;” see Christopher Melchert, *The Formation of the Sunni Schools of Law: 9<sup>th</sup>-10<sup>th</sup> Centuries C.E.* (Leiden: Brill, 1997), 125. Al-Karkhī is almost universally cited in modern scholarship as the first to write a book dedicated to the *qawā'id fiqhiyya*. However, there is some doubt that al-Karkhī was actually the author of this work; see Elgariani, “*Al-Qawā'id al-Fiqhiyya*,” 141, n. 65. For more on this issue of authorship, and on the question of whether this can actually be classified as a *qawā'id* work at all, see David Zvi Kalman, “Maximizing the Law: Al-Karkhī, the *Uṣūl al-Karkhī* and their Relationship to the Islamic Legal Maxims Genre” (MA thesis, University of Pennsylvania, 2013). My thanks to the author for sharing this thesis with me.

<sup>37</sup> Though, as might be expected from one of the first examples of this type of work, not all the principles bear the characteristic concision of the *qawā'id* genre, and later authors sometimes edited principles first stated by al-Karkhī in order to render them even more succinct; see Elgariani, “*Al-Qawā'id al-Fiqhiyya*,” 143.

<sup>38</sup> See al-Karkhī, “*Uṣūl al-Imām al-Karkhī*,” in *Qawā'id al-Fiqh*, ed. Muḥammad 'Amīm al-Iḥsān (Karātshī: Al-Ṣadaf, 1986), 11-23. For discussions of the distinction between *qawā'id fiqhiyya* and *qawā'id uṣūliyya*, see al-Būrñū, *Mawsū'at*, 25-28; Heinrichs, “*Qawā'id*,” 376; Elgariani, “*Al-Qawā'id al-Fiqhiyya*,” 73-81.

Andalūs.<sup>39</sup> He was a Mālikī, not a Ḥanafī, and he wrote his *Uṣūl al-Futyā*, he says, in order to “gather together all the juridical principles [*uṣūl al-futyā*]” of his *madhhab*.<sup>40</sup> He does so, organizing his book into chapters which concern specific topics; i.e., chapter of the child, woman, sick person, etc. In this way as well, *Uṣūl al-Futyā* is an outlier, as this organizational structure, along with an introduction which identifies the various topics he will discuss in the order they appear in his book, made al-Khushanī’s work somewhat ahead of its time.<sup>41</sup> *Uṣūl al-Futyā* includes many rules which are often narrower in scope than the classic examples of *qawā’id* and which might more precisely be called *ḍawābiṭ*.<sup>42</sup>

We know that Abū al-Layth al-Samarqāndī (d. 984) wrote a book called *Ta’sīs al-Nazā’ir* in which he listed 74 *uṣūl* for the purpose of showing that disagreements over particular details of the law stem from more fundamental disagreements over the general principles of the law.<sup>43</sup> A generation or so after al-Samarqāndī, Abū Zayd al-Dabbūsī (d. 1039) authored a work with a similar title, *Ta’sīs al-Nazar*, built on al-Samarqāndī’s previous list of *uṣūl*. He took his predecessor’s 74 principles and added twelve more, and, as al-Samarqāndī did, supplemented each principle with a longer discussion in which he illustrated the *aṣl* in question with particular examples.<sup>44</sup> Like al-Samarqāndī, al-Dabbūsī was trying to explain the basis of disagreements

<sup>39</sup> Delfina Serrano Ruano, “Al-Khushanī,” in *Christian-Muslim Relations: A Bibliographical History, Vol. II: (900-1050)* eds. Thomas and Mallett (Leiden: Brill, 2010), 342.

<sup>40</sup> Al-Khushanī, *Uṣūl al-Futyā fī-l-Fiqh ‘ala Madhhab al-Imām Mālik*, eds. al-Majdūb, al-Ajḡān, Baṭīgh (Tunis: Al-dār al-‘arabiyya li-l-kitāb, 1985), 44.

<sup>41</sup> Al-Amiri, “Legal Maxims,” 106.

<sup>42</sup> For this reason, al-Amiri does not consider *Uṣūl al-Futyā* a true example of the *qawā’id* genre; cf. Elgariani, “*Al-Qawā’id al-Fiqhiyya*,” 144-145, who is unbothered by the presence of *ḍawābiṭ*, explaining that in this period, “no single traditional book was devoted exclusively to the technical known *qawā’id*,” and insists that al-Khushanī’s composition be included in a list of early *qawā’id* works. While not relating to *Uṣūl al-Futyā* specifically, Heinrichs makes a similar point about the common inclusion of *ḍawābiṭ* in compilations of *qawā’id*; see references above, 63, n. 26.

<sup>43</sup> Al-Amiri, “Legal Maxims,” 102-103. This text has not yet been published, but al-Amiri reports that it has been edited for a Master’s degree at Al-Azhar University.

<sup>44</sup> Al-Amiri, “Legal Maxims,” 103.

between legal scholars. He writes that he understands the difficulty of keeping track of the major differences between various foundational Ḥanafī jurists, or between Ḥanafī scholars on the one hand and Mālik b. Anas or al-Shāfi‘ī on the other, so, he says, “I gathered them together in this book of mine.”<sup>45</sup> As al-Karkhī, and apparently al-Samarqāndī, did, he introduces each principle with the word *al-aṣl*, and he too includes a few *qawā‘id uṣūliyya* in his list.

Interestingly, we do not find many compilations of *qawā‘id* in the couple centuries after al-Dabbūsī, a period which included Maimonides’ lifetime. After this delay, though, *qawā‘id* literature became far more prevalent, such that it is possible to speak of the 14th century as a “golden age of the development of *‘ilm al-qawā‘id al-fiqhiyya*.”<sup>46</sup> Regarding the relative neglect of this genre in the 12<sup>th</sup> and 13<sup>th</sup> centuries, it is quite possible that there were more *qawā‘id* works written which have since been lost to history.<sup>47</sup> Nevertheless, even if there was a significant lag between the first few *qawā‘id* compilations in the 10<sup>th</sup> and 11<sup>th</sup> centuries and the explosion of such works in the 14<sup>th</sup> century, it seems the importance of these legal maxims did not wane, at least in the estimation of the jurists of that era. Maimonides’ Cordoban contemporary, Averroes, did not write a work in the *qawā‘id* genre, but he did readily acknowledge the importance of “*uṣūl wa-qawā‘id*” in his legal work.<sup>48</sup> Additionally, we find that al-Qarāfi refers to the *qawā‘id* as “magnificent, many in number and great in utility, comprising the secrets of the law and its wisdoms.” He goes on to remark that “by

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<sup>45</sup> Al-Dabbūsī, *Ta’sīs al-Nazar* (Cairo: Zakarīya ‘Alī Yūsuf, 1972), 5.

<sup>46</sup> Elgariani, “*Al-Qawā‘id al-Fiqhiyya*,” 154.

<sup>47</sup> Al-Bürnū, *MAwsū‘at*, 71; Elgariani, “*Al-Qawā‘id al-Fiqhiyya*,” 146. Al-Amiri, “Legal Maxims,” 107, points out that while the evidence of works of *qawā‘id* is limited in this period, there were quite a few compilations of *furūq*, or explanations of distinctions between legal cases. Al-Amiri suggests that the purposes of *qawā‘id* and *furūq* literature are similar: “The connection between the two disciplines can be explained in this way; as the *fuqahā‘* were interested in discovering the common content which led to having the same *ḥukm* for some different legal details, they were also interested in discovering the distinctions which led to having different *ḥukms* for some similar legal details.”

<sup>48</sup> For more on Averroes’ thoughts on these legal principles, see below, 72.

understanding them, the capability of a *faqīh* will increase and be distinguished.”<sup>49</sup> Given that al-Qarāfi, an accomplished legal scholar, lived his whole life in Cairo and was born only about two decades after the death of Maimonides, his words bear special importance for our inquiry.<sup>50</sup>

Additionally, these two centuries may represent a transitional period for this genre, at least from a semantic standpoint. The reported titles of the handful of books which were written in this period, if indeed they were the original titles of those works, would mark this as the time in which these principles began to shift from being called *uṣūl* to becoming known as *qawā'id*.<sup>51</sup> A few twelfth century legal works, which are no longer extant, include the word *qawā'id* in their titles, but, apparently, that term only began to be consistently used to designate legal maxims in the fourteenth century.<sup>52</sup> The original term for legal maxims, *uṣūl*, seems to have remained in use into the thirteenth century at least.<sup>53</sup> The transition from *asl* to *qā'ida* in this period finds expression in Averroes formulation of “*uṣūl wa-qawā'id*,” mentioned above, in that he seems to use the two terms as synonyms. Furthermore, we have seen that al-Qarāfi calls these principles “*qawā'id kulliyā fiqhīyyā*,” and that he says these *qawā'id* represent one of the two types of “*uṣūl*” of the Islamic legal system. So, apparently, the *qawā'id* are themselves *uṣūl*. This

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<sup>49</sup> Al-Qarāfi, *Kitāb al-Furūq*, 70-71.

<sup>50</sup> Al-Qarāfi lived through significant and turbulent political upheaval in Cairo, so it would not be accurate to say that he and Maimonides lived in precisely the same world, but it is certainly reasonable to expect that al-Qarāfi's enthusiastic description and classification of the *qawā'id* would reflect an outlook with which Maimonides might have been familiar. For more on the political turmoil during al-Qarāfi's lifetime, and its ramifications for Islamic jurists, see Jackson, *Islamic Law*, 33-68.

<sup>51</sup> That is to say, the names of these works begin to include the word *qawā'id*. See the titles cited by Elgariani, “*Al-Qawā'id al-Fiqhīyyā*,” 146, and the list of *qawā'id* works from this period in the comprehensive bibliography provided by Heinrichs, “*Qawā'id*,” 376-382.

<sup>52</sup> It is possible those twelfth-century works were devoted to *qawā'id fiqhīyyā*, but we cannot know that for certain, and the term *qawā'id* was used in other ways at this time; for more on this issue, see Musa, “Legal Maxims,” 326, n. 6, and n. 2 for reports of the use of *qā'ida* in the works of 11<sup>th</sup> century writers. Nevertheless, as we are about to see, both Averroes and al-Qarāfi, who both lived before the fourteenth century, seem to use the term *qawā'id* as a synonym for *uṣūl*.

<sup>53</sup> The Shāfi'i scholar al-Nawawī (d. 1278) titled his work on legal maxims *Al-Uṣūl wa-l-Dawābiṭ*; see Heinrichs, “*Qawā'id*,” 379.

transition between *aṣl* and *qā'ida* in Maimonides' era will become important later in this chapter, when we compare his use of *aṣl* to that of his Jewish predecessors.<sup>54</sup>

The above survey of the historical development of the *qawā'id fiqhīyya* genre reveals the formal correspondence between the introduction to *Sefer ha-Mitsvot* and *qawā'id* compilations that had been written by Maimonides' time. The beginnings of the transition from *aṣl* to *qā'ida* can be perceived in Maimonides' own works,<sup>55</sup> but the sense of *aṣl* as legal principle was still very much in use at the time he was writing. Structurally, each of his fourteen principles is introduced by the word *al-aṣl*, a style identical to that of early *qawā'id* authors like al-Karkhī, al-Samarqāndī, and al-Dabbūsī.<sup>56</sup> In addition, he first succinctly states the principles in this introduction before then going on to provide particular examples which illustrate the *aṣl* in question. We know that al-Dabbūsī wrote his work in that fashion, and while al-Karkhī did not include any examples of *furū'* for the *uṣūl* in his work, the *Uṣūl al-Karkhī* was annotated closer to the time of Maimonides by al-Nasafī (d. 1143), who did add specific cases to explain each *aṣl*.<sup>57</sup> Granted, we do not find a multitude of exemplars for this type of literature by Maimonides' time, so a representative sample will necessarily be limited. Nevertheless, based on the sources available to us, we can say that the style of this introduction, at the very least, would have been immediately recognizable to a reader familiar with the *qawā'id* genre as it existed in Maimonides' era.

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<sup>54</sup> See below, 82-93, in the section entitled “‘*Aṣl*’ as Legal Principle in Judeo-Arabic Literature.”

<sup>55</sup> See section entitled “Echoes of *Qawā'id* in the Works of Maimonides,” below, 73-82.

<sup>56</sup> Maimonides numbers his *uṣūl* (*al-aṣl al-awwal*, *al-aṣl al-thānī*, etc.), while the Muslim writers mentioned here did not. But that is too minor a difference to warrant jettisoning this comparison.

<sup>57</sup> Al-Amiri, “Legal Maxims,” 102.

## The Purposes and Functions of the *Qawā'id*

There is more, though, to a comparison between the *qawā'id* genre and *Sefer ha-Mitsvot* than the style and structure of Maimonides' introduction. To determine why Maimonides may have chosen the *qawā'id* style for his introduction, it is helpful to see the reasons Muslim writers valued this genre. The eventual emergence of the *qawā'id* genre can plausibly be credited to the advent of the *madhāhib*,<sup>58</sup> when Muslim legal scholars became divided into schools which ostensibly demanded fealty to the methodology of each school's respective founder(s).<sup>59</sup> The tenth century saw a rise in the notion of "the closing of the gate of jurisprudence [*qafl bāb al-ijtihād*]," with "imitation [*taqlīd*]" becoming an important feature of juristic work.<sup>60</sup> Ibn Khaldūn, writing about four centuries later, describes this phenomenon. Adherents to a particular *madhhab*, he explains, were no longer free to practice *ijtihād*, to extract laws directly from the primary sources (Quran, Sunna, etc.); rather, they were required to rely on the "established principles [*al-uṣūl al-muqarrarah*] of their leader's school."<sup>61</sup> As al-Amiri writes, the collection of *qawā'id fiqhiyya* began at this point because "the *fuqahā'* who limit themselves to the sphere of the *madhhab* are the ones who need legal maxims more than anyone to regulate

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<sup>58</sup> See Heinrichs, "*Qawā'id*," 374-375; al-Amiri, "Legal Maxims," 98-101; Elgariani, "*Al-Qawā'id al-Fiqhiyya*," 135-138.

<sup>59</sup> The formation of the *madhāhib* was a fluid process which took place over the course of several centuries, and the very notion and meaning of a *madhhab*, usually translated as "a school of law," fluctuated over time. At best, we can only roughly establish the beginning of the *madhhab* system in the general form it took for much of Islamic history as the tenth century, though that itself was the result of a process which had been going on for at least a century. For various theories of how to explain and date the emergence of these schools, see Melchert, *The Formation of the Sunni Schools of Law*; Knut Vikør, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005), 89-113; Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 60-71; Ahmed El Shamsy, *The Canonization of Islamic Law* (New York: Cambridge University Press, 2013), 168-220.

<sup>60</sup> Elgariani, "*Al-Qawā'id al-Fiqhiyya*," 139. We should point out that, despite such claims, the idea that *ijtihād* (in the sense of deriving law from the original sources) ended in this period is not quite accurate. As Elgariani, "*Al-Qawā'id al-Fiqhiyya*," 140, notes, "*ijtihād* has always been exercised in reality in nearly all ages and places." For more on this, see Hallaq, "Was the Gate of Ijtihad Closed?" in *International Journal of Middle East Studies* 16.1 (March, 1984): 3-41.

<sup>61</sup> *Al-Muqaddimah li-l-'Allāmah ibn Khaldūn* (Cairo: 1902), in the chapter entitled "'ilm al-fiqh wa-mā yattabi'ahu min al-farā'id," p. 425. Note ibn Khaldūn's use of the older term for these principles, *uṣūl*.

the great amount of legal details in their *madhhabs*.”<sup>62</sup> If a jurist wanted to ensure that his rulings fit the precedents set by his school’s foundational figures, he required more than just the corpus of those figures’ particular decisions. He also needed to turn to a set of general principles which, at least theoretically, guided those previous decisions and could guide his own in turn. Consequently, it was during the era in which the *madhāhib* cohered that scholars began looking at their schools’ rulings and inducing these governing maxims.<sup>63</sup>

Out of this historical background, we can identify what many medieval writers considered one of the purposes of the *qawā'id*; namely, differentiation. The beginning of this genre corresponded to the crystallization of the *madhāhib* and the *qawā'id* were often compiled in order to demonstrate the differences between the author’s *madhhab* and others. Consider al-Khushanī, who explains that he penned his work to lay out, specifically, the Mālikī principles of legal adjudication, or al-Dabbūsī, whose *Ta'sīs al-Nazar* was explicitly written to outline what sets the Ḥanāfī school apart from other *madhāhib*, as well as to demarcate differences within the Ḥanāfī school itself.

The *qawā'id*, though, possessed other functions, one of which we can label the pedagogical benefit. Al-Khushanī explained that his compilation of the Mālikī juridical principles, which intentionally does not include exhaustive treatments of all relevant individual cases, can teach the material in a way which will allow the reader to have a firm grasp of the law.<sup>64</sup> Similarly, recall that al-Dabbūsī tells us that he was motivated to write his work because

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<sup>62</sup> Al-Amiri, “Legal Maxims,” 98.

<sup>63</sup> These retroactive guidelines for the rulings of the founder of a *madhhab* were, understandably, often difficult to find. In fact, Averroes essentially makes this point, mentioning that when a later reader attempts to impose rules on an earlier jurist who had no such guiding principle for his disparate rulings, the result can be forced; see the passage cited in Sherman Jackson, “Fiction and Formalism: Toward a Functional Analysis of *Uṣūl al-Fiqh*,” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002), 178.

<sup>64</sup> Al-Khushanī, *Uṣūl al-Fuyā*, 44-45.

he knew how hard it is to keep track of all the various differences between the foundational Islamic jurists, so he compiled his list of *uṣūl* as a way to teach those differences in a clear, straightforward manner. Additionally, al-Qarāfī notes that if a jurist does undertake a comprehensive study of the *qawā'id*, he “will not need to memorize most of the particulars” in the first place. Conversely, if this jurist only studies particular cases and ignores the *qawā'id*, he will undoubtedly fail to adequately learn the law, and his thoughts will be “shaken and disordered” by all the various specific rulings.<sup>65</sup>

Related to their pedagogical function, the *qawā'id* are invaluable tools for adjudication. Averroes did not author a book dedicated to the *qawā'id fiqhiyya*, but he did acknowledge their importance. In the introduction to his legal code, he states that he will mention disagreements between legal authorities and also explain the bases for those disagreements. In particular, he writes that he will record those reasons for these disputes which “act as rules and principles [*uṣūl wa-qawā'id*],<sup>66</sup> as it is possible that an issue will come before a jurist about which the law [*al-shar'*] is silent.”<sup>67</sup> Averroes generally does not explicitly designate something as a *qā'ida* or *aṣl* in his work, but he will often boil down a legal disagreement to the principle around which it revolves. For example, he notes that legal scholars have debated whether one is allowed to answer a greeting while in the middle of praying. Speaking is forbidden during prayer, so he explains that the disagreement comes down to whether “an answer to a greeting is a type of speech,” proceeding to elucidate why some think this principle holds true and some think that answering a greeting does not constitute speech.<sup>68</sup> Averroes apparently feels the need to not only

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<sup>65</sup> Al-Qarāfī, *Kitāb al-Furūq*, 71.

<sup>66</sup> It is not clear to me that there is a substantive difference between *uṣūl* and *qawā'id* in Averroes' statement; they are likely meant as synonyms. Again, it seems that the semantic transition from the term *aṣl* to *qā'ida* occurred around this time; see above, 68.

<sup>67</sup> Averroes, *Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* (Beirut: Dar al-Kutub al-'Ilmiyya, 2003), vol. 1, 1.

<sup>68</sup> Averroes, *Bidāyat*, 265.

outline the details of the law itself (whether one at prayer is allowed to respond to a greeting), but also the underlying principle (whether answering a greeting is an instance of speech). Again, as he indicates in his introduction, those principles are important to know because one cannot reliably apply the law without understanding them.

We will revisit these three functions of *qawā'id*—differentiation, pedagogy, and adjudication—as they hint that Maimonides saw the format of the early *qawā'id* works as more than merely a handy stylistic vehicle for his principles of enumeration. Maimonides may have chosen this structure because his intentions for his introductory rules align with the purposes of the *qawā'id* in Islamic literature. We will ultimately return to *Sefer ha-Mitsvot* and the reasons Maimonides offers for why he penned the principles in the introduction, but first, having now surveyed the state of *qawā'id* literature in Maimonides' time, let us first explore the extent to which Maimonides' use of *aṣl* in his other legal works demonstrates his awareness of this Islamic genre. If indeed it seems that he was aware of them, that finding can lend support to the idea that he purposely modeled his introduction after the early *qawā'id* works.

### **Echoes of *Qawā'id* in the Works of Maimonides**

Given his well-documented erudition in Muslim sources, we should not be surprised if indeed Maimonides was acquainted with Muslim notions of legal principles. Beyond that general erudition, though, we have seen that Al-Qarāfi, living in the same city a few decades after Maimonides, discussed the *qawā'id* at length and attached tremendous importance to them. He may have been the first Muslim writer to flesh out the place of these *qawā'id* in the larger system of Islamic law,<sup>69</sup> but it is hard to believe that no discussions on that topic took place before him.

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<sup>69</sup> Al-Amiri, "Legal Maxims," 55.

Additionally, al-Khushanī's *Uṣūl al-Futyā* represented an important work in the Andalusian tradition, and it is not too far a stretch to assume that Maimonides was aware of it.<sup>70</sup> So despite the apparent lag in *qawā'id* writing during the era in which Maimonides lived, it makes sense that he would be familiar with the *qawā'id* as a category in the organization of the law, and could very well have read specific works which treat that subject.<sup>71</sup>

Internal evidence from Maimonides' writings on halakhah can support this hypothesis. Maimonides' first major legal work, his commentary to the Mishnah, includes an extraordinary number of principles, indicating their importance to him. This composition has many roles and functions, but the articulation of general legal rules clearly represented a major concern for Maimonides. In the allusively poetic Hebrew paragraph prefacing his introduction to the commentary, he states that one of his purposes in writing this work is to elucidate the "principles of the foundations [*iqqare ha-yesodot*]" which the sages laid out in the Mishnah.<sup>72</sup> While not absolutely clear, this phrase seems to indicate a desire to lay out general legal principles which serve as the foundation for various individual laws. In fact, we can find hundreds of such principles in his commentary, usually marked by the words *aṣl* or *uṣūl*, but it is not uncommon for Maimonides to use *qā'ida* as well.<sup>73</sup> One example of an *aṣl* comes in his comments to the

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<sup>70</sup> It seems al-Qarāfī uses a case from *Uṣūl al-Futyā* as an example in one of his works, so it does seem to have been read in thirteenth-century Cairo; see Jackson, *Islamic Law*, 90.

<sup>71</sup> Another possible avenue, though this is admittedly quite speculative, for Maimonides to have become familiar with these works comes from the fact that the Ḥanafīs were the first to make strong use of the *qawā'id* genre. Maimonides lived under the Fatimids for five years, and was loyal to them before he sided with the Ayyubids and their conquest of Egypt; see Kraemer, *Maimonides*, 187-188. When the Fatimids first came to power in the tenth century, they seem to have favored the Ḥanafīs over the other Sunni *madhāhib* (see Melchert, *The Formation*, 130), and if Ḥanafī works were preserved through the Shiīte Fatimids past the point that direct Ḥanafī influence on North Africa and Egypt faded, perhaps they would have been accessible to Maimonides. Of course, other scholars of other *madhāhib* would have been interested in the writings of al-Karkhī and others, so this connection through the Fatimids is not entirely necessary; these works would likely have been available to him in any event.

<sup>72</sup> *Mishnah 'im Perush Rabbenu Moshe ben Maimon*, ed. Kafih, vol. 1, 1.

<sup>73</sup> Dror Fixler has helpfully gathered all these many instances together in a list, which he divides between cases Maimonides calls *uṣūl* and those designated as *qawā'id*; see "*Lashon ve-Signon be-Ferush ha-Mishnah la-Rambam*," *Ma'aliyot* 25 (2005): 218-236 for the list of *uṣūl* and 237-238 for *qawā'id*. We should note that Maimonides sometimes mentions rules more than once, and sometimes does not mark them with *aṣl* or *qawā'id*.

Mishnah's ruling in Gittin 5:4 that someone who purposely ruins another's wine needs to pay damages. The case in the Mishnah is that of a *menasekh*, one who uses wine in the service of idolatry.<sup>74</sup> Maimonides explains that here, *menasekh* could refer to one of two things. It might be indicating a case in which the person mixed this wine with another person's, thus making the latter's wine also forbidden. Alternatively, he suggests that the Mishnah may be referring to the perpetrator actually using the victim's wine for idolatrous worship, thereby rendering that wine forbidden. Maimonides adds that if this is the case, the whole question of paying damages would not get off the ground if the *menasekh* knew that engaging in idolatry is a capital offense. If he did know that, he would receive the death penalty, and in order to be held liable to pay damages for the wine he ruined, the violator cannot be sentenced to death for the same action. After all, Maimonides explains, "the principle [*al-ašl*] is that a person does not die and also pay."<sup>75</sup>

Another general principle Maimonides states in order to clarify more specific cases comes in his commentary to Ketubbot 3:8. The Mishnah lists several examples of people who admit to having done something which would obligate them to pay someone, and explains what each admission requires the person to pay and what it does not require. For example, if someone admits to theft, that person would have to pay the value of the stolen goods, but not the extra penalty for theft.<sup>76</sup> The Mishnah itself concludes by observing "this is the rule [*zeh ha-kelal*], anyone liable to pay more than the value of what he damaged does not pay on his own

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Fixler seems to include those unmarked rules in these lists if elsewhere Maimonides refers to the rule with either *ašl* or *qā'ida*.

<sup>74</sup> It is forbidden to receive any sort of benefit from wine which has been used in this way.

<sup>75</sup> *Mishnah 'im Perush Rabbenu Moshe ben Maimon*, ed. Kafih, vol. 3, 223. It seems that Maimonides changed his mind about the applicability of this principle to this particular case, as reflected in his ruling in *Mishneh Torah*; see *Hilkhot Hovel u-Maziq* 7:6.

<sup>76</sup> The thief would generally have to pay double, four times, or five times the value of the object, depending on the circumstances; see Exodus 21:37, 22:3. In this case, the Mishnah rules that the thief does not have to pay any extra penalty after the exact worth of the stolen item.

admission.” Maimonides, in the single sentence he writes to comment on this Mishnah, sums up all these cases in even fewer words. “One of our principles [*min uṣūlinā*],” he explains, is that “a person does not pay a punitive fine [*qenas*] on his own admission.”<sup>77</sup>

He never compiles all these *uṣūl* and *qawā'id* into one list as the Muslim authors of *qawā'id* works did for the principles of Islamic law, but at times in his commentary, he does gather together several principles that are important for understanding a particular area of law that is about to be discussed. He opens *Yevamot* by saying that he will preface his commentary with “principles for this tractate [*uṣūl li-hādhahi-l-masekhta*] and then I will begin with the commentary.”<sup>78</sup> He explains that there are four *uṣūl* which one needs to know before studying this topic, and proceeds to list them. In this particular case, the *uṣūl* themselves do not appear as pithy, succinct formulations,<sup>79</sup> but we can at least see an example of Maimonides extracting the major principles from a set of laws and presenting them together.

These represent only a few of the many examples of this type of rule in Maimonides’ commentary, but they help demonstrate one of the most important features of this work: the identification of these legal *uṣūl* (or *qawā'id*). Fixler finds this aspect of the commentary unusual, and suggests that Maimonides might sometimes use these principles in order to buttress certain opinions of his that might be controversial or otherwise noteworthy.<sup>80</sup> However, in light of the Islamic environment in which Maimonides wrote, perhaps the commentary to the Mishnah

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<sup>77</sup> *Mishnah 'im Perush Rabbenu Moshe ben Maimon*, ed., Kafih, vol. 3, 75.

<sup>78</sup> *Mishnah 'im Perush Rabbenu Moshe ben Maimon*, ed., Kafih, vol. 3, 7.

<sup>79</sup> For example, the first one states: “If a man’s brother, specifically of the [same] father, dies without progeny and leaves a number of wives, he needs to perform *ḥalitsah* or *yibum* with only one of them, as in God’s statement ‘the house of his brother’—he builds one house and does not build two houses. If he performs *ḥalitsa* or *yibum* with one of them, the others are permissible [for others to marry] without *ḥalitsa* and without *yibum*. Similarly, if the deceased left several brothers and one wife or several wives, only one of the brothers performs *ḥalitsa* or *yibum* with one of them for the reason [*al-'illa*] which we mentioned.” Even if the first part alone is the only clause meant to be the *aṣl*, still, there is no clear desire for brevity here.

<sup>80</sup> See Fixler, *Lashon*,” 217, and 222, n. 86.

further shows that Maimonides simply thought, as did the Islamic authors of *qawā'id* works, that identifying abstract legal principles is a necessary exercise for understanding and applying the law.<sup>81</sup> Indeed, the sheer number of legal principles in his commentary to the Mishnah imply that Maimonides viewed these *uṣūl* and *qawā'id* as possessing a unique and important function in the overall system of halakhah.

When we turn to his legal code, *Mishneh Torah*, we find evidence of the nature of that function in Maimonides' thought. In his *Treatise on Resurrection*, he writes that one of his purposes in writing *Mishneh Torah* was to lay out the legal principles which later scholars could apply to specific cases, and the language he uses is suggestive for our current investigation. He remarks that in *Mishneh Torah*, he included "all of the religious and legal principles [*jamī'a al-uṣūl al-dīniyya wa-l-fiqhiyya*] with the intention that those who are called *talmide ḥakhamim* or *ge'onim* or whatever you wish to call them may build their specific rulings [*furū'ahum*] on legal principles [*uṣūl fiqhiyya*]."<sup>82</sup> Compare this to Averroes' remark about the *uṣūl* and *qawā'id* he includes in his code, and how he sees them as important for future jurists to use as guides for their rulings.

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<sup>81</sup> Again, it is true that many of Maimonides' principles are far more specific than would normally be considered part of the *qawā'id* genre according to modern scholars, but see above, page 14, in relation to the specificity of al-Khushanī's *uṣūl*.

<sup>82</sup> "*Ma'amar Teḥiyyat ha-Mettim*," in *Igrot ha-Rambam: Maqor ve-Targum*, ed. and trans. Kafih (Jerusalem: Mossad ha-Rav Kook, 1994), 73. Twersky appears to read Maimonides' statement here as referring specifically to principles of theological belief; see "The Mishneh Torah of Maimonides," *Proceedings of the Israel Academy of Sciences and Humanities*, 5.10 (1976): 290; idem, *Introduction to the Code*, 77-78. This would fit with the context of this section of the *Treatise on Resurrection* in which Maimonides also refers to the theological *uṣūl* he included in his commentary to the Mishnah. Yet this reading does not account well enough for the adjective *fiqhiyya*, nor does it quite fit the stated purpose of these principles, upon which later scholars may build their *furū'*. As such, it is pretty clear that Maimonides is referring to legal principles here, in addition to theological ones. Twersky attempts to explain the references to halakhah in this statement as reflecting "the essential relationship of philosophy and law, their ongoing reciprocity and complementarity," *Introduction to the Code*, 77. That may be true, but Maimonides' description of the *uṣūl fiqhiyya* can stand on its own. My understanding of this passage in *Treatise on Resurrection* corresponds more to the way Stroumsa seems to read it; see Stroumsa, *Maimonides in his World*, 64.

Maimonides then goes on to describe another benefit of these *uṣūl*, explaining that it will allow scholars to have “their Torah knowledge ordered on their tongues and their learning completely at their fingertips.”<sup>83</sup> Recall al-Qarāfī’s account of the importance of the *qawā’id*. Looking solely at individual cases, he says, would not allow a person to understand the law correctly; it is the *qawā’id* which prevent the jurist’s thoughts from being “shaken and disordered.”<sup>84</sup> While *Mishneh Torah* might ostensibly look like a collection of laws, Maimonides insists it is more than that. It is a resource for jurists, and in order to function as such, it needs to include principles of the law from which one can extrapolate.<sup>85</sup> Maimonides, like Islamic writers did, saw the distillation of laws into principles as an essential resource for future decisors who need to adjudicate new laws, and pedagogically critical for a legal scholar’s understanding and ordering of the law.

His statement in *Treatise on Resurrection* is borne out when we look at the number of instances in *Mishneh Torah* in which Maimonides outlines the underlying principles behind the specific rulings he records. He does this in a few ways, one of which is to specifically label them as principles. The word he uses to designate legal principles in this Hebrew-language code, *iqqar*, appears in certain Hebrew translations of *Sefer ha-Mitsvot* as a rendering of *aṣl* in the introduction.<sup>86</sup> In some instances of Maimonides designating an *iqqar* in *Mishneh Torah*, he

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<sup>83</sup> *Toratam sedurah ‘al pihem ve-talmudam kulo ‘oleh be-yadam*. Maimonides uses Hebrew here, the first clause based on a line in Babylonian Talmud, *Ta’anit*, 8a.

<sup>84</sup> See above, 72, n. 65.

<sup>85</sup> See Twersky, *Introduction to the Code*, 61-81, for three suggestions as to the purpose of *Mishneh Torah* based on various references in Maimonides’ own writings. As noted above, Twersky sees this passage from *Treatise on Resurrection* as relevant for theology in particular, and he places it in his discussion of what he calls the “philosophic-ideological motive;” see pp. 77-78. Twersky’s other two suggested purposes speak to *Mishneh Torah* being an important collection of individual laws. The “historical motive” refers to Maimonides’ despair at the state of Jewish scholarship and erudition, as a response to which he desired to provide a digest of the entire Oral Law (see pp. 62-74), while the “literary-systematic motive” had to do with the nature of the law itself and the need for a “*dīwān*, a systematic book of rulings which encompasses all areas of halakhah” (see p. 77).

<sup>86</sup> For more on this, see the appendix to this chapter, below.

mentions the benefit of the principle for understanding and applying the specifics of a particular law. For example, after he describes various procedures for determining if a recently slaughtered animal's lung has a hole,<sup>87</sup> he writes “this is a major principle to have before you [*yihye beyadkha*], that any lung which is inflated in warm water without the water bubbling is intact, without a hole.”<sup>88</sup> His particular instruction to have this principle “before you,” something he does not advise for the preceding laws he codifies regarding specific cases on this same subject, suggests that for the purposes of studying and understanding this area of the law, the principle bears more importance than the individual cases he mentions.<sup>89</sup>

Elsewhere in *Mishneh Torah*, Maimonides comments on the utility of legal principles even more explicitly, this time focusing on the benefit for a judge who needs to adjudicate actual cases. Here, he lays out all the various laws pertaining to a particular type of dispute over an object. In these cases, somebody claims that an object being held by another does not actually belong to the one holding it; rather, the former claims that he lent or rented it to the latter. In the case of a dispute like this, the ruling partially depends on what type of object is under consideration. For example, if it is an object not generally made to be lent or rented out, the judge is to give more weight to the claim of the one who currently has it. Maimonides writes that “an object which could be damaged for more cost than would be received through renting it out, and people are generally careful not to lend it, is considered [in the category of objects] not

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<sup>87</sup> A *terefah*, an animal which has a mortal disease or injury, may not be eaten even if it is slaughtered in a ritually correct manner. If a hole is found in the lung of an animal that has just been slaughtered, the animal is considered to have been a *terefah* at the time of the slaughtering, and eating it is consequently forbidden.

<sup>88</sup> *Hilkhot Shehitah* 7:8.

<sup>89</sup> This principle is actually somewhat controversial, perhaps contributing to Maimonides' desire to emphasize it. The Talmud, *Hullin*, 48a, records that R. Nehemiah would check the lung in this way, but most interpret that as a stringency; even if the lung seems whole, if the water bubbles, the animal is considered a *terefah*. Maimonides, on the other hand, sees this as a leniency; even if the lung appears to have something wrong with it, if the water does not bubble, it is considered whole. See the gloss of Rabad, *ad loc*.

made for lending or renting.”<sup>90</sup> After providing a rabbinic proof-text for this principle, he writes “this matter is a major principle of the law [*iqqar gadol ba-din*], and it is a sensible matter upon which one should rely and judge according to it. It is clear to anyone with knowledge, and a judge should keep it in front of his eyes and not stray.”

In his responsa, Maimonides again demonstrates the value of legal principles in adjudicating the law, often identifying the *asl* on which he bases his ruling. We can find many examples of this, but let us look at just one representative case. Maimonides is asked to decide a case involving a document outlining a marriage agreement between two parties.<sup>91</sup> The document contains various clauses and conditions, and the questioner wants Maimonides to rule whether one side has broken the contract. In the course of his answer, Maimonides writes that in an agreement such as this, the parties need to obligate themselves “from now [*me-akhshav*].” In other words, if one side breaks the contract, their obligation to pay a penalty to the other side is considered to have been in place from the time of the agreement, not from the time the contract was actually broken.<sup>92</sup> Maimonides adds that, in this case, the parties would each need to actually possess, at the time they sign the agreement, the exact amount and type of money specified as the potential penalty for renegeing on the agreement. This is because, he writes, “the

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<sup>90</sup> *Hilkhot To'en ve-Nit'an* 8:10. This principle is far more concise in the original Hebrew than it is in my translation. The example Maimonides gives for such an object is a knife for ritual slaughter, a delicate tool which can be easily damaged and rendered unfit for use.

<sup>91</sup> Maimonides, *Teshuvot ha-Rambam*, ed. Blau, vol. 1, 111-112, responsum 71.

<sup>92</sup> Maimonides requires this language in the contract in order to avoid a problem of *asmakhta*. Briefly, *asmakhta* refers to a situation in which a person makes a commitment (to pay somebody else money, for instance) on a certain condition. The concern is that the one making the commitment did not really believe the condition would be fulfilled, and therefore did not truly intend to carry out the stated commitment. Any agreement in which such a concern exists is considered invalid. There are different opinions about what type of conditional agreement generates an *asmakhta* situation and would consequently be void, but in *Mishneh Torah*, we find that Maimonides himself takes a fairly broad view; basically, any agreement, even if put in writing and witnessed by two people, that is entirely dependent on a future condition being met qualifies as a case of *asmakhta* and is invalid. One way of avoiding the *asmakhta* problem, though, is to include the language of “from now.” The assumption is that someone who did not really believe the condition would be fulfilled would not have made the commitment “from now.” See *Hilkhot Mekhirah* 11:6-7.

overarching principle [*al-aṣl al-muṭṭarid*] is that a person cannot transfer ownership of something which is not yet in existence.”<sup>93</sup> This particular *aṣl* is designated as such in his commentary to the Mishnah, though in a different context. There, the Mishnah rules that a person cannot marry off his daughter who is not yet born.<sup>94</sup> Maimonides clarifies that ruling by explaining that “one of our principles [*min uṣūlinā*] is that a person cannot transfer ownership of something which is not yet in existence.”<sup>95</sup>

This brief survey of Maimonides’ use of legal principles in his commentary to the Mishnah, *Mishneh Torah*, and responsa shows that he devoted much thought to these principles. For Maimonides, presenting the *uṣūl* of halakhah represented a major part of his legal project in all his writings, and for good reason. These *uṣūl* play important roles in his vision of the Jewish legal system, roles summed up in his *Treatise on Resurrection* but repeated in his other writings as well. They allow the one studying halakhah to understand it better than if the only resources available were particular rulings for specific cases, and they allow a legal decisor to confidently arrive at new judgements when faced with unprecedented circumstances.

Maimonides consistently works hard, in all his legal writings, to draw the reader’s attention to the underlying *uṣūl*; he does not simply throw them into his works as asides. We have only seen a few examples, but they appear frequently and in great numbers. Furthermore, the language he often uses to label them can tell us much about the way he thought about them. Maimonides will sometimes refer to “one of our principles,”<sup>96</sup> implying that he conceived of a

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<sup>93</sup> See *Hilkhot Mekhirah* 22:1. Since the obligation to pay the penalty is considered in effect from the time the agreement is signed, each side would need to have the ability to pay the penalty at that time; otherwise, the payment would be considered “not yet in existence.” See *Hilkhot Mekhirah* 22:5 for Maimonides’ ruling that an object that is not yet a person’s property is considered “not yet in existence” for the purposes of that person transferring ownership of it to somebody else.

<sup>94</sup> Mishnah, *Qiddushin*, 3:5.

<sup>95</sup> *Mishnah ‘im Perush Rabbenu Moshe ben Maimon*, ed. Kafih, vol. 3, 303.

<sup>96</sup> We have seen two examples of this; see the previous note, and also above, 75, n. 77.

corpus of these principles which exists, if not in a list on paper, as a part of the structure of the overall system of the law; “our principles” can be interpreted as “the set of principles which we use in service of the law.” In the case from *Mishneh Torah* about lending and renting objects, discussed above, he refers to a “major principle of the law,” again demonstrating that the law (or legal system) includes within it certain principles. These principles possess particular roles, like, as he writes in that case, guiding a judge toward the right decision.

We are now in a position to see that his use of *aṣl* in his legal writings can indeed be seen to fit into a “technical”<sup>97</sup> sense of that word in the surrounding Muslim environment. This is not to say that all the above-cited examples from *Mishneh Torah* and the commentary to the Mishnah need to be seen as borrowing directly from the *qawā'id* genre, but the importance of that genre in Islamic law should be taken into account when reading Maimonides’ legal writings. For Maimonides, *aṣl*, in the sense of a legal principle, functions as a technical term for a particular element within the configuration of halakhah as a whole. Having seen Islamic treatments of the *qawā'id*, Maimonides’ attitude toward legal principles should be familiar.

### **“*Aṣl*” as Legal Principle in Judeo-Arabic Literature**

The previous section connected Maimonides’ use of *aṣl* in his legal writings to Islamic treatments of the *qawā'id*. Before we can fully confirm that connection, though, it is necessary to further address Maimonides’ Judeo-Arabic background. At the beginning of this chapter, we briefly glanced at the *Seder Tanna'im ve-Amora'im* as a possible structural precedent for Maimonides’ introduction. Now we are tasked with a different undertaking, determining whether the sense of *aṣl* in Maimonides’ legal works could have stemmed from previous Jewish

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<sup>97</sup> See Stroumsa’s statement cited above, 58, n. 9.

sources, and not Islamic ones as we have been assuming.<sup>98</sup> Indeed, even if Jewish legal writings contain no antecedent for the style or form of this introduction, they do sometimes isolate legal principles and label them as *uṣūl*, occasionally even commenting explicitly on their importance and utility. These examples might not be particularly numerous, but they do appear in works composed in Iraq, Palestine, Kairouan, and possibly Andalusia, suggesting that, to some extent, the introduction to *Sefer ha-Mitsvot* draws from a long-standing Jewish semantic convention. Nevertheless, when we compare the manner in which Judeo-Arabic works before Maimonides deal with legal principles, and the ways they employ the term *aṣl* in this sense, to Maimonides' own treatment of these issues, we find that it is hard to draw a straight line between them. For Maimonides, *aṣl* took on a technical meaning, referring to a specific type of rule with a defined legal significance. As we will see, the same cannot be said for previous Jewish writers.

Regarding pre-Maimonidean treatments of legal principles, we should note that the Talmud contains many such principles, and sometimes even explicitly marks them by introducing them with the formula “this is the rule [*zeh ka-kelal*]” or calling them “a major rule [*kelal gadol*].”<sup>99</sup> For instance, the Mishnah lists a number of cases of robbery<sup>100</sup> in which the value of the stolen goods changes, as in the case of one who steals wood and makes vessels out of it, or steals wool and makes clothes with it, or steals a pregnant cow which then gives birth, etc. In all cases, the robber must pay the victim the value of the goods at the time of the robbery.

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<sup>98</sup> Of course, pre-Maimonidean Judeo-Arabic texts were also written in an Islamic milieu, so it would be a mistake to see the Islamic context and the Jewish tradition as two completely disparate sources for Maimonides' writing. Nevertheless, it is helpful to distinguish between them in determining the extent to which Maimonides himself adapted elements from Muslim legal literature beyond what had already made its way into Judeo-Arabic works.

<sup>99</sup> On the subject of legal principles in the Talmud, see Shraga Abramson, “*Kelalim ba-Talmud*,” *Sinai* 105 (1989): 22-32. Abramson also compiled a list of talmudic principles cited by Nahmanides; see *Kelale ha-Talmud be-Divre ha-Ramban* (Jerusalem: Mossad ha-Rav Kook, 1971). For a more extensive discussion of the emergence of legal principles in the Talmudic period, see Leib Moscovitz, *Talmudic Reasoning: From Casuistics to Conceptualization* (Tübingen: Mohr Siebeck, 2002).

<sup>100</sup> The Mishnah here is dealing with *gezelah* (robbery), as opposed to *genevah* (theft).

The Mishnah concludes by formulating this as a principle, stating “this is the principle: all robbers pay according to the [value at the] time of the robbery.”<sup>101</sup>

The aforementioned principle limits itself to one area of the law, robbery, but we do find others which are applicable in a wider variety of cases. A few of these principles can be seen in one brief passage.<sup>102</sup> The Mishnah presents a case in which an ox gores a cow, the latter’s miscarried fetus is found next to it, and we are not sure whether the miscarriage happened before the goring or was caused by the goring. In general, if an ox gores an animal, the owner of the ox must pay half the value of the damaged animal. In this case, the Mishnah rules that the owner of the ox must pay the cow’s owner half the value of the cow, but only a quarter of the value of the fetus. The Talmud, in discussing this case, suggests that this ruling about the fetus accords only with the opinion of Symmachus, who believes that “in monetary cases involving doubt, the money is divided.”<sup>103</sup> The majority of the sages, however, disagree with this principle and contend that “this is a major rule of the law [*zeh kelal gadol ba-din*]: the burden of proof is on the one extracting from his fellow.”<sup>104</sup> The Talmud continues, explaining why this is called a “major” rule. “Even if the plaintiff [*nizaq*] is certain and the defendant [*maziq*] is in doubt, the burden of proof is on the one extracting from his fellow.” While not explicitly formulated here, the Talmud is clearly referring to another general principle, “doubt does not overrule certainty [*en safeq motsi mi-yede vaday*].”<sup>105</sup> Weighing the rule about the plaintiff’s burden of proof

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<sup>101</sup> Mishnah, *Bava Qamma* 9:1.

<sup>102</sup> Babylonian Talmud, *Bava Qamma*, 46a.

<sup>103</sup> If we had known that the ox caused the miscarriage, its owner would be obligated to pay half the fetus’ value, and if the miscarriage happened before the goring, the owner of the ox would obviously not be obligated to pay for any damages to the fetus. Since there is doubt in this case, and the court cannot be certain whether the ox’s owner is required to pay half the value or nothing, “the money is divided” and the owner pays a quarter of the value of the fetus.

<sup>104</sup> *Ha-motsi me-havero alav ha-re’ayah*. In other words, in civil cases like this one, the plaintiff must prove that the defendant owes him money. In this instance, the owner of the cow cannot prove that the owner of the ox owes anything for the fetus, so the latter would only have to pay for the damage done to the cow.

<sup>105</sup> See, for example, Babylonian Talmud, *Yevamot*, 38b

against the principle about doubt and certainty, the Talmud finds that the former supersedes the latter and is consequently considered a “major” principle. In any event, this principle has a wider scope than the previous one regarding the robber’s repayment, but it is still limited to cases of tort law.<sup>106</sup>

One example of an even broader principle which, though much rarer, is applied in unrelated legal spheres is based on Proverbs 3:17, “its ways are the ways of pleasantness.” The Talmud considers the subject of this verse to be the Torah and invokes this principle, that the Torah’s ways are pleasant, in rulings on certain cases of levirate marriage which would create undue tension in an existing marriage if the law were carried out in the exact way we might think would be required.<sup>107</sup> This principle applies to ritual law as well; specifically, in deciding what part of the tree the Torah intended when it commanded that “palm branches” be held as part of the celebration of the Sukkot holiday.<sup>108</sup> One possibility raised is that the verse refers to a spiky part of the plant, but this is rejected because “its ways are the ways of pleasantness.”<sup>109</sup> This principle may not appear all that frequently in the talmudic corpus, but in substance, it exemplifies a broadly general rule with relevance to disparate areas of the law.

Given the important role legal principles play in the Talmud, we might expect Jewish jurists to follow the earlier rabbis’ lead and give a fair amount of attention to principles of this sort. Indeed, the Judeo-Arabic legal tradition did not ignore these principles, sometimes even labeling them as *uṣūl*. For example, Hayya Gaon (d. 1038) cites a talmudic passage dealing with

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<sup>106</sup> There are references to this principle in rulings relating to matters, such as the required tithes or gifts to priests, which have ramifications beyond financial obligations, but the application of this principle to those cases is solely due to their monetary aspects; see Babylonian Talmud, *Nedarim*, 19a and *Sotah*, 48a.

<sup>107</sup> See Babylonian Talmud, *Yevamot*, 15a and 87b.

<sup>108</sup> Leviticus 23:40.

<sup>109</sup> Babylonian Talmud, *Sukkah*, 32a. Presumably, this would be unpleasant to hold.

a case in which a sharecropper and landowner disagree about whether they had agreed that the worker would get half or a third of the profit. The Talmud asks who is believed, and records two opinions. One of these, attributed to R. Naḥman, states that “all depends on the custom of the locale,” meaning that if the general custom of that area is for the sharecropper to receive a half, he is believed, but if the customary agreement is for a third, the landowner is believed.<sup>110</sup> Hayya remarks that “this is a major principle [*aṣl kabīr*]” and takes the time to clearly spell out the importance of local custom in deciding cases like this.<sup>111</sup>

In the previous example, *aṣl* describes a talmudic principle Hayya quotes verbatim. He also might use the term to refer to a principle that he formulates himself, depending on whether we can really interpret the following example as a “principle.” In his discussion of one type of case of *nishba` ve-noṭel*, literally meaning one who swears and collects, he uses this term. In these cases, a plaintiff demanding a sum of money swears an oath, and is then believed by the court and awarded that sum. Hayya lists twenty categories of people who “swear and collect,” and he introduces the twentieth by stating that “it is a major principle [*aṣl kabīr*] which branches out into various branches.”<sup>112</sup> He formulates this “principle” as “one who is required to pay a penalty<sup>113</sup> for something he caused his fellow to lose, and he needs to know its amount.”<sup>114</sup> This may not be stated as a concise rule, but if we add “his fellow swears and collects” at the end, it could read more like what we would recognize as a legal principle.<sup>115</sup> At one point during his

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<sup>110</sup> Babylonian Talmud, *Bava Metsi`a*, 110a.

<sup>111</sup> Hayya ben Sherira Gaon, *The Laws of Oaths: The Arabic Text and a Medieval Hebrew Translation*, eds. Abramson, et al. (Jerusalem: Ben-Zvi Institute, 2012), 48.

<sup>112</sup> *Aṣl kabīr yatafarra` ila furū` shatta*; Hayya, 238.

<sup>113</sup> See Blau, *A Dictionary of Mediaeval Judaeo-Arabic Texts* (Jerusalem: Academy of the Hebrew Language, 2006), s.v. “jurm.”

<sup>114</sup> One example Hayya offers where this principle would be applied is a case in which a person lights a fire which subsequently spreads to another’s field. The victim would swear to the value of whatever happened to have been in that field, and the one who lit the fire would pay that amount (with several caveats that Hayya spells out at length).

<sup>115</sup> We will shortly return to the question of whether we can actually call this a “principle.”

discussion of this principle, he explicitly comments on its usefulness, remarking that “this is a principle from which one can learn about all [cases] similar to it.”<sup>116</sup> And Hayya highlights the value of a different *aṣl* a little bit later, when he writes about it that it acts “as a light [*sirājan*] for the knowledgeable to follow its lead.”<sup>117</sup>

Nevertheless, there is only so much we can read into these examples. We find relatively few instances of Hayya using *aṣl* in this way; the above cases represent some of the only ones I have found. Most instances of *aṣl/uṣūl* in Hayya’s *Laws of Oaths*, for example, refer to the main or essential part of something.<sup>118</sup> He also uses the term to refer to a legal category or type of case, at times as an alternative word for *bāb*.<sup>119</sup> Even the appearance of *aṣl* in the context of *nishba* ‘*ve-noṭel*’ discussed above, which we tried to read as “principle,” required the addition of a possibly implied phrase to render it a recognizable principle. Without that phrase, it seems more like the intention is to describe a legal category. It seems Hayya was not terribly concerned with identifying or composing concise rules and presenting them as principles. He certainly devoted much attention to organizing cases into categories, but he rarely formulates principles of the law. It would be difficult to argue that, for Hayya, *aṣl* had a technical meaning of “principle

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<sup>116</sup> Hayya, *Laws of Oaths*, 242.

<sup>117</sup> Hayya, *Laws of Oaths*, 256.

<sup>118</sup> See Hayya, *Laws of Oaths*, 78, 82, 150, 192, for some examples.

<sup>119</sup> For example, on p. 16, he writes that there are ten *uṣūl* for requiring an oath. He lists “the first: one who admits to owing part of the claim [against him].” This certainly seems like he is using *uṣūl* to mean “cases” and not “principles.” The distinction can be subtle, but in this case, it is clinched by his introducing the other cases from this list of ten with the word *bāb*. The text is not complete, but we can see that he refers to, for example, “the second category [*al-bāb al-thānī*]” and “the fifth category;” see p. 40 and 46. If the medieval translation included in the Abramson edition is any indication, this was also the way he introduced the third and fourth; see p. 43 and 45, which read “*ha-sha ‘ar...*” in each case. This meaning of *uṣūl* as “legal categories,” instead of “principles” is what I believe he means in his introduction (p. 6) when he says he will lay out the “*uṣūl* under which disparate cases enter.” It is true that we actually find, occasionally, Maimonides also using *bāb* to describe a discussion of one of the introductory *uṣūl* in *Sefer ha-Mitsvot*. In his respective treatments of the eighth and fourteenth principles, he refers to *hādha-l-bāb* (see Judeo-Arabic text, below, 231 and 247). However, his use of *bāb* here differs from Hayya’s. In the Gaon’s case, *bāb* is the organizing unit for his discussion. His headings for these units are not phrased as principles, but rather as chapter titles describing a category of cases. Hayya’s *bāb* does not refer simply to the section overall, but to the category heading itself. For Maimonides, on the other hand, the organizing unit is the *aṣl*, phrased as a principle. When he uses *bāb*, he seems to be referring to the section describing the *aṣl*, not the *aṣl* itself.

of the law” with a recognized form and a defined role and function in the legal system. Even his pronouncements about how the *uṣūl* he mentions can act as guidance for similar cases, reminiscent of some Muslim descriptions of the *qawā'id* which we have seen, ring slightly hollow. Even if they can be understood as talking about principles and not legal categories or situations, if Hayya truly conceived of principles like this as a critical element for later jurists, why did he not devote more than passing attention to them?

The scarcity of instances of *asl* meaning “legal principle” in Hayya’s work well represents Judeo-Arabic legal writing before Maimonides; we have to struggle to find examples here and there. A few can be seen in the work of Nissim Gaon, a younger contemporary of Hayya who lived in Kairouan and who does designate legal principles with this term at times. One case occurs when he cites a talmudic passage discussing the permissibility of heating water on the Sabbath for the purposes of washing an infant on the third day after his circumcision, which is understood to be a dangerous time.<sup>120</sup> After stating a number of opinions and decisions mentioned there, he connects them to another passage, in which the Talmud discusses a ruling in the Mishnah that one is not liable for extinguishing a flame on the Sabbath for the sake of a sick person. If the “sick person” in the Mishnah refers to a person in mortal danger, the Talmud asks, why does it not rule that extinguishing the flame is absolutely permissible instead of merely stating that one is not punished for doing so, implying that it is nonetheless forbidden?<sup>121</sup> The Talmud’s question here, Nissim explains, bases itself on the “*uṣūl*” he mentioned regarding the permissibility of heating water to wash a dangerously sick infant.<sup>122</sup> The term *uṣūl*, in this

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<sup>120</sup> Babylonian Talmud, *Shabbat*, 129a.

<sup>121</sup> Babylonian Talmud, *Shabbat*, 30a.

<sup>122</sup> Nissim Gaon, *Ḥamishah Sefarim*, ed. Shraga Abramson (Jerusalem: Meqitse Nirdamim, 1965), 46. Nissim’s explanation of the Talmud’s question seems unnecessarily complicated. After all, it might simply be based on the rule that violating the Sabbath is always permitted in life-threatening situations and not related to the particular discussion about a recently circumcised baby; see Rashi’s commentary to *Shabbat*, 30a, s.v. “*Iy*.”

context, can plausibly mean “principles,” but as with Hayya, it does not seem like Nissim conceived of legal principles as possessing an important and specific role in *halakhah*, much less used the word *aṣl/uṣūl* to signify such principles in any technical sense. He does not use the term in this way very often at all, and he never seems interested in specifically identifying legal principles.<sup>123</sup> Even here, he does not specify what parts of his extended quotation from the Talmud represent the *uṣūl*; instead, he just vaguely waves toward them.

We have not yet found any Jewish writer before Maimonides who saw *aṣl*, at least in one of its senses, as possessing what we could describe as a technical meaning in Jewish law. Nor do we find anyone who exhibited anything approaching Maimonides’ keen interest in identifying legal principles and presenting them to his readers. Nevertheless, before we leave the Judeo-Arabic tradition behind us, we should note that we actually can find a few hints that by the twelfth century, there was an increased interest in legal principles in Jewish sources as well.

In particular, let us look at a responsum of Joseph ibn Migash, who taught Maimonides’ father and about whom Maimonides writes “that man’s grasp of Talmud awes, by God, anyone who studies his words and his depth of analysis [*istighrāqahu fī-l-naẓr*], to the point that I can say about him ‘before him there was not a king like him’<sup>124</sup> in this respect.”<sup>125</sup> Ibn Migash reports that he was asked to explain a certain debate recorded in the Talmud regarding some rules relating to ritual purity. He writes that it would be best to begin his answer by explaining, in Arabic, the “principles” of this case, and only then to go back and explain the details “in the language of the Talmud.” He proceeds to spell out some of these principles, beginning by stating

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<sup>123</sup> Generally, the term *aṣl* in Nissim’s work refers to the source for a law, either in the Torah or in rabbinic texts; see Nissim, *Hamishah Sefarim*, 58, 59, 66, among many other examples throughout the works included in this volume.

<sup>124</sup> Based on II Kings 23:25.

<sup>125</sup> *Mishnah ‘im Perush Moshe ben Maimon*, ed. Kafih, vol. 1, 47.

“one of the principles we have is that a *zavah* [woman who had an abnormal discharge] defiles through being carried,<sup>126</sup> and defiles even with a stone [separating her body from the person carrying her].”<sup>127</sup>

Ibn Migash formulates this principle as a concise rule, distilled from the rabbinic sources he cites afterward, and consciously employs this and other principles in this responsum to order, simplify, and explain a complicated topic. Also, his description of this rule as “one of the principles we have” seems to foreshadow some suggestive formulations of Maimonides, perhaps hinting that Ibn Migash also saw legal principles as an important part of the legal system as a whole.<sup>128</sup> This is just one reference in one responsum, of course, which necessarily constricts our ability to draw conclusions from it about his conception of the role and importance of legal principles. Additionally, this responsum has only survived in Hebrew translation, further hindering any attempt to hold it up as an exemplar of the use of the term *aṣl* in Judeo-Arabic; Ibn Migash probably used *aṣl/uṣūl* here, but we cannot know that for certain. Nevertheless, this does offer some, if limited, evidence that in the period leading to Maimonides’ career, Judeo-Arabic legal writers were beginning to attach more significance to principles of the law.

There exists another text from around this time which has survived in Judeo-Arabic, and speaks of the *uṣūl* as critical components of the Jewish legal system, but the precise meaning of *uṣūl* here is unclear. The commentary to the Mishnah by the Palestinian scholar Natan Av ha-Yeshivah (d. 1102) was collected together with additions from other “commentaries of the sages

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<sup>126</sup> *Masa*. This refers to a way of transferring certain types of impurity; if one carries someone or something with one of these types of impurity, even without directly touching that person or object, the one doing the carrying becomes impure as well. For a brief explanation, see Maimonides, *Hilkhot Tum’at Met* 1:6, and commentaries *ad loc*.

<sup>127</sup> Ibn Migash, *She’elot u-Teshuvot R”I Migash*, ed. Nehorai Yosef Oḥana (Jerusalem: Mekhon Yerushalayim, 2016), 12, responsum 13.

<sup>128</sup> See above, 81-82.

[*tafāṣir al-‘ulāmā*].”<sup>129</sup> Based on whose commentaries are featured, we can generally say that the anonymous editor produced this text in the twelfth century, before the last quarter of that century.<sup>130</sup> In any event, in the compiler’s introduction, he mentions that the “Written Torah” includes “general *uṣūl* and overarching matters,” while the “Oral Torah” contains the “legal *uṣūl* and matters regarding the various sorts of laws” passed down from Moses.<sup>131</sup> It seems that in both these cases, *uṣūl* does not truly mean “principles” in the way that we have been understanding that term; even if the “Oral Torah” includes some principles, the “Written Torah” does not. Perhaps translating this word as “topics” or “issues” might capture this editor’s intentions better. He goes on to write that when R. Judah the Prince and others of his generation were concerned that the “Oral Torah” was being forgotten, they compiled “the transmitted *uṣūl al-fiqh*” into a work called the Mishnah. He then explains that the Talmud’s task was “the derivation [*tafrī*]” of individual cases from the *uṣūl* of the Mishnah.<sup>132</sup> Though the Mishnah does include a fair amount of legal principles, it would be a stretch to say that this is all that it contains or even its primary purpose, so, again, it is unlikely this instance of “*uṣūl al-fiqh*” means “principles of the law” in that sense, nor could it mean “legal theory,” per the Islamic use of the term. Rather, I would suggest the compiler of this text simply means that R. Judah the Prince set down all the major topics and basic rules, and that the Talmud took those base rulings and fleshed out the details.

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<sup>129</sup> *Perush ha-Mishnah le-Rabbi Natan ben Avraham Av ha-Yeshivah*; Jerusalem, National Library of Israel, MS. Heb. 38°. I viewed this manuscript through the Friedberg Judeo-Arabic Corpus ([www.jewishmanuscripts.org](http://www.jewishmanuscripts.org)), and for this quotation, see p.7 according to the pagination on the Friedberg portal.

<sup>130</sup> For various opinions about when and where this amalgamated text was produced, and for general information on Natan himself, see Eliezer Schlossberg, “*Bi’ure ha-Miqra be-Ferush ha-Mishnah le-Rav Natan Av ha-Yeshivah*,” *Megadim* 16 (1992): 101-102.

<sup>131</sup> *Perush*, 7.

<sup>132</sup> *Perush*, 9-10.

Yet even if our hesitation to interpret *uṣūl* as “legal principles” is justified, at least we find a clear, explicit demarcation of the place of *uṣūl* (in some sense of the word) in the system of halakhah in the editor’s introduction. And, for what this is worth, in the body of the commentary itself, we do find the phrase “*kelal gadol*” interpreted as “*aṣl kabīr*.”<sup>133</sup> In the context of that section of the commentary, that phrase certainly refers to a legal principle of the type we have been studying.

Perhaps, then, we can reasonably argue that even if Maimonides’ conception of an *aṣl* can more plausibly be attributed to his Islamic environment than to his Jewish background, the twelfth century sources we have just seen suggest that the path to adapting Muslim notions of the *qawā‘id* to *halakhah* had already been prepared. In fact, maybe we can see a natural progression from the few uses of *aṣl* as legal principle in the works of Hayya and Nissim, and the couple mentions in Hayya’s work of the value and benefits of a particular principle, to the possible attitude of ibn Migash and the compiler of Natan Av ha-Yeshivah’s commentary regarding legal principles (or *uṣūl* in some sense) in the twelfth century, and from there to Maimonides’ grander vision of the place of legal principles in Jewish law. But knowing what we know about the conception of legal *uṣūl* in his Maimonides’ Islamic milieu, it seems likely that even if this progression accurately describes the situation, the Islamic background, at the very least, helped it along.

Additionally, there is one element of Maimonides’ treatment of legal principles which, as far as I can tell, is truly unprecedented in Jewish literature. Specifically, his use of the term *qā‘ida* as a synonym for *aṣl* in its sense as legal principle has no parallel in the Judeo-Arabic

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<sup>133</sup> *Perush*, 49-50.

tradition; no other Jewish work I have seen uses *qā'ida/qawā'id* to refer to a legal principle.

Again, Maimonides was living through the era in which *qā'ida* was beginning to be used this way in Islamic literature, so the fact that Maimonides does so as well shows that he was aware of Muslim treatments of this topic.

### **Conclusion: The *Qawā'id* Genre and *Sefer ha-Mitsvot***

To return to the *uṣūl* of enumeration in *Sefer ha-Mitsvot*, it seems likely that Maimonides drew on the *qawā'id* genre in composing his introduction. We have seen that, by organizing all the *uṣūl* into one list, phrasing them as concise statements, and following each with an explanation citing particular examples of the principle's application, he introduces a new presentational style into Jewish legal literature. Also, his use of *aṣl/uṣūl* in his legal works resembles Islamic treatments of the *qawā'id* more than it does previous Judeo-Arabic attitudes toward legal principles, showing that the formal correspondence between the introduction to *Sefer ha-Mitsvot* and the early *qawā'id* works does not represent some anomalous coincidence.

We are left with one final matter to investigate. If Maimonides' introduction is indeed modeled after *qawā'id* compilations, why did he choose that form for these principles? As much as Maimonides' views on legal principles bring to mind those of his Muslim counterparts, he never actually compiled any of them together in the style of the *qawā'id* genre. It is possible to suggest reasons for that; first, the fact that this genre existed in Islamic legal writings does not mean that Maimonides needed to compose such a work. Also, judging by the number of principles he marks as *uṣūl* or *qawā'id* in his various works, perhaps there would be so many entries that such a work would become too unwieldy to be of use. Yet he formatted his introduction to *Sefer ha-Mitsvot* this way. Is that simply due to the number of principles? He

only lists fourteen, a much more manageable number, so perhaps he simply saw an opportunity to take advantage of a useful paradigm for presenting a list of *uṣūl*.

However, it may be possible to discern a more significant reason Maimonides chose this particular way of presenting his methodology of commandment enumeration. It appears that the *qawā'id* genre, whose form Maimonides adopts for his introduction, lent itself particularly well to Maimonides' purpose for these *uṣūl*. After all, we have seen that the *qawā'id* seem to have served three functions in Maimonides' time; namely, as pedagogical aids for studying the law, as tools on which a jurist can rely in adjudicating new cases, and as a way to differentiate one's own *madhhab* from other ones. All three of these functions can be seen in Maimonides' accounts of what he hoped to accomplish by outlining his *uṣūl*.

In terms of the pedagogical aspect, we have seen the way al-Khushanī, al-Dabbūsī, and al-Qarāfī wrote about the value of the *qawā'id*.<sup>134</sup> Clearly, the *qawā'id* genre served a pedagogical purpose in its early stages, and though the *qawā'id fiqhiyya* took on many roles over the years, their "primary important function... is that they have enabled jurists to have adequate knowledge of the different chapters of *fiqh* without the need to memorize all the particulars."<sup>135</sup> Maimonides writes about his principles of enumeration in similar pedagogical terms. In a responsum, he explains that his introductory *uṣūl* serve an important role; "to make understandable [*le-havin*]<sup>136</sup> the methods a person should adopt in counting commandments."<sup>137</sup> These principles have a specific pedagogical function. He points to them when questioned about

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<sup>134</sup> See above, 71-72.

<sup>135</sup> Elgariani, "*Al-Qawā'id al-Fiqhiyya*," 93.

<sup>136</sup> Lit. "to understand." I translated *le-havin* as "to make understandable" because that better fits the context of the passage in which it appears. Perhaps "to clarify" would also be an option, as Maimonides might be using this as a cognate of the Arabic root *b-y-n*. Of course, more study of his use of *le-havin* would be necessary to decide this question.

<sup>137</sup> Maimonides, *Teshuvot ha-Rambam*, ed. Blau, vol. 2, 725, responsum 447.

details of his count,<sup>138</sup> making clear that studying the commandments themselves cannot elucidate the *taryag*. Just as Islamic writers compiled *qawā'id* because it would be impossible to understand the law simply by studying particular cases, Maimonides wrote his *uṣūl* because it would be impossible to understand the topic of commandment enumeration simply by studying particular commandments.

As for the assistance in adjudication the *qawā'id* can provide, Maimonides, as is clear from the survey of *uṣūl* in his legal works, firmly believed in the value of legal principles for this purpose, and the same can be said for his principles of enumeration. Of course, these particular principles cannot help a judge actually arrive at legal rulings, but they do perform the equivalent role in the sphere of commandment enumeration, as they can help someone trying to determine the 613 commandments arrive at the proper count. As he writes, in order to correct the follies of previous counts, he prefaced his list of the commandments with *uṣūl* “on which one should rely” when counting *mitsvot*.<sup>139</sup> These principles can teach the proper way to count the commandments in a way that a simple list of the individual commandments cannot.

Finally, the differentiating aspect of the *qawā'id* certainly finds a parallel in Maimonides' intentions for these *uṣūl*. When Maimonides was looking for a way to show why his count differs from others, he may have seen the style of the *qawā'id* literature as a useful medium. He knew that his readers would be skeptical of his list because it contradicts earlier commandment counts, so he announces that he will defend himself by citing relevant biblical and rabbinic sources and also by “beginning with principles [*wa-aqdam uṣūlan*] that should be relied upon for

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<sup>138</sup> He does this in the above responsum, as well as in *Teshuvot ha-Rambam*, ed. Blau, 632, responsum 355.

<sup>139</sup> See Judeo-Arabic text, below, 211.

counting commandments.”<sup>140</sup> True, not all the *uṣūl* are explicitly written in order to differentiate his methodology from others’; for instance, he remarks that “I do not remember anyone erring with regard to [the sixth] *aṣl*.”<sup>141</sup> Yet, as he explains in the introduction, the *uṣūl*, taken collectively, are indeed intended specifically in order to explain what makes Maimonides’ list different from the ones espoused by his predecessors. The *qawāʿid* style of listing the *uṣūl* of a particular *madhhab* may have appealed to Maimonides as he sought to explain his particular stance on commandment enumeration.<sup>142</sup>

Of course, these principles of enumeration are not “legal principles” of the type we have seen discussed in Maimonides’ other legal works. As such, they do not precisely fit into the “technical” meaning of *aṣl* we have identified in those works, so it is interesting that he chooses this style to describe these *uṣūl* in particular. The above exploration of the three functions of *qawāʿid* and their alignment with Maimonides’ purpose in compiling these *uṣūl* can help answer that, but there is another aspect of the relationship between the *uṣūl* of *Sefer ha-Mitsvot* and the *qawāʿid fiqhiyya* genre as it existed in his time. We have seen that early works of *qawāʿid* commonly included *qawāʿid uṣūliyya*, principles of legal theory. These principles did not help a jurist arrive at rulings in particular cases; rather, they were designed to provide guidelines for

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<sup>140</sup> See Judeo-Arabic text, below, 211-212. Maimonides presents his disputes with Simon Qayyara and others solely as methodological disagreements; he explains that the problems with previous counts stem from their authors “negligence in the matters of these fourteen principles (see Judeo-Arabic text, below, 212).” However, in some cases, the commandments which he claims transgress a principle of enumeration can be explained in ways which would not violate that principle. In other words, some of Maimonides’ disputes with his predecessors might not be about overarching methodological points, but rather about the details of particular laws themselves. Naḥmanides, in defending Qayyara, often employs the strategy of suggesting alternate explanations for commandments included in the *Halakhot Gedolot* in order to show that Qayyara may still have agreed with Maimonides’ basic principles. See Naḥmanides, *Sefer ha-Mitsvot*, ed. Chavel, 52, 63, 69, 88 for a few such cases. We should not ignore the possibility that Maimonides himself understood that Qayyara may have agreed with him in principle at times while simply having a different conception of certain commandments. Maimonides may well have chosen to present their disagreements in methodological terms simply in order to better argue for the necessity of an updated count.

<sup>141</sup> See Judeo-Arabic text, below, 222.

<sup>142</sup> Maimonides’ writing style in this introduction is far more polemical in nature than that of the *qawāʿid* works we have seen, which explain the differences between *madhāhib* in a fairly dispassionate way. That can perhaps explain why Maimonides’ explanations for each *aṣl* are often much longer than those in the Islamic compositions.

scholars engaged in *uṣūl al-fiqh*, extracting laws from the sources of legislation. For instance, al-Karkhī’s 35<sup>th</sup> *aṣl* states that “the principle is that it is possible the first part of a verse [in the Quran] is general in nature, and the other part is specific, or vice versa.” This would not help decide any particular ruling, but it would be useful for settling more fundamental questions about how to extrapolate laws from the Quran. The question of how to tell when the Quran was stating a rule in general terms (*‘āmm*) or was limiting the rule to specific instances (*khāṣṣ*) represented an important element of *uṣūl al-fiqh*, as will be mentioned in the next chapter. Maimonides’ principles in *Sefer ha-Mitsvot* could perhaps be described as *qawā‘id uṣūliyya* for commandment enumeration, as they encompass the rules through which one can extrapolate individual commandments from the biblical and rabbinic sources. This equation between the *uṣūl* in this introduction and the *qawā‘id uṣūliyya* comes into sharper focus in the following chapter, when we see how a number of Maimonides’ introductory principles echo the primary concerns of *uṣūl al-fiqh*.

### **Appendix: Hebrew Translations of “*Aṣl*”**

The translators of *Sefer ha-Mitsvot* have not been in agreement about how to render *aṣl* into Hebrew, highlighting the difficulty of determining the meaning Maimonides intended. The medieval Hebrew version most commonly used today, that of Moses ibn Tibbon, employs the term *shoresh*. The translation of *aṣl* as “principle” is a derivative of that word’s literal meaning of “root,” so *shoresh* could make sense. However, there are other words in Hebrew that are more commonly used for “principle,” as we will see when we look at other translations of this work,

with *shoresh* generally reserved for cases in which the metaphor of roots and offshoots is important.<sup>143</sup>

Kafih, in his modern Hebrew translation of *Sefer ha-Mitsvot*, takes issue with ibn Tibbon, advocating for *kelal* as a better translation of *ašl* than *shoresh*. He remarks that *ašl* can have several different meanings “and here,” Kafih asserts, “there is no sense of root and branch; rather, our master established rules [*kelalim*] by which it is possible to know what to count and what not to count.”<sup>144</sup> Long before Kafih, Solomon ibn Ayyub, another medieval translator, seems to have decided against *shoresh* as an optimal rendering of *ašl*. His choice, *‘iqqar*,<sup>145</sup> has the advantage of being able to express the sense of “root” even if that is a relatively rare usage;<sup>146</sup> in rabbinic Hebrew, *‘iqqar* generally carries other meanings, often referring to the main or most

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<sup>143</sup> Y. F. Perla, in the introduction to his remarkable commentary to the list of commandments in one of Saadya Gaon’s poems, wonders why these principles are “called by the translator [*ha-ma’atiq*] of Maimonides’ *Sefer ha-Mitsvot* ‘*shorashim*.’” He suggests that maybe they are called *shorashim* in order to show that only the “root” of each commandment should be counted and not its various offshoots. He ultimately rejects that, though, for several reasons, and concludes that “it would have been better to refer to them with the term ‘classifications [*gedarim*];” see Perla, *Sefer ha-Mitsvot la-Rasag* (Jerusalem: Qeren Sefarim Toraniyim, 1973), vol. 1, 14. It is true that in medieval philosophical literature, *shoresh* can, like *ašl*, be used in contexts which might designate principles, specifically principles of belief; see Harry A. Wolfson, *Crescas’ Critique of Aristotle: Problems of Aristotle’s Physics in Jewish and Arabic Philosophy* (Cambridge: Harvard University Press, 1929), 319, n. 1. Yet even in such cases, there may be reason to see fundamental dogmas as “roots” out of which the whole of religious life stems, whereas it is not as clear that Maimonides intended these introductory principles to act as “roots” for anything. In any event, Moses ibn Tibbon, with his philosophical training, may have been comfortable with using *shoresh* simply to mean a principle; alternatively, he was simply translating hyper-literally as was his wont (see below). Nevertheless, if we restrict our gaze to legal writings, it is hard to find *shoresh* used this way. To use Maimonides himself as an example, there are many legal principles in *Mishneh Torah*, but he never describes any of them as a *shoresh*. Perhaps the closest usage of *shoresh* to Ibn Tibbon’s in a legal context comes a few centuries later in the responsa of the 15<sup>th</sup> century scholar Joseph Colon (known as Maharik). Colon’s student, Hiyya Meir, organized these responsa into *shorashim*, the theoretical rules which governed the particular legal decisions in question, and subsections (*se’ifim*). See the introductory paragraph in *Sefer She’elot u-Teshuvot Maharik* (Jerusalem, 1973). M. M. Gerlitz suggests that Colon himself referred to his responsa as *shorashim* (see Gerlitz’s introduction to *Sefer She’elot u-Teshuvot Maharik*, ed. Deutch and Schlesinger (Jerusalem: Orayta, 1988), 10, n. 13), though that seems unlikely given that Hiyya Meir takes credit for formulating the *shorashim* in his introductory paragraph cited above. Of course, this usage does not directly parallel the *Sefer ha-Mitsvot*, so it is still difficult to find a similar application of the word *shoresh*. Additionally, it should be noted that Maharik was devoted to the halakhic opinions of Maimonides and taught them extensively to his students; see Jeffrey Woolf, “The Life and Responsa of Rabbi Joseph Colon b. Solomon Trabotto (Maharik)” (PhD diss., Harvard University, 1991), 36, 115-128. It is entirely possible, then, that his student Hiyya Meir actually adopted this terminology from Ibn Tibbon’s model.

<sup>144</sup> *Sefer ha-Mitsvot*, ed. Kafih, 8, n. 55.

<sup>145</sup> See *Sefer ha-Mitsvot*, ed. Heller, 7, n. 13.

<sup>146</sup> See Mishnah, *Kil’ayim*, 7:1 and *Parah*, 2:5 for examples.

important part of something.<sup>147</sup> By the medieval period, the word came to be commonly used as “principle,”<sup>148</sup> so while *‘iqqar* could mean “root” here, medieval readers would likely have interpreted *‘iqqar* simply as “principle” or “rule” without a strong connotation of “root.”<sup>149</sup>

To be fair, ibn Tibbon himself probably did not intend to imply that Maimonides was necessarily suggesting a root-branch relationship between these introductory principles and the list of commandments. After all, ibn Tibbon was the heir to an established tradition of hyper-literal translation which persisted even in cases where the Hebrew translation did not fit common usage, and *shoresh* would be the literal translation of *ašl*.<sup>150</sup> Indeed, he displays this tendency for other terms in *Sefer ha-Mitsvot*.<sup>151</sup> So it is likely that Ibn Tibbon, in translating *ašl* as *shoresh*,

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<sup>147</sup> Maimonides himself actually translates an instance of *‘iqqar* with this meaning (Mishnah, *Berakhot*, 6:7) into Arabic as *ašl*; see *Mishnah ‘im Perush Rabbenu Moshe ben Maimon*, ed. Kafih, vol. 1, 78. Interestingly, in his Arabic commentary to the passages in *Kil’ayim* and *Parah* cited in the previous footnote, he uses the word *‘iqqar* itself instead of employing *ašl* or some other Arabic term; see *Mishnah ‘im Perush*, ed. Kafih, vol. 1, 209 and vol. 7, 418.

<sup>148</sup> Maimonides himself often uses *‘iqqar* that way in *Mishneh Torah*; see above, 73-82, in the section entitled “Echoes of *Qawā’id* in the Works of Maimonides,” for a few examples.

<sup>149</sup> The other medieval translator of which we are aware, Abraham ibn Ḥasdai, may have also chosen *‘iqqar* to translate *ašl* here. His translation is no longer extant, so that conjecture is based on the quotes from *Sefer ha-Mitsvot* found in Nahmanides’ commentary to that work, as well as in other texts which also seem to use neither ibn Tibbon’s wording nor ibn Ayyub’s. Some have suggested that they might be witnesses to ibn Ḥasdai’s translation, though Heller has demonstrated that there is room to challenge that suggestion; see *Sefer ha-Mitsvot*, ed. Heller, 7-9 (the use of *‘iqqar* is mentioned in n. 15), and for a more extensive treatment, see Heller “*Peli’ah ‘al ha-Ramban*,” *ha-Pardes* 12.1 (1938): 11-16.

<sup>150</sup> This tradition began with Moses’ grandfather, Judah ibn Tibbon; see James T. Robinson, “The Ibn Tibbon Family: A Dynasty of Translators in Medieval Provence,” 202 in *Be’erot Yitzhak: Studies in Memory of Isadore Twersky*, ed. Jay Harris (Cambridge: 2005). Judah passed this methodology on to his son, Samuel ibn Tibbon, who arguably took literalism to new extremes; see Robinson, “The Ibn Tibbon Family,” 208-211, and idem, *Samuel ibn Tibbon’s Commentary on Ecclesiastes: The Book of the Soul of Man* (Tubingen: Mohr Siebeck, 2007), 12 (“Ibn Tibbon’s translations are sometimes slavishly literal.”). Samuel’s son, Moses, carried on the literalist tradition of his forebears; for its manifestation in his work particularly, see J.P. Montada, “Moshe Ben Tibbon, un Traductor Literal,” *Sefardica* 14 (2003): 101-115, especially the “Semántica” section, 113-115.

<sup>151</sup> Heller includes a list of several recurring differences between ibn Tibbon’s and ibn Ayyub’s respective translations in the introduction to his edition. To cite two illustrative examples, Heller notes that ibn Tibbon consistently translates the Arabic phrase *dakhal fī* as *nikhnas bi*, whereas ibn Ayyub does not always translate this in the literal sense of “entering.” Similarly, ibn Tibbon translates *‘alim allah* with Hebrew phrases which literally mean “God knows,” while ibn Ayyub is more flexible in accounting for context; see Heller ed., 6. This despite ibn Ayyub’s own declaration that he will, albeit reluctantly, translate literally. He explains that it is well known there are two strategies for undertaking a work like this. A translator can translate “the meaning of the words and the content of statements [*inyan ha-devarim ve-tokhen ha-‘amarim*],” or he can translate “letter by letter, word by word.” He himself favors the former method, considering it “praiseworthy and correct according to anyone with understanding,” and remarking that past translators have always used this strategy “if the translators were wise.”

was motivated more by his general policy of literal interpretation than by a desire to actively promote the notion that Maimonides saw a root-branch relationship here.

Nevertheless, in looking for an example of someone who did present this use of *asl* as meaning a root with branches, we need not search further than Maimonides' own son, Abraham Maimonides. In his defense of *Sefer ha-Mitsvot* from the criticisms of Daniel ha-Bavli, Abraham explicitly remarks that his father's "branches proceed from his roots [*furū 'uhu, zikhrono le-verakhah, muṭṭaridah 'ala uṣūlihi*]." <sup>152</sup> So while ibn Ayyub's *iqqar*, notwithstanding its possible sense of root, likely does not point to a root/branch relationship, and ibn Tibbon's *shoresh* may only be a function of his literalist strategy, we do find that Abraham Maimonides considered it appropriate to speak of Maimonides' *uṣūl* as roots. <sup>153</sup>

Despite Maimonides' declaration in a responsum that he regrets writing *Sefer ha-Mitsvot* in Arabic and hopes to translate it into Hebrew himself, <sup>154</sup> he never did so. However, he does refer to his *uṣūl* while writing in Hebrew at least twice. In the aforementioned responsum, he describes how he prefaced his book with "fourteen chapters [*peraqim*] which have important rules [*kelalim gedolim*] and many principles [*iqqarim rabbim*]." In a different responsum, he

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Nevertheless, he admits that he has written his rendering of *Sefer ha-Mitsvot* using the latter, mechanically literal approach. Despite the criticism he anticipates facing (though he concedes that a translator will inevitably face some criticism no matter what), he makes that methodological choice because if he were to rephrase the content of the work in his own words, he would be at risk of altering, or at least seeming to alter, the intention of the original author. In the case of such an illustrious writer as Maimonides, it is important for the translator to not step between the author and his audience, a problem more easily avoided, he contends, if he were to translate "letter by letter, word by word." Ibn Ayyub, despite what he had previously mentioned about past translators, sees a precedent for his choice in the works of more recent ones, "*ha-hakhamim ha-'aharonim*," perhaps referring to the famous ibn Tibbon translators, Judah and Samuel (ibn Ayyub's translation of *Sefer ha-Mitsvot* predated Moses ibn Tibbon's career). See ibn Ayyub's introduction in *Sefer ha-Mitsvot*, ed. Heller, 27-28.

<sup>152</sup> See Abraham Maimonides and Daniel ha-Bavli, *Ma'aseh Nissim*, ed. and trans. Baer Goldberg (Paris: Brill, 1867), 80. My thanks to Marc Herman for bringing this passage to my attention; for more on the interlocution between Abraham Maimonides and Daniel ha-Bavli, see the third chapter of Herman, "Systematizing God's Law."

<sup>153</sup> It is not entirely clear what the "branches" are for Abraham Maimonides. Are they the commandments themselves? Are they his father's decisions regarding what to count? Either option could work in the context of Abraham's statement.

<sup>154</sup> See the responsum cited above, 15, n. 10.

uses almost the exact same language: “fourteen chapters of important rules on the principles of commandment enumeration [*peraqim be-kelalot gedolot be-iqqare minyan ha-mitsvot*].”<sup>155</sup> Maimonides describes the *uṣūl* with the words *kelalim/kelalot* (as Kafih would later translate *uṣūl*), and *iqqarim* (as ibn Ayyub’s translation has it). It seems the only word he does not use in labeling these *uṣūl* is *shorashim*, and unlike his son, he never refers to any “branches” of the *uṣūl*. However, we should not expect Maimonides to translate this instance of *uṣūl* as *shorashim*, as only a committed literalist would describe these principles with a word that can only mean “roots.”<sup>156</sup>

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<sup>155</sup> See the responsum cited above, 11, n. 13.

<sup>156</sup> In a letter to Moses ibn Tibbon’s father, Maimonides himself argued against the literalist method of translation, contending that translating word for word can be misleading and explaining that sometimes it is necessary to use many words to interpret one word so that its meaning will be clear in the new language. See Isaiah Sonne, “Maimonides’ Letter to Samuel b. Tibbon,” *Tarbiz* 10.3/4 (1939): 311. Perhaps this explanation of the introductory *uṣūl* using multiple terms—“rules” and “principles”—can be seen as an example of Maimonides taking his own advice.

## Transferring Principles of *Uṣūl al-Fiqh* to the Exercise of Commandment

### Enumeration

Beginning with al-Shāfi‘ī (d. 820), many Muslim scholars devoted significant attention to the study of legal theory [*uṣūl al-fiqh*].<sup>1</sup> This field comprises many topics, but broadly speaking, it seeks to lay out the rules and methods by which jurists can either identify or construct the individual laws of Islam. Much of the discipline’s focus relates to the methods of extracting law from the authoritative sources; primarily the Quran and hadith reports. In addition, scholars of *uṣūl al-fiqh* work to determine the sources themselves—the Quran, of course, is universally accepted, but controversy erupted over the suitability of certain types of hadith. Also included in the field of *uṣūl al-fiqh* are discussions over how, or if, laws can be enacted through the mechanism of a consensus [*ijmā‘*] of Muslim legal scholars agreeing on them.

These elements of *uṣūl al-fiqh* will be discussed in more detail below, but from this brief description it should be clear that the science of Islamic legal theory does not relate directly to particular laws or rulings, but rather to the methods by which one can arrive at the substance of positive law. Consequently, *uṣūl al-fiqh*, and the tools and techniques developed in its service, lends itself to crossing religious lines more than individual rulings unique to Islamic law, and the

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<sup>1</sup> The prominent 12<sup>th</sup> century Muslim scholar Fakhr al-Dīn al-Rāzī wrote that “al-Shāfi‘ī is to the science of *uṣūl al-fiqh* what Aristotle the philosopher [*al-ḥakīm*] is to the science of logic;” see al-Rāzī, *Manāqib al-Imām al-Shāfi‘ī*, ed. Aḥmad Ḥijāzī al-Saqqā, (Cairo: Maktabat al-Kullīyāt al-Azharīyya, 1986), 156. Nevertheless, Wael Hallaq has questioned whether al-Shāfi‘ī truly deserves consideration as the foundational figure for *uṣūl al-fiqh*. He points out that, however revolutionary al-Shāfi‘ī’s theories of law were, they did not catch on right away, and it was the work of later scholars which ushered in real treatments of *uṣūl al-fiqh*. According to him, it was only in later generations that Muslim scholars looked back and retroactively dubbed al-Shāfi‘ī the first of the *uṣūlīs*; see Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), 30-35; idem, “Was al-Shāfi‘ī the Master Architect of Islamic Jurisprudence?” *International Journal of Middle East Studies* 25.4 (Nov., 1993): 587-605. Ahmed El Shamsy, though, has offered an explanation for why we do not see extensive citations of al-Shāfi‘ī’s writings for some time. While not the only factor, the political reality in which al-Shāfi‘ī’s followers lived, a situation which did not allow them to freely carry on his work, contributed much to this delay. Only later, when the ruling powers became more favorable to them, were they able to continue honing the science of *uṣūl al-fiqh*, and despite this lag, their works can indeed be seen as offshoots of what al-Shāfi‘ī started; see El Shamsy, *The Canonization of Islamic Law*, 118-137.

questions asked by the scholars of *uṣūl al-fiqh* might be germane to discussions of Jewish law as well. Indeed, Jews living in Islamic lands did display an interest in these matters of legal theory, a phenomenon attributable to the prominence of this field in contemporaneous Islamic discourse.<sup>2</sup>

Maimonides did not author a work dedicated to legal theory, but his writings contain no shortage of passages demonstrating his attention to the manner and methods by which the rabbis established the system of halakhah. Gerald Blidstein notes that “Maimonides, far more than any predecessor or contemporary, was keenly (perhaps obsessively?) interested in the status of the different sources of Law and their interrelationship.”<sup>3</sup> Inasmuch as Blidstein is limiting the predecessors or contemporaries in question to Jewish ones, he is likely correct. Again, though, a more panoramic view which includes Islamic scholars would in fact reveal many predecessors and contemporaries who shared Maimonides’ keen, obsessive interest.

The introduction to his Mishnah commentary offers the clearest, most explicit exploration of these questions,<sup>4</sup> but the introduction to *Sefer ha-Mitsvot* bears the marks of Islamic *uṣūl al-fiqh* scholarship as well. As we will see, Maimonides adapts a number of the concerns and hermeneutical mechanisms of *uṣūl al-fiqh* for the purposes of commandment enumeration. These include the need to determine the sources of the law, the procedure of analogy, discussions of abrogation and temporary commandments, interpreting scriptural statements as general or

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<sup>2</sup> For some treatments of this, see above, 45, n. 111. In addition to those references, see Zvi Stampfer, “Jewish Law in 11<sup>th</sup> Century Spain—The ‘Kitab al-Hawi’ of Rabbi David ben Saadya” [Hebrew], *Shenaton ha-Mishpat ha-Ivri: Annual of the Institute for Research in Jewish Law* 25 (2008): 217-236. Stampfer points out some differences between the ways David ben Saadya used some elements of legal theory and the ways Muslim jurists understood them, but he does highlight that the established field of legal theory in Islam is certainly relevant to the rise in Jewish interest in this discipline in the Islamic world.

<sup>3</sup> Blidstein, “Where Do We Stand?,” 13.

<sup>4</sup> Maimonides himself, in the second principle of *Sefer ha-Mitsvot*, directs the reader to the introduction to his commentary to the Mishnah for a fuller account of his conception of the sources of Jewish law. See Judeo-Arabic text, below, 216, and the English translation, below, 260.

specific, identifying the significance of the imperative, and the use of logic in understanding the text of revelation. We will shortly see how Maimonides incorporates these elements of *uṣūl al-fiqh* into his introductory principles.

It is important to emphasize that Maimonides' adaptations of Islamic legal theory, at least as manifested in *Sefer ha-Mitsvot*, do not serve the goal to which the field of *uṣūl al-fiqh* is directed in Islam. Maimonides is not using these tools to determine the law itself, nor is he even retroactively describing the process through which halakhah had already developed. At least ostensibly, his goal is simply to provide a scaffolding with which the list of 613 commandments can be constructed. When he excludes rabbinic laws, for example, he is not declaring that rabbinic laws are not binding or that rabbinic authority has no claim to legitimacy as a source of the law; he is simply removing these laws from consideration in the sum of 613. This exercise finds no real parallel in Islamic literature, which is generally unconcerned with finding the precise sum of commandments, much less deciding which laws do or do not deserve to be included in a predetermined sum.<sup>5</sup> Of course, at times, Maimonides' guidance on commandment enumeration is necessarily tied to the question of determining the law itself. He often chastises his predecessors for counting certain biblical statements as commandments when they are in fact, not commandments. To counter these errors, Maimonides lays out instructions for extracting law from the Torah, and it is in those moments that the introduction to *Sefer ha-Mitsvot* more closely resembles the work of Islamic scholars of *uṣūl al-fiqh*. Yet even when a particular principle only addresses the specific issue of commandment enumeration, it is still noteworthy that Maimonides

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<sup>5</sup> Though we should note the legend Goldziher cites in which the famed early-Islamic convert from Judaism, Ka'b al-Aḥbār, spoke of 613 commandments in Islam. Goldziher also mentions a separate Muslim tradition that the Quran contains precisely 315 commandments; see Ignaz Goldziher, "Das arabische Original von Maimuni's Sefer Hammisewot," *Vienna Oriental Journal* III (1889): 78. Nevertheless, those sources did not have enough clout in Islamic thought to generate any interest in commandment enumeration.

draws from *uṣūl al-fiqh*. Maimonides had good reason to use Islamic legal theory as a guide to the project of *Sefer ha-Mitsvot*. The bridge *uṣūl al-fiqh* provided from the text of revelation to the specific laws of Islam acted as a model for the importance Maimonides saw in enumerating the 613 commandments God revealed to Moses, a point which will be discussed in more detail in the conclusion to this dissertation. The task of this chapter is to begin exploring some ways in which the introduction to *Sefer ha-Mitsvot* reveals the imprint of *uṣūl al-fiqh*. We will look particularly at six of the principles—the first through fifth as well as the eighth—but this should not imply that looking at Islamic literature, and *uṣūl al-fiqh* in particular, has no relevance for the other eight principles.

### **Principle One: Identifying Sources**

“The first principle, that it is not appropriate to count in this sum commandments which are rabbinic.”

In Maimonides’ first principle, he argues that only biblical commandments, not ones instituted by the rabbis, belong in the list of 613. Maimonides is not the first to draw a stark division between biblical and rabbinic law, and the Talmud itself lays out several important differences.<sup>6</sup> Furthermore, Judah ibn Bal‘am, Maimonides’ eleventh-century Andalusian predecessor, had previously wondered how counts of commandments could possibly include laws not revealed at Sinai.<sup>7</sup> Nevertheless, given that Ibn Bal‘am wrote this as a passing comment in his biblical commentary, Maimonides can be described as the first commandment enumerator to expressly and systematically exclude rabbinic laws. While it is quite possible he was drawing from Ibn

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<sup>6</sup> For example, in a case where, for whatever reason, there is some doubt regarding whether a certain rule is in effect, if the rule in question is considered biblical, one must be stringent and act in accordance with it. If the rule is rabbinic, one may be lenient and assume it is not applicable. See Babylonian Talmud, *Betsah* 3b, for one application of this.

<sup>7</sup> See above, 18, n. 39.

Bal'am,<sup>8</sup> it is also worth noting that Ibn Bal'am's brief comment appears to represent an exception to the general acceptance of rabbinic laws in previous counts. The usual caveats about an argument from silence certainly apply here, but it is interesting that rabbinic laws find their way into pre-Maimonidean counts without much resistance; even someone like Abraham ibn Ezra, who in his *Yesod Mora* anticipates Maimonides in critiquing many elements of the field of commandment enumeration, does not object to the presence of rabbinic commandments in these lists. So we should be cognizant of the fact that when Maimonides sides with the position of Ibn Bal'am, he is actually countering the widespread acceptance of rabbinic laws in counts of the 613 which prevailed before his time.

Maimonides explains the inappropriateness of including rabbinic laws by appealing to the words of the Talmud itself: "613 commandments were commanded to Moses at Mt. Sinai." Obviously, he contends, laws instituted by the rabbis could not have been commanded to Moses at Mt. Sinai, so they cannot be part of this list.<sup>9</sup> But Maimonides does not stop with his citation of the Talmud; a large section of his treatment of this principle consists of an extended discussion about a possible justification for including rabbinic laws. He surmises that the *Halakhot Gedolot* and other commandment enumerators who include rabbinic commandments may have thought that since the charge to obey the rulings of the rabbis does originate in the Torah, perhaps all rabbinic laws can be said to be laws of the Torah because they are supported by the authority guaranteed by the biblical verse "do not stray from the words they tell you right or left."<sup>10</sup> Furthermore, the liturgical benediction preceding the performance of many rabbinic

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<sup>8</sup> That possibility is buttressed by the examples Ibn Bal'am cites for rabbinic laws which should not be counted in the list of 613—Hanukkah candles, reading the megillah on Purim, visiting the sick, and comforting the mourners. These examples reappear in Maimonides' first principle.

<sup>9</sup> Ibn Bal'am makes this point as well in his criticism of Hefets.

<sup>10</sup> Deuteronomy 17:11.

laws includes the phrase "...that You commanded us," implying that God commanded even rabbinic laws. Maimonides insists that these arguments would still not justify listing rabbinic commandments in the list of 613. And even if these were good enough reasons, they would apply equally to all rabbinic laws; commandment counts would need to include every rabbinic commandment, which, Maimonides points out, would swell these lists to far beyond the sum of 613.

Nahmanides defends the *Halakhot Gedolot*, suggesting several ways to validate the inclusion of rabbinic laws in lists of the commandments.<sup>11</sup> His particular arguments, and the counter-arguments of Maimonides' supporters, are not as germane to our discussion as the very fact that Maimonides takes so much time and effort to outline his position. This could underscore the acceptance the inclusion of rabbinic commandments enjoyed in his time, and call attention to the fact that Maimonides is maneuvering against the grain on this matter. In fact, as Zucker has shown, Maimonides appears to be directly addressing not only the *Halakhot Gedolot*, but both Saadya Gaon and Hefets as well. Their respective counts each include the commandments to light candles on Hanukkah and read the megillah on Purim, Maimonides' parade examples of rabbinic pronouncements which could not possibly have been revealed to Moses at Mt. Sinai.<sup>12</sup>

Maimonides makes a convincing case for excluding rabbinic laws, and his logic seems to have carried the day moving forward. Even Nahmanides, who cannot stomach the disrespect for the *Halakhot Gedolot* he perceives in Maimonides' first principle, ultimately concedes that he is personally inclined to agree with Maimonides and to disqualify rabbinic commandments from

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<sup>11</sup> See Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 8-28.

<sup>12</sup> See Moshe Zucker, "Iyyunim ve-He'arot," *PAAJR*, 49 (1982): 97-100. On the other hand, Perla thinks that Saadya does agree with Maimonides' first principle, though he does not take the sources Zucker identifies into account; see Perla, *Sefer ha-Mitsvot la-Rasag* vol. 1, 17-18.

the list of 613.<sup>13</sup> In light of the positive reception Maimonides' work in this principle has received, it is easy to ask why previous enumerators counted these commandments in the first place. Yet perhaps the reverse inquiry would be more appropriate from a historical perspective: what led Maimonides to break from the long-standing tradition of commandment enumerators to give rabbinic laws a place in counts of the 613 commandments?

It is possible to identify several possible answers to that question. First, as we will explore further in the conclusion to this dissertation, Maimonides' purpose in listing the commandments might have differed from that of previous authors. Maimonides may have seen this exercise as an important means of identifying the substance of the Sinaitic revelation to Moses, thus disqualifying rabbinic laws. Geonic enumerators like the author of the *Halakhot Gedolot*, Saadya, and Ḥefets, on the other hand, may have been more concerned with summarizing the corpus of Jewish law, possibly necessitating mentioning prominent laws in the practice of Judaism like the requirements to light Hanukkah candles and read the megillah. The liturgical utility of the lists appearing in *Azharot* poems recited in prayer services could underscore this function.<sup>14</sup>

Second, it is possible that the geonic writers mentioned above did in fact see their lists as truly representing the 613 laws Moses received at Sinai. The presence of rabbinic laws in those lists might raise the eyebrows of readers living after Maimonides, but would not have posed a difficult problem for scholars in the geonic period. In that era, Jewish thinkers generally saw strong links between rabbinic laws and the text of the Torah. According to this outlook, rabbinic laws were not conceived by the rabbis; rather, they were always latent in the text and only came

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<sup>13</sup> See Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 28.

<sup>14</sup> See below, 19-20.

into effect later. In a number of his writings, Maimonides works to dispel this notion, maintaining that the rabbis did act creatively in constructing new laws instead of simply uncovering what had actually been revealed to Moses and subsequently suppressed.<sup>15</sup> This is all to say that Maimonides' contention that rabbinic laws should not be counted in the 613, a contention at odds with previous counts, may have reflected a difference of opinion regarding the content of the revelation at Sinai, not a disagreement about the role or function of commandment enumeration specifically.

The above reasons can help explain *why* Maimonides broke from his predecessors in refusing to count rabbinic commandments, but we should also look at *what* Maimonides is doing in laying out this rule in the first principle. Essentially, he is demarcating what material can be used in determining the 613 commandments. In the first principle, before going any further, Maimonides outlines the sources from which the list of commandments may be drawn; only the Torah itself, not later rabbinic pronouncements, should be featured in this list. This calls to mind what could perhaps be called the first concern of Islamic legal theorists.

Before articulating methods of recognizing or manipulating laws, Muslim jurists needed to delimit the sources of those laws. The Quran represents an unquestioned legal authority, but what about other prophetic traditions? After all, there is no shortage of hadith reports of Muhammad's sayings or activities which are not recorded in the Quran. Most scholars view these reports as legitimate legal sources, though many qualify that acceptance depending on the

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<sup>15</sup> For more on this shift from the geonic authors to Maimonides, see Blidstein, "Oral Law as Institution in Maimonides," in *The Thought of Moses Maimonides*, eds. Ira Robinson, Lawrence Kaplan, and Julien Bauer (Lewiston, NY: Mellen Press, 1990), 167-182, and idem, "Tradition and Institutional Authority in Maimonides" [Hebrew], *Da'at* 16 (1986): 11-27. On the topic of the geonic position linking rabbinic laws to divine revelation, and the possible connection to Islamic legal thinking at the time, see Marc Herman, "Prophetic Authority in the Legal Thought of Saadia Gaon," *JQR*, 108:3 (Summer, 2018): 271-294.

basis of the report. For example, some scholars reject a unit-tradition [*ḥadīth aḥād*], a report attested by only one person, as a source of the law, or at least as a source which can promulgate a law with true certainty. Identifying the sources of the law is necessarily the first step to jurisprudence, so it was naturally the first step taken by Muslim jurists. For them, the question of whether a *sunna* source qualifies or not hinges on the problem of authenticity; is there evidence that Muhammad truly did speak or act as reported? How strong is that evidence? Depending on the answers to those questions, a report could be rejected as an authoritative legal source or, even if it is accepted, might generate a law classified as “uncertain.”<sup>16</sup> For Maimonides, the concern is not authenticity so much as authority; the important difference between biblical and rabbinic laws lies in who proclaimed them not in the manner of transmission. Nevertheless, it seems Maimonides is setting out to do for his project of commandment enumeration what his Islamic counterparts did for theirs of establishing the content of the Islamic legal system. He begins by delimiting the sources relevant for his inquiry and setting aside those which should be discarded.

### **Principle Two: Exegesis and Analogy [*Qiyās*]**

“The second principle, that not everything derived from one of the thirteen hermeneutical devices through which the Torah is interpreted, or through superfluity, should be counted.”

Here, Maimonides continues what he started in the first principle; namely, determining the material from which the 613 commandments may be derived. In the first principle, he argues that laws which do not originate in the Torah do not belong. In the second principle, he maintains that even laws stemming from the text of the Torah may not qualify for this list if the Torah does not state them explicitly. The *Sifra*, the legal midrashic work commenting on the book of Leviticus, begins with a statement by Rabbi Yishmael, who outlines thirteen hermeneutical tools for

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<sup>16</sup> We will briefly mention the matter of certainty and uncertainty in Islamic law below, in the context of Maimonides’ second principle.

interpreting legal passages of the Torah. In addition to these thirteen techniques, the Talmud also makes use of others, such as *ribbuy*, which I have translated as “superfluity.”<sup>17</sup> In his exposition of the second principle, Maimonides argues that laws derived through these devices should be considered rabbinic laws<sup>18</sup> and therefore inadmissible in a list of the 613 commandments. If the rabbis extract a law through hermeneutical techniques, it is not considered sufficiently “biblical” to be counted among the 613 commandments unless, Maimonides writes, the Talmud explicitly states that it constitutes a biblical rule.<sup>19</sup>

This principle generated a heated debate and quickly became the most controversial section of *Sefer ha-Mitsvot*. Nahmanides registers outrage, citing numerous talmudic proofs for his claim that any commandment originating in the biblical text, whether explicitly stated or hermeneutically derived, is indeed considered biblically mandated. Despite the fact that he wrote a running critique throughout the entire book, Nahmanides insists that regarding “this book by the *rav*, its matter is sweet and all of it is lovely, except for this principle which uproots great mountains in the Talmud and fells fortified walls in the Gemara, and its matter for those who study Gemara is bad and bitter.”<sup>20</sup>

Nahmanides objects to Maimonides’ relegation of this category of laws to rabbinic status, but, in truth, Maimonides’ use of the term “rabbinic” in this principle is not entirely clear. In both traditional commentaries on *Sefer ha-Mitsvot* and modern academic treatments of this book, there is no end to the debate about what Maimonides meant by this second principle. Is he indeed

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<sup>17</sup> The rabbis will identify an ostensibly superfluous word or phrase in the text of the Torah and derive a law (or a detail thereof) based on the presence of this extra word.

<sup>18</sup> We will shortly examine the controversy surrounding Maimonides’ use of the term “rabbinic” in this principle.

<sup>19</sup> While most treatments of this principle focus on Maimonides’ apparent designation of hermeneutically-derived laws as rabbinic, his qualification that if the Talmud refers to a rule as biblical it should be accepted as having biblical status did not escape scrutiny; see David Henshke, “*Le-Havhanat ha-Rambam ben ‘De-Orayta’ le-‘De-Rabbanan’*,” *Sinai*, 102 (1988): 205-212.

<sup>20</sup> Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 51.

claiming that these hermeneutically-derived commandments are truly to be considered on the level of rabbinic rules, or is he simply saying that these commandments, while biblical in status, cannot be included in the enumeration for a different reason? Maimonides does seem to say that, unless the Talmud explicitly says that a given interpretation is the “essence of the Torah [*guf torah*]”<sup>21</sup> or “biblical [*mi-de’orayta*],” or that it is a “transmitted interpretation [*tafsīr marwī*]” from the time of Moses, the rule derived from it must be considered rabbinic in nature, not biblical. However, if that truly is Maimonides’ intention in this principle, problems would arise in that, as Nahmanides pointed out, he would appear to be demoting certain laws which really seem to be on the biblical level to the status of rabbinic rules.

To illustrate this debate, let us look at one example of such a law: marriage effectuated by giving the bride money. According to the Talmud,<sup>22</sup> there exist three ways to effectuate a marriage according to halakhah: giving money or something of monetary value [*kessef*], writing a document of marriage and having it witnessed [*shtar*], or sexual intercourse [*bi’ah*]. The Talmud derives the *kessef* method through one of the hermeneutical tools of interpretation,<sup>23</sup> but it seems to treat it and the other two equally. In *Mishneh Torah*,<sup>24</sup> Maimonides does say that this method is “*mi-divre sofrim*,” a somewhat enigmatic phrase which implies that it is rabbinic unlike *shtar* or *bi’ah*, methods which enjoy biblical status, implying that the *kessef* form of

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<sup>21</sup> On this translation of *guf torah*, see Herman, “Systematizing God’s Law,” 172, n. 621.

<sup>22</sup> Babylonian Talmud, *Kiddushin*, 2a.

<sup>23</sup> In this case, the second in Rabbi Yishmael’s list, *gezerah shava*. This technique works through matching a word or phrase used in the Torah regarding a particular law with similar language in another context. In the case of marriage through transferring *kessef*, Deuteronomy 24:1 begins discussing marriage by saying “when a man takes a woman...” Elsewhere, in Genesis 23:13, Abraham tells Ephron, the man who sold him the cave of Makhpelah in Hebron, “I will give money for the field, take it from me.” Since the word “take” appears in both verses, the Talmud concludes that just as Abraham accomplished his purchase through money, a man can give money to a woman to achieve a marriage.

<sup>24</sup> *Hilkot Ishut* 1:2.

conducting a marriage is not as strong as the other two. Again, though, the Talmud seems to treat all three methods equally, so some simply dismissed Maimonides' ruling as incorrect.<sup>25</sup>

Commentaries to *Mishneh Torah* and *Sefer ha-Mitsvot* more sympathetic to Maimonides take up this problem, and try to discern if “*divre sofrim*,” as used in this and other contexts, might designate something other than “rabbinic” status for a law.<sup>26</sup> Additionally, Maimonides' son, Abraham, was asked how his father could have considered the *kessef* method of effectuating a marriage to be rabbinic, and answered that his father had actually changed his mind, and correct editions of *Mishneh Torah* treat all three methods equally.<sup>27</sup> However, Maimonides himself seems to defend his classification of this method of marriage in his own responsa, actually using the term “*mi-derabanan*” and not the possibly more ambiguous “*divre sofrim*” of *Mishneh Torah*.<sup>28</sup> Maimonides complains throughout this responsum that he is suffering physical pain or illness and, moreover, is too busy to offer a full explanation, so he suggests that the questioner look at what he wrote in the second principle of *Sefer ha-Mitsvot*. Perhaps his physical discomfort and his haste in writing this answer leaves open the possibility that Maimonides was not being entirely precise in his responsum, returning us to the debate surrounding the precise meaning of the second principle in *Sefer ha-Mitsvot*.<sup>29</sup>

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<sup>25</sup> See Rabad, for example, in his gloss to this law in *Mishneh Torah*.

<sup>26</sup> See, for example, *Magid Mishnah* and *Kessef Mishnah* on this passage from *Mishneh Torah*, and the comments of *Megillat Esther* and *Lev Sameah* on this principle in *Sefer ha-Mitsvot*. For a good treatment of the many opinions on this matter in traditional sources, see Neubauer, *Ha-Rambam 'al Divre Sofrim*.

<sup>27</sup> See Abraham Maimonides, *Sefer Birkat Avraham*, ed. B. Goldberg (Lyck, 1849), 61-62; responsum 44.

<sup>28</sup> See Maimonides, *Teshuvot ha-Rambam*, ed. Blau, 631-633; responsum 355.

<sup>29</sup> Hanina Ben-Menahem makes that suggestion regarding this responsum. Ben-Menahem is among the minority of scholars who deny that Maimonides meant that hermeneutically-derived commandments have a rabbinic status. If he really meant that, Ben-Menahem points out, Maimonides' second principle would merely be a subcategory of the first, and these introductory principles do seem to be independent of each other. For his treatment of the second principle, see Ben-Menahem, “Maimonides' Fourteen Roots,” 20-25.

Whatever Maimonides' intention in this principle, he is clearly somehow distinguishing between explicit laws, which may appear in the catalog of commandments, and laws derived through hermeneutical interpretation, which may not. Gerald Blidstein suggests that his insistence that hermeneutically derived rules should be considered rabbinic may have been, at least in part, a response to the Karaite sect of Judaism which denied rabbinic authority altogether.<sup>30</sup> Halbertal, though, offers a different explanation; these first two principles are motivated by Maimonides' general desire to demonstrate that there exists a significant gulf between Moses and other prophets,<sup>31</sup> and all the more so between Moses and later sages. The second principle emphasizes the difference in authority between commandments uttered explicitly by Moses and those the sages derived through hermeneutics. Only the former category can truly be considered *mi-deorayta*, biblically mandated. Other commandments, even if their source is in the Torah, do not attain this status (unless the Talmud specifies that a certain interpretation was passed down from Moses himself), because they do not have the strength of Mosaic law.<sup>32</sup> Halbertal goes on to distinguish between two layers of biblical interpretation. The first consists of defining and clarifying the words of the Torah so that we may understand the explicit commandments found therein, while the second involves bringing out other meanings of the text, including the identification of new commandments not explicitly stated.<sup>33</sup> The issue is not whether laws arising from the latter type of interpretation are "correct;"<sup>34</sup> rather, they simply

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<sup>30</sup> This may seem counterintuitive, as one might expect Maimonides to defend the rabbis' interpretations and argue that they are essentially the same as explicit biblical laws. This was the approach of his geonic predecessors, but Blidstein argues that Maimonides thought such an approach would be conceding too much to the Karaites, as it assumes that only biblical laws, and not rabbinic ones, have real legitimacy. Instead, Maimonides contends that rabbinic interpretations of the Bible are *not* equivalent to explicit verses, but they do not need to be; they are bindingly authoritative nonetheless. See Blidstein, "Oral Law as Institution."

<sup>31</sup> See, for example, his *Commentary to the Mishnah*, in the introduction to *pereq ḥeleq; Mishneh Torah*, "Hilkhot Yesode ha-Torah" 7:6; and *Guide of the Perplexed* II: 34, 39.

<sup>32</sup> Halbertal, "Sefer ha-Mitsvot la-Rambam," 462-464.

<sup>33</sup> Halbertal, "Sefer ha-Mitsvot la-Rambam," 468-469.

<sup>34</sup> See Judeo-Arabic text, below, 217, and English translation, below, 264. For more on this, see below, 120-122.

do not have the legal status of those openly stated in the Torah.<sup>35</sup> Yet Halbertal's explanation of these two categories, while helpful, does not fully illuminate Maimonides' stance on biblical interpretation. What is the relationship of the explicit text to its interpretation? And how do we define "explicit;" is it the literal meaning or is it something else?<sup>36</sup>

Maimonides himself describes the relationship between the explicit commandments and those derived by the sages as the extension of "branches from the roots."<sup>37</sup> This metaphor of roots and branches is extremely common in both Islamic and Jewish (at least in the Judeo-Arabic tradition) religious scholarship of all kinds, including legal jurisprudence and scriptural interpretation.<sup>38</sup> It seems then, if this metaphor is to be taken seriously, that the "branches," the hermeneutically derived laws, are organically connected to the text but do not represent its fundamental meaning. As such, they cannot truly be considered *mi-deorayta*.

Mordechai Cohen, in searching for Maimonides' theory of exegesis, develops a more thorough model for it. He addresses the *furū' - 'uṣūl* dichotomy, but goes further, using *Sefer ha-Mitsvot* to offer a more sweeping conclusion about the nature of Maimonides' approach to biblical interpretation. Cohen's principal argument is that we should not conflate two words which might appear synonymous—the Arabic term *ẓāhir* and the rabbinic Hebrew term *peshat*.

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<sup>35</sup> Nahmanides cites numerous talmudic proofs that any commandment stemming from the Torah, whether explicitly or through hermeneutical interpretation, is considered biblically mandated. In fact, this principle, more than anything else that Maimonides wrote in *Sefer ha-Mitsvot*, caused Nahmanides the most consternation. Despite the fact that he wrote a running critique throughout the entire book, he insists that regarding "this book by the *rav*, its matter is sweet and all of it is lovely, except for this principle which uproots great mountains in the Talmud and fells fortified walls in the Gemara, and its matter for those who study Gemara is bad and bitter," see Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 51.

<sup>36</sup> Halbertal does try to offer some explanation for these issues by delving into the "root-branch" dichotomy we will look at shortly. See Halbertal, "*Sefer ha-Mitsvot la-Rambam*," 469-473. Nevertheless, his treatment does not fully explain Maimonides' opinion on these matters.

<sup>37</sup> *Furū' min al-uṣūl*. See Judeo-Arabic text, below, 217, and English translation, below, 264.

<sup>38</sup> For a few examples, see Mordechai Cohen, *Opening the Gates of Interpretation: Maimonides' Biblical Hermeneutics in light of his Geonic-Andalusian Heritage and Muslim Milieu*, (Leiden: Brill, 2011), 246, n. 12.

The latter is often used by other medieval writers to refer to the simple, basic meaning of the scriptural text. That seems to be what the former indicates as well, leading many to, in Cohen's estimation, misunderstand Maimonides' true intention in using these disparate terms. According to Cohen, when Maimonides wants to indicate the literal meaning of a particular verse, he uses *ẓāhir*, not *peshat*. *Peshat* refers to the "real" meaning of the verse, causing Cohen to suggest that the Hebrew phrase *peshuto shel miqra* (or the Aramaic *peshateh di-qera*) should be translated in Maimonides' writings as "Scripture itself."<sup>39</sup> This might differ from the literal meaning (what others might call the *peshat*) of the verse, and may be based on other factors including rabbinic interpretation. As opposed to other exegetes such as Rashbam and ibn Janaḥ who point out differences between the halakhic interpretation of a verse and its *peshat*, "for [Maimonides], *peshateh di-qera* is hardly separate from halakhah; on the contrary, it is the exclusive source of the core of laws deemed by the Talmud to be of biblical authority."<sup>40</sup>

With this understanding of Maimonides' notion of *peshat*, Cohen addresses the second principle in *Sefer ha-Mitsvot*, in which Maimonides derides those who count commandments based on interpretations of verses when "the *peshateh di-qera* does not indicate those commandments at all."<sup>41</sup> Nahmanides, in his critique of this principle, was concerned that ignoring rabbinic interpretation and insisting that only commandments explicit in the Torah would lead to a mischaracterization of biblical halakhah. Yet, Cohen contends, Nahmanides seemingly misunderstood the way Maimonides used the word *peshat*. Maimonides was not

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<sup>39</sup> Cohen, *Opening the Gates*, 298.

<sup>40</sup> Cohen, *Opening the Gates*, 448.

<sup>41</sup> See Judeo-Arabic text, below, 217, and English translation, below, 262.

ignoring rabbinic interpretation; rather, he was specifying which types of interpretation constitute the *peshat* of a verse and which do not.<sup>42</sup>

Cohen's reading of Maimonides, while largely convincing overall, should not be the last word on the subject. Just one example of a case which calls for more study can be found in Cohen's treatment of negative commandment number 299.<sup>43</sup> Leviticus 19:14 states that one should not "place a stumbling block before a blind person," and Maimonides writes that *peshateh di-qera* in this case refers to one who gives bad advice, explicitly saying that he is taking his lead from the Midrash.<sup>44</sup> Cohen correctly points out that the *peshat* in this case is certainly not the literal meaning of the verse and that others (perhaps most significantly Saadya Gaon) did understand the literal meaning to refer to actually tripping a blind person.<sup>45</sup> This fits Cohen's thesis about the difference between *ẓāhir* and *peshat*, but it opens up another problem. Maimonides writes that, besides forbidding bad advice, the verse also prohibits one from causing another to sin, but that this meaning is not *peshateh di-qera*. Cohen takes this to mean that giving bad advice is the *'aṣl* and causing one to sin is the *far'* stemming from it, implying that causing one to sin would merely be a rabbinic prohibition, while giving bad advice would be the only thing this verse proscribes on a biblical level.

As Cohen himself notes, this flies in the face of the rabbinic understanding of this verse, which seems to include causing someone to sin in the biblical prohibition. Additionally, Maimonides, in both his *Commentary to the Mishnah* and in *Mishneh Torah*, rules that causing

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<sup>42</sup> Cohen, *Opening the Gates*, 9-11. This explanation would likely not have satisfied Nahmanides, who correctly points out that if commandments derived hermeneutically should not be counted, several laws the Talmud apparently saw as being *mi-deorayta* would not be classified as such by Maimonides; see above, 111-113.

<sup>43</sup> My thanks to Marc Herman for pointing out this example.

<sup>44</sup> See Maimonides, *Sefer ha-Mitsvot*, ed. Kafih, 320-321.

<sup>45</sup> Cohen, *Opening the Gates*, 318-320.

one to sin constitutes a full violation of this verse on par with giving someone bad advice.<sup>46</sup>

While certainly not impossible, it seems unlikely that Maimonides changed his mind between the *Commentary to the Mishnah* and *Sefer ha-Mitsvot* and then back again between *Sefer ha-Mitsvot* and *Mishneh Torah*, as Cohen thinks happened. Since Maimonides does not actually use the terms 'asl and far' to describe the relationship between giving bad advice and causing one to sin, and his other writings give us reason to believe he thought that both are biblically prohibited, it is possible that *peshateh di-qera*, at least in this case, might mean something other than Cohen's interpretation of it.<sup>47</sup>

Returning to the relevance of Islamic legal theory for understanding the second principle, the word Maimonides uses to refer to the hermeneutical mechanisms themselves, the ones which the rabbis employ to derive laws, underscores the importance of looking to *uṣūl al-fiqh* literature to appreciate Maimonides' work here. He refers to all those mechanisms collectively as *qiyās*. This term, usually translated as "analogy" in the context of *uṣūl al-fiqh*, became an important topic of discussion in Islamic scholarship.<sup>48</sup> There, *qiyās* represented the method of a jurist, using his own reason and not any textual or traditional source, finding a rationale [*'illa*] for one law

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<sup>46</sup> For these references, see Cohen., *Opening the Gates*, 320, n. 111.

<sup>47</sup> Indeed, some challenges to Cohen's notion of *peshateh di-qera* have surfaced. Albert Friedberg dedicates the "Postscript" of his book to offering an alternative to Cohen's framework based on alternative readings of the examples Cohen cites in support of his theory; see Friedberg, *Crafting the 613 Commandments*, 337-345. Additionally, Marc Herman has recently disputed Cohen's reading of the second principle in particular, questioning the degree to which *peshat* can be seen as a technical term at all; see "What is the Subject of Principle Two in Maimonides's *Book of the Commandments*? Towards a New Understanding of Maimonides's Approach to Extrascriptural Law," *AJS Review*, forthcoming (my thanks to the author for showing me a draft of this paper). Cohen, Herman, and others work hard to decode Maimonides' often confusing presentation of his views on the relationship between the text of the Torah and rabbinic authority in the second principle. To date, I have not found a unifying theory which satisfactorily explains all the factors and examples in Maimonides' writing on this topic, and I am not convinced that such a theory is even possible.

<sup>48</sup> For more on *qiyās*, see Zysow, *Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood Press, 2013), 159-258; Hallaq, *A History of Islamic Legal Theories*, 83-113; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 264-305.

and then applying it in another situation.<sup>49</sup> A classic example appears with regard to the Quran’s prohibition against drinking wine [*khamr*].<sup>50</sup> Many Muslim scholars extended this prohibition to other forms of alcohol based on an analogy. *Khamr* is forbidden due, presumably, to its intoxicating nature; therefore, any other intoxicant would also be forbidden. Islamic jurists would refer to the first, known law (in the above example, the prohibition of *khamr*) as a “root,” and the law derived from *qiyās* (the prohibition of other intoxicants) as a “branch.” Maimonides maintains that root-branch terminology for his use of *qiyās*, but choosing the word “*qiyās*” in the first place might seem a surprising choice, as none of the interpretative devices he subsumes in the category of *qiyās* truly parallel the Muslim model of analogy.<sup>51</sup> In fact, only one of these devices involves the use of human reason at all—*qal va-ḥomer* [argument from *a fortiori*]. The rest are based on the arrangement of verses, textual similarities between verses, etc.,<sup>52</sup> and according to many scholars these are not based on reason in any way.<sup>53</sup>

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<sup>49</sup> Granted, not all Muslim jurists limited the exercise of *qiyās* to analogy, but even those who expanded the scope of *qiyās* only included analytical methods which were based on reason, such as arguments from *a fortiori* or *reductio ad absurdum*. For more on this question, see Hallaq, “Non-Analogical Arguments in Sunni Juridical *Qiyās*,” *Arabica* 36.3 (Nov., 1989): 286-306.

<sup>50</sup> See Quran, 2:219 and 5:90.

<sup>51</sup> Some scholars have suggested that the Arabic word *qiyās* is etymologically derived from the word *heqqesh*, a common legal hermeneutical tool used in the Talmud, even if that derivation was based on a misunderstanding of the root of the word *heqqesh*; see Judith Romney Wegner, “Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and their Talmudic Counterparts,” *The American Journal of Legal History* 26.1 (1982): 45-46. Yet whether or not this etymological link holds, the use of the word *qiyās* in Maimonides’ time would have carried the meanings and connotations of its use in contemporaneous Islamic legal writing. Given the differences between *qiyās* in Islam and the Talmud’s hermeneutical methods, the former would not have been an obvious choice to represent the latter.

<sup>52</sup> The above example of transferring money to effectuate a marriage is an instance of what Maimonides would call *qiyās*. The hermeneutical device which establishes this law, *gezerah shavah*, is based on a simple textual parallel, not an analysis of the substance of the law itself.

<sup>53</sup> See, for example, Nahmanides’ critique of Maimonides’ second principle, where he argues that such textual parallels require an “explicit tradition because it is a matter that can be used to interpret all day and contradict all the laws of the Torah, as words are repeated in the Torah multiple times.” He goes on to point out that the Talmud says in several places that “a person can use *qal va-ḥomer* [*a fortiori* reasoning] oneself [to derive a law], but a person may not use a *gezerah shavah* [the type of textual parallel used in the marriage case mentioned above] oneself unless he received [a tradition to use this device] from his teacher” (Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 32-33). In other words, if a person could use one’s own reasoning to derive laws through textual parallels, mistakes would be made because there are many parallels which are legally insignificant. The only way to know if this technique is applicable in any particular instance is to have a received tradition; reason alone is not enough.

It is possible that Maimonides is simply using the word *qiyās* differently than his Muslim counterparts; after all, in dealing with Jewish law, there is no reason he must stick to the technical meanings of Arabic terms as they find expression in Islamic law. On the other hand, his use of *qiyās* here might indicate a particular conception of these hermeneutical devices as being, like analogy, the work of human reason. Given Maimonides' stance on the rabbinic status of laws derived through this device, it is highly plausible that he intentionally used the word *qiyās* in order to make this point.

Nevertheless, Maimonides himself explicitly contrasts his own use of the word *qiyās* with its sense in Islamic legal theory, at least as it relates to one aspect of Muslim writers' discussions of *qiyās*. He cautions his readers against thinking that that he is excluding laws which are the products of *qiyās* because they are “uncertain [*ghayr mutayaqqin*]” or that they may be “correct or incorrect [*ṣaḥīḥ aw laysa bi-ṣaḥīḥ*].” Rather, he excludes them because they are merely “branches from the roots,”<sup>54</sup> as discussed above. His mentioning the issue of uncertainty should not go unremarked upon, as it can be seen as a model for how to understand his use of *uṣūl al-fiqh* concepts in general.

Muslim legal scholars engaged in much discussion about the certainty of laws, working to categorize certain laws as “certain” or “uncertain.”<sup>55</sup> For example, some viewed laws derived by unit-traditions as uncertain. Such laws would still generally be considered binding, but they do not have the same status as those which are “certain” to have been mandated by God. Since *qiyās* produced laws based on reason and not on explicit divine or prophetic commands, its

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<sup>54</sup> See Judeo-Arabic text, below, 217, and English translation, below, 264

<sup>55</sup> The only comprehensive discussion of this issue is Zysow, *Economy of Certainty*, but most other surveys of *uṣūl al-fiqh* will mention the question of certainty where it comes up in the context of bigger issues like *qiyās* or unit-traditions; they can be found in these works' respective indexes under “certainty,” or the Arabic terms “*yaqīn*” or “*qat*”.

products were similarly seen as uncertain. Even those jurists who accepted *qiyās* as a critical component of *uṣūl al-fiqh*, and did not disqualify it because it relies on human reasoning, were generally unwilling to grant it the same status as laws in the Quran or in prophetic traditions.

Maimonides denies that his exclusion of hermeneutically-derived laws is driven by those laws' status as "uncertain." He seems to be making the point that their being uncertain is irrelevant to his discussion. Why, then, does he raise this question of certainty at all? Based on his formulation, a reader might infer that Maimonides is reassuring his readers that, despite their being excluded as branches, hermeneutically-derived laws are still "certain." Yet that reading would likely be mistaken considering Maimonides' beliefs about the place of human reasoning in establishing rabbinic laws, even those derived from Rabbi Yishmael's hermeneutical principles.<sup>56</sup> It would seem more likely that Maimonides simply means that the lack of certainty with regard to these laws is not what disqualifies them. So, again, why mention it in the first place?

Maimonides seems to think that his use of the term *qiyās* will lead his readers to think that the deciding factor in excluding these laws is, in fact, their status as uncertain. This is a reasonable assumption given that the question of certainty is what is at stake in Islamic discussions of *qiyās*. Maimonides is clarifying that his use of *qiyās* differs from that of Muslim jurists. He is taking this technique, adapting to Jewish law, and bringing it to bear on his enumeration project. He preserves the skeleton of *qiyās*; just as Islamic scholars did, he uses the term to refer to jurists taking the divinely revealed text and, through hermeneutical methods

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<sup>56</sup> See Blidstein, "Oral Law as Institution."

deriving new laws not written in that text. The actual mechanism of *qiyās* in Maimonides' construct, though, does not match *qiyās* in Islamic law.

### **Principle Three: Temporary Commandments and Abrogation [*Naskh*]**

The third principle, that one should not count commandments which are not in effect for [all] generations.

This principle, and its connections to Islamic legal theory, will receive the thorough treatment it deserves in the next chapter, which I have entirely dedicated to it. Nonetheless, a brief description of the issues at play proves helpful in the context of this chapter. We have seen how Maimonides begins by identifying appropriate sources and then, in the process, offers his vision of the role of *qiyās* in the development of Jewish law. Both identifying sources and *qiyās* take prominent positions in *uṣūl al-fiqh* literature, and Maimonides' third principle continues the link between that field and the introduction to *Sefer ha-Mitsvot*.

In this principle, Maimonides states that temporary commandments, laws given for a specific time and place, should not be counted among the 613. In his elaboration of this principle, he seems to be echoing elements of Islamic discussions relating to the phenomenon of abrogation [*naskh*]. In brief, Islamic jurists would sometimes point to *naskh* as a resolution for apparently contradictory laws in the Quran or *sunna*; the conflicting rulings could be understood as representing revelations received by Muhammad at different times, and the later one [*nāsikh*] would be said to replace the earlier one [*mansūkh*]. Some Muslim scholars saw the earlier law, the one rendered obsolete by the second revelation, as having always only represented a temporary commandment to be replaced later. Jurists who understood the abrogated law in this way described the nature of temporary commandments in terms similar to ones Maimonides would use to explain his notion of temporary commandments.

Maimonides seems aware that his third principle may remind some readers of Islamic description of *naskh*. This causes him some discomfort, as, aside from its primary application in works of legal theory, the concept of *naskh* featured prominently in anti-Jewish polemics; there, Islam is said to have abrogated the older religion of Judaism. Maimonides walks a fine line in dealing with this problem, writing about temporary commandments in a manner reminiscent of Islamic scholarship on *naskh* while simultaneously laying out a defense of Judaism against the charge that it has (or could be) abrogated. He does not do this explicitly; indeed, he never uses the term *naskh* at all, an understandable choice given its polemical associations. Nevertheless, a reader familiar with Islamic legal and polemical literature, as well as with Jewish responses to the accusation of abrogation, will notice both the similarities to legal discussions of *naskh* as well as Maimonides' attempts to distance himself from the function of *naskh* in interreligious polemics. Again, since a full explanation of the relationship between the third principle and *naskh* would prove too involved to be incorporated as a section of this chapter, the following chapter is dedicated to this purpose.

#### **Principle Four: General Commandments**

The fourth principle, that one should not count commandments which encompass all the laws.

In this principle, Maimonides warns against counting general commandments in the list of 613. He explains that he is referring to commandments such as “You shall be holy,”<sup>57</sup> which, he claims, simply generally mandates following all the commandments and does not actually create its own specific obligation or prohibition. Because such commands do not add any particular requirements, they have no place in this list.

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<sup>57</sup> Leviticus 19:2.

The word I have translated as “encompass”—*ta’umm*—is related to the word *‘āmm* [general], a critical technical term in Islamic, and Judeo-Arabic, legal thought. Muslim scholars regularly contrasted a general [*‘āmm*] command with a specific [*khāṣṣ*] one, though the terms “general” and “specific” in Islamic legal literature do not refer to Maimonides’ point in this principle. Again, Maimonides distinguishes between a command which generally enjoins obeying all of God’s laws and one which specifically demands or forbids a certain deed. In Islamic law, on the other hand, the distinction between “general” and “specific” relates to the scope of a law as understood by jurists. For example, the Quranic verse laying out the punishment for theft, “as for the male or female thief, cut off their hands,”<sup>58</sup> might seem to apply to all thieves in any circumstance; that is to say, it is a general command. Nevertheless, other statements in the *sunna* lead jurists to specify its scope and to interpret this verse as referring to more limited instances.<sup>59</sup>

Apart from in Islamic texts, “specification” [*takhṣīṣ*] appears as an important principle of interpretation in Jewish exegetical works written in the Islamic world, with both Rabbanites and Karaites elaborating on the necessity of distinguishing between general and specific verses.<sup>60</sup>

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<sup>58</sup> Quran, 5:38.

<sup>59</sup> For example, to trigger this punishment, the stolen object must be worth at least a certain amount and it must be taken from certain types of places. This is the example cited by David Vishanoff in his brief description of this hermeneutical principle; see Vishanoff, *The Formation of Islamic Hermeneutics: How Sunni Legal Theorists Imagined a Revealed Law* (New Haven: American Oriental Society, 2011), 5-6. For more on *‘āmm—khāṣṣ* in Islamic literature, see Hallaq, *A History of Islamic Legal Theories*, 45-47; Kamali, *Principles*, 140-155.

<sup>60</sup> Norman Calder raises, and ultimately rejects, the possibility that it was actually the principles of Rabbi Yishmael which led to Muslim interest in the general-specific dichotomy, claiming that the Rabbi Yishmael “shows a similar concern with this basic device: eight out of the thirteen principles refer to the general and the particular.” Calder concludes that *‘āmm—khāṣṣ* scholarship should not be seen as stemming from Jewish hermeneutical traditions for various reasons, including that “a casual survey of (parts of) the two traditions does not suggest either that the broad structures or the constitutive elements show a non-trivial degree of similarity;” see Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 233-235. To clarify this point, with which I wholeheartedly agree, let us look briefly at the rabbinic technique of *kelal u-frat* [general and specific], one of Rabbi Yishmael’s hermeneutical principles. Through it, the rabbis interpret verses in which a general term is followed by a specific term, as in Leviticus 1:2: “[Bring a sacrifice from] animals; from cattle and sheep shall you offer your sacrifice.” The general “animals” is immediately followed by the specific “cattle and sheep,” and the *kelal u-frat* mechanism determines that the specific term qualifies the general exclusively; in this case, the verse means that sacrifices cannot

Both Samuel ben Ḥofni and Saadya, two of the most prominent Rabbanite exegetes of the geonic era, highlight the importance of understanding how to interpret general and specific language in the Hebrew Bible. At one point in his biblical commentary, Samuel ben Ḥofni discusses a dispute among Jewish scholars about how and when to apply *takhšīš*, a dispute which Moshe Zucker has shown to parallel a similar debate within Islamic circles.<sup>61</sup> Saadya similarly uses the principle of *takhšīš* at times in his commentary,<sup>62</sup> and Qirqisani reports that Saadya identifies misunderstanding general and specific formulations as one of the three reasons that rabbinic disputes about halakhah emerged.<sup>63</sup> On the Karaite side, Yefet makes extensive use of *takhšīš* in his commentary, and that technique represents an important element of his exegetical methodology.<sup>64</sup>

Again, Maimonides' concern in principle four does not precisely line up with this hermeneutical technique in Arabic and Judeo-Arabic literature. Nevertheless, as with other

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come from all animals, only cattle and sheep. The order within the verse represents the critical factor because if the specific term comes first, the rule to be applied would be *perat u-khlal* [specific and general], and would teach that the law under consideration applies to the entire general category, not only the specific examples listed first. The *'āmm-khāšš* dynamic, on the other hand, generally deals with resolving apparent contradictions between two verses or between a scriptural verse and an accepted tradition (the *sunna* in the case of Islam or a rabbinic ruling in the case of Judeo-Arabic texts). These verses could be located far apart from each other, and the order of the general and specific formulations is not an important factor. Analyzing all the other principles of Rabbi Yishmael which deal with the general and the specific would take us too far afield, but they are similarly unrelated to the Islamic legal discussions of *'āmm* and *khāšš*.

<sup>61</sup> See Zucker, *Al Targum Rasag La-Torah* (New York: Feldheim, 1959), 256, n. 78.

<sup>62</sup> For some examples, see Ilana Sasson, *The Arabic Translation and Commentary of Yefet ben 'Eli on the Book of Proverbs* (Leiden: Brill, 2016), 70-71.

<sup>63</sup> See Qirqisani, *Kitāb al-Anwār*, ed., Leon Nemoy (New York: 1940), 1:127. By way of background, as mentioned above in this chapter (n. 15), Saadya believed that the law in all its details was revealed by God. Saadya then needed to explain why, if the law was revealed in its entirety, disputes about laws abound in Jewish legal literature. One explanation he offered was that some scholars transmitting the substance of that revelation mistakenly understood a law as applying generally when it was truly meant to apply to only specific cases. Zucker tries to show similarities between Saadya's explanation and statements by Islamic jurists; see Zucker, "*Le-Va 'ayat ha-Maḥloqet be-Masoret (ha-Rambam neqed R. Ya 'aqov ben Ephraim me-Eretz Yisrael)*," in *Salo Wittmayer Baron Jubilee Volume on the Occasion of his Eightieth Birthday*, eds. Saul Lieberman and Arthur Hyman (Jerusalem: American Academy for Jewish Research, 1975), 2:324-325. For more on Saadya's conception of the revealed nature of the law, see Herman, "Prophetic Authority."

<sup>64</sup> See Ilana Sasson, *The Arabic Translation and Commentary of Yefet ben 'Eli*, 66-70. Sasson identifies some parallels and differences between Yefet's use of *takhšīš* and that of Quran exegetes.

elements of Islamic religious scholarship mentioned above, it is possible to see the *khāṣṣ-‘āmm* dichotomy being adapted to Maimonides’ project of commandment enumeration. Instead of general vs. specific applications of a particular rule, Maimonides uses this dichotomy to distinguish between commandments which are themselves general—“which encompass all the laws”—and those which introduce a particular requirement. The similarity between Maimonides’ fourth principle and the *khāṣṣ-‘āmm* mechanism in Islamic literature becomes clearer when we see the way his son Abraham defends his inclusion of the section of Deuteronomy 28:9 “and you walk in His ways” as a distinct commandment in *Sefer ha-Mitsvot*.<sup>65</sup>

Maimonides explains that this phrase requires “imitating [*al-tashbuh*]” God; just as God is merciful, Jews must be merciful, just as God is compassionate, Jews must be as well, etc. This follows the rabbinic reading of another verse, “walking in all His ways,”<sup>66</sup> which Maimonides also cites in his description of this commandment.<sup>67</sup> Abraham received a question from someone skeptical that the phrase “and you walk in His ways” represents a commandment at all. The questioner goes on to ask, even if it were to be considered a command, why should it not be considered a general one encompassing the entire Torah and disqualified from the list of 613 due to principle four?<sup>68</sup> Abraham responds that this is indeed a commandment, and he offers two proofs that it is not a “general commandment [*amr ‘āmm*],” the second one relating to the formulation of the verse itself. The first answer, though, does not have to do with the way the phrase is worded. Rather, Abraham stridently insists that because the Sifre had interpreted this

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<sup>65</sup> Positive commandment no. 8

<sup>66</sup> Deuteronomy 11:22.

<sup>67</sup> Sifre, *Ekev* 49. The rabbinic passage appears here in published copies of the Sifre, as a commentary to Deuteronomy 11:22. Yet Maimonides, in a number of his writings, cites this passage as an interpretation of Deuteronomy 28:9; see Freimann’s note in Abraham Maimonides, *Teshuvot Rabbenu Avraham ben ha-Rambam*, ed. A.H. Freimann (Jerusalem: Meqitse Nirdamim, 1937), 67 n. 13.

<sup>68</sup> Abraham Maimonides, *Teshuvot Rabbenu Avraham*, 65-66, responsum no. 63.

verse to specifically require imitating God, “we are required to believe that it is a specific commandment [*amr khāṣṣ*].” He explains that following the interpretation of the rabbis is a “great principle [*aṣl ‘azīm*]” which separates the Rabbanites from the “school [*madhhab*] of the Karaites.”<sup>69</sup> Because Rabbanite tradition has established this verse as a specific one, it is a specific one, despite its general-sounding formula. It is hard to read Abraham’s explanation without thinking of the debates in Islamic literature regarding the ability of non-Quranic traditions to “specify” general commands in the Quran.<sup>70</sup> Again, the use of “general” and “specific” in Maimonides’ fourth principle does not exactly match their use in Islamic scholarship, but perhaps we can see in this principle another example of Maimonides shaping the questions of Islamic legal theory to fit his aims in this book.<sup>71</sup>

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<sup>69</sup> Abraham Maimonides, *Teshuvot Rabbenu Avraham*, 66-67.

<sup>70</sup> See, for example, the debates summarized in Zysow, *The Economy of Certainty*, 86-88. See also John Wansbrough, *Quranic Studeis: Sources and Methods of Scriptural Interpretation*, ed. Andrew Rippin (Amherst: Prometheus Books, 2004), 191 n. 7.

<sup>71</sup> The placement of this principle about general commandments immediately after the third, which deals with temporary commandments, may further indicate that Maimonides’ treatment of general commandments has something to do with the *‘amm-khāṣṣ* issue in Islamic scholarship, though I concede that this is somewhat speculative. As will be explored more thoroughly in the following chapter, the third principle connects reasonably clearly to the question of *naskh*, and the hermeneutical technique of particularizing a general verse sometimes plays a role in Islamic jurisprudence akin to that of *naskh*. If two commands seem to contradict each other, one possible resolution lies in determining that one abrogated the other, but *takhṣīṣ* presents another method. One verse can be seen as a general command, and the other as a specification of that command; for more on the connection between *takhṣīṣ* and *naskh*, see Wansbrough, *Quranic Studies*, 191. The laws of inheritance present a useful example. Quran 2:180 demands that a person establish a bequest to arrange inheritance within the family, and the next verse, 2:181, warns against violating the bequest. On the other hand, Quran 4:11-12 lays out detailed rules for inheritance, implying that these regulations are required and that individuals do not have the option of creating a personalized bequest. Some jurists used *naskh* to resolve the contradiction, arguing that the inheritance rules in 4:11-12 abrogated the bequest law in 2:180. Others, though, insisted that no contradiction exists between these verses. Rather, 4:11-12 narrows the scope of the apparently general command in 2:180, specifying it to mean that a bequest is necessary when accounting for certain relatives for whom the inheritance laws in 4:11-12 would not apply. For more on this question of inheritance laws, see David S. Powers, “On the Abrogation of the Bequest Verses,” *Arabica* 29.3 (1982): 246-295; Powers discusses the *takhṣīṣ* opinion on pp. 262-264. In any event, even if Maimonides’ adaptations of *uṣūl al-fiqh* for *Sefer ha-Mitsvot* erase the connection between temporary commandments and *takhṣīṣ*, given that such a connection existed in Islamic writings, perhaps Maimonides’ juxtaposition of the third and fourth principles constitutes a relic of the Islamic scholarship he was mining.

### **Principle Five: Reading Imperatives as Reasons**

The fifth principle, that one should not count the reason for a commandment as a commandment itself.

Maimonides uses this principle to warn his readers not to confuse a reason for a commandment with a commandment itself, and that the former cannot be included in a list of commandments. This seems fairly—even tautologically—straightforward; the list of 613 commandments should obviously only include commandments. Maimonides' next line explains, at least to a degree, why he thought this principle is worth mentioning. "Reasons for commandments," he points out, "may appear similar to [*shibh*] prohibitions, and one may think that they are part of the sum [of commandments]." By "appear similar to prohibitions," he means that the reason for a commandment may be phrased in the imperative form, as is clear from the first example he provides.

Maimonides cites Deuteronomy 24:4, which deals with the prohibition of remarrying one's ex-wife after she has married another man; if the woman in question is divorced or widowed from her second marriage, her first husband is not allowed to remarry her. The verse reads: "Her first husband, who sent her away, is not able to take her again...and you shall not cause the land to sin [*ve-lo taḥati et ha-'arets*] which the Lord your God gives you as an inheritance." The phrase "you shall not cause the land to sin" is written in the imperative form, so it may be possible to read it as a separate prohibition, but Maimonides insists that it is simply a "reason for prohibiting what preceded it [*ta 'alīl li-taḥrīm mā tuqaddim*], as if to say that if you do this, you will increase corruption in the land."<sup>72</sup> Therefore, it should not be counted in a list of the 613 commandments. He offers several other examples of verses with similar structures, and

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<sup>72</sup> See Judeo-Arabic text, below, 221, and English translation, below, 272.

he declares that despite the use of the imperative, the final clause should not be read as a command, but rather as a reason for the law it follows.

Consistent with his general practice in his discussion of the fourteen *'uṣūl*, he accuses the author of the *Halakhot Gedolot* of erring with regard to this principle. “Our counterpart was mistaken concerning this principle too [*wa-qad ghalat ghayrunā fī hādha al-'aṣl aydan*] and he counted all of these prohibitions without contemplation [*bi-ghayr ta'ammul*].” He ends his discussion of this principle by taunting his “counterpart,” remarking that if one were to ask him what, in particular, these supposed prohibitions are actually prohibiting, he would be embarrassed and not able to answer. This, according to Maimonides, irrefutably proves that the count put forth in the *Halakhot Gedolot* is worthless.<sup>73</sup>

Nahmanides wrote an extensive rejoinder to this fifth principle. He does not disagree that reasons for commandments should not be counted in a list like this, but he does take issue with Maimonides' examples. He contends that, while the Torah does sometimes provide the reasons for particular commandments, “everything that is said in the imperative form is a prohibition.” He then goes on to take up Maimonides' final challenge. Sifting through a wealth of rabbinic sources, he attempts to show that the author of the *Halakhot Gedolot* would actually not be embarrassed if asked what each verse is prohibiting.<sup>74</sup> Maimonides, of course, is not without his own defenders, and the legal minutia involved in this question has been debated for centuries.

Nahmanides' assertion that everything which looks like an imperative *is* an imperative needs to be qualified. We will shortly explore Maimonides' eighth *aṣl* which states that grammatical negations which might look like prohibitions do not belong in the list of the 613;

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<sup>73</sup> See Judeo-Arabic text, below, 222, and English translation, below, 273.

<sup>74</sup> Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 68.

only actual prohibitions may be included. In his critique of that principle, Nahmanides agrees that there are biblical statements voiced in what can be read as an imperative which are, in fact, not commandments. Nahmanides objects to Maimonides' assertions there, but he makes clear that he is only quibbling with the particular examples cited in the eighth principle. As for the general principle itself, Nahmanides agrees that this is "clear and not elusive" for anyone.<sup>75</sup> It seems, then, that Nahmanides does admit that clauses which *could* appear to be prohibitions might not actually be considered commandments; they might simply be negations. Consequently, we would need to dig a little deeper to understand his criticism of the fifth *asl*, that everything phrased as an imperative must be considered a prohibition.

It is not the purpose of this chapter to analyze Nahmanides' position on these matters, but looking at how he grapples with these issues can highlight some of what Maimonides is doing in the fifth *asl*. While he grants that reasons should not be counted as commandments, he directly contradicts Maimonides' main argument, arguing that a grammatical imperative necessarily generates a legal imperative. Nahmanides was of the opinion that the word *lo*<sup>76</sup> can introduce either a grammatical negation or an imperative (as per his agreement with Maimonides' eighth principle). However, once it is decided that a particular phrase is an imperative,<sup>77</sup> it must necessarily appear on a list of the 365 negative commandments. Apparently, for Nahmanides, the only interpretive work that needs to be done is to determine whether a certain phrase is a negation or an imperative.

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<sup>75</sup> Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 86.

<sup>76</sup> See below, in the section on the eighth principle, for more on the senses of the word *lo*.

<sup>77</sup> Based on Nahmanides' defenses of the *Halakhot Gedolot* in the fifth and eighth principles, apparently the way to make that determination is simply to see how the Talmud interpreted the verse in question.

Maimonides, though, takes this one step further. The jurist/exegete's work does not end with determining that the *lo* in question is an imperative, as not every imperative establishes a commandment; the Torah could simply be formulating the reason for a commandment in terms of an imperative. Maimonides cannot be arguing that the *ta' līl* of a commandment should be read as a negation (he never uses the term "negation"<sup>78</sup> in this *'aṣl* at all) because then he would not be stating anything different from what he writes in the eighth principle. Returning to Islamic literature can help us understand Maimonides' motivation in laying out this fifth principle.

Again, interpretation and exegesis represent an important facet of *uṣūl al-fiqh* literature. Once a source is deemed an authentic source of legal information, it needs to be interpreted; the word choice, syntax, and grammatical features need to be analyzed in order to uncover the meaning of the source itself. We have seen a glimpse of this above, in the context of the fourth principle, with the importance Muslim scholars saw in analyzing whether commands are considered general or specific. One exegetical issue which comes up in Islamic *uṣūlī* literature is the nature of an imperative. Scholars are careful to point out that there exist many implications of an imperative aside from the issuing of a binding command.<sup>79</sup>

Maimonides' work in this fifth principle can be seen in this context even if he is only dealing with prohibitions and not imperatives in general; after all, as we will see in his eighth principle, he is careful to spell out that a prohibition belongs in the category of an imperative. Additionally, Islamic scholars would subject the prohibition [*nahī*] to a similar treatment as they did for the more general category of *amr*; that is to say, they demonstrated that a *nahī* may not

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<sup>78</sup> *Nafī*. This is an important term in his eighth principle where he discusses the differences between negations and prohibitions.

<sup>79</sup> Zysow, *Economy of Certainty*, 63-73.

represent a legal prohibition despite its having been phrased as such.<sup>80</sup> While I could not find a Muslim author who explicitly maintains that a *nahī* could represent a *ta'īl*,<sup>81</sup> in clarifying that a *nahī* can have more than one meaning—a possibility denied by Nahmanides, Maimonides is echoing an important feature of *uṣūl al-fiqh* literature.

### **Principle Eight: Negations, Imperatives, and the Importance of Logic**

The eighth principle, that one should not count negations with prohibitions.

Maimonides explains that since the words used to prohibit something are identical to those used to negate something, it is easy to mistake a negation, which should not be counted, with a prohibition, which should be. Though this may be a useful word of warning on a linguistic level, it is hard to see why it is necessary for him to include this as one of his introductory principles. Just as we noted with regard to the fifth principle, the enumeration of commandments must obviously only include commandments.

Maimonides himself remarks that this rule is essentially self-evident, and though he does accuse his “counterpart” of not following it,<sup>82</sup> it is hard to imagine that the *Halakhot Gedolot* thought that grammatical negations should be counted as prohibitions. Why, then, did Maimonides feel it necessary to include this rule as part of his principles of enumeration? Could it be that he wanted a forum to explain how a proper familiarity of Aristotelian logic is necessary to correctly interpret Scripture,<sup>83</sup> and *Sefer ha-Mitsvot* is acting as the vehicle for that lesson?

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<sup>80</sup> See, for example, Tāj al-Dīn al-Subkī, *Jam' al-Jawāmi' fī 'Ilm Uṣūl al-Fiqh* (Beirut: Dār Ibn Ḥazm, 2011), 298-299, and al-Bukhārī, *Kashf al-Asrār 'an Uṣūl Fakhr al-Islām al-Bazdawī* (Beirut: Dār al-Kutub al-'Ilmīyah, 1997), 376. Both these writers lived after Maimonides, but their work is illustrative of this enterprise.

<sup>81</sup> The closest I could find to this is the possibility that a *nahī* can serve as a *bayān al-'āqiba*; see al-Subkī and al-Bukhārī, loc. cit. Again, though, this is not exactly what Maimonides means by *ta'īl*.

<sup>82</sup> See Judeo-Arabic text, below, 228, and English translation, below, 276.

<sup>83</sup> More on that aspect below, 136-138.

That may be an overstatement, but it is certainly true that Maimonides devotes a huge amount of time to discussing this principle, far disproportionate to its obviousness.

He begins this section by stating that prohibitions belong in the same category as commands. As such, they are completely different from negations, despite the fact that prohibitions and negations are often introduced by the same word; namely, *lā* in Arabic and *lo* in Hebrew. This incontrovertible point would likely not elude even someone without the background in Aristotelian logic from which Maimonides draws. Nevertheless, Maimonides presses on with his lesson, explaining the nature of a negation and how it differs from a prohibition. He cites examples of negations in the Bible in order to demonstrate that they, like prohibitions, use the word *lo*.<sup>84</sup>

This leads to probably the most significant statement in this section. “There is nothing,” Maimonides tells us, “that will distinguish for you a negation from a prohibition other than the meaning of the sentence, but not from the expression.”<sup>85</sup> This might mean that the only way to tell if a phrase is a negation or prohibition is by looking at its context or other textual clues which can indicate the “meaning of the sentence.” However, an examination of the examples cited by Maimonides to prove this point shows that context or other textual indications alone cannot be the determining factor. Given its significance in understanding Maimonides’ exegetical methods, it is worth exploring this statement about “the meaning of the sentence” before we look at the light Islamic literature may shed on this principle in general.

Mordechai Cohen addresses one example cited here. Maimonides insists that Numbers 17:5 should be read as a negation—“and he will not be like Korah and his company”—and not as

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<sup>84</sup> See Judeo-Arabic text, below, 227, and English translation, below, 274-275.

<sup>85</sup> See Judeo-Arabic text, below, 229, and English translation, below, 279.

a prohibition—“do not be like Korah and his company.”<sup>86</sup> Like Nahmanides before him, Cohen points out that Maimonides’ explanation is not the apparent simple meaning of the verse. The Torah seems to be saying that the fire-pans used in Korah’s rebellion were hammered into the structure of the altar to serve as a reminder to the Israelites of what happened to those who rebelled, “in order that there should never be [another case] like Korah and his company.” Nevertheless, Maimonides refers to his interpretation as “*peshateh di-qera*,” even though he explicitly notes that it arises from rabbinic sources. Cohen uses this to support his claim that *peshat*, at least for Maimonides, can refer to a rabbinic interpretation of the verse even if that interpretation is not consistent with the “plain sense” of the text.<sup>87</sup>

Another illustrative example, which Cohen does not cite, comes later, in Maimonides discussion of *meliqah*, the procedure by which the priest slaughters a fowl-offering. Maimonides cites a talmudic dispute about the fowl sin-offering; in particular, whether the priest can fully separate the head from the body.<sup>88</sup> The subject of the debate is Leviticus 5:8, and whether one should translate it as saying the priest may not separate the head, or simply that the priest does not have to separate the head. He is using this rabbinic source to underscore the importance of knowing the meaning of the verse, and it is quite significant that he chooses this example to prove that.

The debate in the Talmud about whether “he shall not separate” is a prohibition or simply saying that the priest need not separate the head is not at all related to the question of how to read the verse in its context. There is over a page of discussion in the Talmud, on Zevaḥim 65b leading into 66a, about the possible basis of the dispute between Rabbi Elazar and the

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<sup>86</sup> See Judeo-Arabic text, below, 229, and English translation, below, 278.

<sup>87</sup> Cohen, *Opening the Gates*, 320-324.

<sup>88</sup> See Judeo-Arabic text, below, 229-230, and English translation, below, 279-281.

anonymous *tanna* of the Mishnah, and never is the question of the verse's context raised; the Talmud only brings up legal points to explain the dispute, not textual ones. In fact, this is a good example of how sometimes the context and other textual indications *cannot* tell the reader whether a verse is a negation or a prohibition, as either reading of Leviticus 5:8 is valid grammatically. Again, the rabbinic interpretation is key to understanding the basic meaning of this verse.

Yet there may be more to this example. As part of its discussion of this verse, the Talmud uses another verse to challenge the side reading Leviticus 5:8 as a negation. If "*lo yavdil*" in Leviticus 5:8 is merely saying "he does not separate" the head (i.e., he does not need to separate it) maybe we should translate "*lo yekhassennu*" in Exodus 21:33 as saying that if somebody digs a pit, he does not need to cover it. The Talmud answers that the difference is that in the case of the pit, the very next verse decrees that the one who digs the pit is liable if damage occurs when something falls into it. Therefore, it is obvious that Exodus 21:33 must be saying that the digger must cover the pit.

Maimonides includes this challenge from Exodus in his discussion of *meliqah*. This is interesting because the ruling about the pit is based on the context of the surrounding verses, specifically the verse in which we read that the owner of the pit is liable for damages that result of his pit. In mentioning this section of the talmudic dispute, perhaps he is indicating that context is indeed an important factor in deciding how to interpret verses significant to legal questions.<sup>89</sup>

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<sup>89</sup> It is unlikely Maimonides would completely discount context as a way to determine the meaning of a phrase, especially if there is no rabbinic treatment of it. However, it seems, at least for verses with legal implications, that he downplays its utility, especially in relation to rabbinic authority.

However, two factors may mitigate this. First, the appeal to context is itself found in a rabbinic source, making it difficult to determine if Maimonides believes the interpretation demanding the owner cover his pit comes from scriptural context or from rabbinic authority. Second, the example of the pit is of limited use for the larger point he is making about understanding the difference between negations and prohibitions. Grammatically, the verse describing the case of the pit is still a negation, not a prohibition. Context can only tell us whether the negation is saying that the owner *does not have to cover the pit* or saying that liability is assigned in a case where the owner *did not cover the pit*. So context does guide us, but it does not teach us whether the *lo* in this case is a prohibition or a negation; it can only be a negation.<sup>90</sup> Nevertheless, it is noteworthy that he mentions the discussion surrounding the verse from Exodus, as it does imply that textual clues like context might have some authority on these questions.

In any event, returning to Maimonides' larger purpose in this principle, we have seen that he begins by making clear to his readership that prohibitions are subsumed under the larger category of commands. He remarks that he is not the first to make that assertion, and that "those who speak about the art of logic" have already established it.<sup>91</sup> Though he does not mention him by name, this is undoubtedly a reference to Alfarabi, as Maimonides quotes directly from the Muslim philosopher's epitome of Aristotle's *De Interpretatione* to show that prohibitions can be

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<sup>90</sup> Because it can only be a negation, it is not immediately clear why the Talmud cites this verse as relevant to the discussion about *meliqah*. For one suggestion, see the explanation of *Tosafot* on *Zevahim* 66a, s.v. *ela me-ata*.

<sup>91</sup> Maimonides refers to logic as an "art [*sinā 'a*]," as he does in the title to his own work on logic. In the centuries leading up to Maimonides' lifetime, there seems to have been some question among Islamic scholars regarding whether logic constituted an "art," a "science [*ilm*]," or an "instrument [*āla*];" see Anwar G. Chejne, "Ibn Hazm of Cordova on Logic," *JAOS* 104.1 (Jan.-Mar., 1984): 61. Given how much Maimonides draws from Alfarabi, including the quotation mentioned in this passage, it should not be surprising that Maimonides follows him in calling logic an art; see Alfarabi, *Iḥṣā' al-'Ulūm*, ed. 'Uthmān Amīn (Cairo: 1968), 67, in which Alfarabi describes the importance of studying "*sinā 'at al-mantiq*." For more on the degree to which Maimonides follows Alfarabi in general, see Lawrence Berman, "Maimonides, the Disciple of Alfarabi," *Israel Oriental Studies* 4 (1974): 154-178.

classified as commands.<sup>92</sup> Later, Maimonides explains that a command is a complete statement [*qawl tāmm*] on its own and does not convey information through a subject and predicate.<sup>93</sup> Here we see echoes of Alfarabi’s epitome again, as that work includes a few paragraphs under the heading of “*al-qawl minhu tāmm wa-minhu ghayr tāmm*” which fully explain the differences between “complete statements” and “incomplete statements.” The former, he writes, come in several types, some of which, including commands, do not express information (except by accident).<sup>94</sup> Maimonides does not fully flesh out what he means by *qawl tāmm*, but reading Alfarabi’s fuller treatment of the topic helps clarify Maimonides’ point about the nature of commands and how they differ from negations, which do express information.

The relationship between Maimonides’ eighth principle and the work of Alfarabi does not end there, though. Alfarabi, in both his *Kitāb al-Ḥurūf* and his *Kitāb al-Alfāz al-Musta‘mala fi-l-Manṭiq*, goes to great lengths to define certain terms. In *Kitāb al-Ḥurūf*, the focus is on expressions important for the study of Aristotle’s *Metaphysics*, particularly terms relating to the categories, but he does make clear that the categories have importance in the study of other disciplines aside from metaphysics, including logic.<sup>95</sup> While Alfarabi, at least in this work, does not actually mention any terms Maimonides defines in this eighth principle, the very exercise of painstakingly explaining certain *ḥurūf*—in Maimonides’ case, the Hebrew expressions *lo* and *en* and the Arabic *lā*, *laysa*, and *mā*—might indicate that Maimonides was at least drawing from Alfarabi’s style of writing about issues and terms relevant to logic.<sup>96</sup>

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<sup>92</sup> See Judeo-Arabic text, below, 226, and English translation, below, 273-274.

<sup>93</sup> See Judeo-Arabic text, below, 227, and English translation, below, 275.

<sup>94</sup> Alfarabi, *Kitāb al-‘Ibāra*, in *Al-Manṭiq ‘ind al-Farābī*, ed. Rafiq al-Ajam (Beirut: Dar el-Mashreq, 1985), vol. 1, 139.

<sup>95</sup> Alfarabi, *Kitāb al-Ḥurūf*, ed. Muhsin Mahdi (Beirut: Dar el-Mashreq, 1969), 66-67.

<sup>96</sup> The connection between Maimonides’ use of the word *ḥarf* in this principle and Alfarabi’s *Kitāb al-Ḥurūf* would be more pronounced if we understood Alfarabi as employing *ḥurūf* in the sense of “particles,” instead of its alternate meaning, “letters.” However, Mahdi makes a convincing case that Alfarabi did indeed mean “letters” (the

When we take *Kitāb al-Alfāz al-Musta‘ala fī-l-Manṭiq* into account, the connection between Maimonides’ eighth principle and Alfarabi’s treatment of logic grows stronger. In this work, as the title suggests, Alfarabi sets out to define terms which are important for the study of logic itself, not simply for metaphysics as he did in *Kitāb al-Ḥurūf*. It is here that we find a brief passage that corresponds to a statement Maimonides makes in this section of *Sefer ha-Mitsvot*. Alfarabi, in his discussion of “sentence modifiers [*hawāshī*],”<sup>97</sup> explains a number of terms. Among them are “particles [*hurūf*]<sup>98</sup>... which when associated with a thing indicate that it has been negated, such as *laysa* and *lā*.”<sup>99</sup> Compare this with Maimonides’ declaration in the eighth principle that “the particle by which one negates in the Arabic language, mostly, is the particle *mā*. One also negates with the particle *lā* and with *laysa*.”<sup>100</sup>

Maimonides is clearly not copying Alfarabi verbatim here, as he did with the latter’s epitome of *De Interpretatione*, but at the very least, the great Jewish scholar does seem to be working within the same tradition as his Muslim predecessor. A reader of this eighth principle who is unfamiliar with Alfarabi might wonder why Maimonides is devoting so much time to explaining apparently basic terms. Seen against the background of Alfarabi’s logical writings, however, with their attention to carefully describing the functions of various particles, Maimonides’ work here becomes more understandable. This type of linguistic elaboration was an integral part of teaching logic, and Maimonides felt that a proper appreciation of that field

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*Metaphysics* was nicknamed the “Book of Letters”) even though a significant percentage of the book is devoted to defining terms. See Mahdi’s introduction to *Kitāb al-Ḥurūf*, 36-37.

<sup>97</sup> With “sentence modifiers,” I have followed Shukri Abed’s attempt at translating *hawāshī*, a difficult word to translate. See Abed, *Aristotelian Logic and the Arabic Language in Alfarabi* (Albany: SUNY Press, 1991), 68. It is also rendered as “adverbs” (see Kees Versteegh, *Landmarks in Linguistic Thought III: The Arabic Linguistic Tradition* (London: Routledge, 1997), 77) but that does not quite fit the terms which Alfarabi includes in this category.

<sup>98</sup> Here, Alfarabi is definitely using that word to refer to “particles” and not “letters,” just as Maimonides does in this principle.

<sup>99</sup> Alfarabi, *Kitāb al-Alfāz*, 45.

<sup>100</sup> See Judeo-Arabic text, below, 227, and English translation, below, 274.

would be invaluable for understanding the principle of commandment enumeration he lays out in this *aṣl*.<sup>101</sup>

## Conclusion

To return to Maimonides' words about his use of *qiyās* in the second principle, he denies that certainty and uncertainty have relevance to his discussion of whether derived laws belong in the list of the 613 commandments. As mentioned above, Maimonides seems to be signaling that, while he is implementing some of the language and apparatuses of Islamic legal theory, he is not indiscriminately transferring concepts from Islam to Judaism. Rather, he is borrowing a tool from the Islamic legal system, but before using it, he refashions it to fit his purposes. In his treatment of *qiyās*, Maimonides himself hints at his method of adapting Islamic concepts, and that model of adaptation—not direct adoption—holds true for the other Islamic legal notions Maimonides uses in his introduction to *Sefer ha-Mitsvot*. We can see this in his focus on identifying authoritative sources, his adaptation of the notion of temporary commandments,<sup>102</sup> his discussion of general commandments, and his explorations of imperatives and negations. None of the principles discussed in this chapter match the parallel Islamic concepts precisely, but that does not mean that these concepts, and their treatments by Muslim jurists, did not contribute to Maimonides' thinking about the principles of commandment enumeration.

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<sup>101</sup> We should note that in his own *Treatise on the Art of Logic*, Maimonides, unlike Alfarabi, does not include any sections devoted to defining particles at all. Nevertheless, here and there, he explains certain particles in passing; see, for example, Maimonides, *Maimonides' Treatise on Logic*, ed. Israel Efros (New York: American Academy for Jewish Research, 1938), ch. III; for the Arabic original, p. 9 of the Hebrew section, for Efros' English translation, p. 37 of the English section.

<sup>102</sup> To be explored in the next chapter.

### The Impact of Islamic Notions of Abrogation on Maimonides' Third Principle

Maimonides' third principle of enumeration states that temporary commandments should not be included in the list of 613 *mitsvot*.<sup>103</sup> He was not the first to insist that such commandments be excluded, and some later authors actually believed that nobody ever disagreed with that point. Maimonides, though, was not as charitable toward previous enumerations. He argued that some commandments included in other counts demonstrate that their authors did not understand the need to keep temporary commandments out of the list of 613. While relatively short, his treatment of this principle displays several interesting features. First, how did he understand the commandments he thinks were mistakenly included in other enumerations? Those who believe that no list of *mitsvot* could possibly have included temporary commandments need to explain why certain laws which Maimonides presents as effective for only a limited time were indeed counted in the *Halakhot Gedolot* or in other pre-Maimonidean lists. We will, for the most part, leave this question aside, as it is discussed extensively in the commentaries to *Sefer ha-Mitsvot*, particularly those responding to Nahmanides' challenges.

Additionally, and more pressing for our inquiry, there is the matter of the cultural context in which Maimonides wrote this. In responding to what he saw as the erroneous tendency of others to include non-permanent commandments in their lists, he explains that certain commandments were given only for a certain period of time. This brought him close to the Islamic legal phenomenon of *naskh* (abrogation), a concept which describes how certain laws in the Quran or Sunna were replaced or superseded by later revelations. The conceptual proximity of this third principle to the notion of *naskh* actually posed a serious problem for Maimonides.

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<sup>103</sup> The Hebrew phrase Maimonides always uses to designate a temporary commandment is "*mitzvah she-'ena noheget le-dorot*," literally, "a commandment which is not in effect for [all] generations."

Muslim authors commonly claimed that, just as certain laws can be revoked or replaced, Judaism and its laws had been abrogated *in toto* by Muhammad's revelation.<sup>104</sup> The close relationship between the function of abrogation in Islamic law, what we may call "legal *naskh*," with that of "polemical *naskh*," or its use in Muslim refutations of Judaism, meant that Maimonides had to be careful in his description of temporary commandments. Maimonides, acutely aware of the danger involved in dabbling in this issue, presents this principle in such a way which implicitly addresses Muslim claims of Judaism's obsolescence. While he does not explicitly invoke *naskh* anywhere in this principle, a reader familiar with Jewish responses to Islamic allegations of the Torah's abrogation, including those by Maimonides himself, will recognize the imprint of those responses on the framing of this principle.

### **The History of Jewish Legal Discussions Regarding Temporary Commandments**

The objection to the place of temporary commandments in counts of the 613 *mitsvot* did not originate with Maimonides. Abraham ibn Ezra, in *Yesod Mora*, asks why lists of the *taryag* would include the "many commandments which have passed [*mitsvot rabot she-'averu*];" that is to say, commandments which are no longer in effect.<sup>105</sup> Like Maimonides, ibn Ezra seems to think that previous enumerators erred with regard to this principle. Also like Maimonides, he provides examples of temporary commandments, and while some examples overlap, key differences do appear, demonstrating that these two scholars differed in their conceptions of this category of commandments. This disagreement between Maimonides and ibn Ezra will be of particular interest when we look at Islamic treatments of *naskh*, but for now, we can suffice by

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<sup>104</sup> In fact, some Muslim writers denied that abrogation existed within Islam at all, and that *naskh* was *only* relevant to describing the abrogation of earlier religions by Islam; see Powers, "On the Abrogation of the Bequest Verses," 246-247.

<sup>105</sup> Ibn Ezra, *Yesod Mora*, 98.

noting that Maimonides' third principle is generally consistent with ibn Ezra's position that temporary commandments be excluded from enumerations.

As examples of this type of command, they both cite the prohibition of keeping manna overnight in the wilderness,<sup>106</sup> the verse "be ready for three days" in advance of the revelation at Sinai,<sup>107</sup> the requirement to recite the blessings and curses to the Israelites upon their entrance into Canaan,<sup>108</sup> and the commandment to build an altar on Mt. Ebal.<sup>109</sup> We can trace this tradition back further, as Samuel b. Ḥofni Gaon discusses commandments which are no longer in effect in his *Kitāb al-Sharā'ī*.<sup>110</sup> He too cites Exodus 19:15, "be ready for three days," as an example, and like ibn Ezra (though not Maimonides), also mentions the command to the Israelites to paint their doorposts with blood on the eve of their exodus from Egypt.<sup>111</sup> Samuel b. Ḥofni also offers Exodus 34:3 as an example, as Maimonides does (though ibn Ezra does not).<sup>112</sup> Unfortunately, it is difficult to tell the extent of Samuel b. Ḥofni's potential influence on Maimonides and ibn Ezra in their discussions of temporary commandments, as we do not possess a complete record of this section of *Kitāb al-Sharā'ī*.

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<sup>106</sup> Exodus 16:19. I am interpreting ibn Ezra's mention of "*lo totiru mi-mennu* [do not leave extra from it]" as Cohen and Simon do; see their note on this reference in *Yesod Mora*, 99. They conclude that ibn Ezra is actually referring to this verse in Exodus about the manna, though that verse actually reads "*ish 'al yoter mi-mennu* [let nobody leave extra from it]." Leviticus 22:30, in regard to the thanksgiving offering, actually uses the phrase quoted by ibn Ezra, but there is no reason to interpret that command as temporary.

<sup>107</sup> Exodus 19:15.

<sup>108</sup> Deuteronomy 11:26-29. The citation of Deut. 21:11 in *Sefer ha-Mitsvot*, ed. Kafih, 17 n. 47, is incorrect.

<sup>109</sup> Deuteronomy 27:4-6. Again, the citation of Deut. 24:5 in *Sefer ha-Mitsvot*, ed. Kafih, 17 n. 49, is incorrect.

<sup>110</sup> See David Sklare, *Samuel ben Ḥofni Gaon*, pp. 214-215 for the English translation, p. 10 in the Judeo-Arabic pagination for the original.

<sup>111</sup> Samuel b. Ḥofni quotes Exodus 12:7, the verse in which God tells Moses and Aaron to relay this law to the Israelites, while ibn Ezra chooses Exodus 12:22, the verse in which Moses actually communicates it to the elders of Israel. Saadya Gaon also mentions this instruction as an example of what he calls a "*horayat sha'ah*," a command which applies to a particular moment; see Yosef Tobi, "A Second 'Shiv'ata for Shavu'ot' Written by Rav Saadia Gaon," [Heb.] *Tarbiz* 53:2 (1984): 240.

<sup>112</sup> This verse instructs Moses that nobody may ascend Mt. Sinai with him, nor can anyone else even be on the mountain, including grazing sheep and cattle. We should note that while Samuel b. Ḥofni cites the first part "no man may ascend with you," Maimonides quotes the last clause, "do not even let sheep or cattle graze." The citation of Ex. 34:4 in the *Kitāb fī-l-Sharā'ī*, in Sklare, *Samuel ben Ḥofni Gaon*, p. 10 of the Judeo-Arabic pagination, is incorrect, though in Sklare's English translation on p. 215, this verse is correctly identified.

Maimonides and ibn Ezra may have some examples in common because they are both responding to counts of the 613 commandments they had seen. This leads to the question of whether any commandment enumerator ever thought that temporary *mitsvot* should be counted in the list of 613. Despite the frustration exhibited by Maimonides and ibn Ezra, there has long been a strong tendency among writers on the subject of commandment enumeration to dismiss Maimonides' accusation that the *Halakhot Gedolot* "has also erred in regard to this principle [*qad ghalat aydan fi hādha-l- 'ašl*]." Daniel ha-Bavli challenged this assertion,<sup>113</sup> and Nahmanides is astounded and offended that anyone could accuse the *Halakhot Gedolot* of making such a mistake,<sup>114</sup> proceeding to explain that the author of that work included the verses cited by Maimonides because he interpreted them as referring to permanent commands. Simon b. Tsemaḥ Duran also thought that it would be impossible to count temporary commandments, and notes that the disagreements between Maimonides and Nahmanides are only about "the details of this principle," not the principle itself.<sup>115</sup> In the modern period, R. Yeruḥam Fishel Perla denied that anyone actually thought that temporary commandments should be counted. "On this principle, there is no disagreement among the medieval scholars [*ha-rishonim*]," he states, "yet here, Maimonides suspected the author of the *Halakhot Gedolot* groundlessly." Perla goes on to explain that Maimonides objected to some inclusions in the *Halakhot Gedolot* because "some of the commandments counted by the author of the *Halakhot Gedolot* were thought by Maimonides to be temporary commandments," but Perla remarks that "Nahmanides has already responded with answers sufficient to absolve the author of the *Halakhot Gedolot* from this charge."<sup>116</sup>

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<sup>113</sup> See Abraham Maimonides and Daniel ha-Bavli, *Ma'aseh Nissim*, 9-16.

<sup>114</sup> "*Has ve-shalom she-ba'al ha-halakhot yiṭ'eh ba-zeh*;" see *Sefer ha-Mitsvot*, ed. Chavel, 52.

<sup>115</sup> Simon ben Tsemaḥ Duran, *Zohar ha-Raḳia'* (Vilnius: 1879), 8.

<sup>116</sup> Perla, *Sefer ha-Mitsvot la-Rasag*, vol. 1, 21.

Whether Nahmanides' answers are indeed sufficient is debatable. As is the case for most of *Sefer ha-Mitsvot*, the arguments between Maimonides and Nahmanides on the interpretation of the commandments mentioned here became the focus of the many traditional commentaries on this principle.<sup>117</sup> We do not need to rehash this centuries-long discussion, but one controversial aspect of Maimonides' treatment of this principle, one generally ignored by commentators, does deserve our attention. It represents an important divergence of opinions between Maimonides and ibn Ezra, and it appears in the body of Maimonides' work, in his discussion of a particular commandment.

Positive commandment 187 presents the obligation to kill the seven nations who inhabited Canaan at the time the Israelites entered the land. Maimonides bases this commandment on Deuteronomy 20:17-18, in which God commands the Israelites to completely destroy these nations in order that they not be influenced by the "abominations which they have done to their gods."<sup>118</sup> Maimonides states this law in a reasonably concise and straightforward manner, but is then drawn into an extended defense of his inclusion of this commandment. He writes that it might be possible for someone to assume this is a temporary obligation since "the seven nations have already been destroyed [*qad bādū*]," but he argues that such an assumption would be mistaken. He does not mention the name of anyone who thinks that this is not a permanent commandment, but ibn Ezra does include this in his list of "commandments which have passed."<sup>119</sup> Subsequent to Maimonides, Daniel ha-Bavli was also skeptical that this

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<sup>117</sup> See, among others, the commentaries commonly printed in editions of *Sefer ha-Mitsvot*, including *Lev Sameah*, *Megillat Esther*, and *Qinat Soferim*, who all take up this issue.

<sup>118</sup> *Sefer ha-Mitsvot*, ed. Kafih, 153.

<sup>119</sup> See Abraham ibn Ezra, *Yesod Mora*, 99. Ironically, elsewhere, it is ibn Ezra who cites an opinion claiming that the Germanic and French peoples include the descendants of the few Canaanites who survived; see ibn Ezra's commentary to Obadiah 1:20, s.v. "*asher kena 'anim*."

commandment was truly a commandment incumbent on all generations, forcing Maimonides' son, Abraham, to further explain his father's opinion.<sup>120</sup>

Maimonides knows he needs to clarify the definition of a temporary commandment in order to defend his inclusion of this requirement in his count of the 613, so he takes the opportunity to do so in his treatment of this commandment. He begins by stating that only someone who does not understand the meaning of a temporary commandment would think that the obligation to destroy the seven nations belongs in that category. Maimonides argues that a command which has been “completed through its purpose being accomplished [*yunqada bi-ḥuṣūl ghāyatihi*]” but was “not linked to a time or a particular place” is not considered a temporary commandment.<sup>121</sup> Therefore, even though this commandment is no longer in effect because “their destruction was completed by David,” it still qualifies as a permanent commandment because “we are commanded to root them out and pursue them [*bi-’istīṣālihim wa-tatabu’ihim*] in every generation until the last person is destroyed.” Maimonides cites his next commandment, number 188, the obligation to destroy Amalek,<sup>122</sup> as proof. Would that be considered a temporary commandment because God promised that He will one day erase their memory?<sup>123</sup> “This cannot be said [*hādha lā yuqāl*],” he remarks, unaware of, or pointedly ignoring, the fact that ibn Ezra also lists that commandment among his examples of ones which “have passed.”<sup>124</sup>

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<sup>120</sup> The respective opinions of Daniel and Abraham on this commandment are spread through their larger discussion of temporary commandments; see the reference above, 143, n. 11.

<sup>121</sup> *Sefer ha-Mitsvot*, ed. Kafih, 153-154.

<sup>122</sup> Deuteronomy 25:19.

<sup>123</sup> See Exodus 17:14.

<sup>124</sup> See Abraham ibn Ezra, *Yesod Mora*, 99. Cohen and Simon explain ibn Ezra's position by drawing our attention to his commentary to Deuteronomy 25:19 which they interpret as claiming that the commandment to destroy Amalek applied only to the period after the initial conquest of Canaan, but their note does point out that the Talmud, in Sanhedrin 20b, treats the obligation to destroy Amalek as a permanent commandment; see their comments on the words “*u-milḥemet ‘amaleq*,” *Yesod Mora*, 99-100. However, there is nothing in ibn Ezra's commentary to that verse which implies that this commandment was limited to a particular time; he writes that it did not take effect until after the wars of conquest were over, but he never implies that there was a time it ceased to be in effect. A different

Maimonides' conclusion to his treatment of this commandment is worth quoting in full:

To sum up, it is necessary for you to understand and contemplate the distinction between the commandment [*al-mitsvah*] and the thing about which we are commanded [*al-shay aledhī nitstaveh alav*]. For it is possible for it to be in effect for [all] generations even though the thing about which we are commanded was already finished [*qad 'adam*] in a particular generation; the lack of the thing about which we are commanded does not make the commandment temporary.<sup>125</sup> Rather, it would be a temporary commandment if the matter is reversed. That is, when a certain thing exists in a certain situation, and a certain action or law is required with regard to it at a particular time, and today it is not required even though the thing exists in that situation, such as the case of an elderly Levite, who was considered unfit to serve in the wilderness but is considered fit for us today, as is explained in its place.<sup>126</sup> Understand this principle and grasp it.<sup>127</sup>

As mentioned above, this did not convince Daniel ha-Bavli, who argued that if one generation successfully completes the task required in a commandment, “the obligation is cancelled [*saqat al-hiyyuv*] for subsequent generations.”<sup>128</sup> Given that ibn Ezra mentions this commandment in the context he does, it seems that is his opinion as well, though he does not write that explicitly. On the matter of this disagreement about classifying temporary commandments, we will shortly see a similar discussion in Islamic sources regarding the nature of abrogation.

### **Legal Abrogation in Islam and Maimonides on Temporary Commandments**

The conceptual similarity between the notion of a temporary commandment and *naskh*, the Muslim jurisprudential device by which later revelations abrogate earlier ones, becomes clearer

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explanation for ibn Ezra's position would be to assume that he would have agreed with some 19<sup>th</sup> century Talmudic scholars who mitigated this law by claiming that since the Talmud states in a number of places (see Berakhot, 28a, for example) that the Assyrian king Sennacherib jumbled up the nations, it seems that it would be impossible to tell who is an Amalekite anymore and the commandment to kill them is effectively nullified; for more on that claim by these later writers, see Avi Sagi, “The Punishment of Amalek in Jewish Tradition: Coping with the Moral Problem,” *Harvard Theological Review* 87.3 (July, 1994): 338-339. However, that would be a rather large assumption considering that ibn Ezra never hints at that solution. One further possibility to explain ibn Ezra's opinion might be to translate his category of *mitsvot she-averu* non-literally; that is, not “commandments which have passed,” but “commandments which *could* pass,” and since it is possible for all of Amalek to be destroyed at some point, it cannot be counted as a truly permanent commandment. In any event, it should be clear that more investigation is needed with regard to ibn Ezra's stance on the commandment to destroy Amalek.

<sup>125</sup> Lit. “not in effect for all generations.” See above, 140, n. 1.

<sup>126</sup> This is one of the cases mentioned in his discussion of the third principle in his introduction.

<sup>127</sup> *Sefer ha-Mitsvot*, ed. Kafih, 154.

<sup>128</sup> *Ma'aseh Nissim*, 10.

when we look at how some Muslim authors described the mechanism of abrogation.<sup>129</sup> In order to distinguish between the acceptable concept of *naskh* and the theologically problematic *badā*,<sup>130</sup> changing of God’s mind,<sup>131</sup> some Muslim scholars explained an abrogated law as, essentially, a temporary commandment. Al-Juwaynī reports that the Mu‘atāzilites believed that “*naskh* does not abolish a permanent rule [*ḥukman thābitan*]; rather, it is a clarification of the end of the time period of the law [*tabyīn intihā’ muddat sharī‘ah*].”<sup>132</sup> Ibn Ḥazm uses almost identical language in explaining his view of *naskh*, calling it “the clarification of the end of the time of the first command [*bayān intihā’ zamān al-‘amr al-‘awwal*].”<sup>133</sup>

In the early 12<sup>th</sup> century, Al-Shahrastānī put this view in stronger terms, and actually explicitly used the existence of temporary commandments in the Torah to illustrate this conception of abrogation. “*Naskh*, in truth, is not cancellation [*ibtālan*], but it is the fulfillment [*takmīl*]” of the first law. “In the Torah,” he goes on to write, “there are general laws and specific laws [*aḥkām ‘āmah wa-‘aḥkām khāṣah*], whether [specific to] a people or to a time.” When that time expires, he explains, these obligations would obviously be discontinued. “This cannot be said to be a nullification or a change in God’s mind [*ibtāl aw badā*].”<sup>134</sup> There were certainly those who disagreed with this conception of *naskh*; al-Juwaynī himself thought that the second revelation should be considered “the statement indicating the elimination of a permanent rule,”

<sup>129</sup> On *naskh* as a principle of Islamic legal theory, see Louay Fatoohi, *Abrogation in the Qur’ān and Islamic Law* (New York: Routledge, 2013); John Burton, *Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh: Edinburgh University Press, 1990); David S. Powers, “The Exegetical Genre of *Nāsikh al-Qur’an wa Mansūkhuhu*,” in *Approaches to the History of the Interpretation of the Qur’ān*, ed. Andrew Rippin (Oxford: Clarendon Press, 1988), 117-138; Wansbrough, *Quranic Studies*, 192-202; Kamali, *Principles of Islamic Jurisprudence*, 202-227.

<sup>130</sup> It was problematic, at least, for most Sunnis, though many Shiites did accept *badā*; see Goldziher and Tritton, “*Badā*” in *Encyclopedia of Islam, Second Edition*, eds. Bearman, et. al.

<sup>131</sup> For various ways *badā* has been translated or explained in academic scholarship, see Yoram Erder, “Early Karaite Conceptions about Commandments Given before the Revelation of the Torah,” *PAAJR* 60 (1994): 106 n. 12.

<sup>132</sup> Al-Juwaynī, *Kitāb al-‘Irshād fī Uṣūl al-‘Iṭiqād*, in Martin Schreiner, “*Zur Geschichte der Polemik zwischen Juden und Muhammedanern*,” *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 42.4 (1988): 660.

<sup>133</sup> Ibn Ḥazm, *Al-‘Iḥkām fī Uṣūl al-‘Aḥkām*, 4:20; (Beirut: Dar El-Fikr, 2007) vol. 1, 344.

<sup>134</sup> Al-Shahrastānī, *Kitāb al-Milal wa-l-Niḥal* (Cairo: Maktabat al-Iymān li-l-Nashar wa-l-Tawzī‘, 2014), 231.

and that if not for that later revelation, “the abrogated rule would continue.”<sup>135</sup> However, these dissenting voices notwithstanding, we can see that there was a strong tradition in Islamic sources of describing an abrogated law as having always been intended to be in effect for a limited amount of time. The abrogating law, then, cannot be said to void the preceding one, as al-Juwaynī would maintain; rather, it is merely alerting us to the end of the period in which the earlier law was in effect.

Returning to the disagreement about how to define a temporary commandment between, on one side, Maimonides and, on the other, ibn Ezra and Daniel ha-Bavli, we find that ibn Ḥazm describes a similar debate among Muslims. “People disagree about what *naskh* applies to,” he writes, “is it to the commandment or to what is commanded by it [*a ‘ala al-’amr am ‘ala al-ma’ mūr bihi*]?”<sup>136</sup> Recall Maimonides’ insistence in positive commandment 187 to distinguish between “the commandment and the thing about which we are commanded.” Maimonides uses the Hebrew terms *mitsvah* and *nitstaveh* instead of the Arabic *amr* and *ma’ mūr*, but this linguistic discrepancy should not distract from the similarity in substance. Ibn Ḥazm asserts that *naskh* can only apply to the commandment itself, not what is commanded by it. After all, he writes, “what is commanded by it is our action,” and actions have either been done or not done. If an action has been accomplished, “than it is already completed [*fa-qad faniya*],<sup>137</sup> since our actions are completable accidents [*a’ rād fāniyya*], and it is impossible to forbid something which has already been completed if there is no way for it to ever return. And similarly, it is also

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<sup>135</sup> Al-Juwaynī, *Kitāb al-Irshād*, 660.

<sup>136</sup> Ibn Ḥazm, *Iḥkām*, 348.

<sup>137</sup> The word Maimonides uses to describe the obligation to destroy the seven nations comes from the same root *fanī*; he says that the requirement is to make sure they are “destroyed [*yafnūn*] down to the last person,” and that David was the one to ensure that “their destruction was complete [*tamm fanā’ hum ‘ala yad David*];” see *Sefer ha-Mitsvot*, ed. Kafih, 154. However, it would probably be reading too much into this word choice to claim a connection to ibn Ḥazm’s discussion of *naskh*.

impossible to command something that has been completed.” He then goes on to explain the parallel absurdity of applying abrogation to an action which has not been done yet.<sup>138</sup>

Ibn Ḥazm, as we have seen, considers an abrogated obligation to have always been intended as a temporary commandment, and like Maimonides, he thinks it inaccurate to describe such a jurisprudential phenomenon as pertaining to the action that is being commanded. Only the commandment itself can be subject to legal expiration. Just as ibn Ḥazm limited *naskh* to cases where it is clear that the *amr* was what is being abrogated, Maimonides limited the category of “commandments which are not in effect for all generations” to cases where it is clear the *mitsvah* was confined to a particular time. He does not use the term “accident,” as ibn Ḥazm does, but that description of human performance of the divine command fits Maimonides’ notion of temporary commandments; the fact that the action prescribed has been completed does not affect the essence of the commandment itself, which remains permanent.

Another similarity between Maimonides’ third principle and Islamic treatments of *naskh* can be seen by looking further at ibn Ḥazm’s remarks about the nature of abrogation. We have seen that both he and the Mu‘tāzilites quoted by al-Juwaynī describe the abrogating verse [*nāsikh*] as a “clarification” (*bayān* and *tabyīn*, respectively) of the end of the period in which the abrogated verse [*mansūkh*] is in effect. Ibn Ḥazm highlights this clarifying aspect of *naskh* at length. “*Naskh*,” he declares, “is one of two types of delayed clarification [*ta’khir al-bayān*].”<sup>139</sup> According to ibn Ḥazm, the first type occurs when a vague command is revealed, but the time for that obligation has not yet come.<sup>140</sup> When it is time for it to take effect, the details of the requirement contained in the “general expression [*al-lafẓ al-mujmal*]” will be “clarified to us

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<sup>138</sup> Ibn Ḥazm, *Iḥkām*, 348-349.

<sup>139</sup> Ibn Ḥazm, *Iḥkām*, 345.

<sup>140</sup> The example he gives is the general command to pray and give charity (Quran 2:110).

[*buyyina li-nā*]” by a “later, elucidating expression [*lafẓ ‘ākhar mufassir*].” *Naskh* represents the second type of “delayed clarification,” in which God always knew that a particular rule would change to a different one at a later point, and “when that time came, the Exalted One clarified to us [*bayyana li-nā ta ‘āla*] what was hidden from us regarding the transfer of that action to another.” Ibn Ḥazm continues to defend his classification of abrogation as a type of *bayān*, responding to those who would deny that the category of *bayān* includes *naskh*.<sup>141</sup>

In most cases, the methods for identifying a temporary commandment differ between the respective legal systems of Judaism and Islam. In the case of the latter, it is clear a commandment is temporary if there is an abrogating verse, what Ibn Ḥazm calls a *bayān*; at that point, it is apparent that the earlier command was actually only a temporary one.<sup>142</sup> In Judaism, there is often not a separate verse which replaces an earlier law. Instead, as Maimonides states, only if the commandment was obviously designated for a particular time can we declare it temporary. However, in his treatment of the third principle, Maimonides does cite one instance of a commandment which was indeed changed by a later verse.

The last case of a temporary commandment that Maimonides mentions in the third principle, that of the obligation to only eat meat in the context of a *shelamim* sacrifice, actually does resemble an instance of *naskh*. As he explains, the Israelites were told that they needed to offer a sacrifice if they wanted to eat meat,<sup>143</sup> but this was a command limited to the time they were traveling in the wilderness. Proof that this was a temporary commandment comes from Deuteronomy 12:20, which permitted non-sacrificial meat once they entered Canaan. The way

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<sup>141</sup> Whether these are actual or theoretical interlocutors is unclear.

<sup>142</sup> This is assuming the conception of *naskh* ascribed to the Mu‘tāzilites and endorsed by Ibn Ḥazm; again, al-Juwaynī would not agree to the equation of an abrogated command with a temporary one.

<sup>143</sup> See Leviticus 17:3-5.

Maimonides portrays the relationship between the original prohibition and subsequent permission to eat meat whenever it is desired should remind us of the way ibn Ḥazm presents the mechanism of *naskh*. Maimonides writes that the prohibition applied only in the wilderness, “as clarified in Deuteronomy [*ka-mā buyyina fī mishneh torah*].” Maimonides, apparently, sees the permitting verse as a *bayān* which sheds light on the previous law, teaching that it had always been a temporary commandment. Maimonides may not have been intentionally echoing Muslim scholars like ibn Ḥazm in his choice of the word *buyyina*, but at the very least, it is clear that his conception of the way these two verses interact directly parallels certain notions of the way abrogation works in Islamic law.<sup>144</sup>

### **Maimonides’ Problem: Islamic Uses of Abrogation in the Polemical Arena**

Maimonides had to know that his treatment of temporary commandments might remind some readers of *naskh*, and this would have been understandably concerning for a leading Jewish scholar given the prominent place of *naskh* in anti-Jewish polemics.<sup>145</sup> For centuries, Muslims and Jews had hotly debated the viability of the notion that the Torah had been abrogated. It seems that this topic was a recurring subject of disputations in *majālis*, which began in Baghdad in approximately the tenth century and took place for hundreds of years all over the Muslim

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<sup>144</sup> The obligation to only eat meat in the context of a sacrifice, in Maimonides’ treatment, acts as the abrogated law, replaced by the permitting verse in Deuteronomy. The eleventh-century Karaite biblical commentary known as the *Talkhīṣ*, composed by Yūsuf ibn Nūḥ and abridged by his student Abū al-Faraj Hārūn, seems concerned that this requirement for a sacrifice could be used by Muslim polemicists to show that abrogation exists in the Torah (a polemical strategy discussed below). In contrast to Maimonides, though, the *Talkhīṣ* presents the obligation in the wilderness as having replaced the earlier situation in which there was no need for a sacrifice; that is, Maimonides sees that command as the *mansūkh*, and the *Talkhīṣ* presents it as the *nāsikh*. For the passage in the *Talkhīṣ*, see Miriam Goldstein, *Karaite Exegesis in Medieval Jerusalem* (Tübingen: Mohr Siebeck, 2011), 202 for the Judeo-Arabic text, and 172 for Goldstein’s discussion of this passage as it relates to *naskh*.

<sup>145</sup> On the use of *naskh* in polemics by Muslims against Jews, see Camilla Adang, *Muslim Writers on Judaism and the Hebrew Bible* (Leiden: Brill, 1996), 192-222; Hava Lazarus-Yafeh, *Intertwined Worlds* (Princeton: Princeton University Press, 1992), 35-41; Norman Roth, “Forgery and Abrogation of the Torah: A Theme in Muslim and Christian Polemic in Spain,” *PAAJR* 54 (1987): 203-236.

world. These *majālis* (sing. *majlis*) consisted of meetings involving Jews, Christians, and Muslims in which the participants would discuss matters of theology, often taking the form of interreligious disputations.<sup>146</sup> Aside from this verbal sparring, a significant number of written works by both Muslims and Jews on the topic of *naskh* have survived, so we have a good sense of the types of arguments used on both sides of the debate.

One common technique employed by Muslim writers was to demonstrate that *naskh* existed within Jewish scripture and law already, so it would be no great leap to claim that Judaism itself could be abrogated. Close to the time of Maimonides, a twelfth-century Muslim scholar and convert from Judaism, al-Samaw' al al-Maghribī, devoted a large portion of his hugely influential polemical work *Ifhām al-Yahūd* to explaining how to convince Jews that *naskh* exists and applies to Judaism. It seems he thinks *naskh* represents the strongest weapon available to him in his fight against Judaism, as he actually opens his work with this extensive section. A major focus of this part of *Ifhām al-Yahūd* consists of citing biblical laws which have changed or gone out of effect, as well as calling attention to laws introduced after the revelation of the Torah. Examples al-Maghribī mentions include purity laws prescribed in the Torah but not followed by Jews today, the verse in which God transfers the special status and function of the firstborns to the Levites,<sup>147</sup> and the verse banning additions to the law,<sup>148</sup> which, he says, has apparently been abrogated given the existence of post-biblical laws instituted by the rabbis.<sup>149</sup>

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<sup>146</sup> For more on the *majlis*, see Lazarus-Yafeh et al., eds., *The Majlis: Interreligious Encounters in Medieval Islam* (Wiesbaden: Harrasowitz Verlag, 1999); of particular relevance to our current study is the article by David Sklare, “Responses to Islamic Polemics by Jewish Mutakallimūn in the Tenth Century” in this volume, 137-161. Aside from the sources in that article, another account of a Baghdad *majlis* dispute about *naskh* appears in Aḥmad ibn Yaḥyā ibn al-Murtadā, *Kitāb Tabaqāt al-Mu'tazila*, in *Die Klassen der Mu'taziliten*, ed. Susanna Diwald-Wilzer (Beirut: 1961), 88-89.

<sup>147</sup> Al-Maghribī cites Numbers 8:18; for background, see Numbers 3:11-13, 40-51.

<sup>148</sup> Deuteronomy 13:1.

<sup>149</sup> See al-Maghribī, *Ifhām al-Yahūd*, ed. Moshe Perlmann, *PAAJR* 32 (1964): 16-23 of Arabic pagination; 38-41 in English pagination for Perlmann's translation.

Al-Maghribī made important contributions to Muslim polemics against Judaism, but he did not invent this strategy.<sup>150</sup> In particular, ibn Ḥazm, whose work on legal *naskh* we have already seen, was himself a master of this method of argumentation, marshalling a large number of examples of what he described as *naskh* in the Torah.<sup>151</sup> In fact, it might be possible to view Maimonides' vehement assertion in positive commandment 187 that destroying the seven nations represents a permanent command as an implicit response to a particular charge leveled by ibn Ḥazm.

Ibn Ḥazm discusses *naskh* as a polemical tactic in several of his writings, including the *Iḥkām fī Uṣūl al-Aḥkām*. That is a legal work, and he takes up the issue of abrogation due to its important legal ramifications. Along the way, he references several intra-Islamic debates about the scope, meaning, and mechanism of *naskh*, so his pivot to the interreligious debate about *naskh* does not seem at all out of place. He describes how “some Jews deny *naskh* in its entirety,” and proceeds to briefly outline the folly of such a denial. Ibn Ḥazm notes that “we have already spoken about this in our book called *al-Faṣl*,”<sup>152</sup> so he only offers a relatively cursory treatment of abrogation as it relates to Judaism in the *Iḥkām*.<sup>153</sup> *Kitāb al-Faṣl* represents the *locus classicus* for ibn Ḥazm's polemical discussion of *naskh*, and it is there that he makes an argument relevant to our discussion here.

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<sup>150</sup> *Iḥkām al-Yahūd* would become, almost immediately, a valuable resource for Muslim polemicists. For example, the 13<sup>th</sup> century Egyptian scholar al-Qarāfī quotes directly from it; see Diego R. Sarrió Cucarella, *Muslim-Christian Polemics*, 95. On the topic of al-Maghribī's considerable influence on the field of Jewish-Muslim polemics, even into the 21<sup>st</sup> century, see Schmidtke, “Samaw'al al-Maghribī, al-,” in *Encyclopedia of Jews in the Islamic World*, ed. Stillman; Marazka, Pourjavady, and Schmidtke, *Samaw'al al-Maghribī's (d. 570/1175) Iḥkām al-Yahūd: The Early Recension* (Wiesbaden: Harrassowitz Verlag, 2006), 1-3; and Chiesa and Schmidtke, “The Jewish Reception of Samaw'al al-Maghribī (d. 570/1175): Some Evidence from the Firkovitch Collection,” *Jerusalem Studies in Arabic and Islam* 32 (2006): 327-349.

<sup>151</sup> For more on his particular virtuosity in this regard, see Lazarus-Yafeh, *Intertwined Worlds*, 39-40.

<sup>152</sup> The full name of this work is *Kitāb al Faṣl fī-l-Milal wa-l-Ahwā' wa-l-Niḥal*.

<sup>153</sup> Ibn Ḥazm, *Al-Iḥkām*, 350.

In *Kitāb al-Faṣl*, ibn Ḥazm explores all the various groups and sects of the world. Like al-Maghribī's *Iḥkām al-Yahūd* would later do, his section on Judaism includes a guide to convincing Jews of the possibility of *naskh*, partially through demonstrating that Jewish law already accepts the idea of abrogation. He writes that when debating a Jew, one should ask if it is true that in previous eras, “when a people came to attack you, their blood was permissible to you and killing them was right and obligatory [*ḥaqqan wa-farḍan*].” After the Jewish interlocutor would say yes, he says, it should be pointed out that if someone from that attacking nation “joined your religion...killing them would become forbidden.” Ibn Ḥazm goes on to say that if this convert would then revert to his old ways and continue fighting, Jewish law would once again mandate that he be killed. The fact that an obligation (in this case, to kill this person) could become a prohibition and then once again become an obligation shows, according to ibn Ḥazm, that *naskh* is not foreign to Jewish law.<sup>154</sup>

Given ibn Ḥazm's remarks about the laws pertaining to killing the Israelite's enemies while at war, perhaps Maimonides' insistence in positive commandment 187 that the obligation to destroy the seven nations is not temporary can be seen in a different light. Maybe it is

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<sup>154</sup> *Kitāb al-Faṣl* (Cairo: 1899), vol. 1, 100. Ibn Ḥazm goes on to remark that this type of vacillation between obligation and prohibition occurs throughout Jewish law, including with regard to the Sabbath. After all, what is allowed on Friday is not allowed on Saturday, and then it is allowed again on Sunday. He might have considered this an effective strategy for debating Jews, but the case of Sabbath should probably be seen as an exclusively polemical argument, and not one which tells us about ibn Ḥazm's overall conception of abrogation. After all, it contradicts one of ibn Ḥazm's first statements in the *Iḥkām* about *naskh*, in which he writes regarding a law “which is attached to a certain time, and that time expires...that is not *naskh*. If this were *naskh*, prayer would become abrogated when its time is up, and fasting would be abrogated...” The obligation to observe the Sabbath would appear to be a similar type of law, and the fact that what is forbidden on the Sabbath becomes permissible on Sunday seems to be a case like those above about which he says nobody could possibly label them instances of *naskh*; see *Iḥkām*, 344. It might be possible that ibn Ḥazm, in citing this case of the Sabbath, is simply uncritically repeating what seems to have been a common feature of Muslim polemics regarding *naskh* in Judaism. Around a century earlier, Saadya Gaon mentions that this point about the Sabbath is one of the standard arguments raised by those who believe in abrogation; see Saadya Gaon, *Ha-Nivḥar be-Emunot u-ve-De'ot, Maqor ve-Targum*, ed. Joseph Kafih (Jerusalem: Sura Institute for Research and Publication, 1970), 134.

responding not only to those Jewish writers like ibn Ezra who saw this as an obsolete commandment, but also to Muslim arguments which assume that such cases represent instances of abrogation within Jewish law. Or, to put this slightly differently, maybe Maimonides saw a particular urgency in denying the claims of scholars like as ibn Ezra, who would describe this law as temporary. Of course, ibn Ḥazm was writing about an enemy converting, and not the eradication of the enemy, but Maimonides may well have associated the intra-Jewish debate about the seven nations with ibn Ḥazm's contention about *naskh* in this area of Jewish law.

The above connection of Maimonides' views on the seven nations to ibn Ḥazm's claim in *Kitāb al-Faṣl* might be fairly speculative, but his discussion of the third principle of enumeration itself demonstrates some clearer indications that Maimonides had Muslim notions of *naskh* in mind, at least to some degree, while he wrote about temporary commandments. Of course, he never uses the word *naskh* in this passage, nor does he explicitly connect "commandments which are not in effect for [all] generations" with abrogation. Therefore, in order to understand how he dealt with the specter of *naskh* in this principle, we must first examine the state of the Jewish-Muslim debate about abrogation as it stood in his time.

### **Jewish Approaches to Abrogation**

Jews could not simply ignore Muslim claims regarding abrogation, and some saw the debate about *naskh* as a truly serious challenge.<sup>155</sup> Jewish scholars devoted considerable energy to refuting these Muslim arguments and establishing which, if any, types or interpretations of *naskh* might be acceptable. Saadya Gaon allocated a large portion of the third section of his magnum opus, *Book of Beliefs and Opinions*, to discussing "matters on the topic of abrogation of the law

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<sup>155</sup> On the severity of the challenge of *naskh*, see Daniel Boušek, "The Abrogation of Mosaic Law in Judaism's Medieval Polemic with Islam," in *Jewish Studies in the 21<sup>st</sup> Century: Prague—Europe—World*, ed. Marcela Zoufalá (Wiesbaden: Harrasowitz Verlag, 2014), 29-30.

[*aqwāl bi-l-kalām naskh al-shar*].”<sup>156</sup> Even if, as Daniel Lasker contends, Saadya was actually more concerned with countering Christian views on Judaism’s abrogation<sup>157</sup> than he was with responding to Muslim arguments,<sup>158</sup> Saadya’s work, produced in Abbasid Iraq, represents an important contribution to Jewish literature on *naskh*.<sup>159</sup>

He opens by stating unequivocally that Jews<sup>160</sup> have received an “agreed upon tradition” from the prophets that the laws of the Torah “will not be abrogated [*lā tunsakh*].”<sup>161</sup> This leads into his primary strategy at countering claims of abrogation—adducing scriptural prooftexts. Clearly, he posits, the laws in the Torah cannot be replaced because the Bible contains numerous promises, explicit and implied, that it will last forever. He mentions that commandments are

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<sup>156</sup> Saadya Gaon, *Ha-Nivḥar*, 131.

<sup>157</sup> For some examples of Christian arguments regarding the abrogation of the Torah, see David Berger, *The Jewish-Christian Debate in the High Middle Ages* (Philadelphia: Jewish Publication Society of America, 1979), 262, 272-273.

<sup>158</sup> On this question of whether Saadya’s primary target was Christianity or Islam, see Daniel Lasker, “Against Whom did Saadia Polemicize Concerning Abrogation of the Torah?” *Daat* 32-33 (1994): 5-11 [Hebrew] and idem, “Saadya Gaon on Christianity and Islam,” in *The Jews of Medieval Islam: Community, Society, and Identity*, ed. Daniel Frank (Leiden: Brill, 1995), 165-177. Lasker presents this theory as a rejoinder to a previous article by Eliezer Schlossberg, “R. Saadia Gaon’s Attitude Towards Islam,” *Daat* 25 (Summer, 1990): 21-51 [Hebrew]. Schlossberg then wrote a response to Lasker, see “‘Against Whom did Saadia Polemicize Concerning Abrogation of the Torah?’ A Response to Prof. Lasker’s Paper,” *Daat* 32-33 (1994): 13-17 [Hebrew]. As Lasker notes, Schlossberg’s position that Islam is Saadya’s true target here, has long been the standard view in scholarship on this topic; see Lasker, “Against Whom,” 5, n. 3, for a list of scholars who had previously assumed that this section of *Beliefs and Opinions* should be seen primarily as a contra-Islamic work. Nevertheless, Lasker was not the first to see at least parts of Saadya’s discussion of *naskh* as directed at Christians, see Haggai Ben-Shammai, “The Attitude of Some Early Karaites Towards Islam,” in *Medieval Jewish History and Literature*, vol. 2, ed. Isadore Twersky (Cambridge: Harvard University Press, 1984), 8, n. 18. Bernard Septimus has suggested that, while this section must have been written with Muslim arguments in mind, Saadya tried to veil his criticism of Islam somewhat by implying that his refutation of abrogation was written as a challenge to Christianity; see Septimus, “A Prudent Ambiguity in Saadya Gaon’s *Book of Doctrines and Beliefs*,” *Harvard Theological Review* 76:2 (Apr., 1983): 249-254. Yonatan Moss has recently declared that Septimus’ theory is refuted “quite definitively” by a passage from a fragment of a different work by Saadya, published by Zucker in “Fragments of the *Kitāb Tahṣīl*”: 405-406; see Moss, “Fish Eats Lion Eats Man: Saadia Gaon, Syriac Christianity, and the Resurrection of the Dead,” *Jewish Quarterly Review* 106.4 (Fall, 2016): 494, n. 1. I confess to not understanding how that passage refutes, “quite definitively” or otherwise, the above article by Septimus. Finally, Lasker reports that Sarah Stroumsa has suggested to him that Saadya may have had neither Christianity nor Islam in particular as his polemical targets, but rather meant to write a “general refutation of the doctrine of abrogation;” see Lasker, “Saadya Gaon,” 177, n. 45.

<sup>159</sup> According to the Muslim historian al-Mas‘ūdī, Saadya himself participated in *majlis* debates, including one on the topic of *naskh* attended by al-Mas‘ūdī himself; see al-Mas‘ūdī, *Kitāb al-Tanbih wa-l-’Ashrāf*, ed. De Goeje (Leiden: 1894), 113.

<sup>160</sup> He uses the term *banū isra’īl*.

<sup>161</sup> Saadya, *Ha-Nivḥar*, 132.

often described as an “eternal covenant [*brit olam*]” and that they are given “for [all] your generations [*le-dorotekhem*].”<sup>162</sup>

Next, Saadya points out that Deuteronomy 33:4 refers to the Torah as an “inheritance [*morashah*],” presumably indicating that it would be passed down to all generations. He then immediately turns from that verse to another argument, stating that “our people... is a people by virtue of its Law [*ummatunā...innamā hiya umma bi-shar ṭā ihā*],” and therefore, since the “the Creator said that the people will last as long as heaven and earth last, it is necessary that its Law last as long as heaven and earth last.” He goes on to cite Jeremiah 31:34-35 as evidence, as that passage promises that Israel will never be abandoned. As they appear in Maimonides’ third principle as well, the proof from Deuteronomy 33:4 and the imagery of heaven and earth have significance for us, so we will return to them in the context of analyzing this enumeration principle.<sup>163</sup>

It seems Saadya thought prooftexts from Scripture constituted the most convincing refutation of the claim the Torah has been abrogated. He notes that there are some who oppose *naskh* on rational grounds, and he lists a number of such arguments, and though he does not explicitly dismiss these arguments, he does seem somewhat less enthusiastic about them. Because the above arguments using biblical prooftexts have more relevance to *Sefer ha-Mitsvot* than do these arguments from reason, and because this section on *naskh* in *Beliefs and Opinions* has been more than adequately summarized by others,<sup>164</sup> we will move on from Saadya for now.

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<sup>162</sup> See Exodus 31:16, in which the commandment to observe the Sabbath uses both these formulations.

<sup>163</sup> See below, 170ff.

<sup>164</sup> See Adang, *Muslim Writers*, 198-202, and Boušek, “The Abrogation,” 37-43.

Karaite writers also felt compelled to take up the challenge presented by the notion of *naskh*. Qirqisani, a contemporary of Saadya's, wrote about abrogation in his *Kitāb al-Anwār wa-l-Marāqib*,<sup>165</sup> and there are certain similarities to the Gaon's work in *Beliefs and Opinions*. For instance, he too cites scriptural proofs for the eternity of the Torah, including a few that Saadya mentioned as well, such as Exodus 31:16 and Malachi 3:22-23.<sup>166</sup> His approach to *naskh* has, like Saadya's, already been recapitulated several times in modern scholarship,<sup>167</sup> so we will not go over it in detail. Nevertheless, it is worth highlighting a few points which will help set the stage for examining Maimonides' third principle.

It is important to note that while one target of his polemic on abrogation was certainly Islam—he titles one of the sections dealing with *naskh* “a refutation of the Muslims and of all who affirm the prophecy of the invalid one [*pasul*]”<sup>168</sup>—he had various Jewish groups in mind as well. He raises the issue of abrogation in response to the 'Isawiyya sect of Judaism, though Ben-Shammai has demonstrated that he was probably implicitly targeting a group of Karaites whose theology Qirqisani found objectionable.<sup>169</sup> Additionally, completely removed from the section written against Muslims, he includes a discussion of the various opinions of different Jewish groups on the topic of commandments given before Sinai. His title for this section is “on the disagreement among people regarding the antiquity [*qidam*] of the commandments and the

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<sup>165</sup> Qirqisani apparently wrote an entire book dedicated to *naskh*, but it has not survived and, actually, it seems that it may not have ever enjoyed widespread popularity; see Sklare, “Responses,” 137-138.

<sup>166</sup> Qirqisani, *Kitāb al-Anwār*, 293. His strategy in citing these verses seems to differ slightly from Saadya's; see Boušek, “The Abrogation,” 45.

<sup>167</sup> See Adang, *Muslim Writers*, 202-210, and Boušek, “The Abrogation,” 43-49.

<sup>168</sup> Qirqisani, *Kitāb al-Anwār*, 292. The Hebrew word *pasul*, meaning one who is invalid, defective, etc., was commonly used by Jews to describe Muhammad, presumably because of its phonetic similarity to the Arabic word for messenger, *rasūl*, which is used by Muslims as a name for Muhammad. Al-Maghribī mentions that Jews have the audacity to refer to Muhammad with several derogatory terms; *pasul* is one of the names he mentions; see *Iḥḥām al-Yahūd*, 67 of Arabic pagination; 62 in the English translation. For more on this nickname and other derogatory names used by medieval Jews for Muhammad and Islam, see Ben-Shammai, “The Attitude,” 8-9, 13-17.

<sup>169</sup> See Ben-Shammai, “The Attitude,” 25-26.

abrogation of the Law [*naskh al-shar'*].”<sup>170</sup> In other words, this was an intra-Jewish debate on *naskh*, showing that this issue was not one that concerned Jews only in the context of disputations with Christians or Muslims. During this period, apparently, Jewish scholars vigorously deliberated this issue among themselves.<sup>171</sup> Of course, this intra-Jewish debate could not be absolutely severed from the interreligious arena; Qirqisani himself accuses those he attempts to refute<sup>172</sup> of adopting their erroneous views of *naskh* because they were trying too hard to distance themselves from Islamic conceptions of abrogation.<sup>173</sup>

Aside from showing that *naskh* was an important topic of debate among Jews themselves, Qirqisani’s treatment of abrogation shows the importance of the revelation at Sinai in discussions of *naskh*. Was there any innovation in that revelation? If so, what was it? Qirqisani’s Jewish interlocutors, according to him, argued that there was nothing new in that revelation and that the commandments had all been given to Adam. This conveniently removed the phenomenon of *naskh* from Jewish theology, but it created other problems. As al-Maghribī would later put it in *Ifhām al-Yahūd*, if Jews argue that commandments were *not* given before Sinai, they are admitting to the possibility of *naskh*. If they argue that commandments *were* given before Sinai, as Qirqisani reports some Jews did, they would be stating that Sinai added nothing new and is of no importance, which “would be tantamount to unbelief” for them.<sup>174</sup> We will see how Maimonides deals with this problem.

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<sup>170</sup> *Kitāb al-Anwār*, 440.

<sup>171</sup> On the many opinions among Karaites, and some Rabbanites, on this matter, see Erder, “Early Karaite Conceptions,” 101-140.

<sup>172</sup> In particular, he singles out the Ananites and certain Karaite sects.

<sup>173</sup> *Kitāb al-Anwār*, 440.

<sup>174</sup> Al-Maghribī, *Ifhām al-Yahūd*, 8 in Arabic pagination; 34 in the English translation.

Samuel ben Ḥofni Gaon wrote a treatise devoted to the subject of abrogation entitled “The Book of the Abrogation of the Law [*Kitāb Naskh al-Sharʿ*].”<sup>175</sup> He begins by declaring that this treatise should be “as a weapon for our companions [*wa-la-yaqūn ki-l-silāḥ li-ʿaṣḥābinā*],”<sup>176</sup> a guide for defending Judaism from this ubiquitous and formidable attack against it. Samuel had taken part in face-to-face disputations with Muslims in *majālis* and was motivated to write this book in order to provide a handbook for Jewish disputants.<sup>177</sup> He divided this work into chapters dealing with many issues relating to abrogation, such as the definition of *naskh*, what it includes and does not include, and a description of the various schools of thought within Judaism about *naskh*. On that intra-Jewish disagreement about abrogation, Samuel identifies three camps within Judaism; those who believe that *naskh* is not rationally possible, those who believe it is possible but that Scripture precludes it from occurring to the Torah, and those who think that neither reason nor Scripture deny *naskh*.<sup>178</sup>

This is certainly not a complete list of Jewish works relating to *naskh*, but it should give us some idea of the extent of the attention paid to *naskh* in medieval Jewish literature. It posed a serious problem for Jewish theologians, and played a major role in both Muslim-Jewish and intra-Jewish debates. With this in mind, let us return to Maimonides himself.

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<sup>175</sup> For the Judeo-Arabic text of this work, see Sklare, “The Religious and Legal Thought of Samuel ben Hofni Gaon: Texts and Studies in Cultural History (PhD diss., Harvard University, 1992), Vol. 2, 155-172.

<sup>176</sup> Sklare, “Religious and Legal Thought,” 156.

<sup>177</sup> See Sklare, “Responses,” 140-141 (see n. 15 in particular), and 146. Samuel’s younger contemporary, the Karaites Yūsuf al-Baṣīr, also intended to write a work completely devoted to the possibility of one revelation abrogating another, but we do not know if he actually did so; see Sklare, “Yūsuf al-Baṣīr: Theological Aspects of his Halakhic Works,” in *The Jews of Medieval Islam: Community, Society, and Identity*, ed. Frank, 258. However, he did write other works in which he attacked various other Muslim doctrines, and these were also likely written as handbooks based on al-Baṣīr’s personal experience in the arena of the *majlis*; see Sklare “Responses,” 140-142 and 150-161.

<sup>178</sup> Sklare, “Religious and Legal Thought,” 164-167

## Maimonides on the Abrogation of the Torah

Maimonides was well aware of the polemical use of abrogation in Islamic texts and addressed it directly in several places. Perhaps his strongest formulation comes in the presentation of his thirteen principles of faith in his commentary to the Mishnah. He states that “the ninth principle is abrogation [*al-qā’ida al-tāsi’a al-naskh*]; that is, that this Law of Moses [*sharī’at Moshe*] will not be abrogated and no Law will come from God beside it.”<sup>179</sup> Arthur Hyman has argued that these thirteen principles should not be read primarily as interreligious polemic against Christianity or Islam,<sup>180</sup> and that, instead, they represent a consistent and important expression of Maimonides’ overall philosophy.<sup>181</sup> Nevertheless, even if Hyman is correct, it would be an inexcusable oversight to ignore the historical and cultural context in which Maimonides wrote these principles.<sup>182</sup>

Despite the long-standing precedent of Christian theologians claiming that the Torah had been replaced, a passage in *Mishneh Torah* might show that Maimonides thought of abrogation as a particularly Muslim challenge. In a paragraph regarding the coming of the Messiah, Maimonides explains that Christianity and Islam serve a crucial role in preparing the world for that event. He explains that the legacy “of Jesus the Christian and of this Ishmaelite” is the propagation of information about God, Messiah, and the commandments to the entire world,

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<sup>179</sup> *Mishnah ‘im Perush Rabbenu Moshe ben Maimon*, ed. Kafih, vol. 4, 215.

<sup>180</sup> See Hyman, “Maimonides’ Thirteen Principles,” in *Jewish Medieval and Renaissance Studies*, ed. Alexander Altmann (Cambridge: Harvard University Press, 1967), 119-144. See his references on p. 136 for those who thought Maimonides presented these principles mainly as a way to show that “Judaism was not inferior” to Islam and Christianity, since “Muslims had a confession of faith and Christians dogmas.”

<sup>181</sup> Cf. Miriam Galston, “The Purpose of the Law According to Maimonides,” *Jewish Quarterly Review* 69.1 (July, 1978): 28, n. 3, in which Galston takes issue with Hyman’s description of Maimonides’ conception of the function of Jewish law. Though Galston does not directly address Hyman’s treatment of the thirteen principles, her correction might affect how we fit these principles into Maimonides’ greater philosophical project.

<sup>182</sup> Even Hyman ultimately concedes that “the affirmation of such principles as the supremacy of the prophecy of Moses and the eternity of the Law had a certain urgency in Maimonides’ times in the face of Christian and Muslim claims that their revelations had superseded that of Moses;” see Hyman, “Maimonides’ Thirteen Principles,” 136.

even to “the distant isles,” thus preparing humanity in order for “the entire world to serve God together.” Maimonides notes that Christians and Muslims are constantly “discussing [*nose'im ve-notenim*] these matters [i.e., God and the Messiah] and the commandments of the Torah” in that “these say that these commandments were true but have already been cancelled by this time and were not in effect for all generations [*nohagot le-dorot*], and these say there are secret matters in them and they are not as they apparently seem [*ve-'enan ke-peshutam*], and the Messiah has already come and revealed their secrets.”<sup>183</sup> Though he does not say which group he is referring to in each case, the fact that he separates the Muslim and Christian views (“these say...and these say...”), and the obvious reference to Christian allegorical interpretations of the Hebrew Bible in the second clause, might show that he saw abrogation as primarily, though probably not uniquely, a Muslim approach to Jewish law.<sup>184</sup> Perhaps this view stemmed from the pivotal role played by *naskh* within Islamic law. Even Muslim writers who did not set out to specifically address the field of interreligious disputation wrote extensively on the subject of abrogation within the *shari'a*, often leading them to mention, at least in passing, the polemical ramifications of *naskh*.<sup>185</sup>

Elsewhere in *Mishneh Torah*, Maimonides mentions some scriptural evidence that the Torah cannot be abrogated. Among other verses, he cites a biblical phrase applied quite a bit to

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<sup>183</sup> *Hilkhot Melakhim*, 11:4.

<sup>184</sup> There is another passage which, in most printed editions of *Mishneh Torah*, also names abrogation as a particularly Muslim claim. In *Hilkhot Teshuvah*, 3:8, Maimonides explains the technical categories of heresy designated by various terms. One of the people to whom the term “*kofer ba-Torah* [denier of the Torah]” applies is a person “who says that the Creator switched one commandment for a different commandment and this Torah has been cancelled, even though it originally came from God, like the Muslims [*kegon ha-Hagarim*].” However, the autographed manuscript of *Mishneh Torah* (Oxford, Bodleian Library, MS. Hunt. 80, fol. 85r) as well as a manuscript from the Geniza (Cambridge, Lewis-Gibson, *Talmudica* II, fol. 89v) reads “like the Christians and Muslims [*kegon ha-Notserim ve-ha-Hagarim*].”

<sup>185</sup> We saw above how ibn Ḥazm transitions organically from speaking about *naskh* and the debates about it in an intra-Islamic, legal context, to mentioning the claims of the Jews who deny abrogation. Examples of other writers who combined treatments of legal and polemical *naskh* include ibn Qutayba (see Adang, *Muslim Writers*, 197), al-Birūnī (Adang, *Muslim Writers*, 216), ‘Abd al-Jabbār, and al-Bāqillānī (Lazarus-Yafeh, *Intertwined Worlds*, 38).

particular rules, “an eternal law for your generations,”<sup>186</sup> as well as Deuteronomy 13:1, which bans additions or subtractions from the Torah. We have seen that al-Maghribī mentions this verse, claiming that, far from denying abrogation, it actually seems to have been abrogated itself by the rabbis who have added an enormous number of laws to the Jewish legal system.<sup>187</sup> In any event, Maimonides, who does not offer any rational argument for why the Torah cannot be abrogated, seems to place himself, not surprisingly, into the camp of most rabbanites in the medieval period who thought that *naskh* might be theoretically possible, but that the Torah precludes that possibility with regard to its own laws.

Maimonides’ most extensive direct response to Islamic claims of *naskh*, at least among his writings available to us, appears in his “Epistle to Yemen.”<sup>188</sup> Writing to advise and comfort Jews in Yemen suffering under the dangerous and oppressive conditions inspired by the messianic fervor surrounding the Ismā‘īlī leader ‘Abd al-Nabī, Maimonides saw fit to address some arguments against Judaism that his addressees encountered. Among these were the accusation that the Torah had been abrogated and the related claim that the Hebrew Bible itself contains allusions to the coming of Muhammad, and he cites a number of verses from the Torah which Muslims used to support these arguments. We will not look at all the points he makes here, but there are a few of which we should be aware before we turn to his third principle in *Sefer ha-Mitsvot*.

With regard to *naskh* in particular, Maimonides mentions Deuteronomy 33:2, “God came from Sinai, rose up to them from Se‘ir, appeared from Mt. Paran...” This verse, so ubiquitous in

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<sup>186</sup> This formula appears fairly frequently in the Torah; see, for example, Exodus 12:14, Leviticus 10:9 and 24:13, and Numbers 18:23. This list is not meant to be exhaustive.

<sup>187</sup> See above, 152, n. 47.

<sup>188</sup> On this letter, see Mordechai Akiva Friedman, *Ha-Rambam, ha-Mashiaḥ be-Teman, ve-ha-Shemad*, and Joel Kraemer, *Maimonides: The Life and World*, 233-242.

Islamic polemics against Judaism, was said by Muslim writers to outline the progression of divine revelation from one religion to another; first Judaism (represented by Sinai), then Christianity (Se'ir), and finally Islam (Mt. Paran).<sup>189</sup> In addressing this verse, and a few others commonly cited by Muslims, Maimonides begins by simply dismissing the notion that they have anything to do with Islam, asserting that “these interpretations have defiled many who say them<sup>190</sup> and there is no need to state that they represent the ultimate weakness.” He goes on to insist that even Muslims themselves do not actually think this verse means what they say it does. Nevertheless, he does offer a lengthy refutation of this interpretation of Deuteronomy 33:2. Since all the verbs are in past tense, he writes, the verse cannot be referring to future events like the respective advents of Christianity or Islam. Instead, it must be describing the progression of God’s presence as perceived by the Israelites leading up to the revelation at Sinai.<sup>191</sup>

That revelation at Sinai plays a key role in Maimonides’ denial of the applicability of *naskh* to the Torah. He offers an allegorical interpretation of a passage in Song of Songs to explain why other religions constantly challenge Judaism. “Solomon has compared the [Jewish] people to a beautiful woman, perfect in form.” Like “deceiving men who trick the noblest of women in order to carry out indecency with them,” people of other religions attempt to draw the Jewish people toward wrong ideas. Continuing with his elucidation of the parable, Maimonides describes the Jewish response to these would-be seducers: “Find me something comparable to

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<sup>189</sup> For a list of some of the Muslim writers who cited this verse, see Eliyahu Ashtor, “*Darkei ha-Pulmus ha-Islami*,” in *Sefer ha-Zikaron le-Vet ha-Midrash le-Rabbanim be-Vinah* (Jerusalem: 1946), 192, and for more on the way it was used and on the geographical inferences it inspired, see Lazarus-Yafeh, *Intertwined Worlds*, 109, n. 110.

<sup>190</sup> This translation is based on the text of the Shailat version, which reads “*hādhahi `umūr qad sammajat kathīr miman qālahā*”; see *Igrot ha-Rambam*, ed. Shailat, 92-93. Alternatively, Kafih’s edition reads *hādhahi `umūr qad sa`amatu mimā kathar qawlihā*, which might be rendered “I have become disgusted due to the many mentions of these interpretations;” see *Igrot ha-Rambam*, ed. Kafih, 31. The phrase “*mimā kathar qawlihā*” in Kafih’s text is translated here in accordance with Blau, *A Grammar of Medieval Judaeo-Arabic* [Hebrew] (Jerusalem: Magnes, 1961), 231.

<sup>191</sup> *Igrot*, ed. Shailat, 94-95. Saadya also addresses this verse and resolves it in a similar manner; see Saadya, *ha-Nivhar*, 137-138.

the episode at Mt. Sinai<sup>192</sup> in which the camp of Israel and the camp of God faced each other, and then we will turn to your belief [*wa-narja 'u li-ra'yikum*].”<sup>193</sup> According to Maimonides, the revelation at Sinai was a singular historical event, “the best of witnesses [*khayr al-shāhidīn*] has testified that there was not anything like it before it nor will there ever be.”<sup>194</sup> Its uniqueness lies in the fact that “an entire people [*umma bi-'asrihā*] heard the word of God, may He be exalted, and saw His splendor with their eyes.” This direct encounter with the divine that the entire people shared was orchestrated, Maimonides writes, to establish the belief that the Torah could never be changed.<sup>195</sup>

Furthermore, the impact of this momentous episode was not limited to the generation living then. Anyone claiming to be a prophet who announces that the Law of Moses has been replaced or was only temporary must not be a true prophet. Even if that supposed prophet performed miracles to buttress his claim, he or she should still not be followed. After all, Maimonides explains, the Jewish people can attest to the veracity of Moses’ revelation not because he performed any miracles, but because “we, the assembly of the Children of Israel, knew the truth of Moses our master through our witnessing him [*bi-kawninā shāhadnā*] at the episode at Mt. Sinai at the time of [God’s] speech, not merely through his miracles.”<sup>196</sup>

This leads us to a different, if closely related, element of Maimonides refutation of Muslim arguments on *naskh*. Aside from the public nature of the revelation at Sinai, there is the matter of the prophet who received that revelation. Moses, as Maimonides puts it, was “the

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<sup>192</sup> “*Ma'amad har sinai*.” Maimonides frequently uses this expression for the revelatory event, and while he was certainly not the first to do so, it seems the fact that he mentions it so often contributed greatly to its subsequent popularity; see Shraga Abramson, “Expressions Concerning the Giving of the Torah” [Hebrew], *Leshonenu* 58.4 (1994): 317-322.

<sup>193</sup> *Igrot*, ed. Shailat, 91.

<sup>194</sup> “The best of witnesses” would be Moses, and this “testimony” likely refers to Deuteronomy 4:32-33.

<sup>195</sup> *Igrot*, ed. Shailat, 90.

<sup>196</sup> *Igrot*, ed. Shailat, 97.

master of all prophets” and, as Scripture itself attests, no other prophet can compare to him.<sup>197</sup> The Torah, revealed to the greatest of all prophets, promises that its laws are permanent,<sup>198</sup> and that cannot be contradicted by any other prophet. If a person claiming prophetic abilities does announce that the Torah has been abrogated, that person would be calling Moses a liar and would therefore, Maimonides writes, be proven to be a false prophet deserving the death penalty “if we have the capability for that.”<sup>199</sup>

Maimonides was not the first in his family to write a letter intended to comfort those living through persecution, and his father Maimon’s *Letter of Consolation*, responding to the Almohad conquest of Andalusia, also takes up the subject of Moses’ unique status. While he does not address the charge of *naskh* explicitly, it may well have motivated his extensive descriptions of Moses’ singular greatness in prophetic ability, character, and even physical attributes. The revelation at Sinai, delivered to the greatest of prophets, cannot be replaced by a lesser figure.<sup>200</sup> Maimonides, then, would be following the tradition of his father in presenting Moses’ particular prophetic ability as itself a repudiation of *naskh*.

### **Maimonides’ Third Principle of Enumeration**

With an understanding of the prominent place *naskh* occupied in Jewish literature written in Islamic lands, we can now turn to the third principle of enumeration in *Sefer ha-Mitsvot*. Again,

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<sup>197</sup> *Igrot*, ed. Shailat, 96. See Deuteronomy 34:10.

<sup>198</sup> To demonstrate that promise, Maimonides uses a number of the verses he cited for this purpose in *Hilkhot Yesode ha-Torah* 9:1.

<sup>199</sup> *Igrot*, ed. Shailat, 97. See *Hilkhot Yesode ha-Torah* 9:2, in which Maimonides codifies this as law; if a prophet attempts to add, subtract, or change any commandment, or claims that the laws of the Torah are not permanent, he has proven himself a false prophet and should be put to death.

<sup>200</sup> See L.M. Simmons, “Maimon’s Letter of Consolation, Arabic Text,” *JQR* 2.3 (April, 1890): 335-368, and for an English translation, idem, “The Letter of Consolation of Maimon ben Joseph, English Translation,” *JQR* 2.1 (Oct. 1889): 62-101. Eliezer Schlossberg seems to take it as given that Maimon’s attention to Moses’ excellence is in response to claims of *naskh*; see Schlossberg, “The Attitude of R. Maimon, the father of Maimonides, to Islam and Muslim Persecutions” [Hebrew], *Sefunot*, New Series vol. 5 (1991), 104-105. While I agree that this is a reasonable position, I would not put it in such certain terms.

while his primary polemical targets in this principle are Jewish commandment enumerators who counted laws which Maimonides thought to be temporary, the way he frames his argument suggests that he had this question of abrogation on his mind. We will look in particular at two components of the third principle; his appeal to Sinai and the scriptural evidence he cites.

### **Appeal to Sinai**

As noted several times in this dissertation, the text of published editions of the Talmud do not mention Sinai, and instead simply state “613 commandments were said to Moses.” Nevertheless, Maimonides consistently quotes the passage as “613 commandments were said to Moses at Sinai.” Yet even if we accept that the text of the Talmud does include an explicit reference to Sinai, it is noteworthy to see what Maimonides reads into it. He begins by citing the Talmud’s declaration that “613 commandments were said to Moses at Sinai,” to which Maimonides adds that this “indicates that this number is the number of commandments which are in effect for all generations.” The Talmud itself never says anything of the sort, but Maimonides argues that simply by invoking Sinai, the rabbis are essentially excluding all non-permanent commandments. “Commandments which are not in effect for all generations have no connection to Sinai,” he explains; “they were revealed at Sinai or elsewhere.” In other words, temporary commandments, even if they were actually revealed at Sinai, “have no connection to Sinai.” He clarifies that the term “Sinai,” as used by the rabbis, refers to the “principal Law-giving [*aṣl al-tashri*]”<sup>201</sup> that was legislated at Sinai.” The word does not signify a geographical location, but a legal event.

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<sup>201</sup> Maimonides uses this phrase to refer to the ten commandments in particular in his commentary to the Mishnah, Tamid 5:1; see *Mishnah ‘im Perush Rabbenu Moshe ben Maimon*, vol. 5, 420.

As is clear from the *Epistle to Yemen*, Maimonides views the reception of the Torah at Sinai as a singular occurrence, and that singularity has far-reaching ramifications. A revelation conducted in so public a manner and involving so uniquely distinguished a prophet cannot but mean that the laws given through that revelation are necessarily permanent. This point is buttressed in this third principle, as it is in the *Epistle to Yemen* and in *Mishneh Torah*, with verses from the Torah which speak to the eternal nature of the laws, and we will examine some of those verses below. But before he gets to that scriptural evidence, he calls our attention to the importance of Sinai in this context. If he simply wanted to show that the Torah calls itself permanent, implying that the 613 commandments are only those which are permanent, he could have skipped straight to those verses; the particular mention of Sinai in the Talmud does not seem so critical to this point.

Maimonides is reading into this rabbinic passage a significance which is not immediately apparent in the text of the Talmud itself, but is understandable in light of his use of Sinai in combating the notion that the Torah has been abrogated. He eventually moves to his scriptural proofs, but he first lingers on the significance of the Talmud's mentioning the word Sinai, as if that word itself demonstrates that the commandments are permanently binding. This opening to the third principle is understandable only if we take his stance on *naskh* into account. Having seen the major role of the Mosaic revelation in his response to *naskh* in *Epistle to Yemen*, we can see that for Maimonides, Sinai truly does represent proof for the eternal nature of the Torah.

Elsewhere, he uses this rabbinic statement about the 613 commandments to take a stand on the question of laws given pre-Sinai, which, as we have seen from the work of writers such as Qirqisani and al-Maghribī, was inextricably related to the question of *naskh*. In his commentary to the Mishnah, he forcefully declares that even if a commandment was introduced before Sinai,

the reason it is binding for future generations is that it was repeated to Moses. After all, he points out, the Talmud tells us that the 613 commandments were given at Sinai, and that includes commandments like circumcision, which was first given to Abraham.<sup>202</sup> Years later, in a letter, Maimonides repeats this assertion, accusing one who believes commandments such as circumcision to be binding due to their pre-Sinaitic revelation, and not due to their repetition to Moses at Sinai, of “knowing nothing of the principles of religion [*uṣūl al-dīn*].” In this letter too, he invokes the talmudic passage about the 613 commandments to prove his point.<sup>203</sup> Again, for Maimonides, the uniqueness of Sinai stands as a bulwark against accusations of abrogation, and so he sees much significance in the passing reference to Sinai in the talmudic discussion of the 613 commandments.

Essentially, that revelation set the canon of laws. In the context of his comments on pre-Sinaitic commandments in his commentary to the Mishnah and his letter, the implication is that the transition from the pre-Sinai era to the Mosaic revelation does not represent a case of abrogation within Jewish law, as Jewish law itself only began with Sinai. And in *Sefer ha-Mitsvot*, Maimonides uses this talmudic passage about the 613 commandments to imply a similar point. Temporary commandments, even if they were revealed to Moses while the Israelites were

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<sup>202</sup> See his comments to Hullin, 7:6, in *Mishnah 'im Perush Rabbenu Moshe ben Maimon*, vol. 5, 212.

<sup>203</sup> *Igrot*, ed. Shailat, 405. Joseph Stern has suggested that Maimonides changed his mind from his position in his Mishnah commentary, as evidenced by a passage in *Mishneh Torah*, *Hilkhot Melakhim* 9:1, which might imply the obligation for pre-Sinaitic commandments began when they were commanded, and then the revelation to Moses completed the corpus of binding laws; see Stern, *Problems and Parables of Law* (Albany: SUNY Press, 1998), 176, n. 23. However, as David Henshke has pointed out, this letter which adamantly affirms the opinion he expressed in the commentary was written after he wrote *Mishneh Torah*, so it seems unlikely he changed his mind. Henshke offers an alternative explanation for this passage in *Mishneh Torah* which harmonizes it with his statement in the commentary. For a treatment of Maimonides' opinion about pre-Sinaitic commandments, see Henshke, “The Commandments of the Patriarchs and the Commandments of Sinai” [Hebrew], in *Mi-Birkat Mosheh: Maimonidean Studies in Honor of Rabbi Nachum Eliezer Rabinovitch*, eds. Zvi Heber and Carmiel Cohen (Ma'aleh Adumim: Ma'aliyot, 2012), vol.1, 619-646, and 627-632 in particular for his discussion of the passage in *Mishneh Torah*.

camped around Mt. Sinai, were never part of the canonical revelation indicated by the technical term “Sinai,” so they too cannot be used to prove that *naskh* exists in Jewish law.

### **Scriptural Evidence: The Motif of Heaven and Earth in Jewish Responses to *Naskh***

Maimonides shifts from his discussion of the revelation at Sinai to scriptural proofs for the permanence of the commandments. He notes that the Talmud’s treatment of the *taryag* invokes Deuteronomy 33:4; “Moses commanded us a Law [*torah*].” The Talmud points out that the numerical value of the letters in the word *torah* add up to 611, and since two commandments were revealed directly to the Israelites by God (and thus, were not “commanded” by Moses), we see that there are 613 commandments in total. Though it is not quoted in the talmudic passage, Maimonides draws our attention to the next clause in this verse, “an inheritance [*morashah*] for the community of Jacob.” This, he argues, proves that the 613 commandments must be permanent since “what is called an inheritance is that which lasts through the generations, as He states ‘like the days of the heavens on the earth.’”<sup>204</sup>

The proof from the word “inheritance [*morashah*]” is familiar to us from Saadya’s refutation of *naskh* in *Beliefs and Opinions*.<sup>205</sup> The only difference is that, whereas the Gaon does not explicitly spell out the significance of the Torah being an “inheritance,” Maimonides does. However, there can be little doubt that Saadya intended the interpretation that Maimonides gives to this verse, and simply felt that there was no need to make it any more obvious. Maimonides would have certainly been aware of Saadya’s use of this verse against accusations that the Torah has been abrogated, and so, again, it seems the echoes of the loud medieval debate about *naskh* reverberate in this principle of *Sefer ha-Mitsvot*.

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<sup>204</sup> The quote is from Deuteronomy 11:21.

<sup>205</sup> See above, 157.

Furthermore, just as Saadya turned from the “inheritance” proof to evidence of the Torah’s permanence from biblical references to the eternity of heaven and earth, Maimonides does as well. However, the verses to which they turn differ. Maimonides quotes the end of Deuteronomy 11:21, while Saadya cites Jeremiah 31:34-35.<sup>206</sup> It is possible that Maimonides’ verse carried some significance in medieval discussions of *naskh*, but to understand that point, it is necessary to take an extended look at the imagery of heaven and earth in those discussions. Saadya’s reference in *Beliefs and Opinions* can act as a good starting point for this examination. To review, Saadya claims (without any scriptural evidence) that the Jewish people is only a people by virtue of its laws, and since that people will last as long as the heavens and earth last, as demonstrated by this passage in Jeremiah, the Torah’ permanence must be equal to that of heaven and earth.

Upon closer examination, these verses from Jeremiah do not quite fit Saadya’s reasoning in that they do not truly use the imagery of heaven and earth the way Saadya does. He does not quote the next verse, 31:36, which actually does mention heaven and earth, but even there, the promise is *not* that Israel will exist as long as heaven and earth exist, as Saadya writes. Rather, it states that “if heaven can be measured or the foundations of earth can be found,” then God will forsake Israel. The implication, of course, is that none of those will ever happen, but the analogy is not to the eternity of heaven and earth; instead, it is to the inability to measure them or fully search them out. The verses he does quote, 31:34-35, promise that Israel will not be abandoned as long as the sun, moon, and stars are functioning. That better suits Saadya’s time-oriented analogy, but the comparison is to those celestial bodies and not specifically to heaven and earth.

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<sup>206</sup> Elsewhere, Maimonides cites those verses from Jeremiah as evidence for the theory of creation *a parte post*; see *Guide of the Perplexed* II:28.

This all might seem like trivial quibbling, but we will see that the imagery of heaven and earth represents something of a puzzling feature of the Muslim-Jewish debate on *naskh*, and since Maimonides also uses this imagery in his third principle, investigating how it was used constitutes an important task for our purposes.

Saadya himself uses the analogy to the eternity of the heaven and earth to counter arguments about *naskh* in another of his works, his commentary to the book of Genesis. Writing about the binding of Isaac,<sup>207</sup> he mentions that those who believe the laws of the Torah can be abrogated use this episode to prove their claim. If God can tell Abraham to sacrifice Isaac and then subsequently tell him not to do so, why could He not cancel all the laws He had previously commanded? Saadya offers four different refutations of this argument.<sup>208</sup> In *Beliefs and Opinions*, he also raises this episode as a common proof cited by the proponents of *naskh*. There, he counters it by explaining that the original command to Abraham was not to actually *kill* Isaac, but to simply place him on an altar. Abraham may have assumed he was supposed to go further, but God never intended for that. Therefore, when Abraham is told to spare his son, the new directive does not at all countermand the first one.<sup>209</sup> That interpretation of the *Aqedah* is the first of the four refutations in Saadya's commentary to Genesis, with the second and third also focusing on how to interpret the original command to sacrifice Isaac in a way which remains consistent with God's eventual intervention to spare him.<sup>210</sup>

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<sup>207</sup> Genesis 22: 1-19.

<sup>208</sup> Saadya, *Perushe Rav Saadya Gaon le-Bereshit*, ed. Moshe Zucker (New York: JTS, 1984), 141-142.

<sup>209</sup> *Ha-Nivhar*, 140.

<sup>210</sup> Saadya's second suggestion is that the original command was always given with the caveat that it only applies if God will confirm it later, reading "that I will tell you" in 22:2 as "if I will tell you." Saadya's third argument is that God suppressed the word "ram" from the original command. That is to say, the ram that Abraham ended up sacrificing in 22:13 was always meant to be the sacrifice, and that is what God truly commanded at the beginning of this episode, even if he obscured that from Abraham in order to make him think that Isaac was to be the offering.

While Saadya's first three answers attempt to explain why the order to spare Isaac did not actually constitute a case of *naskh*, the fourth admits that God truly did abrogate the first command. However, Saadya insists that this needs to be read as an exception, an isolated case which cannot teach us that the laws of the Torah can also be abrogated. *Naskh*, he concedes, might be possible in instances when there exists no explicit assurance that original order will be eternal. But we do indeed find such an assurance with regard to the Torah's laws because "God excluded [abrogation], and said: I will not abrogate them ever, and one who attempts to abrogate them should not be accepted. They will not be abrogated ever, as long as the heaven and earth last."<sup>211</sup>

Interestingly, Saadya does not directly quote a biblical prooftext for his assertion that God promised that the laws would not be replaced, and even more perplexing, the purportedly divine statement he summarizes does not actually appear anywhere in the Bible; there is no verse which promises that the commandments will not be abrogated as long as heaven and earth exist.<sup>212</sup> Perhaps that is why Saadya made a more convoluted argument in *Beliefs and Opinions*; the Jewish people are only a people by virtue of their laws, and since God promised to never disband the Jewish people as long as the heaven and earth last, we can conclude that the laws will likewise last forever. While the verses in Jeremiah quoted there get closer to making this point, we have seen that they do not precisely fit Saadya's argument anyway. For some reason, Saadya feels it necessary to include a reference to the eternity of heaven and earth, even to the extent that he essentially invents a divine promise in his commentary to Genesis, and in *Beliefs*

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<sup>211</sup> *Ha-Nivhar*, 142.

<sup>212</sup> See below, 180, n. 125, in reference to the verses that Schmidtke suggests make this claim.

*and Opinions*, he forces some verses from Jeremiah into a more elaborate syllogism in order to work that imagery into his argument.

Appealing to a scriptural promise tying the validity of Jewish law to the permanence of heaven and earth seems to have been a fairly common technique among Jews in their disputes with Muslims, at least according to some Muslim writers. A generation after Saadya, al-Bāqillānī, a renowned Ash‘arite theologian and legal scholar living in Baghdad,<sup>213</sup> devotes the thirteenth chapter of his *Kitāb al-Tamhīd* to refuting those who, on the basis of revelation and not reason, deny the abrogation of Mosaic law. He begins by citing a statement by Moses that “this law is permanent for you, and is required of you as long as heaven and earth last; there is no abrogation or replacement for it.”<sup>214</sup> Of course, no such statement appears in the Bible. Camilla Adang writes that while al-Bāqillānī’s “biblical reference cannot be identified, it reminds one of Sa‘adya’s argument based on Jer. 31:35f,”<sup>215</sup> though I would submit that if we look for a comparison to Saadya’s works, this quotation is much closer to his commentary to Genesis than it is to his argument in *Beliefs and Opinions*. In any event, perhaps he did have Saadya in mind. Al Bāqillānī was active in religious disputation<sup>216</sup> and, living in Baghdad so soon after Saadya’s career, must have been familiar with the claims of so prominent a Jewish scholar—if not from actually reading Saadya’s works, then from *majlis* disputes (or accounts thereof) involving Saadya or other Jewish interlocutors who drew from the great Gaon’s ideas.

Another tenth century Muslim scholar, Abū ‘Alī Muḥammad ibn Khallād al-Baṣrī, seems to have similarly attested to Jews referring to the eternity of heaven in denouncing *naskh*. His

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<sup>213</sup> For a short account of al-Bāqillānī’s life and career, see Adang, *Muslim Writers*, 51-54.

<sup>214</sup> Al-Bāqillānī, *Kitāb al-Tamhīd*, ed. Richard McCarthy (Beirut: Librairie Orientale, 1957), 176.

<sup>215</sup> Adang, *Muslim Writers*, 211.

<sup>216</sup> See Adang, *Muslim Writers*, 51.

compositions on this topic have not survived, but Schmidtke and Adang have published the works of two eleventh century Mu‘tāzilite writers who embedded some of his writing in their works. Both list several scriptural proofs that Jewish apologists cite to claim that the Torah can never be abrogated, and each report that one such proof is the quotation that the laws will be in effect “as long as the heavens and earth last.”<sup>217</sup>

Moving to the first half of the twelfth century, Rukn al-Dīn Maḥmūd b. Muḥammad al-Malāḥimī al-Khwārazmī, a leading Mu‘tāzilite scholar, mentions in his *Kitāb al-Fā’iq fi Uṣūl al-Dīn* that Jews attempt to discount *naskh* of the Torah by citing biblical sources which guarantee the eternity of the commandments, one of which uses the phrase “as long as the heavens and earth last.”<sup>218</sup> In the late twelfth/early thirteenth century, the Shiite theologian Sadīd al-Dīn Maḥmūd b. ‘Alī al-Ḥimmaṣī al-Rāzī uses identical language, citing Jews who say that the laws of the Torah will be permanent “as long as the heavens and earth last.”<sup>219</sup> Sabine Schmidtke has shown that there is a distinct likelihood that both of these writers were borrowing from the works of the Mu‘tāzilite master Abū al-Ḥusayn al-Baṣrī, a student of ‘Abd al-Jabbār in the early eleventh century.<sup>220</sup> This takes us a little closer to the world of Saadya Gaon, though it certainly does not prove that Saadya was the source of this tradition. At the very least, it indicates that this puzzling trend of mentioning the eternity of heaven and earth in the context of refuting *naskh*, despite no obvious actual biblical verse which supports this, continued through the time of al-Baṣrī.

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<sup>217</sup> See Schmidtke and Adang, “Mu‘tāzilī Discussions of the Abrogation of the Torah: Ibn Ḥallād (4<sup>th</sup>/10<sup>th</sup> Century) and His Commentators,” *Arabica* 60 (2013): 701-742; see 717 and 735 for the references to heaven and earth.

<sup>218</sup> Ibn al-Malāḥimī, *Kitāb al-Fā’iq*, eds. Madelung and McDermott (Tehran: 2007), 357.

<sup>219</sup> See the selection from al-Ḥimmaṣī’s *al-Munqidh min al-Taqlīd* in the appendix to Schmidtke, “Abū al-Ḥusayn al-Baṣrī on the Torah and its Abrogation,” *Mélanges de l’Université Saint-Joseph* 61 (2008): 574.

<sup>220</sup> See Schmidtke “Abū al-Ḥusayn al-Baṣrī,” 569.

In fact, though, even if the writings of ibn al-Malāḥimī and al-Ḥimmaṣī were simply drawing from earlier sources, we do find a twelfth century Jewish writer who uses the imagery of heaven and earth to describe the eternal validity of the Torah. In his *Bustān al-‘Uqūl*, Netanel ibn al-Fayyumi, writing in Yemen and apparently the father of the addressee of Maimonides’ *Epistle to Yemen*, describes the many biblical promises relating to messianic redemption.<sup>221</sup> In the middle of this discussion, he asserts that these promises are not contingent; they will eventually be fulfilled whether or not the Jewish people repent. As for the Bible’s warnings regarding the terrible punishments which will befall the people if they neglect the commandments,<sup>222</sup> Netanel writes that the Jews have already suffered all of these, in that they have been subjugated and dispersed throughout all the nations. He adds that the condition of the Jewish people is actually worse than the Bible describes, because “the nations did not suffice with that, but they insult them [*yu ‘ayyarūnuhum*] and say that their law has been abrogated and cancelled [*qad nusikhat wa-’ubḥilat*].” He insists that this cannot be true, and that the Torah would never be cancelled “as long as the heavens and earth last. Similarly, the people will not cease nor perish nor be destroyed.”<sup>223</sup>

It is tempting to point to Saadya’s influence on this equation of the eternal nature of the law and the permanence of the Jewish people, though Netanel does not construct the syllogism that his geonic predecessor did. Also, Netanel’s main concern in this section of *Bustān al-‘Uqūl* is not countering claims of abrogation; he only mentions those, seemingly superfluously, in passing. He is more interested in affirming that the Jewish people will never be destroyed and

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<sup>221</sup> On Netanel ibn al-Fayyumi, and especially on his uniquely accepting view of Islam, see Colette Sirat, *A History of Jewish Philosophy in the Middle Ages* (Paris: Cambridge University Press, 1985), 88-93 and M. A. Friedman, *Ha-Rambam, ha-Mashiah be-Teman, ve-ha-Shemad*, 94-107.

<sup>222</sup> He points in particular to the curses listed in Leviticus 26:14-44.

<sup>223</sup> Netanel ibn al-Fayyumi, *Gan ha-Sekhalim*, ed. Kafih (Qiryat Ono: Makhon Mishnat ha-Rambam, 2001), 104-105.

will ultimately enjoy the messianic redemption, so his desire to steer the discussion from the Torah's permanence to that of the people is understandable, independent of Saadya's argument in *Beliefs and Opinions*. Nevertheless, this connection between the law and the people should, at least, remind us of Saadya, and the fact that Netanel punctuates this comparison with a remark about heaven and earth might further indicate that the use of this imagery in rejecting *naskh* owes its prevalence to Saadya's influence.

If it is true that the works of al-Bāqillānī, ibn Khallād, ibn al-Malāḥimī, al-Ḥimmaṣī, and Netanel ibn al-Fayyumi demonstrate the impact Saadya's invocation of the eternity of heaven and earth had on Jewish responses to *naskh*, we are left with a vexing problem. We have seen that Saadya seems to force it into *Beliefs and Opinions* in a fairly awkward manner, and he oddly uses it in his commentary to Genesis to paraphrase a non-existent biblical promise. Why did Saadya feel the need to include this imagery?

Furthermore, whatever Saadya's reasons were for insisting on mentioning heaven and earth in this context, why did this proof of his have the influence it did? Al-Bāqillānī's phantom biblical verse, reminiscent of Saadya's argument in the commentary to Genesis, is the only proof-text that the Muslim writer cites. Saadya had other, actual, verses he used to prove that the commandments are eternal, why were al-Bāqillānī's Jewish interlocutors not using those? Ibn al-Malāḥimī and al-Ḥimmaṣī do write that Jews point to biblical descriptions of particular commandments as being "an eternal covenant" or "for all generations," which Saadya also mentions. But then they add that Jews also will mention that the laws will be in effect as long as heaven and earth last. Why would that last piece of evidence be beneficial for Jewish polemicists to use if they can instead point to those other, true quotations? And even if Netanel ibn al-Fayyumi is simply asserting that the abrogation of the Torah is preposterous, and not truly

attempting to “prove” that, why does he invoke heaven and earth in particular, instead of incorporating quotations from actual verses?

We cannot definitively answer these questions, but it might be possible to suggest a potential explanation for all this with ramifications for our study of Maimonides’ third principle of enumeration. Perhaps already by the time of Saadya Gaon, there was a tradition among Jewish disputants to cite the eternity of heaven and earth in their refutations of abrogation, and all the above references to heaven and earth were drawing from that tradition. To determine if such a tradition existed, and to figure out why and how it began, we would need to examine Jewish works on *naskh* which predate Saadya. There are not many such works which have survived, but we can indeed find one earlier Judeo-Arabic polemical work which defends Jewish law from charges that it has been abrogated, though this work was not written against Islam.

The anonymous compilation known as “The Account of the Disputation of the Priest [*Qiṣṣat Mujādalat al-Usquf*],” or *Sefer Nestor ha-Komer* in its Hebrew translation, was likely composed in the ninth century, and represents one of the earliest explicit Jewish polemical works.<sup>224</sup> In it, the author refutes the Christian charge that the laws of the Torah have been cancelled. He argues that it is clear from the gospels that Jesus himself did not intend to get rid of these laws. The author proceeds to offer almost an exact translation of Matthew 5:17-18, in which Jesus announces that he did not come to change anything in the Torah, and that, as this work puts it, “the heaven and earth will change [*tataghayyar*] and the Torah of Moses will not

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<sup>224</sup> It is difficult to definitively prove when this work was composed; see *The Polemic of Nestor the Priest*, eds. Lasker and Stroumsa (Jerusalem: Ben Zvi Institute, 1996), vol. 1, 15-19, for more on this. Ultimately, Lasker and Stroumsa suggest that the author was influenced by the anti-Christian polemics of Dāwūd al-Muqammaṣ composed in the ninth century, and they also find reason to believe that certain ninth-century Muslim polemics rely on this work. Therefore, they conclude that *Qiṣṣat Mujādalat al-Usquf* was probably written in the middle of the ninth century.

change.”<sup>225</sup> The use of these verses from Matthew, which do explicitly compare the eternity of the Torah with the permanence of heaven and earth, would have been seen by Jewish polemicists as a fantastic way to counter Christian claims that the commandments of Judaism have been abrogated. It is not surprising, then, that these verses appear with some frequency in later Jewish polemics against Christianity.<sup>226</sup>

It is possible that this quotation from Matthew ensured that referring to heaven and earth became an important weapon against abrogation in the Jewish polemical arsenal. Its appearance in this anonymous account demonstrates that it made itself into the Judeo-Arabic world at a relatively early stage, and Jewish participants in disputations with Christians would likely have invoked this New Testament verse often. Of course, with regard to abrogation, Jews faced a battle on two fronts. Refuting Christian claims would not have been good enough if Muslim ones went unchallenged, and citing Matthew in response to Islamic arguments would have been an awkward exercise. The obvious rhetorical benefit of using the New Testament against Christians would not apply in disputes with Muslims, and if Jews invoked a verse from the Gospels to prove the eternity of the Torah, it might have implied that they accepted the authority of that verse. Additionally, if a Jewish scholar was writing for an audience of his own coreligionists in order to strengthen their faith in the eternity of the Torah, that writer might try to show that Scripture itself promises that the laws would be in effect for eternity. In this case as well, a verse from the Gospels would not have the power to prove that, as Jews did not accept the authority of the New Testament. Therefore, Jewish polemicists would not have quoted Matthew directly when arguing for a Muslim or Jewish audience. Nevertheless, it is likely that they did not want to

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<sup>225</sup> *The Polemic of Nestor*, vol. 2, 36.

<sup>226</sup> See Berger, *The Jewish-Christian Debate*, 312, and Boušek, “The Abrogation,” 35 n. 35, for some examples.

abandon completely the powerful imagery of the eternity of heaven and earth, especially if that imagery had become a standard feature of arguments against abrogation due to its efficacy in disputes with Christians.

Perhaps we can explain the constant mentions of heaven and earth in this way; that association had become such an important element of the Jewish response to challenges to the Torah's eternity that it was used even when the New Testament source could not be cited. If true, this can explain why Saadya himself, in his commentary to Genesis, only uses the heaven and earth imagery to describe God's promise that the Torah would not be abrogated, eschewing the other proofs he uses in *Beliefs and Opinions*, proofs which utilize actual biblical citations. Perhaps he is simply echoing, in brief, a common way to refer to the Torah's immunity to *naskh* without spending too much time citing verse after verse. This might also help us understand why, in *Beliefs and Opinions*, Saadya felt the need to construct a syllogism and force the verses from Jeremiah into it. He surely knew that no verse in the Hebrew Bible explicitly uses the eternity of heaven and earth in describing the permanence of the laws,<sup>227</sup> but if there was this tradition to mention heaven and earth as a rejection of *naskh*, perhaps he felt that he could not simply ignore it. So he did the best he could to work that imagery into an argument from Scripture, resulting in

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<sup>227</sup> Strangely, Sabine Schmidtke seems unfazed by references to biblical verses which invoke the eternity of the heaven and earth as a model for the eternity of the Torah. She notes that there is no verse which reads exactly as quoted in the Muslim sources she analyzes, but she does point to various verses to which these references could, she contends, plausibly allude. See Schmidtke "Abū al-Ḥusayn al-Baṣrī," 569, where she writes that this imagery "is frequently employed in the Bible to designate the eternal validity of the Mosaic law." The article she co-authored with Camilla Adang makes a similar claim; see "'Mu' tazīlī Discussions," 711. However, the verses she offers as examples simply do not contain this imagery. The closest verse she quotes, appearing in both articles, is Exodus 20:11, which reads "honor your father and mother in order that your days be lengthened on the land which the Lord your God gave you." There is no mention of heaven here at all, and the reference to land, *adamah* in this case, is not part of a comparison to the permanence of that land. Additionally, this verse refers to a particular commandment, honoring one's parents, not the Torah as a whole. The other verses cited in those articles, Exodus 31:16-17 and Deuteronomy 4:2, have even less of a connection to this imagery.

his assertion that since the Jewish people will last forever, the law of that people must last forever as well.

We may be able to go further in reconstructing the history of this comparison to heaven and earth. The verse from Matthew would not have been citable in many cases, as described above, but there is reason to believe that Jews actually did look for a verse in the Hebrew Bible which used the imagery of heaven and earth to describe the eternity of the laws of the Torah. There is some evidence that the verse on which some may have settled was the one used by Maimonides in his third principle of enumeration, Deuteronomy 11:21. That verse describes the reward for obeying God's commandments,<sup>228</sup> "in order that your days and the days of your children be increased on the land that God swore to your ancestors to give to you, as the days of the heavens on the earth." This passage can be interpreted in several different ways, though there is a strong tradition that the promise is longevity for individuals; "in order that your days...be increased" means "in order that you will live a long life."<sup>229</sup> However, another plausible explanation of this verse is that if the Israelites obey God's commandments, they will maintain their dominion in the Land of Israel as long "as the days of the heavens on the earth." Saadya himself implies this interpretation in *Beliefs and Opinions*, when, while not in the context of *naskh*, he quotes Deuteronomy 11:21. He goes on to explain that since the Jewish people sinned,

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<sup>228</sup> There is a traditional interpretation of this verse that assumes this is the reward specifically for the commandment to place a *mezuzah* on one's doorpost, the commandment referenced in the previous verse, 11:20; see, for two examples, Babylonian Talmud, Shabbat 32b and Kiddushin 31a. However, not all talmudic interpretations think 11:21 is so limited; for instance, Babylonian Talmud, Berakhot 8a cites this verse in a way which seems to imply that it is the promised reward for generally keeping to God's instructions.

<sup>229</sup> All three talmudic references in the previous note seem to interpret it this way. Maimonides himself, in a letter, actually uses this verse to show that obeying the commandments leads to long life; see *Igrot*, ed. Shailat, 268. And even though this is a rabbinic interpretation, it seems Qirqisani was convinced of it as well; see *Kitāb al-Anwār*, 272-273. If this interpretation is correct, then the reference to "the land that God swore...to give to you" might imply that this reward of longevity would only apply to those living in the Land of Israel. The talmudic passage on Berakhot 8a assumes this caveat, as it records that the Palestinian sage R. Yoḥanan was surprised to hear that there were elderly people in Babylonia.

“their state expired and their kingdom ended [*inqaḍat dawlatuhum wa-zāla mulkuhum*].”<sup>230</sup> This interpretation might be useful in disproving the abrogation of the Torah, as it would imply that the Torah could last forever; the Jewish people will remain in the Land as long as the commandments are kept properly, and that could last as long “as the days of the heavens on the earth.”<sup>231</sup>

There are actually indications that this verse did have a history of getting conscripted into the fight against *naskh*. First, Saadya himself may reference it in his commentary to Genesis. While he does not directly quote any verse when he invokes the eternity of heaven and earth, he uses a strange formulation. He does not mention “the heavens *and* the earth,” but rather “the heavens *on* the earth [*al-samawāt ‘ala-l-’ard*].” That is not a common way of expressing this, and brings to mind the formulation of that verse in Deuteronomy, “as the days of the heavens on the earth.”

Additionally, al-Bāqillānī’s argument in *Kitāb al-Tamhīd* might demonstrate that he heard Deuteronomy 11:21 used in this context. We have seen that he begins the section on scriptural denials of *naskh* with a non-existent biblical quotation which mentions heaven and earth. He offers a few responses, one of which consists of challenging the authenticity of that quotation. Echoing a common Muslim claim, he asserts that the Torah has been subject to an untrustworthy transmission history; it does not have, in the terminology of Islam, a reliable *tawātur*.<sup>232</sup> Therefore, he contends that Moses probably never actually uttered this statement that the Torah will never be abrogated. Al-Bāqillānī goes on to say that Jews who do not lie about

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<sup>230</sup> *Ha-Nivhar*, 253.

<sup>231</sup> Of course, as we will explore shortly, since this verse seems contingent on the commandments being followed, it does not truly refute the notion that they could be abrogated.

<sup>232</sup> For more on Muslim challenges to the *tawātur* of Jewish Scripture, see Lazarus-Yafeh, *Intertwined Worlds*, 41-47.

their Scripture will admit that the quotation in question is actually “if you follow me in what I have commanded you and what I have prohibited from you, your kingdom [*mulkukum*] will be established like the heavens and the earth are established.”<sup>233</sup>

Adang dismisses this quotation as equally inaccurate, and suggests that al-Bāqillānī favors this one simply because it does not disprove abrogation in the way the first quotation did.<sup>234</sup> Al-Bāqillānī does scoff that there is nothing in this new formulation which would preclude *naskh*, so it does fit his polemical purposes better. That does not mean, however, that he invented it. As it happens, this quotation is not terribly far from Deuteronomy 11:21 even if, as Adang is correct to note, the exact phrasing does not appear in the Bible. It is not too great a jump from a guarantee that the Israelites will remain in the Land of Israel as long as “the days of the heavens on the earth” to a promise that their “kingdom will be established like the heavens and earth are established.” Recall Saadya’s interpretation of this verse, in which he states that due to the sins of the people, “their kingdom ended.” This might suggest that al-Bāqillānī was aware that his first quotation was inaccurate, and also that he had heard Deuteronomy 11:21 mentioned in refutations of *naskh*.

To return to Saadya, briefly, there is good reason for him to have decided against using this verse. Al-Bāqillānī himself, assuming that he was thinking of Deuteronomy 11:21, remarked that it does not exclude *naskh*, and while he does not explicate that, we can easily understand his claim. The verse indicates that if the Jewish people obey the commandments, they will remain in the Land as long as the heavens are on the earth. This would indeed imply that in such a case, the commandments would also last forever, and so might be a good choice for countering claims of

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<sup>233</sup> Al-Bāqillānī, *Kitāb al-Tamhīd*, 179-180.

<sup>234</sup> Adang, *Muslim Writers*, 212.

abrogation. However, it also implies that if the commandments are *not* obeyed, the Jews would not remain on the Land. Saadya himself uses this verse as an example of a promise that is contingent; if the people sin, their dominion in the Land will end.<sup>235</sup> In that case, would the commandments still be permanent? The verse does not absolutely deny that they would, but it certainly does not exclude the possibility that they could be abrogated. Perhaps for this reason, Saadya purposely avoided it, even while he maintained the imagery of heaven and earth.

However, despite the above problem with deploying this verse against *naskh*, it was definitely used in this way by at least one Jewish polemicist, albeit one living in a different era and different environment. This represents, in addition to my interpretations of Saadya's specific formulation of "the heavens *on* the earth" and of al-Bāqillānī's second quotation, another piece of evidence that this verse Maimonides quotes in our principle had been adopted as a proof-text against *naskh*. In late thirteenth-century Catalonia, Solomon b. Abraham ibn Adret (Rashba) wrote his *Treatise on the Ishmaelite*, a response to a Muslim polemical work, probably by ibn Ḥazm, that had been shown to him.<sup>236</sup> In addressing the claim of abrogation, ibn Adret twice cites Deuteronomy 11:21. First he simply alludes to it in an argument similar to Saadya's in the commentary to Genesis. Ibn Adret explains that abrogation of a law might be possible if there is no accompanying statement that it will not be abrogated. But if "a particular law or a particular Torah" is said to be in effect "generation after generation, 'as the days of the heavens on the earth,'" that law or that Torah cannot be abrogated. He then explicitly invokes this verse when he

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<sup>235</sup> See above, 182, n. 128.

<sup>236</sup> While *Ma'amar 'al Yishmael* was almost certainly written by Rashba, there is a view that it was not. For this opinion see Moshe Zucker, "Birurim be-Toledot ha-Vikukhim ha-Datiyyim she-ben ha-Yahadut ve-ha-Islam," in *Sefer Ha-Yovel le-khevod Aharon Kaminka* (Vienna: 1973), 41, note 1 [Hebrew section]. For a defense of the view that this work was indeed written by Rashba, see Roth, "Forgery and Abrogation," 222-226, as well as Martin Jacobs, "Interreligious Polemics in Medieval Spain: Biblical Interpretation between Ibn Ḥazm, Shlomoh ibn Adret, and Shim'on ben Ṣemaḥ Duran," in *Gershom Scholom (1897-1982): In Memoriam*, Vol. 2, ed. Joseph Dan (Jerusalem: Hebrew University of Jerusalem, 2007), 46-49.

says that God has indeed made such a promise about the Torah of Moses. Aside from referencing the common biblical phrase “eternal law [*huqqat olam*] for your generations,” which we have seen Maimonides himself quote for this purpose in *Mishneh Torah*, he cites Deuteronomy 11:21 almost in full.<sup>237</sup> It is possible that ibn Adret himself selected this verse as a proof-text, without having seen it anywhere else. However, it seems more likely that he was drawing from previous responses to *naskh*, and his use of this verse shows that there may have been a tradition among Jewish apologists to cite Deuteronomy 11:21 in this context. While al-Bāqillānī is correct to note that it does not actually preclude *naskh*, of all the verses in the Torah, this one comes the closest to comparing the eternity of the Law to the eternity of heaven and earth. If Jews engaged in interreligious polemics wanted to conscript a verse from the Hebrew Bible to use in this way, Deuteronomy 11:21, the verse quoted in Maimonides’ third principle of enumeration, would have been their best choice.

## Conclusion

It should be evident that Maimonides’ discussion of temporary commandments draws heavily from the extensive tradition of the Muslim-Jewish debate on *naskh*. Maimonides’ reference to the power of the Sinaitic revelation in establishing the Torah’s eternity, as well as the verses he cites, should call to mind Jewish responses to the accusation that the Torah has been abrogated. As Saadya did, he mentions Deuteronomy 33:4, which refers to the Torah as an “inheritance,” and also like Saadya, he pivots from there to the heaven and earth imagery.<sup>238</sup>

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<sup>237</sup> See the edition of the *Ma’amar ‘al Yishmael* in Joseph Perles, *R. Salomo b. Abraham b. Adereth: Sein Leben und seine Schriften* (Breslau: 1863), 23-24 in the Hebrew pagination. The citation of this verse reads “in order that your days and the days of your children be increased on the land, etc., as the days of the heavens on the earth.”

<sup>238</sup> Saadya seems to separate them, treating the “inheritance” verse and the heaven and earth imagery as two distinct proofs for the eternity of the Torah. Maimonides, on the other hand links the two. The Torah is an inheritance, “and what is called ‘inheritance’ is something that lasts throughout the generations, as He said ‘as the days of the heavens

It is possible to downplay, at least somewhat, these connections to *naskh* literature. Perhaps he is merely borrowing some arguments from the debate over abrogation because they are similarly useful for establishing his primary concern in this principle; demonstrating that the 613 commandments do not include any temporary laws. Again, the surface meaning of Maimonides' statement here is not related to *naskh*. For instance, Deuteronomy 33:4 is the verse the Talmud uses to prove that there are 613 commandments, so Maimonides seems to simply be arguing that the *taryag* must not include any temporary ones, since the biblical basis of there being 613 commandments calls them an inheritance.

However, given the relevance of *naskh* to a discussion of temporary commandments, it seems more likely that he was purposely addressing that issue, even if his chief purpose here is to argue against previous commandment enumerators who, he thought, counted temporary commandments. In other words, there is significance in his borrowing these proofs from previous works on *naskh*. It is no accident that he appealed to Sinai here in the way that he did in the *Epistle to Yemen*, nor is it a coincidence that he employs the heaven and earth imagery, so common in the debate about the Torah's abrogation, and cites the Torah referring to itself as an "inheritance." Temporary commandments were firmly linked to the issue of *naskh*, with some Muslim writers conceiving of abrogated laws in Islam as always having been intended as temporary. Maimonides' discussion of the seven nations in positive commandment 187, and its similarity to ibn Ḥazm's work on *naskh*, further indicates that Maimonides' conception of temporary commandments was not unrelated to *naskh*. And considering the state of the

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on the earth." It is possible, though not absolutely necessary, to read Maimonides as using Deuteronomy 11:21 to prove, not that the Torah is eternal, but that an inheritance lasts forever. In other words, the two verses, 33:4 and 11:21, need to be used together. In any event, despite this possible difference, the relationship to *Beliefs and Opinions* should be clear.

ubiquitous debate on abrogation in Jewish sources, whether in pushing back against Islamic polemics or in writing about different camps within Judaism, the question of *naskh* could not be ignored. This does not mean that Maimonides specifically wrote this principle in order to deal with *naskh*. He probably set out to write it for the purpose he mentions explicitly, to show that the 613 commandments only include permanent laws. But he could not ignore the implications of his work in this principle. In bringing up the concept of temporary commandments, he had to at least offer an implicit argument against *naskh*.<sup>239</sup> By showing that they do not belong in the 613 commandments, which comprise the extent of the “principal Law-giving” at Sinai, he tacitly rejects the idea that Judaism contains abrogated laws.

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<sup>239</sup> This connection between abrogation and temporary commandments was not significant only in the Muslim world. Maimonides’ Provençal contemporary, Jacob b. Reuben, includes a denial of the Christian notion that the laws of the Torah had expired in the second chapter of his polemical work against Christianity. In the course of his argument, Jacob feels the need to bring up the issue of temporary commandments like the order to “construct a tabernacle” (Exodus 26:1). Those cases are different, he says, because they were obviously commanded to be carried out immediately. Additionally, given our discussion of anti-abrogation biblical prooftexts, we should note that Jacob offers only two verses as proof that the Law is permanent, Jeremiah 33:25 and Isaiah 59:21. The proof from the former verse is predicated on a comparison between the commandments and the heavens and earth. See Jacob b. Reuben, *Milhamot ha-Shem*, ed. Judah Rosenthal (Jerusalem: Mossad ha-Rav Kook, 1963), 31.

### **Conclusion: Rediscovering Revelation and the Benefits of Harnessing *Usūl al-Fiqh***

Why did Maimonides write *Sefer ha-Mitsvot*? The first chapter of this dissertation raised this question, but after having analyzed the impact of Maimonides' Islamic milieu on this work, perhaps we are now in a better position to offer a further suggestion. In adapting some concepts of *uṣūl al-fiqh* to his project, Maimonides demonstrates an interest in tracing the law back to its original source in the Torah, an interest which may have played a part in motivating him to write this work in general, and the introductory principles in particular. We will shortly explore this possibility, but it is worth resetting the question of Maimonides' motivations in order to appreciate the implications of his adapting Islamic legal theory.

As discussed in chapter one, Maimonides himself explained his reasons for embarking on this project in his introduction to the book. He states that he first wrote out his list of the 613 commandments as a handy method to guarantee the comprehensiveness of his great legal code, *Mishneh Torah*, and then decided to expand it into a full treatise when he realized that his readers would question the ways his choices differed from those of his predecessors in the field of commandment enumeration. This explanation seemed to have satisfied his premodern readers, as it went unchallenged for hundreds of years. The notion that a scholar of Maimonides' stature would devote considerable time and energy to identifying precisely which laws constitute the list of 613 commandments to which the Talmud refers seemed wholly reasonable even to his fiercest critics.<sup>1</sup> Nahmanides, who led the charge in critiquing Maimonides' claims in *Sefer ha-Mitsvot*, did not question the point of the work. Even as he opened by probing the degree to which one should take seriously the Talmud's specific sum of 613, Nahmanides closes his critique by

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<sup>1</sup> While there were some medieval Jewish scholars who denied that the Talmud's reference to 613 commands should be taken literally (see above, 15-16), I have not found any premodern writer who questions why Maimonides thought it worthwhile to write this work.

listing the commandments which he claimed Maimonides forgot in order to make up for the ones he thought Maimonides added incorrectly,<sup>2</sup> thereby ensuring that his own list contained exactly 613 commandments.

In the 20<sup>th</sup> century, readers of *Sefer ha-Mitsvot* began to question why Maimonides would have bothered to write this work. Rabbi Yeruham Fishel Perla, in the introduction to his breathtakingly expansive commentary to Saadya Gaon's poem listing the commandments, mentions that "many have asked" why medieval Jewish writers, Maimonides included, spent so much time on commandment enumeration. After all, all laws are binding, whether or not they happen to fit the criteria of the 613 commandments. Perla goes on to answer that anyone who truly analyzes the works of these writers will see that "this question only comes from ignorance," since the very project of making sure that the number of commandments equals 613 considerably affects the details of the legal system. After all, if one scholar thinks a certain law constitutes a commandment and another scholar disagrees, the latter would need to fill in the resulting gap with a different law, sometimes leading to counting something as a binding law which others think is not. Perla gives the example of the Torah's approval in Deuteronomy of eating meat outside the context of sacrifices.<sup>3</sup> Saadya, the *Halakhot Gedolot*, and others count this as a commandment, but all other medieval enumerators consider this to be a matter of permission; one *may* eat meat for one's own pleasure, but one is not *commanded* to do so. Perla thus explains the important ramifications of counting the commandments—the process of doing so impacts

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<sup>2</sup> See Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 243-254 for the positive commandments Nahmanides adds, and 395-414 for the negative commandments.

<sup>3</sup> For more on this issue, see below, 269, n. 115.

decisions about whether something is binding or not and impacts the very substance of halakhah.<sup>4</sup>

It may be accurate to state that certain disagreements between enumerators constitute disagreements about whether something is a law or not, but many such disagreements simply reduce to questions about what types of laws may be counted among the 613. For example, Maimonides takes previous enumerators to task for counting the recitation of the book of Esther on the holiday of Purim as a commandment. Yet he does not mean to say that this recitation does not represent a binding law, he simply thinks it does not belong in the list of 613 because it is not a biblical commandment. Those who do count it would also classify it as a rabbinic, and not biblical, law, but would argue that it still merits a place on the list.<sup>5</sup> It is hard to find a real legal disagreement here; the question of whether megillah recitation deserves mention in the count of 613 commandments would seem to have no actual legal consequences. Perla might respond that there are ramifications elsewhere since, if one were to subtract the commandment of megillah recitation, it would be necessary to add another commandment, potentially leading to counting something as legally binding when it would not otherwise be seen as such.

Yet, even if we accept Perla's argument, the best it can do is explain some legal ramifications of commandment enumeration once undertaken. It is unlikely that Maimonides, or anyone else, would initially set out to use the medium of listing commandments as a vehicle for expressing legal disagreements. While it is true that the pressure of reaching a specific number of commandments could have influenced medieval writers in deciding whether something constitutes a binding law or not, that does not mean that the genre of commandment enumeration

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<sup>4</sup> See Perla, *Sefer ha-Mitsvot la-Rasag*, 56-57.

<sup>5</sup> See above, 108-109.

itself was undertaken for the purposes of making legal arguments. Those arguments would likely have been made, at least explicitly, on the merits of the case in question and by summoning evidence from the Talmud and other legal sources.<sup>6</sup>

So we are left with our original question: why did Maimonides write this book? As mentioned in chapter one, Maimonides' own stated reasons do not truly suffice. Friedberg's point that compiling a list of the 613 commandments would not actually have helped Maimonides ensure that *Mishneh Torah* covered the entirety of the law is undoubtedly correct.<sup>7</sup> And Halbertal's argument that an intellectual "riddle" like deciding which of the many laws in halakhah deserve to be counted as commandments would not have been enough to inspire Maimonides to compose this work without another reason certainly rings true.<sup>8</sup> We have seen both Halbertal's and Friedberg's suggestions as to why Maimonides penned *Sefer ha-Mitsvot*, but having explored the ways Maimonides adapts some elements of *uṣūl al-fiqh*, I now wish to put forth another explanation. I do not mean to exclude any other reason Maimonides may have decided to write this work, as there were likely a number of factors which contributed to his feeling this project to be a necessary undertaking. I intend, rather, to contribute to a more

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<sup>6</sup> On the other hand, see above, 24-25, for Friedberg's contention that Maimonides wrote *Sefer ha-Mitsvot* in large part to introduce belief in certain theological tenets into the legal system. However, as I remarked there, it seems unlikely that Maimonides would have gone to the effort he did in writing this work for the sake of a few commandments, so Friedberg's suggestion should not be seen as the key to Maimonides' motivation in composing *Sefer ha-Mitsvot*. Additionally, the commandments to which Friedberg refers are themselves mentioned in the Talmudic passage about the 613 commandments, so using the genre of commandment enumeration to make the legal argument that these beliefs are binding would make sense in this case. In other words, the evidence from the Talmud that these are commandments comes in the form of the passage about 613 commandments. Using commandment enumeration to make a legal argument about other laws, like eating meat for pleasure, would not be as effective.

<sup>7</sup> See above, 24.

<sup>8</sup> See above, 22.

complete understanding of the nexus of motivations which drove Maimonides to enter the fray of commandment enumeration.

By the time Maimonides was active, while Jewish biblical exegesis was flourishing, *legal* biblical exegesis had effectively ceased, at least for the Rabbanite majority of which Maimonides was a leading member. As far as the law is concerned, the Talmud had already provided the last word on how to interpret the Torah. When medieval Jewish scholars, Maimonides included, wrote responsa on legal matters, they rarely cited biblical verses, instead focusing on rabbinic sources. It would not be much of an exaggeration to say that the text of the Torah itself had become essentially irrelevant to legal discussions. In matters of law, the meaning of the Torah had been decided centuries before Maimonides was alive. That is not to say that legal deliberation had ceased. On the contrary, the Jewish legal debate in the 12<sup>th</sup> century was as robust as it had ever been, but that debate was almost exclusively concerned with interpreting the Talmud and other rabbinic sources.

In a number of his works, Maimonides stresses the primacy and importance of the Mosaic revelation and the record of that revelation as manifested in the text of the Torah.<sup>9</sup> Against the aforementioned trend to sideline Scripture in legal contexts, Maimonides applies his emphasis on Moses' prophecy to his legal works as well. *Mishneh Torah* consciously avoids citing rabbinic sources but persistently quotes verses from the Torah as prooftexts, thereby reversing the relative places of the Talmud and the Bible in legal discourse, foregrounding the Torah and hiding the rabbinic sages.<sup>10</sup> Sometimes, he will even cite a verse that is not explicitly

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<sup>9</sup> See above, 143, n. 31.

<sup>10</sup> Of course, Maimonides will often codify a law by directly copying the formulations of the Talmud, but he does not, with some exceptions, quote the rabbi who says it or even mark it as a quote at all. His citations from the Torah, on the other hand, are framed unmistakably as quotations, often introduced by "as it says [*she-ne'emar*]."

cited by the Talmud as a prooftext. For example, to bolster his statement that it is a commandment to mourn the death of one's relatives, he cites Leviticus 10:19, "if I had eaten the sin-offering today, would it have been good in God's eyes?"<sup>11</sup> The quote is from Aaron's question to Moses in the aftermath of the deaths of the former's sons Nadab and Abihu, when Aaron and his remaining sons did not eat of the sacrifices brought to the Tabernacle. Moses confronts them for shirking their responsibilities, and Aaron responds that it would be inappropriate to go about his regular duties so soon after his sons' deaths. The Talmud never cites this as a source for a commandment to mourn,<sup>12</sup> and Maimonides' commentators struggle to figure out how and why Maimonides is reading this as a prooftext for the law about mourning.<sup>13</sup> This represents an illustrative model of the exegetical element which Maimonides weaves into *Mishneh Torah*.<sup>14</sup> It also underscores Maimonides' determination—perhaps even desperation—to have the text of the Torah brought to bear on matters of halakah, even if that means Maimonides has to adduce scriptural citations not mentioned by the Talmud in its discussion of the topic in question.

*Sefer ha-Mitsvot* goes further, not only embedding quotations from the Torah in its codification of the individual commandments, but, in its introductory principles, explaining how one should go about mining the scriptural text to uncover commandments. Maimonides goes to great lengths to explain how to read the Torah—from understanding the difference between a law explicitly stated in the text and one which the rabbis derived through *qiyās*, to recognizing

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<sup>11</sup> *Mishneh Torah, Hilkhhot Evel* 1:1.

<sup>12</sup> See, though, the commentary of David ben Zimra (Radbaz) for a reasonably plausible explanation for how Maimonides read a talmudic passage in Babylonian Talmud, *Zevaḥim*, 100b—which quotes this verse—in a way which steered him toward citing it in this context.

<sup>13</sup> See, for example, Yosef Karo's *Kessef Mishnah* commentary to *Hilkhhot Evel* 1:1.

<sup>14</sup> For more on the exegetical contributions of *Mishneh Torah*, see Twersky, *Introduction to the Code*, 176-187, and *passim*.

when a command in the Torah was meant to be temporary, or general, or merely a reason for a law and not the law itself. He expounds on the meaning of an imperative in the Torah, demonstrating in the fifth principle that it does not necessarily indicate a command and warning in the eighth principle that a prohibition can be easily confused with a negation. Again, for Rabbanites, this would not have been important, at least from a legal standpoint, as the Talmud had already decided all these questions with regard to specific laws.

Maimonides constantly portrays his disagreements with his predecessors as arguments about how to read the Torah, rather than as disputes about the law itself.<sup>15</sup> For example, in the fifth principle, he accuses his counterparts of thinking that if the Torah phrases something as a prohibition, it belongs in the count of 613. Yet, he argues, these passages often represent reasons for previously stated commandments, not separate commandments. He triumphantly concludes his principle by taunting his predecessors, remarking that if one were to ask them what these phrases actually prohibit, they will have no answer. He must, however, have known that they may indeed have had an answer, as Nahmanides works to show in his critique of this principle. The dispute, in truth, does not boil down to a quarrel about how to read the Torah. Instead, it centers on a disagreement about how to understand the rabbinic passages which interpret these verses; do the rabbis treat them as introducing new laws or not?<sup>16</sup> Maimonides, though, frames this as a disagreement about how to interpret the Torah itself, shunting aside the more legally relevant questions of interpreting the Talmud and keeping the focus squarely on how the text of the Mosaic revelation informs our understanding of the law.

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<sup>15</sup> See above, 96, n. 140.

<sup>16</sup> See Nahmanides, *Sefer ha-Mitsvot*, ed. Chavel, 67-79, for Nahmanides' discussion of the rabbinic sources.

Maimonides may have been so concerned with preserving the place of the Torah in legal discourse in order to demonstrate that Rabbanites too, and not only Karaites, saw Scripture as important to praxis. Additionally, this may be yet another function of Maimonides' aforementioned tendency to emphasize the greatness of Moses and his prophecy whenever possible. Maimonides could have been driven by one or both these factors, factors which might be related to each other in any event, or there could have been other reasons leading him to continuously look to the Torah in his legal expositions. Whatever the reason, it is interesting to note *how* he ends up connecting the substance of the commandments to the scriptural text. The Talmud does not self-consciously address why it interprets the Torah the way it does in most cases, and certainly does not discuss this issue as systematically as Maimonides would probably have appreciated.

So, if the rabbis themselves do not provide an adequate guide to extracting law from the text of the Torah, where could Maimonides have found one? As luck would have it, he lived in the Islamic world of the twelfth century, a world in which *uṣūl al-fiqh* represented an important religious science. Muslim legal theorists who engaged in its study were dedicated to explaining how to move from point A—the sources of the law such as the Quran and *sunna*—to point B—the details of positive law.<sup>17</sup> In the course of their writings, they offered directives on how to establish a source's authority, how to weigh various sources in relation to each other, how to interpret sources, and, in the case of *qiyās*, how to evaluate the power of interpretation itself.

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<sup>17</sup> One can reasonably question whether the science of *uṣūl al-fiqh* always truly acted as a guide to deriving new law from these sources, or if it provided a *post facto* justification for laws already established (as Maimonides seems to have been doing in the introduction to *Sefer ha-Mitsvot*), or some other option. For more on this, see Jackson, "Fiction and Formalism," and throughout the presentation of the discussions at the ALTA conference in the same volume, 385-429. This question does not truly bear on our discussion though, since what interests us is the function that *uṣūl al-fiqh* was *said* to have by its exponents; namely, providing directives for evaluating and interpreting the sources of the law for the purpose of legislation.

Maimonides, it seems, found this model useful. As emphasized in the third chapter of this dissertation, he did not simply transfer the rules of *uṣūl al-fiqh* to his own project, but adapted them in creative ways. Nevertheless, a reader familiar with the techniques and tools of Islamic legal theory will recognize their marks on Maimonides' introductory principles of enumeration.

To return to Maimonides' motivation in writing *Sefer ha-Mitsvot*, his use of *uṣūl al-fiqh* seems to show a desire to link law to revelation. The emphasis on revelation is key here.

Maimonides is not employing elements of Islamic legal theory to construct law, as he excludes many binding laws from his count; rather, he is using them to identify commandments. This leads us back to Friedberg and Halbertal; if *Sefer ha-Mitsvot* is not a book of law, per se, what is the point of it? Why play this game of picking out the laws which make up the count of 613? The answer to that may lie in Maimonides' constant revisiting of the text of the revelation. The 613 commandments seem to represent the units of legal revelation to Moses. True, there exist other laws, but while they may be obligatory, they are not revelatory. *Sefer ha-Mitsvot* represents Maimonides' attempt at uncovering the substance of the Mosaic revelation at Sinai, a task he would certainly have found worthwhile. And he seems to have gone about this task, at least partially, with the aid of some tools adapted from the Islamic science of *uṣūl al-fiqh*.

## Appendix A: An Edition of the Introduction to *Sefer ha-Mitsvot*

### Previous Editions

This edition of the Judeo-Arabic text of Maimonides' introduction to *Sefer ha-Mitsvot* is derived from twelve of the earliest complete, or nearly complete, manuscripts of the introduction listed in the catalog of the Institute for Microfilmed Hebrew Manuscripts (IMHM) at the National Library of Israel (NLI). It improves on the two currently available editions of this work in terms of the accuracy of transcription, the number of manuscripts consulted, and the more appropriate weight given to the Oxford manuscript described below. It also begins to broadly identify two scribal traditions in copying this work, though more work needs to be done to complete a full stemmatic analysis. We will return to this in the descriptions of the manuscripts consulted.

A survey of the two publications of the Judeo-Arabic text of *Sefer ha-Mitsvot* reveals the need for a new edition. The first, edited by Moïse Bloch and published in 1888, made use of three manuscripts, one at the Oxford Bodleian library, one in the Royal Library of Berlin (now known as the Berlin State Library), and one from the Séminaire Israélite de Paris. Bloch also relates that he consulted a manuscript from the library of Baron David Guenzburg in Paris, which, he reports, “almost always corresponds to that of the Seminary.”<sup>1</sup> Bloch provides citations from library catalogs of Oxford and Berlin, respectively, and according to these citations, he used Oxford, Bodleian Library, MS. Poc. 239<sup>2</sup> and Berlin, Staatsbibliothek, MS. Or. Qu. 575.<sup>3</sup> Both of these also feature in this new edition, and information about each appears in

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<sup>1</sup> Bloch, *Le Livre*, xxix-xxx.

<sup>2</sup> See *Catalogue of the Hebrew Manuscripts in the Bodleian Library*, ed. Adolf Neubauer (Oxford: Clarendon Press, 1886), vol. 1, column 176, no. 858.

<sup>3</sup> See *Verzeichniss der hebräischen Handschriften*, ed. Moritz Steinschneider (Berlin: 1878), 69, no. 102. There seems to be some confusion regarding the Berlin manuscript Bloch uses. He simply refers to it as “un ms. de Berlin,” and notes its location in Steinschneider’s catalog. His citation from that catalog points to MS. Or. Qu. 575, and that manuscript does match the textual variants he quotes from his Berlin manuscript. Nevertheless, Mordechai

the section below describing the manuscripts consulted. As for the manuscript from the Séminaire Israélite de Paris, Bloch seems to refer to a manuscript currently in the library of the Alliance Israélite Universelle.<sup>4</sup> Bloch likewise does not identify the Guenzburg manuscript, though he remarks that he finds it similar to the Paris manuscript and assumes they represent two copies of the same source. The Guenzburg collection, now housed at Moscow's Russian State Library,<sup>5</sup> contains several manuscripts of the Arabic text of *Sefer ha-Mitsvot* according to the NLI catalog, though I did not have the opportunity to look at these to determine which, if any, Bloch used. As discussed below, we can reasonably consider the Oxford manuscript the most important extant manuscript. Nevertheless, since we have access to many other ones today, relying only on the few manuscripts Bloch uses does not provide the best chance for an accurate edition of the text.

The other available edition of the Judeo-Arabic text of *Sefer ha-Mitsvot*, compiled and edited by Joseph Kafih, improves on Bloch's text. Kafih published his version in 1971, primarily basing it on a manuscript copied by his ancestor in 1492 and passed down in the family for

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Cohen writes that Bloch's Berlin manuscript "may be" a different one, Staatsbibliothek, MS. Or. Qu. 684; see Cohen, *Opening the Gates*, 516, n. 2. Additionally, the catalog of the NLI, in its entry for a different manuscript (Jerusalem, National Library of Israel, MS. Heb. 8°5234), reports that that one is a copy of MS. Or. Qu. 684—the one to which Cohen refers—made for Bloch's use in compiling his edition. I have not yet been able to review MS. Heb. 8°5234 to see which Berlin manuscript it actually follows, but the evidence I have seen all indicates that Bloch's Berlin manuscript is MS. Or. Qu. 575, not MS. Or. Qu. 684. Again, his citation of Steinschneider's catalog points to the former, as does the text he attributes to it. Also, Bloch remarks that the Berlin manuscript is missing the beginning of the introduction, a description matching MS. Or. Qu. 575, whereas MS. Or. Qu. 684 contains the entire introduction.

<sup>4</sup> Paris, Alliance Israélite Universelle, MS. 32. See Moïse Schwab, "Les Manuscrits et les Incunables Hébreux de la Bibliothèque de l'Alliance Israélite," *REJ* 49 (1904): 275. The NLI catalog states that this is a copy of the Oxford manuscript, but Bloch writes that only the sections originally missing from the Paris manuscript were copied and then added to the manuscript by B. Goldberg; see Bloch, *Le Livre*, xxx, n.1. Goldberg writes about receiving this manuscript and his desire to fill in its lacunae in accordance with the Oxford manuscript in *Ha-Magid*, Wednesday, October 9, 1861, 254.

<sup>5</sup> For more on this collection, see Benjamin Richler, "Microfilming the Baron Guenzburg Collection of Hebrew Manuscripts in the Russian State Library in Moscow," *Judaica Librarianship* 8.1-2 (Spring, 1993-Winter 1994): 142-144.

almost five hundred years.<sup>6</sup> Kafih writes that he did consult other Yemenite manuscripts of *Sefer ha-Mitsvot* in his possession, but he did not find any variants of sufficient significance for him to mention individually. He also occasionally cites Bloch's text when it differs from his own, though he dismisses Bloch's work as being full of "mistakes which stemmed from misreadings of the manuscript." Additionally, Kafih mentions variants from the Oxford and Berlin manuscripts quoted in Bloch's apparatus, even as he registers particular displeasure with the former, remarking that the Oxford manuscript is replete with "mistakes and errors, and most variants Bloch cites are simply inaccuracies."<sup>7</sup>

Shortly after Kafih's edition appeared, Joshua Blau reviewed it.<sup>8</sup> In that review, he welcomes the publication of a new edition given the inadequacies of the first, specifically noting that Bloch often mistakenly "corrected a large number of 'deviations' from literary Arabic."<sup>9</sup> Additionally, as Kafih did, Blau expresses disappointment with the transcription errors in Bloch's text. Nevertheless, he takes Kafih to task for citing variants from that edition without consulting Bloch's manuscripts themselves, thereby transferring those mistakes from Bloch's text to Kafih's.<sup>10</sup> This represents an especially frustrating element of Kafih's edition. As much as he decries Bloch's carelessness, Kafih relies entirely on Bloch when evaluating the manuscripts used in that earlier edition; he did not look at them himself. Neglecting the manuscripts leads not only to the problem Blau mentioned, Kafih's preservation of Bloch's errors, but it also means that Kafih cannot offer true evaluations of them. This becomes important when, as mentioned

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<sup>6</sup> Jerusalem, Joseph Kafih, MS. 66.

<sup>7</sup> See *Sefer ha-Mitsvot*, ed. Kafih, 11 [introductory pagination].

<sup>8</sup> Joshua Blau "A New Edition of *Sefer ha-Mitsvot*" [Hebrew], *Leshonenu: A Journal for the Study of the Hebrew Language and Cognate Subjects* 37.4 (1973): 291-302.

<sup>9</sup> Blau sees this as characteristic of Judeo-Arabic scholarship in Bloch's time, though he gives Bloch credit for grasping the idiosyncrasies of Judeo-Arabic better than his contemporaries generally did.

<sup>10</sup> See Blau, "A New Edition," 292.

above, he disparages and dismisses the Oxford text. Since my edition of the introduction prioritizes that manuscript, it is worth addressing Kafih's concerns.

Kafih's undeniable expertise in Judeo-Arabic literature means that his readers would be forgiven for accepting his judgement, but Kafih's impression of this manuscript is filtered through Bloch's text, leading Kafih to underestimate the Oxford manuscript's importance. Aside from improperly relying on Bloch for the text of this manuscript, Kafih also sometimes misinterprets Bloch's apparatus and attributes formulations to the Oxford manuscript which Bloch did not intend. An example of this appears in just the second reference to this manuscript in Kafih's edition. In the section in which Maimonides describes how he settled on the structure of *Mishneh Torah*, he writes the phrase, as Kafih presents it, "*al-peraqim aletī fī tilka-l-jumla,*" and Kafih notes that the Oxford manuscript has the masculine *aledhī* instead of *aletī*.<sup>11</sup> However, had he looked at that manuscript himself, he would no doubt have seen that it unmistakably reads *aletī*. His confusion seems to have come from a reading of Bloch's edition. On this phrase, Bloch notes a textual variant of *aledhī* here, though he neglects to identify the manuscript in which that word appears.<sup>12</sup> Apparently, Kafih assumed Bloch was referring to the Oxford text, perhaps because Bloch's previous note marked a variant from that manuscript. As it happens, of all the manuscripts I consulted, *only* the Oxford manuscript and Kafih's manuscript have *aletī*.<sup>13</sup> In fact, according to my preliminary findings below, Kafih's manuscript appears to belong to the same scribal tradition as the Oxford one does. Of course, that fact itself does not speak to the accuracy of the Oxford manuscript, but if Kafih had looked at it himself and seen its similarities to his

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<sup>11</sup> *Sefer ha-Mitsvot*, ed. Kafih, 4, n. 19 in the Judeo-Arabic notes.

<sup>12</sup> *Le Livre*, ed. Bloch, 3.

<sup>13</sup> In my text, I have chosen to use *aledhī*, siding with the preponderance of textual witnesses. Blau writes that he would have selected *aletī*, though he displays some ambivalence regarding this preference; see Blau, "A New Edition," 296-297, n. 64.

own, he might have altered his negative perception of the Oxford text. Moreover, Kafih's resolute allegiance to Yemenite manuscripts, particularly to those of his own family, means that he instinctively undervalues textual evidence from other sources. The disregard Kafih displays for the Oxford text, the only manuscript I have seen which is not written in Yemenite handwriting, may stem from his favoring of the Yemenite tradition.<sup>14</sup>

In his review, Blau credits Kafih's edition as being "far superior to what had been available," yet he concludes that it leaves much to be desired.<sup>15</sup> To demonstrate this point, Blau goes so far as to offer an alternative presentation of the first few pages of the introduction to *Sefer ha-Mitsvot*,<sup>16</sup> correcting some of the errors made by Kafih and Bloch, submitting a more precise account of the textual variants, and including references to his own grammar of Judeo-Arabic when relevant.<sup>17</sup> Blau's assessment of Kafih's work describes it well. It represents a significant upgrade from Bloch's publication, but it leaves the reader wishing for a still better text. It is my hope that the following edition of the introduction begins to fill that role.

### **The Manuscripts**

As mentioned above, this edition is compiled from twelve manuscripts, and generally speaking, we can organize them into two groups of six. We can still find plenty of variation within each group, and each manuscript will, at times, share a formulation with the other group and not with the members of its own. However, overall, enough instances exist where the text splits between these two groups, six manuscripts have one formulation and six have another, to allow us to

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<sup>14</sup> Even if Kafih did not see the handwriting of the Oxford manuscript, since it was not among his collection of Yemenite copies of *Sefer ha-Mitsvot*, his preference of Yemenite manuscripts would still work to the Oxford text's disadvantage.

<sup>15</sup> Blau, "A New Edition," 302.

<sup>16</sup> Blau, "A New Edition," 294-302.

<sup>17</sup> Blau, *A Grammar*.

preliminarily organize the manuscripts according to this division. Due to the lack of consistent identifying characteristics for either one, I will simply refer to them as Group A and Group B. What follows is a description of each manuscript, categorized according to which group of six it belongs. Within each group, I have organized them chronologically, to the extent we can know their chronological order, and I have labeled them with the shelf number and the microfilm number at the IMHM. The initial Hebrew letter preceding the shelf number refers to the letter representing the manuscript in the apparatus to the text of this edition. The orthographical notes reflect my observations of the introduction in each manuscript; obviously, if we were to take the entire work into account, we might obtain a better picture of these manuscripts' respective scribal features.

#### Group A

⌘ Oxford, Bodleian Library, MS. Poc. 239 (IMHM 21619)<sup>18</sup>

This manuscript contains 187 folios, with the actual text of *Sefer ha-Mitsvot* beginning on 8b. From 2a-7a, it includes an introductory table of the commandments drawn as a grid made up of individual squares, each containing the letter or letters corresponding to the number of the commandment, with a few words of the Scriptural source for the commandment at the top of the square. Starting at 185b, a different scribe takes over, and he marks the beginning of each commandment with its number, contrary to the practice of the scribe who penned the majority of this document. So, for example, on 185b, we find ...**שנו** ואלמצוה אלסאדסה ואלכמסין ואלתלת מאיה... whereas earlier in the manuscript, that initial number does not appear before the word **וואלמצוה** which begins each commandment. This manuscript, the only one I consulted not written in the

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<sup>18</sup> Because of the weight I am giving this manuscript, I will describe it in greater detail than the others I consulted.

Yemenite style,<sup>19</sup> presents orthographical features unique among the manuscripts used for this edition. It uses כ for both خ and ك, and it also does not differentiate between ذ and د, both are represented by ז. Additionally, it does not mark the dagger alif in ذلك, so while all the other manuscripts consistently write דאלך, this manuscript shows דלך. Another uniqueness is its marking of غ and ج; this manuscript uses ג for غ and ג for ج, while the rest of the manuscripts have that reversed, with ג for ج and ג for غ. Furthermore, it is consistent in using ט for ظ; a few other manuscripts occasionally use ט like this, but this manuscript is the only one to do this for every instance of ظ. The other ones, either exclusively or predominantly, use צ for ظ.

According to the colophon written on the last page, this manuscript dates to 1277, making it the earliest available textual witness to the introduction to *Sefer ha-Mitsvot*. The colophon reads:

ונשלם זה הספר מצות לרבנו משה הרב הגדול המעוז המגדול יחי לעד אמן  
 בן כגן מרנו ורבנו מימון הרב זצל והוא לבחור הכשר המבין  
 המשכיל הוא ניהו מרנ ורב צדוק הלוי שצ בן כבוד מרנא ורבנ זכאי ביר  
 שמריה הרב זל ונפשו לתחיה

After this, a note appears in the margin written in what looks like the same hand, though in a more casual manner:

קובלת חסב אלטאקה  
 פי שנת אתקפח  
 לשט

The first page contains information about the ownership of this manuscript, though it is not entirely legible.<sup>20</sup> At the top of the page, the name [...] עוויאל בר יהוש[...] appears, and farther down, a longer inscription reads:

קניתיו מן [...]
   
אלדי עמאלהא [...]
   
צדקה בן אלש [...]

<sup>19</sup> The NLI catalog describes the script style as *mizrahit*.

<sup>20</sup> In the following transcription, the symbol [...] represents text that is either cut off or illegible.

וּכְתַב עֲבַד הָאֵל [...]   
 בִּירְבֵנוּ יְהוֹשֻׁעַ   
 הַנְּגִיד רֹאשׁ יִשְׁיב [...]   
 שֶׁל תּוֹרַת נֶכֶד רַבֵּינוּ [...]   
 הַגָּאוֹן בִּירְבֵנוּ מִיְמוֹן   
 זְצוּקָל

Since this inscription has only survived with significant lacunae, we cannot know the nature of this manuscript's relationship to Yehoshua ha-Naggid, if it indeed had such a relationship.

Nevertheless, the mention of Maimonides' great-great-grandson in the record of this manuscript's provenance might give it some more weight.<sup>21</sup>

ב Berlin, Staatsbibliothek, MS. Or. fol. 4215 (IMHM 1857)

Containing 165 folios, this manuscript is missing the beginning of the introduction. According to its colophon, it was written in 1328 and, like all the other manuscripts aside from the Oxford one described above, it is written in Yemenite script. It shares many of its orthographical characteristics with all the other manuscripts I consulted, again, excepting the Oxford one. For instance, כּ is used for ك and ס for خ, נ represents נ, and ל is used for ج while ל is for غ. As for features it does not share with all the other Yemenite manuscripts, the scribe will sometimes write ם for the final alif in هـ, though he usually uses א. For ם, this manuscript usually uses ם without any diacritics, and for ظ, the scribe will sometimes write ם and sometimes ם.

ב Berlin, Staatsbibliothek, MS. Or. Qu. 575 (IMHM 1735)

This, Bloch's Berlin manuscript, consists of 162 folios. It is missing the beginning of the introduction to *Sefer ha-Mitsvot*, and the first folio is comprised of a page from the introduction to Maimonides' *Guide of the Perplexed*. Per the NLI catalog, it dates from the fourteenth or

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<sup>21</sup> For more on Yehoshua, see S.D. Goitein, "The Twilight of the House of Maimonides" [Hebrew], *Tarbiz* 54.1 (1984): 67-104.

fifteenth century. This manuscript, like the previous one in this section, uses both  $\dot{\text{z}}$  and  $\ddot{\text{z}}$  for  $\text{ظ}$ , and usually—though not always—marks  $\text{ﺺ}$  with  $\text{ﻥ}$  without diacritics.

ת New York, JTS, MS. 6996 (IMHM 43272)

Consisting of 83 folios, this manuscript is dated to the fourteenth or fifteenth century by the NLI catalog and begins with a table of the commandments. It uses  $\dot{\text{z}}$  for  $\text{ظ}$  and  $\text{ﻥ}$  for  $\text{ﺺ}$ .

ו New York, JTS, MS. 6998 (IMHM 43274)

This manuscript contains 162 folios, and has several sections missing, including the beginning, the end, and some pages in the middle. It uses  $\dot{\text{z}}$  and  $\ddot{\text{z}}$  interchangeably to refer to  $\text{ظ}$ , and generally uses  $\text{ﻥ}$  without diacritics to refer to  $\text{ﺺ}$ . The NLI catalog dates this manuscript to the fourteenth or fifteenth century as well.

ך Jerusalem, Joseph Kafih, MS. 66 (IMHM 32306)

This manuscript, upon which Kafih primarily based his text, consists of 123 folios. It was written in 1492, though the first folio seems to have been written by a later Yemenite scribe. It contains many marginal corrections in different hands, including, according to the notes in the NLI catalog, Kafih's own. It is missing part of the ninth introductory principle, and negative commandments 49 to 65 are out of order. One of its unique properties, at least among the manuscripts I consulted for this edition, lies in its use of  $\text{ﻥ}$  for  $\text{ﺺ}$ . Also, like all the other manuscripts, it will sometimes double a letter receiving a *shadda* and sometimes it will not, but in this manuscript, the scribe often places a *shadda* mark above the letter whether or not it is also doubled. The final alif of  $\text{ﻛﻧﺎ}$ ,  $\text{ﻭﺍﻧﺎ}$ , or  $\text{ﻫﻧﺎ}$  is sometimes represented by  $\text{ﻥ}$  and sometimes  $\text{ﻛ}$ .

### Group B

א New York, JTS, MS. 6548 (IMHM 41433)

Dated to 1351, this manuscript begins with a table of the commandments and contains 169 folios. For ם, it generally uses ם, though when in the construct form, the scribe sometimes replaces that with ן.

⚭ New York, JTS, MS. 6997 (IMHM 43273)

This manuscript consists of 88 folios, is missing the beginning and end of the work, and many folios have been shuffled into the wrong order. The introduction begins at 29a and goes through 29b, then, skipping some some text, begins again at 22a. The manuscript is in order through 28b, and it then picks up at 38a through 41b, before skipping back to 30a-b. It skips some text and begins again at 42a, going through 43b. The text continues on 31a through 36b and then jumps to 44a, proceeding in order for the rest of the introduction. With regard to its orthography, the scribe sometimes places a *shadda* mark above a letter. He marks Arabic vocalization at times, and when he quotes Hebrew text, he sometimes inserts Hebrew vocalization. For ם, the manuscript uses ם, ם, and sometimes ן for the construct form. While ط is generally represented by ץ, the scribe will use ם at times. The NLI catalog dates this manuscript to the fourteenth or fifteenth century.

⚭ New York, JTS, MS. 6999 (IMHM 43275)

Dated to 1423, this manuscript contains 167 folios, and begins with a list of the commandments. The scribe will sometimes use a *shadda* mark, whether he doubles the letter or not.

⚭ Bnei Brak, Yosef Iraqi Ha-Cohen, MS. 203 (IMHM 73308)

This manuscript consists of 140 folios, beginning with a table listing the commandments, and was written in 1464. The scribe uses both ם and ם for ם, and when in construct form, the scribe sometimes writes ן. He also uses both ך and ך for the final letter of *הַזֶּה*, *אִדָּא*, and *כִּנָּא*. This

manuscript will often use  $\aleph$  as a final letter instead of  $\aleph$ ; so, for example, we find many instances of the word  $\aleph\aleph$ , as opposed to  $\aleph\aleph$ .

א Berlin, Staatsbibliothek, MS. Or. Qu. 684 (IMHM 1799)

This manuscript contains 174 folios, was completed in 1491, and begins with a table of the commandments. The final alif in  $\aleph\aleph$ ,  $\aleph\aleph$ , and  $\aleph\aleph$  is generally represented by  $\aleph$ , though at times we find  $\aleph$  in this position.

ב London, David Solomon Sassoon, MS. 1058 (IMHM 9804)

Beginning with a table of the commandments, this manuscript consists of 123 folios. The NLI catalog dates it to the fifteenth century. The scribe uses  $\aleph$  for the final alif in  $\aleph\aleph$ ,  $\aleph\aleph$ , and  $\aleph\aleph$ , and when  $\aleph$  is in the construct form, he represents it with  $\aleph$ .

### **This Edition**

The following edition of the introduction to *Sefer ha-Mitsvot* takes several factors into account in presenting this text. If an overwhelming majority of textual witnesses exists in a particular instance, I prefer to follow that majority, though I give more weight to the Oxford manuscript given its early date and its mention of Yehoshua ha-Naggid in the note on its ownership. As a result, I generally side with Group A, which also includes א, the second-earliest manuscript available. In some cases, I also choose the Oxford text even if only one or two other manuscripts share its variant. Lastly, I use my own judgement at times in deciding which variant to place in the body of the text.

In this presentation, I have standardized the spelling according to general convention in modern scholarship, and for the sake of ease in typing, I have used ' after a letter instead of  $\aleph$  above the letter; so,  $\aleph$ =ג,  $\aleph$ =ד,  $\aleph$ =ז,  $\aleph$ =ח,  $\aleph$ =ט,  $\aleph$ =י,  $\aleph$ =כ,  $\aleph$ =ל,  $\aleph$ =מ,  $\aleph$ =נ,  $\aleph$ =ס,  $\aleph$ =ע,  $\aleph$ =פ,  $\aleph$ =צ,  $\aleph$ =ק,  $\aleph$ =ר,  $\aleph$ =ש,  $\aleph$ =ת. In the apparatus below the text, I similarly

standardize the spelling unless I am citing only one manuscript or a few manuscripts which use the same spelling, in which case I try to keep the spelling of the original. I have also standardized the representation of the tetragrammaton as "י"י", added paragraph breaks, and inserted some punctuation.

Aside from the Oxford text, all other manuscripts<sup>22</sup> introduce the text with the opening:

קאל כבוד גדולת קדושת מרינו ורבינו משה הרב הגדול בישראל הפטיש החזק יהי שמו לעולם בר כבוד גדולת קדושת מרינו ורבינו מימון הרב הגדול החכם והנבון תנצב"ה<sup>23</sup>

This opening is itself preceded by the phrase "בשם י"י אל עולם",<sup>24</sup> a standard header for

Maimonidean texts.<sup>25</sup> As the manuscripts which include this pious *basmallah* have it above the opening of ... קאל כבוד, which Maimonides himself clearly did not write, it is possible that "בשם י"י אל עולם" similarly represents a later scribal addition. More evidence for this comes from the

Oxford manuscript, which does not include this *basmallah* and opens simply:

קאל רבינו משה הרב הגדול ירום הודו חמוד רבינו מימון הרב המובהק זצ"ל

Yehoshua ha-Naggid was asked about the honorific גדולת כבוד and the epithet פטיש החזק at the beginning of *Sefer ha-Mitsvot*, and he explains the symbolism in those phrases.<sup>26</sup> Interestingly, of all the manuscripts I have seen, the one which mentions Yehoshua's name is alone in *not* opening the work this way. As that manuscript is the only non-Yemenite one I consulted, and the question to Yehoshua came from the Yemenite Jewish community,<sup>27</sup> perhaps, we can

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<sup>22</sup> Excluding, of course, those missing the beginning of the text.

<sup>23</sup> תהא נפשו צרורה בצרור החיים ה' spells out.

<sup>24</sup> ת has בשם י"י צבאות אל עולם, and ל has בשם רחמן מלא רחמים above the line מְגַי עַל אֱלֹהִים (vocalization in original).

<sup>25</sup> See Steven Harvey, "Maimonides and the Art of Writing Introductions," in *Maimonidean Studies 5*, eds. Arthur Hyman and Alfred Ivry (New York: Michael Scharf Publication Trust of Yeshiva University, 2008), 87-88.

<sup>26</sup> See Yehoshua ha-Naggid, *Teshuvot R' Yehoshua ha-Naggid (al-Masā'il)*, ed. and trans. Yehuda Ratzaby, (Jerusalem: Makhon Mishnat ha-Rambam, 1989), 95 for the Judeo-Arabic and 31 for Ratzaby's Hebrew translation. The question is asked in a way which indicates that the questioner believed Maimonides himself wrote this opening, and see 31, n. 1, in which Ratzaby cites a version of this question which asks why Maimonides glorified himself so much here, to which Yehoshua responds that Maimonides was not the one to write this introductory formula.

<sup>27</sup> See Ratzaby's introduction to Yehoshua, *Teshuvot R' Yehoshua ha-Naggid*, 14-15.

hypothesize that this prefatory formula was added in Yemen and became part of the Yemenite scribal tradition for *Sefer ha-Mitsvot*.

### The Judeo-Arabic Text

אנה למא תקדם<sup>28</sup> לנא אלתאליף אלמשהור<sup>29</sup> אלדי צ'מנאה תפסיר ג'מלה' אלמשנה, וכאן גרצ'נא פי ד'לך אלתאליף אלאקתצאר עלי תביין מעני הלכה הלכה מן אלמשנה, ולם יכון קצדנא פיה אסתיעאב פקה כל שריעה וחצר כל מא יחתאג' אליה מן אסור ומותר וחייב ופטור, כמא יבין למן ינט'ר<sup>30</sup> פי ד'לך אלתאליף, ראית איצ'א באן אג'מע מג'מועא יחתוי עלי ג'מלה' אחכאם אלשריעה ואעמאלהא חתי לא ישד' ענה שאד'. ואן<sup>31</sup> אתחרי פיה מא מן<sup>32</sup> עאדתי אן אפעלה מן תרך ד'כר אלאכ'תלאפאת ואלאקאויל אלמדפועה, ואן לא את'בת פיה גיר הלכה פסוקה. ואן יכון ד'לך אלמג'מוע משתמל עלי ג'מיע אחכאם שריעה' משה רבינו אלדי<sup>33</sup> יחתאג' פי זמאן אלגלות מנהא ואלדי<sup>34</sup> לא יחתאג'. וחסן ענדי אן אסקט מנה אלסנד ואלאסתדלאל בד'כר ראוי אלרואיאת, חתי לא אקול דברי ר' פלוני ולא ר' פלוני אומר כך וכך ענד כל קול וקול. בל אד'כר חכמי משנה וחכמי תלמוד כלהם עליהם אלסלאם ד'כרא מג'מלא פי אול אלמג'מוע, ואקול אן אחכאם אלשריעה כלהא, והי<sup>35</sup> תורה שבעל פה, מרויה ען פלאן ופלאן ען פלאן אלי עזרא<sup>36</sup> אלי משה רבינו. ואד'כר מע כל שכ'ץ מן אלראויין אלאשכ'אץ אלמשהיר אלמעאצרין<sup>37</sup> לה אלראויין מת'ל רואיתה<sup>38</sup>, הד'א כלה טלב אלאיג'אז.

וכד'לך ראית באן לא אולפה בלסאן כתב אלתנזיל אד'י<sup>39</sup> תצ'יק בנא אליום תלך אללגה אלמקדסה ען תכמיל מעאני אלפקה בהא. ולא איצ'א אולפה בלגה' אלתלמוד אד' לים יפהמהא<sup>40</sup> מן אהל מלתנא אליום אלא אחאד, ותשד' כלמאת כת'ירה ותצעב ולו עלי אלמברזין פי אלתלמוד. בל אולפה בלגה' אלמשנה כי יסהל ד'לך עלי אכת'ר<sup>41</sup> אלנאס. ואסתועב פיה כל מא צח וצפא מן אקאויל אלשריעה, חתי לא תשד' מסאלה מחתאג' אליהא אלא ואל'כרהא, או אד'כר אצל תסתכ'רג' בה תלך אלמסאלה בסהולה דון נט'ר בעיד, לאן גרצ'י פיה איצ'א אלאיג'אז מע אלחצר, חתי יכון קאריה קד אחאט בכל מא יוג'י פי אלמשנה ואלתלמוד וספרא<sup>42</sup> וספרי ואלתוספתא, נעם ובכל מא חדקה אלגאונים אלמתאכ'רין ז"ל, ומא ביינוה ושרחיה מן אסור ומותר וטמא וטהור ופסול וכשר וחייב ופטור ומשלם ואינו משלם ונשבע ופטור מלשבע. ובאלג'מלה אנה לא יחתאג' בעד אלתורה כתאב אכ'ר סואה ליתעלם מנה שי ממא ילזם פי ג'מלה' אלשריעה<sup>43</sup> בין מדאוריתא בין מדרבנן.

<sup>28</sup> [למא תקדם] ק: למא קד תקדם ("קד" בשוליים)

<sup>29</sup> [אלמשהור] ה: (חסר)

<sup>30</sup> [ינט'ר] ה: נצ'ר

<sup>31</sup> [ואן] א: (חסר)

<sup>32</sup> [מא מן] א: מן מא

<sup>33</sup> [אלדי] א: לאלדי

<sup>34</sup> [ואלדי] א: ואלדי

<sup>35</sup> [והי] א: והיא

<sup>36</sup> [ען פלאן ופלאן ען פלאן אלי עזרא] ר: ען פלאן ופלאן אלי עזרא

<sup>37</sup> [אלמעאצרין] נ: אלמעאצרין, ר: אלמעאצרין

<sup>38</sup> [רואיתה] ת,ג,ג,ר,ל: רואיתה

<sup>39</sup> [אד'] ר: (חסר)

<sup>40</sup> [יפהמהא] ל: מן יפהמהא

<sup>41</sup> [אכת'ר] ת: (חסר)

<sup>42</sup> [וספרא] א: סיפרא

<sup>43</sup> [אלשריעה] נ: הד'ה אלשריעה

פלמא קצדת בפכריי<sup>44</sup> הד'ה אלגאיה, ג'אל ד'הני פי וג'ה תקסים הד'א<sup>45</sup> אלדיואן ותבויבה<sup>46</sup> כיף ינבגי אן<sup>47</sup> יכון. הל אקסמה מת'ל תקסים אלמשנה ואקתפי את'רהא,<sup>48</sup> או אקסם<sup>49</sup> תקסים אכ'ר ואקדם ואוכ'ר<sup>50</sup> חסב מא יקתצ'י אלנט'ר אנה אלאוילי ואלאסהל לאלתעלים? פבאן לי אן אג'וד מא כאן תקסימה אן יג'על הלכות הלכות מוצ'ע אלמסכתות מן אלמשנה, חתי יקאל פיה הלכות סוכה הלכות לולב<sup>51</sup> הלכות תפלין הלכות מזוזה הלכות ציצת. ואן<sup>52</sup> אקסם כל ג'מלה אלי פרקים והלכות כמה תפעל אלמשנה, חתי יכון, מת'לא, פי הלכות תפלין פרק ראשון ופרק שני ופרק שלישי ורביעי, וכל פרק מקסום הלכות הלכות כי יסהל חפט'ה למן אראד אן יחפט'י<sup>53</sup> שי מנה.

וביין הו אן אד'א כאנת אלקסמה הכד'א, כאן<sup>54</sup> אלמצוה אלואחדה, אמא עשה או לא תעשה, לא ינבגי<sup>55</sup> אן יקסם פקההא פי ג'מלתיין,<sup>56</sup> בל כל מא יחתאג' פיהא מן אלתקסים יכון פי אלפרקים אלד'י<sup>57</sup> פי תלך אלג'מלה. וקד תכון פי אלג'מלה אלואחדה עדד<sup>58</sup> מצוות, אמא<sup>59</sup> באן יכון להא מעני ואחד יעמהא או באן תכון מצוות כת'ירה פי גרין' ואחד. מת'לא אקול, אני אד'א תכלמת פי ע"ז, ופרהסת עלי הד'ה אלג'מלה בהלכות<sup>60</sup> ע"ז, פאני אתפקה<sup>61</sup> פי הד'ה אלג'מלה פי עדד<sup>62</sup> מצוות פי מסית ומדיח, ומעביר למולך, ומתנבא בשמה, ועובד אותה, וגיר ד'לך<sup>63</sup> ממא הו<sup>64</sup> מן אלמצוות פי גרין' ע"ז כ'אצה. וכד'לך, אד'א קלת הלכות אסורי מזבח, אתכלם פי תלך אלג'מלה עלי שאור ודבש, ובעלי מומין, ואתנן ומחיר, ונחווהא, אד' הד'ה אלמצוות כלהא להא מעני ואחד יעמהא, והו<sup>65</sup> אנהא אשיא<sup>66</sup> חרם תקריבהא.

פלהד'א אלגרין' איצ'א,<sup>67</sup> ראית אנה ינבגי אן אחצר אולא פי צדר אלכתאב עדד<sup>68</sup> אלמצוות כלהא, עשה ולא תעשה, חתי יאתי תקסים אלכתאב עלי ג'מלתהא ולא תבקא מצוה מנהא<sup>69</sup> אלא וקד תכון<sup>70</sup> אסתועבנא אלכלאם פי פקההא. אמא במפרדהא, מת'ל אלסוכה, ואללולב<sup>71</sup>, ואלציצית, ואלתפליין,<sup>72</sup> אד' כל ואחדה מנהא תחתמל אלכלאם עלי חדתהא, או עלי ג'מלה' מצוות מנהא מת'ל מא ד'כרנא. בעד אן נעדהא ונקול אן הד'ה הלכות ע"ז, פיהא כד'א וכד'א מצוות עשה

44 [בפכרי] ק: בפכרתי

45 [וג'ה תקסים הד'א] ת: וגה אלתקסים להד'א

46 [ותבויבה] פ: ופי תבויבה

47 [ינבגי אן] פ: (חסר)

48 [את'רהא] ת: את'ארהא

49 [אקסם] נ: אקסמה

50 [ואקדם ואוכ'ר] ג,ג,ה,ר,ל: ואקדם ת'ם אוכ'ר, ק: ואקדם ת'ם ואוכ'ר

51 [הלכות לולב] א: (יש קוויים מעל המלים)

52 [ואן] פ: (חסר)

53 [אן יחפט'י] א: או חפט'

54 [כאן] ל: פאן, ת: כאנת

55 [ינבגי] א: ינבגי עדה

56 [ג'מלתיין] ת: אלגמלתיין

57 [אלד'י] א,ק: אלתי

58 [עדה] א,ת: עדה'

59 [אמא] ר: (חסר)

60 [בהלכות] א: הלכות

61 [אתפקה] ק: אתפק

62 [עדה] א: עדה

63 [ד'לך] פ,ק,ג,ה,ר: תלך

64 [הו] ג,ג,ה,ר: הי

65 [והו] ק,ג,ה,ר,ל: והי

66 [אשיא] ל: (חסר)

67 [איצ'א] ק: (חסר)

68 [עדה] א,פ: עדה

69 [מצוה מנהא] ק: מנהא מצוה

70 [וקד תכון] א,פ: ונכון קד, [תכון] ק: (חסר)

71 [אלסוכה ואללולב] א: ("אלסוכה ואללולב" נמחק ובמקומו "אלשבת וקריית שמע")

72 [ואלציצית ואלתפליין] פ: ואלתפליין ואלציצית, [ואלתפליין] א: (נמחק)

והי<sup>73</sup> אלכד'א ואלכד'א, וכד'א וכד'א<sup>74</sup> מצוות לא תעשה והי אלכד'א ואלכד'א<sup>75</sup>. הד'א כלה תחרז מן אן ישד' עני שי  
לם<sup>76</sup> אתכלם פיה פאד'א חצרתהא באלמצוות אמנת מן ד'לך. פלמא תלכ'ץ לי<sup>77</sup> הד'א אלמעני<sup>78</sup>, ורמת וצ'ע אלכתאב  
וד'כר אלמצוות כלהא ד'כרא מרסלא ועדתהא<sup>79</sup> פי צדר אלכתאב, תחרכת עלי אלם קד כנת תאלמתהא מנד' סנין.

וד'לך אן אלמעדוד מן אלמצוות קד והם פיה באמור לא אקדר אצף עט'ם שנאעתהא, לאן כל מן עני בעדדהא<sup>80</sup> או בוצ'ע  
כתאב פי שי<sup>81</sup> מן הד'א אלגר'ץ, קד תבעוא כלהם צאחב הלכות גדולות. ולא<sup>82</sup> יחרפון ען אגראצ'ה פי עדדהא אלא  
תחריפא יסירא כאן אלעקול וקפת ענד קול הד'א אלרג'ל. וחתי צאחב כתאב אלשראיע אלמשהור ראיתה תנבה עלי ג'ז  
יסיר מן והם צאחב אלהלכות, ועט'ם ענדה אן יעד ביקור חולים ונחום אבלים כמא עד צאחב אלהלכות ואלד'י  
אסתעט'מה פהו<sup>83</sup> עט'ים, לכנה אתא באעט'ם מנה, ותבעה איצ'א במא הו אשנע כמא סיבין למן נט'ר פי כלאמנא הד'א.  
ועלם אלה תעאל<sup>84</sup> וכפי בה שהידא אני כל מא תפכרת פי אוהאמהם פי מא עדוה, וכונהם יעדוא<sup>85</sup> מא יבדוא באול<sup>86</sup>  
כ'אטר אן הד'י לא ינבגי עדדה, ויתבע בעצ'הם בעי' פי ד'לך מן גיר תאמל, תעט'ם ענדי מציבתנא, ונתייקן לזום  
תואעדה ת'ע לנא ותהי לכם חזות הכל כדברי<sup>87</sup> הספר החתום אשר יתנו אותו אל יודיע ספר<sup>88</sup> לאמר קרא נא זה ואמר  
לא אוכל כי חתום הוא. וכד'לך כל מא סמעת אלאזהרות אלכת'ירה' אלעדד אלמולפה ענדנא פי בלאד אלאנדלס, נהפכו  
עלי צירי<sup>89</sup>, למא נראה מן שהרה' אלחאל<sup>90</sup> ופשאה. ואן כאנוא גיר מלוומין לאן מולפיהא<sup>91</sup> שערא לא פקהא, ואלד'י  
ילזמהם מן חית' צנאעתהם. פקד אתקנוה מן עד'ובה' אלקול וחסן אלנט'אם, לכן אלשי אלמנט'ום תבעוא פיה צאחב  
הלכות גדולות וגירה מן אלפקהא אלמתאכ'רין. פלמא תפכרת פי ד'לך, ועלמת שהרה' הד'א אלמעדוד אלד'י<sup>92</sup> באידי  
אלנאס, עלמת אני אן ד'כרת אנא אלמעדוד אלחק אלד'י ינבגי אן יעד ד'כרא מטלקא דון דליל, פאן אול קאר יקראה  
יסבק אלי והמה אן הד'א<sup>93</sup> גלט, ויכון ענדה דליל אלגלט כונה עלי כ'לאף מא ד'כר פלאן ופלאן. אד' הכד'א הו עקל  
אכת'ר אלכ'ואץ פי זמאננא הד'א, אנה לא<sup>94</sup> יעתבר צחה' אלקול במענאה, בל במואפקתה<sup>95</sup> לקול מן תקדם מן גיר  
אעתיבאר לאלקול אלמתקדם, פנאהיך כיף יכון<sup>96</sup> אלג'מהור.

פלד'לך ראית אנה ינבגי אן אקדם<sup>97</sup> קבל אלתאליף אלד'י ד'כרת מקאלה<sup>98</sup>, והי הד'ה. אביין פיהא עדד אלמצוות וכיף  
ינבגי אן תעד. ואסתדל עלי ד'לך בנצוץ אלחורה ובאקאוויל אלחכמים פי תפסירהא, ואקדם אצול ינבגי אן יעתמד עליהא

73 [והי] א: והו  
74 [וכד'א] א: והד'ה ל: (חסר)  
75 [ואלכד'א] א: וכדא  
76 [לם] א: לא  
77 [לי] ת,ק: (חסר)  
78 [אלמעני] א: (נמחק ומתוקן ל"אלתריב")  
79 [ועדתהא] ק: ועדהא  
80 [בעדדהא] ג,ג,ט,ה,ה: עדדהא  
81 [שי] ל,ג,ג,ט,ה: שי מנהא  
82 [ולא] ת: ולם  
83 [פהו] פ: הו  
84 [תעאלי] ר: (חסר)  
85 [יעדוא] א: יעדון  
86 [באול] פ: פי אול  
87 [כדברי] א: בדברי  
88 [ספר] ק: הספר  
89 [עלי צירי] ק,ל: צירי עלי  
90 [אלחאל] ת,ג,ט,ג,ה,ר,ל: אלקול  
91 [מולפיהא] פ,ג,ט,ג,ה,ל: מולפיהא, ר: מוולפיהא  
92 [אלד'י] ק: אלתי  
93 [אן הד'א] ת,ג,ג,ה,ר: אנה  
94 [לא] ת: מא  
95 [במואפקתה] א: במואפקתה  
96 [כיף יכון] א: מן חאל  
97 [אקדם] ק: אקדם מקדמה  
98 [מקאלה] ק: (חסר)

פי ערך אלמנטים. פאד'א צח ערדדא מן הד'ה אלמקאלה באלדליל אלואצ'ח אלד'י לא אשכאל פיה, תביין למן קראהא כ'טא כל מן עד כ'לאף מא ערדדנאה<sup>99</sup> נחן. וליס בי אנא חאג'ה אלי אלרד<sup>100</sup> עלי שכ'ץ מעיין ולא תביין כ'טאה, אד' אלפאידה ואלגאיה אלמקצודה בהד'ה אלמקאלה תחצל לטאלבהא בגיר ד'לך. וד'לך אני<sup>101</sup> אביין אלמצוות כלהא, וערדדאה מצוה מצוה, ואסדל עלי כל מא פיה אשכאל או מא יוהם מן לא אסתצ'לאע<sup>102</sup> לה פי פקה אלשריעה, פאזיל והמה ואביין מא אשכל. וליס גרצ'י פי הד'ה אלמקאלה אלתפקה פי מצוה מן אלמצוות<sup>103</sup>, בל ערדדאה פקט. ואן שרחה מנהא שי ענד ד'כרהא, פאנמא אשרחה עלי ג'הה' שרחה אלסם חתי יעלם הד'א אלמר או אלנהי אי שי הו, והד'א אלסם עלי אי שי יקע. פאד'א חצל עלם ערדדאה באלדליל מן הד'ה אלמקאלה, חנינד' אד'כרהא ד'כרא מטלקא פי צדר ד'לך אלתאליף אלג'אמע כמא ד'כרת.

ואנא אלן אכ'ד פי ד'כר אלצול אלתי<sup>104</sup> ינבגי אן יעתמד עליהא פי ערך אלמצוות, והי ארבעה' עשר אצלא. בעד אן אקדם אן<sup>105</sup> ג'מלה' אלמצוות אלתי<sup>106</sup> ישתמל עליהא ספר התורה אלתי<sup>107</sup> שרענא אללה בהא<sup>108</sup> הי שש מאות ושלוש עשרה מצוות. מנהא מצוות עשה מאיתין ת'מאניה<sup>109</sup> וארבעין ערך עט'אם ג'סד<sup>110</sup> אלנסאן, ומנהא מצוות לא תעשה ת'לאת'<sup>111</sup> מאיה כ'מסה<sup>112</sup> וסתין והי ערך איאם<sup>113</sup> אלסנה אלשמסיה. והד'א ערך מד'כור פי נץ אלתלמוד אכ'ר<sup>114</sup> גמר מכות, קאלוא שש מאות ושלוש עשרה מצוות נאמרו לו למשה בסני שלש מאות ששים וחמש<sup>115</sup> כנגד ימות החמה ומאתים וארבעים ושמה<sup>116</sup> כנגד איבריו של אדם. וקאלוא איצ'א עלי סביל אלדרש אן כון<sup>117</sup> מצוות עשה<sup>118</sup> ערך אלעט'אם, כלומר כל<sup>119</sup> אבר ואבר אומר לו<sup>120</sup> לאדם עשה בי מצוה, וכן מצוות לא תעשה ערך איאם אלסנה, כלומר כל יום ויום<sup>121</sup> אומר לו<sup>122</sup> לאדם אל תעבור<sup>123</sup> בי עבירה. והד'א מא לא<sup>124</sup> יג'הלה אחד מן כל מן עד אלמצוות, אעני אנהא הד'א ערדדאה<sup>125</sup>. ואנמא והמוא כל אלוהם פי אלשיא אלמעודדה<sup>126</sup> כמא סיבין פי הד'ה אלמקאלה, וד'לך בגפלתהם<sup>127</sup> ען מעאני הד'ה אלצול אלארבעה עשר אלתי<sup>128</sup> אביינהא אלן.

<sup>99</sup> [ערדדנאה] ת: ערדדנא

<sup>100</sup> [אלי אלרד] פ: לאלרד

<sup>101</sup> [אני] ק: באני

<sup>102</sup> [אסתצ'לאע] ת: אסתלאע

<sup>103</sup> [אלמצוות] ל: אלמצוות כלהא

<sup>104</sup> [אלתי] פ,ק,ר: אלד'י

<sup>105</sup> [אן] ה: מן

<sup>106</sup> [אלתי] פ,ק,ה: אלד'י

<sup>107</sup> [אלתי] פ,ת: אלד'י

<sup>108</sup> [בהא] ת: בה

<sup>109</sup> [ת'מאניה] פ,ת,ה: ות'מאניה

<sup>110</sup> [ג'סד] ת: ג'סם

<sup>111</sup> [ת'לאת'] א: תלתה

<sup>112</sup> [כ'מסה] פ,ת: וכל'מסה

<sup>113</sup> [איאם] ק,ג,ג,ה,ה,ר: (חסר), פ: (כתוב מעל השורה)

<sup>114</sup> [אכ'ר] ק: פי

<sup>115</sup> [וחמש] ר: חמש, ת: וחמש מצוות לא תעשה

<sup>116</sup> [וארבעים ושמה] ל: שמונה וארבעים, פ: ושמונה וארבעים, ת: וארבעים ושמה מצוות עשה

<sup>117</sup> [כון] ה: יכון

<sup>118</sup> [עשה] ה: (חסר)

<sup>119</sup> [כל] ק: שכל

<sup>120</sup> [לו] ג,ג,ה,ה,ר: (חסר)

<sup>121</sup> [ויים] נ: (חסר)

<sup>122</sup> [לו] ג,ג,ה,ה,ר: (חסר)

<sup>123</sup> [תעבור] פ: תעש, ה: תעשה, ק: "תעש" בטקסט מתוקן ל"תעבור" בשוליים

<sup>124</sup> [לא] א: לם

<sup>125</sup> [ערדדאה] א: אלעדד

<sup>126</sup> [אלמעודדה] ת: אלמעודדות

<sup>127</sup> [בגפלתהם] ל: לגפלתהם, ר: כגפלתהם

<sup>128</sup> [אלתי] ק,ר: אלד'י

ואלאצל אלאוול מנהא<sup>129</sup> אנה לא ינבגי אן תעד<sup>130</sup> פי הד'ה אלג'מלה אלמצוות אלתי הי מדרבנן.  
 ואלאצל אלתי'אני אן ליס כל מא יתעלם באחד<sup>131</sup> שלש עשרה מדות שהתורה נדרשת בהן או ברבוי ינבגי עדדה.  
 ואלאצל אלתי'אלתי' אנה לא ינבגי אן תעד מצוות שאינן נוהגות לדורות.  
 ואלאצל אלראבע אנה לא ינבגי אן תעד אלאואמר אלתי תעם אלשראיע כלהא.  
 ואלאצל אלכ'אמס אנה לא ינבגי עד<sup>132</sup> תעליל אלמצוה מצוה בפני עצמה.  
 ואלאצל אלסאדס אן אלמצוה אלתי<sup>133</sup> יכון פיהא עשה ולא תעשה, ינבגי אן יעד עשה שבה מע מצוות עשה ולא שבה מע מצוות לא תעשה.  
 ואלאצל אלסאבע אנה<sup>134</sup> לא ינבגי אן יעד<sup>135</sup> פקה אלשריעה.  
 ואלאצל אלתי'אמן אנה לא ינבגי אן יעד אלנפי מע אלנהי.  
 ואלאצל אלתאסע אנה לא ינבגי אן יעד<sup>136</sup> אללאוין ואלעשה בל אלאשיא אלמנהי ענהא ואלמאמור בהא.  
 ואלאצל אלעאשר אנה לא ינבגי עד אלתי'אלתי' אלתי הי לגאית מא<sup>137</sup>.  
 ואלאצל אלחאדי עשר אנה לא ינבגי עד אג'זא אלשריעה עלי אלאנפראד ג'ז ג'ז אד'א<sup>138</sup> כאן מג'מועהא מצוה אחת.  
 ואלאצל אלתי'אני עשר אנה<sup>139</sup> לא ינבגי אן תעד אג'זא צנאעה<sup>140</sup> מא<sup>141</sup> מאמור בעמלהא כל ג'ז עלי אנפראדה.  
 ואלאצל אלתי'אלתי' עשר אן אלמצוות לא יתכת'ר עדדהא בעדד אלתי'אלתי' תלזם פיהא תלך אלמצוה.  
 ואלאצל אלראבע עשר כיה ינבגי אן תעד אקאמה' אלחדוד במצוות עשה.  
 ואנא ארג'ע עלי תביין אצל אצל מנהא ואלאסתדלאל עליה אן שא אללה.<sup>142</sup>  
 אלאצל אלאול אנה לא ינבגי אן תעד<sup>143</sup> פי הד'ה אלג'מלה אלמצוות אלתי<sup>144</sup> הי מדרבנן.  
 אעלם אן הד'א מעני<sup>145</sup> מא כאן ינבגי אלתי'אלתי' עליה לביאנה, לאן אד'א כאן נץ אלתי'אלתי' שש מאות ושלוש עשרה מצוות נאמרו לו למשה בסיני, כיה<sup>146</sup> נקול פי שי הו מדרבנן אנה מן ג'מלה' אלעדד? לכן נבהנא עלי ד'לך לכונה קד גלט

<sup>129</sup> [מנהא] ר: (חסר)

<sup>130</sup> [תעד] ג,ל: יעד

<sup>131</sup> [באחד] ק: באחדא

<sup>132</sup> [עד] פ: אן תעד

<sup>133</sup> [אלתי] פ: אלד'י

<sup>134</sup> [אנה] ה: אן

<sup>135</sup> [אן יעד] ב: עד

<sup>136</sup> [אן יעד] ק: עד, [יעד] פ,ת,ל: תעד

<sup>137</sup> [מא] ק: אמא

<sup>138</sup> [אד'א] ר,ג: אד'

<sup>139</sup> [אנה] פ,ק,ג: אן

<sup>140</sup> [צנאעה'] ל: צנעת

<sup>141</sup> [מא] ת: (חסר)

<sup>142</sup> [אללה] ג,ט,ג,ה,ר,ל: אללה תעלי סבחאנה

<sup>143</sup> [תעד] ג,ט,ג,ה,ר,ל: יעד

<sup>144</sup> [אלתי] ר: אלד'י

<sup>145</sup> [מעני] ג,ט,ג,ה,ר,ל: אלמעני

<sup>146</sup> [כיה] ק: פכיה

פיה, ועדדוא<sup>147</sup> נר חנוכה ומקרא מגלה פי ג'מלה' מצוות עשה. וכד'לך מאה ברכות בכל יום, וניחום אבלים, וביקור חולים, וקבירת מתים, והלבשת ערומים, וחשוב<sup>148</sup> תקופות<sup>149</sup>, ושמנה עשר יום לגמור בהן את ההלל. ואעתבר ואעג'ב ממך יסמע נצהם נאמרו לו למשה בסיני, ויעד קראה' אלהלל, אלד'י סבח בה דוד אלה תעאלי, אנה שרע בה משה. ויעד נר חנוכה, אלד'י קבעו אותו חכמים פי בית<sup>150</sup> שני, וכד'לך מקרא מגלה. אמא כון משה קיל לה פי סיני אן ישרענא אן אד'א כאן פי אכ'ר דולתנא, ואעתראנא מע אליונאן כד'א וכד'א פילזמנא<sup>151</sup> אן נוקד נר חנוכה, פמא ארי אן אחד יתכ'ייל הד'א ולא יכ'טר בוהמה.

ואלד'י יבדוא לי אנהם<sup>152</sup> אוקעהם פי הד'א כוננא נבארך עלי הד'ה<sup>153</sup> אלאשיא אשר קדשנו במצותיו וציונו על מקרא מגלה, ולהדליק נר<sup>154</sup>, ולגמור את ההלל. וסואל אלתלמוד היכן צונו, וקאלוא<sup>155</sup> מלא תסור. פאן כאן עלי הד'א אלוג'ה עדוא, פינבגי אן יעדוא כל שי<sup>156</sup> הו מדרבנן, אד' כל מא אמרוא<sup>157</sup> אלהכמים בעמלה וכל מא נהונא<sup>158</sup> ענה קד אמר משה רבינו בסיני אן יאמרנא באמתת'אלה, והו ק"ו על פי התורה אשר ירוך ועל המשפט אשר יאמרו לך תעשה. ונהאנא ען מ'אלפתהם פי שי ממא<sup>159</sup> רתבוה או קאסוה<sup>160</sup>, וקאל לא תסור מן<sup>161</sup> הדבר אשר יגידו לך ימין ושמאל<sup>162</sup>. פאן כאן<sup>163</sup> יעד כל מא הו מדרבנן פי ג'מלה' שש מאות ושלוש עשרה מצוות אד' הו<sup>164</sup> דאכל תחת ק"ו תעאלי<sup>165</sup> לא תסור<sup>166</sup> ועל המשפט אשר יאמרו לך תעשה, לאי שי תכ'צץ<sup>167</sup> הד'ה דון גיראה? כמה עדו נר חנוכה ומקרא מגלה, כאן יעדון<sup>168</sup> נטילת ידיים ומצות עירוב. <sup>169</sup> נחן<sup>170</sup> נבארך אשר קדשנו במצותיו וצונו על נטילת ידיים ועל מצות עירוב כמה<sup>171</sup> נבארך<sup>172</sup> על מקרא מגלה ולהדליק נר של<sup>173</sup> חנוכה, ואלכל מדרבנן. ובביאן קאלוא מים ראשונים מצוה מאי מצוה אמר אביי מצוה לשמוע דברי חכמים, כמה קאלוא פי מקרא מגלה ונר חנוכה היכן צונו מלא תסור. וקד תביין אן כל מא ירתבוה אלאנביא עליהם אלסלאם אלקאימין בעד משה רבינו, פהו איצ'א מדרבנן. ובביאן קאלוא בשעה שתיקן שלמה עירובין וידיים יצתה<sup>174</sup> בת קול ואמרה חכם בני ושמח לבי, וביינוא פי מואצ'ע אכ'רי אן עירובין דרבנן וידיים

147 [ועדדוא] ר: ועד, ק: ועדדוא פיה  
 148 [וחשוב] ת: וחשבון  
 149 [תקופות] פ:ל, תקופות ומזלות  
 150 [פי בית] ה: בבית  
 151 [פילזמנא] א: פאלזמנא  
 152 [אנהם] ל: אנהם אנמא, ק: "אנמא" הוסף בשוליים  
 153 [הד'ה] ת: הד'א  
 154 [נר] ב,פ,ר: נר חנוכה. ג,ת: נר שלחנוכה  
 155 [וקאלוא] פ,ג,ט,ג,ה,ר,ל: (חסר)  
 156 [שי] ק: שי מא  
 157 [אמרוא] א: אמרנא  
 158 [נהונא] ר: נהו  
 159 [ממא] פ,ק: מן מא  
 160 [רתבוה או קאסוה] פ: קאסוה ורתבוה, ת: רתבוה וקאסוה  
 161 [מן] ב,ת,ק,ג,ג,ה,ר,ל: מכל  
 162 [ימין ושמאל] ב,ק,ג,ט,ג,ה,ר,ל: (חסר)  
 163 [פאן] ר: (חסר)  
 164 [הו] א: והו  
 165 [תעאלי] פ,ת: (חסר)  
 166 [תסור] נ: תסור מכל הדבר  
 167 [תכ'צץ] ג,ט,ג,ה,ר,ל: תכ'תץ  
 168 [יעדון] ת,ל: יעדוא  
 169 [ומצות עירוב] ק: וערובין  
 170 [נחן] ג,ג,ה,ר,ל: ונחן, ט: כמה נחן  
 171 [כמא] ר: וכמא  
 172 [נבארך] א: נברך  
 173 [של] פ,ר: (חסר)  
 174 [יצתה] ר,ל: יצאת

מדברי סופרים. פקד תביין לך<sup>175</sup> אן כל מא ירתב בעד משה רבינו, דרבנן יתסמי. ואנמא ביינת לך הד'א ללא<sup>176</sup> תט'ן אן מקרא מגלה אד' והו<sup>177</sup> תיקון נביאים<sup>178</sup> תעד מדאוריתא, לאן עירובין דרבנן<sup>179</sup>, ועלי אנהא<sup>180</sup> תיקון שלמה בן דוד ובית דינו.

והד'א הו אלד'י אגפל גירנא בעד<sup>181</sup> הלבשת ערומים, למא וג'ד פי ישעיה כי תראה ערום וכסיתו. ולם יעלם אן הד'א דאכ'ל<sup>182</sup> תחת ק"ו תעאלי<sup>183</sup> די מחסורו אשר יחסר לו, לאן מעני הד'א אלאמר אלד'י לא אשכאל פיה<sup>184</sup> אן נטעם אלג'יעאן, ונכסי אלעריאן, ונדפע אלפרש למן לא פרש לה, ואלגטא למן לא גטא לה, ונזוג' אלעאזב<sup>185</sup> אלגיר קאדר עלי אלזואג', ונרכב מן<sup>186</sup> עאדתה אלרכוב כמא<sup>187</sup> שהר פי נצוץ<sup>188</sup> אלתלמוד, לאן הד'א כלה<sup>189</sup> דאכ'ל תחת ק"ו תעאלי<sup>190</sup> די מחסרו<sup>191</sup>. וכאן נץ אלתלמוד ענד האולא מולפא<sup>192</sup> בלעגי שפה ובלשון אחרת, ולולא ד'לך, מא עדו מקרא מגלה ושבהה פי מצוות שנאמרו לו למשה בסיני. ונץ גמר שבועות אין לי אלא מצוות שנצטוו על הר סיני מצוות<sup>193</sup> שעתידין<sup>194</sup> להתחדש כגון מקרא מגלה מניין ת"ל<sup>195</sup> קיימו וקבלו<sup>196</sup> קיימו<sup>197</sup> מה שקיבלו כבר. והו אן יעתקדוא<sup>198</sup> כל מצוה ירתבהא אלנביאים ואלחכמים פי מא בעד.

ויא עג'בי<sup>199</sup> לאי שי עדוא<sup>200</sup> מצוות עשה אלת<sup>201</sup> הי מדרבנן, כמא ד'כרנא, ולם יעדוא איצ'א מצוות לא תעשה אלת<sup>202</sup> הי מדרבנן? וכמא<sup>203</sup> עדוא פי מצוות עשה נר חנוכה, ומקרא מגלה, ומאה ברכות<sup>204</sup>, והלל, כאנוא<sup>205</sup> יעדון איצ'א פי ג'מלה' מצוות לא תעשה עשרים שנייה בעשרים מצוות לא תעשה. לאן<sup>206</sup> כמא<sup>207</sup> כל ערוה וערוה לא תעשה דאוריתא, כד'לך כל שנייה ושנייה לא תעשה דרבנן, כמא ביינוא וקאלוא<sup>208</sup> שנייות מדברי סופרים. וקד באן פי

- 175 [לך] ג,ט,ה,ר: (חסר)  
 176 [ללא] ב,ג,ט: לילא  
 177 [והו] ה,ר: הו, ת: והי  
 178 [נביאים] ת: סופרים  
 179 [דרבנן] ב,ת,ק,ג,ג,ה: מדרבנן  
 180 [ועלי אנהא] א: מע כונהא  
 181 [בעד] א: פעד  
 182 [דאכ'ל] א: ידכל  
 183 [תעאלי] ר,פ,ט,ק: (חסר)  
 184 [פיה] ל: פיה הו  
 185 [אלעאזב] ל,ת: אלעזב  
 186 [מן] ק: מן מן  
 187 [כמא] ת: (חסר)  
 188 [נצוץ] ת: אלנצוץ  
 189 [כלה] ק: (חסר)  
 190 [תעאלי] פ,ת,ק,ג,ט,ה: (חסר)  
 191 [מחסרו] ת: מחסרו אשר יחסר לו  
 192 [מולפא] ר: (חסר)  
 193 [מצוות] ק: (חסר)  
 194 [שעתידין] ג,ט,ג,ה,ר,ל: שהן עתידין  
 195 [ת"ל] ת: (חסר)  
 196 [וקבלו] פ: וקבל היהודים  
 197 [קיימו] א,ג: וקיימו  
 198 [יעתקדו] פ: יעתקדו אן  
 199 [עג'בי] א: עג'ב  
 200 [עדו] ב: יעדו  
 201 [אלתי] ט,ר: אלד'י  
 202 [אלתי] ר: אלד'י  
 203 [וכמא] ט,ג,ה: כמא  
 204 [ברכות] ה: ברכה בכל יום  
 205 [כאנוא] ב,פ,ג,ט,ג,ה,ר,ל: כאן, ט: וכאן  
 206 [לאן] א: לאנה  
 207 [כמא] ק: (חסר)  
 208 [וקאלוא] ת: וקאל

אלתלמוד אן קול אלמשנה אסור מצוה יריד בה אלשניות, וקאל<sup>209</sup> מאי מצוה מצוה לשמוע דברי חכמים. וכד'לך כאנוא<sup>210</sup> יעדון פי אלג'מלה אחות חלוצה אלתי הי מדברי סופרים. ובאלג'מלה אנא לו עדדנא כל עשה מדרבנן<sup>211</sup> וכל לא תעשה דרבנן, לאנתהי ד'לך<sup>212</sup> אלאף כת'ירה.

והד'א אמר ביין לא כ'פי בה ג'מלה, והו<sup>213</sup> אן כל מא הו מדרבנן ליס<sup>214</sup> ינעד פי ג'מלה' שש מאות ושלוש עשרה מצוות, לאן הד'ה אלג'מלה הי כלהא נצוץ תורה, ליס פיהא שי מדרבנן כמה נביין. ואמא<sup>215</sup> כונהם יעדון בעץ' אלאשיא אלתי הי מדרבנן ויתרכון בעצהא באכת'יאר מנהם, פהו אמר לא יסע קבולה בוג'ה, קאלה מן קאלה. וקד ביינא מעני<sup>216</sup> הד'א אלאצל וברהאנה<sup>217</sup> חתי לם יבק פיה שי מן אלאשכאל עלי אחד<sup>218</sup>.

**אלאצל**<sup>219</sup> **אלת'אני** אן<sup>220</sup> ליס כל מא יתעלם באחד שלש עשרה מדות שהתורה נדרשת בהן או ברבוי ינבגי עדדה קד ביינא פי צדר תאליפנא פי שרה אלמשנה אן אכת'ר אחכאם אלשריעה יסתכ'רג<sup>221</sup> בשלש<sup>222</sup> עשרה מדות שהתורה נדרשת בהן. ואן אלחכם אלמסתכ'רג' במדה מן תלך אלמדות קד יקע פיה אלאכ'תלאף, ואן ת'ם אחכאם הי תפאסיר מרוייה ען<sup>223</sup> משה רבינו<sup>224</sup> לא כ'לאף פיהא לכנהם יסתדלוא<sup>225</sup> עליהא באחד<sup>226</sup> שלש עשרה מדות, לאן מן חכמה<sup>227</sup> אלנץ אנה ימכן אן תוג'ד פיה אשארה תדל עלי ד'לך אלתפסיר אלמרוי או קיאסא ידל עליה, וקד ביינא הד'א אלמעני הנאך. פאד'א<sup>228</sup> כאן ד'לך כד'לך פליס כל מא נג'ד אלחכמים קד אסתכ'רג'וה במדה משלש עשרה מדות נקול<sup>229</sup> אנה נאמר למשה בסיני. ולא איצ'א נקול פי כל<sup>230</sup> מא נג'דהם פי אלתלמוד יסנדונה<sup>231</sup> אלי אחד שלש עשרה מדות אנה מדרבנן, לאן<sup>232</sup> קד יכון תפסיר מרוי. פאלוג'ה פי ד'לך, אן כל מא לא תג'דה נץ פי אלתורה, ותג'ד אלתלמוד קד תעלמה באחד<sup>233</sup> שלש עשרה מדות, אן ביינו הם באנפסהם וקאלוא אן הד'א<sup>234</sup> גוף תורה או אן הד'א מדאוריתא פינבגי עדדה, אן<sup>235</sup> אלארואיין קאלוא אנה דאוריתא. ואן לם יביינו ד'לך ולא אפצחוא בה פהו מדרבנן, אד' וליס ת'ם נץ ידל עליה.

<sup>209</sup> [וקאל] פ,ק: וקאלוא

<sup>210</sup> [כאנוא] ת: (חסר)

<sup>211</sup> [מדרבנן] פ,ק: דרבנן

<sup>212</sup> [ד'לך] ק: (חסר)

<sup>213</sup> [והו] ק,ר: והי

<sup>214</sup> [ליס] ל: לא, פ: פליס

<sup>215</sup> [ואמא] ק: ואמא

<sup>216</sup> [מעני] ת: מעני

<sup>217</sup> [ובראהנה] פ,ג,ט,ג,ר,ל: וברהנאה

<sup>218</sup> [עלי אחד] ת: בוגה

<sup>219</sup> [אלאצל] א: ואלאצל

<sup>220</sup> [אן] ת: אנה

<sup>221</sup> [יסתכ'רג'] ל: תסתכ'רג'

<sup>222</sup> [בשלש] ר: באחד שלש

<sup>223</sup> [ען] ט: מן

<sup>224</sup> [רבינו] א: (חסר)

<sup>225</sup> [יסתדלוא] ר: אסתדלו

<sup>226</sup> [באחד], ת,ס,ה,ר,ל: באחד

<sup>227</sup> [חכמה'] א: חכם

<sup>228</sup> [פאד'א] ג,ט,ג,ה,ר,ל: פאן

<sup>229</sup> [נקול] ב: וקול

<sup>230</sup> [כל] ת: (חסר)

<sup>231</sup> [יסנדונה] ט,ר: יסנדוה

<sup>232</sup> [לאן] ה,ל: לאנה, ר: לכן

<sup>233</sup> [באחד] ס,ג,ר,ל: באחד

<sup>234</sup> [הד'א] ה: הו

<sup>235</sup> [אן] ב,ת,ס,ל: לאן

<sup>236</sup> [דאוריתא] פ: מדאוריתא

והד'א איצ'א אצל קד והם פיה גירנא, וד'ל'ך עד יראת חכמים פי ג'מלה' מצוות עשה. ואלד'י חמלה עלי ד'ל'ך, פי מא יבדוא לי, קול רבי עקיבה את יי"י אלהיך תירא לרבות תלמידי חכמים, פט'ן אן כל מא יחצל ברבוי הו מן אלג'מלה אלמד'כורה. ואן כאן אלאמר כמה זעמוא, לאי שי לם יעדוא כבוד בעל האם ואשת האב מצוה בפני עצמה מצ'אפה אלי כבוד אב ואם וכד'ל'ך כבוד אחיו הגדול, לאן האולא אלאשכ'אין תעלמוא<sup>237</sup> לזום אלכבוד להם ברבוי, קאלוא את אביך לרבות אחיך הגדול ולרבות בעל אמך ואת אמך לרבות אשת אביך, כמה קאלוא את יי"י<sup>238</sup> לרבות תלמידי ח"כ. פלאי שי עדוא הד'ה ולם יעדוא הד'ה?

וקד וצלת בהם אלגפלה אלי<sup>239</sup> אשד מן הד'א, וד'ל'ך אנהם<sup>240</sup> אד'א וג'דוא דרש פי פסוק ילזם מן ד'ל'ך אלדרש עמל אפעאל מא<sup>241</sup> או אג'תנאב אמור מא,<sup>242</sup> והי כלהא בלא שך<sup>243</sup> דרבנן, יעדונהא פי ג'מלה' אלמצוות, ועלי אן פשטיה<sup>244</sup> דקרא לא ידל עלי שי מן תלך אלאמור, מע אלאצל אלד'י אפאדונהא<sup>245</sup> עליהם אלסלאם, והו ק"ו אין מקרא יוצא מידי פשוטו. וכוון אל'תלמוד יבחת' פי כל מוצ'ע ויקול גופיה דקרא במאי קא מדבר אד'א וג'דוא<sup>246</sup> נץ קד תעלם מנה אשיא כת'ירה עלי ג'ה'ה' אלשרח ואלאסתדלאל. ולאעתמאדהם<sup>247</sup> הד'א אלוהם, עדוא פי ג'מלה' מצוות עשה ביקור חולים וניחום אבלים וקבירת מתים מן אג'ל אלדרש אלמד'כור פי קולה תעאלי והודעת להם את הדרך ילכו בה ואת המעשה אשר יעשון. והו ק"ו פי ד'ל'ך את הדרך זו גמילות חסדים ילכו זה ביקור חולים בה זו קבירת מתים<sup>248</sup> ואת המעשה אלו הדינין<sup>249</sup> אשר יעשון זה<sup>250</sup> לפנים משורת הדין. פט'נוא אן כל פעל ופעל מן הד'ה אלאפעאל מצוה בפני עצמה ולם יעלמוא אן הד'ה אלאפעאל<sup>251</sup> כלהא<sup>252</sup> ואשבאההא דאכ'לה תחת מצוה אחת מן ג'מלה' אלמצוות אלמנצוצה פי אל'תורה בביאן, והו קולה תעאלי ואהבת לרעך כמוך. ובהד'א אל'טריק בעינה עדו חשוב<sup>253</sup> תקופות<sup>254</sup> מצוה מן אג'ל אלדרש אלמד'כור פי ק"ו כי היא חכמתכם ובינתכם לעיני העמים, והו ק"ו איזו היא חכמה ובינה שהיא לעיני העמים<sup>255</sup> הוי אומר זה<sup>256</sup> חשוב<sup>257</sup> תקופות ומזלות. ולו אנה עד מא הו אבין מן הד'א ויוהם אנה ינבגי אן יעד אכת'ר, והו כל שי יתעלם במדה משלש<sup>258</sup> עשרה מדות שהתורה נדרשת בהן, לאנתהא עדד אלמצוות אלאף כת'ירה.

ולעלך תט'ן אנא נהרב מן עדדהא לכונהא גיר מתיקנא, וכוון אל'חכם אל'מסתכ'רג' בתלך אל'מדה צחיח או ליס בצחיח, ליס הד'ה הי אל'עלה. בל אל'עלה כון כל מא יסתכ'רג' פרוע מן אלאצול אל'תי נאמרו לו למשה בסניי בביאן, והי שש מאות ושלוש עשרה מצוות. ולו כאן אל'מסתכ'רג' משה נפסה, פאנהא לא תנעד. ודליל הד'א כלה קולהם פי גמר תמורה אלף ושבע מאות קולין וחומרין וגזירות שוות ודקדוקי סופרים נשתכחו בימי אבלו של משה ואע"פ כן החזירן עתניאל בן קנז מפלפולו שנ' ויאמר כלב אשר יכה את קרית ספר ולכדה כו' וילכדה עתניאל בן קנז. ואד'א כאנת הד'ה

<sup>237</sup> [תעלמוא] א: תעלמוא

<sup>238</sup> [י"י] ט: יי"י אלהיך

<sup>239</sup> [אלי] א: אלי מא הו

<sup>240</sup> [אנהם] א: (חסר)

<sup>241</sup> [מא] ה: אמא

<sup>242</sup> [מא] ה: אמא

<sup>243</sup> [בלא שך] ק: בלאו

<sup>244</sup> [פשטיה] א: פשטיה

<sup>245</sup> [אפאדונהא] ר: אפאדוהא

<sup>246</sup> [וג'דוא] ר: וגדנא

<sup>247</sup> [ולאעתמאדהם] ת: ולאעתמאדאתהם

<sup>248</sup> [קבירת מתים] ת: קבורה

<sup>249</sup> [אלו הדינין] ת: זה הדין

<sup>250</sup> [זה] ב, ס, ק, ג, ט, נ, ה: זו

<sup>251</sup> [אן הד'ה אלאפעאל] פ: אנהא

<sup>252</sup> [כלהא] ת: (חסר)

<sup>253</sup> [חשוב] ת, ל: חשובון

<sup>254</sup> [תקופות] פ, ת, ס, ל: תקופות ומזלות

<sup>255</sup> [העמים] ל: כל העמים

<sup>256</sup> [זה] ג, ט, ה, ר: זו

<sup>257</sup> [חשוב] ת, ל: חשובון

<sup>258</sup> [משלש] פ: מן אל'שלש

אלמנסייאת, כם תכון אלג'מלה אלתי<sup>259</sup> נסי מנהא הד'א אלעדד, לאן איצ'א מן אלמחאל אן יקאל נסי כל מא עלם. פלא שך אן כאנת תלך<sup>260</sup> אלאחכאם אלמסתכ'רג'ה<sup>261</sup> בקל וחומר ובגיראה מן אלמדות אלאף כת'ירה, והד'ה<sup>262</sup> כלהא כאנת קד<sup>263</sup> חצלת בימי משה רבינו לאן בימי אבלו<sup>264</sup> נשתכחו. פקד תביין לך אן ולו בימי משה נקול דקדוקי סופרים לאן כל מא לם<sup>265</sup> יסמעה בסיני<sup>266</sup> בביאן פהו מדברי סופרים. פקד תביין אן שש מאות ושלוש עשרה מצוות שנאמרו לו למשה בסיני לם<sup>267</sup> יעד פיהא כל מא תעלם בשלש עשרה מדות, ולו פי זמאנה עליה אלסלאם,<sup>268</sup> פנאהיך אן ינעד פי ד'לך<sup>269</sup> מא<sup>270</sup> אסתכ'רג'ה<sup>271</sup> פי אואכ'ר<sup>272</sup> אלזמאן. בל אנמא ינעד מא כאן תפסיר מרוי ענה, והו אן יביינו<sup>273</sup> אלנאקלין ויקולון אן הד'א אלשי חראם<sup>274</sup> פעלה וחרמאן ד'לך מדאורייתא או<sup>275</sup> יקולון אנה גוף תורה. פנא<sup>276</sup> נעדה לאנה עלם באלנקל לא באלקיאס, ואנמי ד'כר אלקיאס<sup>277</sup> פיה ואלאסתדלאל עליה באחד שלש עשרה מדות לאט'האר<sup>278</sup> חכמה<sup>279</sup> אלנץ, כמא ביינא פי שרחה אלמשנה.

**אלאצל**<sup>280</sup> **אלת' אלת'** אנה לא ינבגי אן תעד<sup>281</sup> מצוות שאינן נוהגות לדורות.

אעלם אן קולהם שש מאות ושלוש עשרה מצוות<sup>282</sup> נאמרו לו למשה בסיני ידל עלי כון הד'א אלעדד הו עדד מצוות הנוהגות לדורות, לאן מצוות שאינן נוהגות לדורות לא ארתבאט להא בסיני, נזלת פי סיני או פי גירה. ואנמא קצד בקול סיני לאצל אלתשריע אלד'י שרע פי סיני, והו קולה לה<sup>283</sup> תעאלי עלה אלי ההרה והיה שם ואתנה לך כ'ו. ובביאן קאלוא, מאי קראה<sup>284</sup> תורה צוה לנו משה מורשה,<sup>285</sup> יעני עדד תורה והו<sup>286</sup> שש מאות ואחת עשרה,<sup>287</sup> ואנכי ולא יהיה לך<sup>288</sup> מפי הגבורה שמעום, ובהא תמת שש מאות ושלוש עשרה מצוות. יריד בהד'א<sup>289</sup> אלסימן אן אלשי אלד'י צוה לנו משה ולם נסמעה אלא מנה הו<sup>290</sup> עדד תורה, וסמאהא מורשה קהלת יעקב, ומצוה שאינה נוהגת לדורות ליסת לנא

- [אלתי] פ:ס: אלד'י<sup>259</sup>  
 [תלך] פ: (חסר)<sup>260</sup>  
 [אלמסתכ'רג'ה] ת: מסתכ'רג'ה<sup>261</sup>  
 [והד'ה] ת: והד'א<sup>262</sup>  
 [כאנת קד] ת: קד כאנת<sup>263</sup>  
 [אבלו] ת: אבלו של משה<sup>264</sup>  
 [לם] ר: לא<sup>265</sup>  
 [בסיני] ל: פי סיני<sup>266</sup>  
 [לם] ג,ט,ג,ה,ר,ל: לא<sup>267</sup>  
 [עליהם אלסלאם] א: (חסר)<sup>268</sup>  
 [פי ד'לך] ת: (חסר)<sup>269</sup>  
 [מא] נ: כל מא<sup>270</sup>  
 [אסתכ'רג'ה] פ: אסתכ'רג'ה<sup>271</sup>  
 [אואכ'ר] ה: אוכ'ר<sup>272</sup>  
 [יביינו] ס: יביין<sup>273</sup>  
 [חראם] ר: אחראם<sup>274</sup>  
 [אן] ת,ר: אן<sup>275</sup>  
 [פנא] ק: פאנה<sup>276</sup>  
 [אלקיאס] ה: באלקיאס<sup>277</sup>  
 [לאט'האר] ת: לצ'אהר<sup>278</sup>  
 [חכמה] א: חכם<sup>279</sup>  
 [אלאצל] א: ואלאצל<sup>280</sup>  
 [תעד] פ: נעד<sup>281</sup>  
 [מצוות] ת: (חסר)<sup>282</sup>  
 [לה] א,ה: (חסר), [קולה לה] ק: קול אללה<sup>283</sup>  
 [קראה] ל: קרא<sup>284</sup>  
 [מורשה] פ: מורשה קהלת יעקב<sup>285</sup>  
 [והו] ס,ה,ר: והי<sup>286</sup>  
 [עשרה] ת,ס,ג,ט,ג,ה,ר,ל: עשרה מצוות<sup>287</sup>  
 [לך] ל: (חסר)<sup>288</sup>  
 [בהד'א] ל: בד'אלך, ר: בהא<sup>289</sup>  
 [הו] ה: והו<sup>290</sup>

מורשה, ואנמא תתסמי ירושה מא תדום מע אלאג'יאל, כמא קאל<sup>291</sup> כימי השמים על הארץ. ומן קולהם איצ'א אן כל עצ'ו ועצ'ו כאנה יאמר אלאנסאן בעמל מצוה וכל יום ויום כאנה ינהיה ען<sup>292</sup> עבירה דליל<sup>293</sup> עלי כון הד'א אלעדד לא ינקץ אבדא. ולו כאן מן ג'מלה' אלעדד מצוות שאינן נוהגות לדורות לכאנת תנקץ<sup>294</sup> הד'ה אלג'מלה<sup>295</sup> פי אלזמאן אלד'י אנקצ'י פיה לזום תלך אלמצוה, וכאן הד'א אלקול לא יתם אלא פי זמאן מחדוד.

וקד גלט<sup>296</sup> איצ'א פי הד'א אלאצל, <sup>297</sup> ועד גירנא למא צ'אק בה אלמתסע ולא יבאו לראות כבלע את הקדש, <sup>298</sup> ועד לא <sup>299</sup> יעבד עוד פי אללויים, והד'ה איצ'א<sup>300</sup> אינן נוהגות<sup>301</sup> אלא במדבר. ואן כאן קד<sup>302</sup> קיל רמז לגונב את הקסוה לא <sup>303</sup> יבאו לראות, <sup>304</sup> פכפי בק"ו רמז, ואן פשטיה דקרא ליס הו פי ד'לך. ולא הו איצ'א מן ג'מלה' מחויבי מיתה בידי שמים כמא תביין פי אלתוספתא ופי סנהדרין. ואני לאעג'ב<sup>305</sup> איצ'א מן הד'א אלד'י יעד הד'ה אללאוין, לאי שי למ יעד ק"ו פי אלמן איש אל יותר ממנו עד בקר, וק"ו ת"ע אל תצר את מואב ואל תתגר במ מלחמה, וכד'לך אלנהי אלד'י ג'א פי<sup>306</sup> בני עמון אל תצרם ואל תתגר במ. <sup>307</sup> וכאן יעד איצ'א פי ג'מלה' מצוות עשה ק"ו עשה לך שרף ושים אתו על נס, וקול' קח צנצנת אחת ותן שמה מלא העמר מן, כמא עדוא תרומת המכס וחנכות המזבח. וכד'לך<sup>308</sup> כאן<sup>309</sup> יעד<sup>310</sup> היו נכנים לשלשת ימים, ואיצ'א גם הצאן והבקר אל ירעו, <sup>311</sup> ופן יהרסו לעלת אל יי"י, <sup>312</sup> וכת'יר מת'ל הד'א. ולא ישך ד'ו<sup>313</sup> עקל פי אן <sup>314</sup> הד'ה כלהא<sup>315</sup> מצוות נאמרו לו למשה<sup>316</sup> אמר ונהי לכנהא<sup>317</sup> כלהא<sup>318</sup> לפי שעה ואינן<sup>319</sup> נוהגות לדורות פלד'לך<sup>320</sup> לא תעד.

<sup>291</sup> [כמא קאל] א: כקול', ג, ט, נ, ה, ר: כמא קאלו

<sup>292</sup> [ען] ר: ען עמל

<sup>293</sup> [דליל] ק: דליל ד'אלך

<sup>294</sup> [תנקץ] ב, פ, ק, ג, ט, נ, ה, ר: (חסר)

<sup>295</sup> [אלג'מלה] ק: אלגמלה תנקץ ("תנקץ" כתוב ביד אחרת בשוליים)

<sup>296</sup> [גלט] א: גלט גירנא

<sup>297</sup> [אלאצל] ל: אלפצל

<sup>298</sup> [הקדש] פ: הקדש ומתו

<sup>299</sup> [לא] ת: ולא

<sup>300</sup> [איצ'א] א: חסר

<sup>301</sup> [נוהגות] פ, ת, ס, ק, ה: נוהגות לדורות

<sup>302</sup> [ואן כאן קד] ת: וקד כאן

<sup>303</sup> [לא] ת: ולא

<sup>304</sup> [לראות] ג, ט, נ, ה, ר, ל: לראות כבלע את הקדש

<sup>305</sup> [ואני לאעג'ב] ת: ולאני אעגב, ה: ואני ולאעגב

<sup>306</sup> [פי] ת, ס: פי ג'מלה'

<sup>307</sup> [בם] פ: במ מלחמה

<sup>308</sup> [וכד'לך] א: כדלך

<sup>309</sup> [כאן] ה: כמא

<sup>310</sup> [יעד] ק, ר, ל: יעדו

<sup>311</sup> [ירעו] א: ירעו אל מול וג', פ: ירעו אל מול ההר ההוא

<sup>312</sup> [אל יי"י] ר: (חסר)

<sup>313</sup> [ד'ו] ג, ט, נ, ה, ר, ל: ד'ו

<sup>314</sup> [אן] נ: (חסר)

<sup>315</sup> [כלהא] ג: כלהא אנהא

<sup>316</sup> [למשה] ב, פ, ת, ק, ט, ר: למשה בסיני

<sup>317</sup> [לכנהא] א: לכונהא

<sup>318</sup> [כלהא] ק: (חסר)

<sup>319</sup> [ואינן] ר: ואינה, פ: ואינו

<sup>320</sup> [פלד'לך] ל: לד'אלך

ולהד'א<sup>321</sup> אלאצל לא ינבגי אן תעד<sup>322</sup> ברכות וקללות אלמאמור בהא פי גרזים ועיבל, ולא בניאן אלמזבח אלד'י אמר<sup>323</sup> בבניאנה ענד חלולנא פי ארץ כנען, לאן הד'ה כלהא מצוה<sup>324</sup> לפי שעה.<sup>325</sup> ולא אלאמר אלד'י אמרנא באן נקרב כל בהימה נריד אלאכל מנהא שלמים, לאן ד'לך<sup>326</sup> כלף<sup>327</sup> פי אלמדבר כ'אצה, והו ק"ו והביאום ליי"י קאלוא פי ספרא והביאום ליי"י<sup>328</sup> זו מצות עשה. לכנהא במדבר פקט כמה ביין פי משנה תורה אבאחה' בשר תאוה לדורות, והו ק"ו בכל אות נפשך תאכל בשר. ולו כאן ינבגי אן יעד כל מא הו<sup>329</sup> מן הד'א אלקביל,<sup>330</sup> לכאן<sup>331</sup> אלד'י אמר בה משה מן יום תנבא אלי יום מאת כ'ארג' ען מצוות הנוהגות לדורות, נאיף עלי ת'לאת' מאיה' מצוה,<sup>332</sup> אד'א<sup>333</sup> עדדנא כל אמר ג'א פי מצר וכל מא ג'א פי אלמלואים וגירהא, כלהא נץ תורה, מנהא עשה ומנהא לא תעשה. פמנד' ימתנע<sup>334</sup> עדדהא כלהא, ילזם צ'רורה אן לא תעד ולא<sup>335</sup> ואחדה מנהא, וליס כמה פעל גירנא אלד'י אכ'ד' מנהא שי<sup>336</sup> עלי ג'הה' אלאעואן למא אעיאה אלעדד. והד'א מא קצדנא תחצילה<sup>337</sup> פי הד'א אלאצל.

**אלאצל אלארבע** אנה לא ינבגי אן תעד אלאואמר אלתי תעם אלשראיע כלהא.

קד יג'י פי אלתורה אואמר ונואהי ליסת פי שי מעיין, בל תעם אלשראיע כלהא, כאנה יקול אלתזם<sup>338</sup> כל מא אמרתך בה ואנתהי ען כל מא נהיתך ענה או<sup>339</sup> לא תכ'אלף שי<sup>340</sup> ממא<sup>341</sup> אמרתך בה. פלא וג'ה לעד הד'א אלאמר מצוה בפני עצמה, לאנה<sup>342</sup> למ<sup>343</sup> יאמר בפעל עמל מא מכ'צוץ פיוכון מצות עשה, ולא נהא ען<sup>344</sup> פעל<sup>345</sup> מעיין איצ'א<sup>346</sup> פיוכון מצות לא תעשה. והד'א מת'ל ק"ו ובכל אשר אמרתי אליכם תשמרו, ומת'ל קולה<sup>347</sup> את חקתי תשמרו, ואת<sup>348</sup> משפטי תעשו, ושמרתם את בריתי, ושמרתם את משמרת, וכת'ר מת'ל הד'א.

<sup>321</sup> [ולהד'א] ת: פלהד'י

<sup>322</sup> [תעד] ה: יעד

<sup>323</sup> [אמר] פ: אמרנא

<sup>324</sup> [מצוה] ל: (חסר)

<sup>325</sup> [שעה] ג,ט,ג,ה,ר,ל: שעה ואינן נוהגות לדורות

<sup>326</sup> [ד'לך] ל: הד'י

<sup>327</sup> [כלף] ב: כלף כלה, ת: כאלף

<sup>328</sup> [ליי"י] פ,ס,ק,ג,ט,ג,ה,ר,ל: (חסר)

<sup>329</sup> [הו] ב: (חסר)

<sup>330</sup> [אלקביל] ת,ג,ט,ה,ר: אלסביל

<sup>331</sup> [לכאן] ג,ט,ג,ה,ר,ל: לכאן אלאמר

<sup>332</sup> [מצוה] ת: מצוה כלהא נץ אלתורה מנהא

<sup>333</sup> [אד'א] ת: אד'

<sup>334</sup> [ימתנע] ק: ימתנע פי

<sup>335</sup> [ולא] ב,ה: ולו

<sup>336</sup> [מנהא שי] ת: (חסר)

<sup>337</sup> [תחצילה] א: לתחצילה

<sup>338</sup> [אלתזם] ר: תלזם

<sup>339</sup> [או] פ,ס,ר: אי

<sup>340</sup> [שי] ב: פי שי

<sup>341</sup> [ממא] ת: מן מא

<sup>342</sup> [לאנה] ת: לאן

<sup>343</sup> [לם] ל: לא

<sup>344</sup> [ען] א: (חסר)

<sup>345</sup> [פעל] ג,ט,ג,ה,ר,ל: פעל עמל מא

<sup>346</sup> [איצ'א] פ: (חסר)

<sup>347</sup> [קולה] ל: (חסר)

<sup>348</sup> [ואת] ק: את

וקד גלט פי הד'א<sup>349</sup> אלאצל איצ'א,<sup>350</sup> חתי עדוא קדשים תהיו במצוה מן ג'מלה' מצוות<sup>351</sup> עשה, ולם יעלמו אן ק"ו קדשים תהיו<sup>352</sup> והתקדשתם והייתם קדשים ואומר באמתת'אל<sup>353</sup> ג'מיע אלשריעה, כאנה יקול כן מקדס בכונך<sup>354</sup> תעמל כל מא אמרתך בה ותנתהי ען כל מא נהיתך ענה.<sup>355</sup> ונץ ספרא קדשים תהיו פרושים היו,<sup>356</sup> יעני אעתזלו אלקבאיח אלמנהי ענהא כלהא. ופי אלמכילתא קאלוא ואנשי קדש תהיון<sup>357</sup> לי<sup>358</sup> איסי בן יהודה אומר כשהקב"ה מחדש מצוה לישראל<sup>359</sup> הוא<sup>360</sup> מוסיף להם<sup>361</sup> קדושה, יעני אן הד'א אלאמר ליס הו אמר מג'רד בד'אתה, בל אנמא הו תאבע לאלמצוה אלמאמור בהא, פאן ממתת'ל<sup>362</sup> ד'לך<sup>363</sup> אלאמר יתסמי קדוש. ולא פרק בין ק"ו קדשים תהיו או לו קאל עשו מצותי, אתרי כאן נקול<sup>364</sup> אן<sup>365</sup> הד'ה<sup>366</sup> מצות עשה מצ'אפה אלי אלמצוות אלמשאר אליהא אלמאמור בפעלהא? כד'לך לא נקול פי קדשים תהיו ונחווה אנה מצוה, לאנה לם<sup>367</sup> יאמר בעמל שי גיר מא עלמנא, ונץ ספרי והייתם קדשים זו קדושת מצוות. פקד באן מא נחונא לה. ומן הד'א אלאצל<sup>368</sup> איצ'א ק"ו ומלתם את ערלת לבבכם, יעני אן תטיע ותסמע לכל<sup>369</sup> מא תקדם ד'כרה מן אלמצוות, וכד'לך וערפכם לא תקשו עוד, יעני לא תתעאצי<sup>370</sup> פי קבול כל מא כלפתך ולא תכ'אלף עליה.

**אלאצל אלכ'אמס אנה לא ינבגי עד תעליל אלמצוה מצוה בפני עצמה.**

קד יגי פי תעליל אלמצוות שבה לאוין,<sup>371</sup> פיט'ן<sup>372</sup> בהא אנהא<sup>373</sup> מן ג'מלה' מא יעד עלי אנפראדה. וד'לך מת'ל ק"ו לא יוכל בעלה הראשון אשר שלחה<sup>374</sup> לשוב לקחתה וגו' ולא תחטיא את הארץ<sup>375</sup> הו<sup>376</sup> תעליל לתחרים מא תקדם, כאנה יקול אנך<sup>377</sup> אד'א פעלת הד'א פקד כת'רת אלפסאד פי אלבלאד. ומת'ל ק"ו אל תחלל את בתך להזנותה ולא תזנה הארץ, פאן קולה ולא תזנה הארץ<sup>378</sup> תעליל,<sup>379</sup> כאנה יקול אן עלה' תחרים ד'לך כי לא תזנה הארץ. וכד'לך ק"ו ולא

<sup>349</sup> [הד'א] ת: מת'ל הד'א

<sup>350</sup> [איצ'א] א: (חסר)

<sup>351</sup> [מצוות] ה: אלמצוות

<sup>352</sup> [תהיו] א: (חסר)

<sup>353</sup> [באמתת'אל] ב,ה: באמת'אל

<sup>354</sup> [בכונך] ט: (חסר)

<sup>355</sup> [ענה] פ: מנה

<sup>356</sup> [היו] ת: תהיו

<sup>357</sup> [תהיון] ב,פ,ס,ג,ט,ג,ר: תהיו

<sup>358</sup> [לי] ב,ס: (חסר)

<sup>359</sup> [מצוה לישראל] ל: לישראל מצוה

<sup>360</sup> [הוא] ת,ה: הו

<sup>361</sup> [להם] ב,ת,ס,ק,ג,ט,ג,ה,ר: להן

<sup>362</sup> [ממתת'ל] ר: מת'ל

<sup>363</sup> [ד'לך] ה: (חסר)

<sup>364</sup> [נקול] ג,ט,ג,ה,ר: יקול

<sup>365</sup> [אן] נ: (חסר)

<sup>366</sup> [הד'ה] ט: (חסר)

<sup>367</sup> [לם] ט: לא

<sup>368</sup> [אלאצל] ק: אלמת'ל

<sup>369</sup> [לכל] ג,ט,ג,ה,ר: כל

<sup>370</sup> [תתעאצי] ה: תתעאצא

<sup>371</sup> [לאוין] ג,ט,ג,ה,ר: אללאוין

<sup>372</sup> [פיט'ן] ס: פיצ'נון

<sup>373</sup> [אנהא] ה: אנה

<sup>374</sup> [אשר שלחה] פ: (חסר)

<sup>375</sup> [לשוב לקחתה וגו' ולא תחטיא את הארץ] ק: לשוב לקחתה פאן ק"ו ולא תחטיא את הארץ, [ולא תחטיא את הארץ] ת,ס,ל: ולא תחטיא את

הארץ פאן קולה ולא תחטיא את הארץ, א: ("פאן קולה ולא תחטיא את הארץ" כתוב בשוליים)

<sup>376</sup> [הו] ת: הוא

<sup>377</sup> [אנך] ת: (חסר)

<sup>378</sup> [פאן קולה ולא תזנה הארץ] ת: (חסר)

<sup>379</sup> [תעליל] ל: הו תעליל, ג: ("הו" כתוב בשוליים), ת: תעלילה

תטמאו בהם ונטמאתם במ בעד ד'כרה תחרים אלאנואע אלת<sup>380</sup> יחרם אכלהא, פעלל ד'לך וקאל לא תנתג'סוא<sup>381</sup> באכלהא, כאנה יכ'בר אן ארתכאב<sup>382</sup> הד'א אלנהי נג'אסה<sup>383</sup> נפס. ובביאן קאלוא פי ספרי פי ק"ו ת"ע בעד מא<sup>384</sup> תקדם אלנהי ען אכ'ד דיה מן<sup>385</sup> אלקאתל ולא תטמא את הארץ, מגיד הכתוב<sup>386</sup> ששפיכות דמים מטמא<sup>387</sup> את הארץ. פקד תביין אן הד'א אללאו תעליל אללאו אלמתקדם, לא אנה שי אכ'ר. וכד'לך ק"ו ומן המקדש לא יצא ולא יחלל הא אם יצא חלל. וקד גלט גירנא פי הד'א אלאצל איצ'א, ועד הד'ה<sup>388</sup> אללאיון כלהא בגיר תאמל. ואנמא יפתצ'ח אלד'י יעדהא<sup>389</sup> אד'א סיל וקיל לה, הד'א אללאו ינהי ען<sup>390</sup> אי שי, פלא יכון לה חנינד' ג'ואב ראסא, ובהד'א יתביין בטלאן עדהא. והד'א מא קצדנא ביאנה פי הד'א אלאצל.

**אלאצל<sup>391</sup> אלסאדס** אן אלמצוה אלת<sup>392</sup> יכון פיהא עשה ולא תעשה, ינבגי אן יעד עשה שבה מע מצוות עשה ולא שבה מע מצוות לא תעשה.

אעלם אן אלשי אלואחד יכון<sup>393</sup> פיה עשה ולא תעשה עלי אחד<sup>394</sup> ג' אוג'ה. אמא אן י"ך עמל מא מצות עשה ואלתעדי עליה מצות לא תעשה, מת'ל שבת<sup>396</sup> ויום טוב ואלשמטה, אלת<sup>397</sup> עמל אלצנאעה פיהא מצות לא תעשה ואלעטלה פיהא מצות עשה כמא סיבין. וכד'לך ציאם יום אלכפור<sup>398</sup> מצות עשה ואלאפטאר פיה מצות לא תעשה. ואמא אן י"ך לאו שקדמו עשה, מת'ל ק"ו פי אלאונס ומוציא שם רע ולו תהיה לאשה, והד'ה מצות עשה, ובעד ד'אלך קאל לא יוכל לשלחה<sup>399</sup> כל ימיו, והד'ה מצות לא תעשה. ואמא אן יכון לאו<sup>400</sup> מתקדם ת'ם ינתק לעשה, מת'ל ק"ו לא תקח האם על הבנים, ובעד ד'לך שלח<sup>401</sup> תשלח את האם. וכל נוע מן הד'ה<sup>402</sup> ינבגי אן יעד עשה שבה פי ג'מלה' מצוות עשה ולא שבה פי ג'מלה' מצוות לא תעשה, לאן בביאן לאלחכמים פי כל ואחד<sup>403</sup> מנהא אנהא מצות עשה ומצות לא תעשה. וכת'ר מא יקולון פיהא<sup>404</sup> עשה שבה ולא שבה, והו שי ביין לאן מעני אלאמר פיהא גיר מעני אלנהי והמא מעניין מתבאינין, אמר באחדהמא ונהי ען אלאכ'ר. ומא אד'כר אחד גלט פי הד'א אלאצל פי מא אד'כרה אלאן.

**אלאצל<sup>405</sup> אלסאבע** אנה לא ינבגי אן יעד פקה אלשריעה.

380 [אלתי] ת,ה: אלד'י  
 381 [תנתג'סוא] פ,ת,ס,ג,ט,ג,ה,ר,ל: תתנגסו, ק: תנגסו  
 382 [ארתכאב] ר: אכ'באר  
 383 [נג'אסה'] ר: ונגאסה  
 384 [מא] א: א (חסר)  
 385 [מן] פ,ת,ס,ק,ג,ט,ה: (חסר)  
 386 [הכתוב] ל: (חסר)  
 387 [מטמא] ל: מטמא  
 388 [הד'ה] ת: הד'א  
 389 [יעדהא] ל: עדהא  
 390 [ען] ה: עלי  
 391 [אלאצל] א: ואלאצל  
 392 [אלתי] ת: אלד'י  
 393 [יכון] ס,ל: אלד'י יכון  
 394 [אחד] נ: חסר  
 395 [אוג'ה] פ,ת,ס,ק,ג,ט,ג,ה,ר,ל: וגוה  
 396 [שבת] ה: אלשבת  
 397 [אלתי] ת,ל: אלד'י  
 398 [ציאם יום אלכפור] א: ציאם צום כפור, נ: ציאם אלכפור  
 399 [לשלחה] פ,ק,ג,ה: שלחה  
 400 [לאו] ת: אללאו  
 401 [שלח] ס,ל: קאל שלח  
 402 [הד'ה] ת: הד'א  
 403 [ואחד] ת,ל: ואחדה  
 404 [פיהא] ק: (חסר)  
 405 [אלאצל] א: ואלאצל

אעלם אן אלשריעה אלואחדה הי קצ'ייה' מא מסלמה, וילזם ען תלך אלמקדמה אואמר ונואהי כת'ירה, הי פקה אלשריעה. מת'אל<sup>406</sup> ד'לך אלחליצה ואליבום<sup>407</sup> המא שתי מצוות מן מצוות<sup>408</sup> עשה והד'א מא<sup>409</sup> לא כ'לאף פיה. פאד'א תאמלנא פקה הד'ה<sup>410</sup> אלשתי מצוות<sup>411</sup> מן מצוות עשה ומא ילזם פיהמא<sup>412</sup> בחסב אלמקדמאת אלשרעייה, לזם אן י"ך בעץ' אלנסא חולצות ולא מתיבמות, ובעצ'הן מתיבמות ולא חולצות, ובעצ'הן או חולצות או מתיבמות,<sup>413</sup> ובעצ'הן לא חולצות ולא מתיבמות. וכד'לך אלרג'אל איצ'א, אעני אליבמין, בעצ'הם חולצין ולא מיבמין, ובעצ'הם מיבמין ולא חולצין, ובעצ'הם לא חולצין ולא מיבמין,<sup>414</sup> ובעצ'הם או מיבמין או חולצין.<sup>415</sup> וכד'לך נג'ד אליבמות,<sup>416</sup> בעצ'הן חולצת מזה ומתיבמת לזה, ובעצ'הן חולצת מזה ומזה, ומנהן<sup>417</sup> מותרות לבעליהן ואסורות ליבמיהן, ומותרות ליבמיהן ואסורות לבעליהן, ואסורות לאלו ולאילו, ומותרות לאלו ולאילו.<sup>418</sup> פלו עדדנא כל פרצ'ה<sup>419</sup> מן הד'ה אלפרצ'את מצוה בפני עצמה, לאנתהאת פרצ'את מסכת יבמות וחדהא נאיף עלי אלמאיתין מצוה. ומא מנהא ואחדה אלא אמר עלי חדתה או נהי, מת'ל אן יקול<sup>420</sup> אן הד'ה מצוה<sup>421</sup> ילזם אן תחלוץ עלי צפה' כד'א או תתיבם עלי צפה' כד'א, או נקול אן הד'ה לא תג'וז<sup>422</sup> להד'א, או לא ימכנהא אלחליצה ראסא או אליבום. והכד'א ילזם פי כל מצוה ומצוה.<sup>423</sup>

ואד'א<sup>424</sup> כאן ד'לך כד'לך, והד'א ממא<sup>425</sup> לא כ'לאף פיה, פאן פקה<sup>426</sup> אלמצוה איצ'א אד'א כאן נץ<sup>427</sup> תורה<sup>428</sup> לא ינבגי עדדה, לאן ליס<sup>429</sup> בכון אלכתאב ביין פקה תלך אלמצוה או אלאשתראטאת אלתי פיהא נעד נחן כל שרט או כל פרצ'ה פקהייה במצוה. וקד גלט פי הד'א כת'יר, לאן כל מא יוג'ד<sup>430</sup> מכתוב יעד מן גיר תאמל לאצל אלמצוה ולא לפקההא או שרוטהא. מת'אל<sup>431</sup> ד'לך תלזים אלכתאב פי ספר ויקרא למטמא מקדש וקדשיו ואלמד'כורין מעה קרבן חטאת, פהד'ה מצות עשה בלא שך. ת'ם תפקה אלכתאב פי הד'א אלקרבת<sup>432</sup> מא י"ך, פקאל אנה יכון<sup>433</sup> כשבה או שעירה, פאן למ יקדר עלי ת'מנהא פיג'יב שתי תורים או שני בני יונה, פאן למ יקדר פיג'יב עשירית האיפה סלת, והד'א הו קרבן עולה ויורד. פהד'א אנמא הו תביין אלקרבת אללאזם לה מא הו. פלא ינבגי אן נעד הנא שלש מצוות, ונקול<sup>434</sup> אלאמר אלד'י

406 [מת'אל] ת: מת'ל  
407 [אלחליצה ואליבום] ג, ט, נ, ה, ר, ל: אליבום ואלחליצה  
408 [מן מצוות] ל: (חסר)  
409 [מא] ת: ממא  
410 [הד'ה] ת: הד'ין  
411 [מצוות] ת: אלמצוות  
412 [פיהמא] נ: פיהא  
413 [או חולצות או מתיבמות] ק: או מתיבמות או חולצות  
414 [ובעצ'הם לא חולצין ולא מיבמין] ס, ק, ג, ט, נ, ה, ר, ל: ובעצ'הם לא מיבמין ולא חולצין, פ: (חסר)  
415 [ובעצ'הם או מיבמין או חולצין] ת: או חולצין או מיבמין, פ: ובעצ'הם או מיבמין או חולצין ובעצ'הם לא חולצין ולא מיבמין  
416 [נג'ד אליבמות] פ: אליבמות נגד  
417 [ומנהן] ק: ובעצ'הן  
418 [ואסורות לאלו ולאילו ומותרות לאלו ולאילו] פ: ומותרות לאלו ולאילו ואסורות לאלו ולאילו, ל: ואסורות לאלו ולאילו  
419 [פרצ'ה] פ, ק, ה: ופרצ'ה  
420 [יקול] א: נקול  
421 [מצוה] א: (חסר)  
422 [תג'וז] ת: תזוג  
423 [מצוה ומצוה] ק: מצוה  
424 [ואד'א] ל: ואן, ס: אד'א  
425 [והד'א ממא] ל: והד'י מן מא, ג, ט, נ, ה, ר: והד'א מא  
426 [פקה] ר: פקהה  
427 [נץ] ה: אלנץ  
428 [תורה] ק: אלתורה  
429 [ליס] ב: בליס  
430 [יוג'ד] ג, ט, נ, ה, ר: נג'ד  
431 [מת'אל] ת: מת'ל  
432 [אלקרבת] א: קרבן  
433 [יכון] ב, ת: (חסר)  
434 [ונקול] א: נקול

אמר<sup>435</sup> בתקריב בהמה, ת'ם אלאמר אלד'י אמר<sup>436</sup> בתקריב עוף, ת'ם אלאמר אלד'י אמר<sup>436</sup> בתקריב עשירית האיפה, פאן לים הי<sup>437</sup> ת'לאת'ה אואמר ואנמא הו אמר ואחד, והו<sup>438</sup> אן<sup>439</sup> יקרב קרבן על<sup>440</sup> שגגתו, וד'לך אלקרבן הו כד'א<sup>441</sup> או כד'א אן לם ימכן<sup>442</sup> כד'א.

ומן הד'א אלקביל איצ'א שגגת מצוות, וד'לך אן אלנץ ג'א פי ויקרא אן מן שגג ותעדא עלי<sup>443</sup> מצוות יי"י יקרב קרבן. והד'ה מצות עשה ואחדה, והי<sup>444</sup> אן יקרב אלשוגג חטאת ובשרט אן תכון אלשגגה פי דבר שחייבין על זדונו כרת, ויכון פיה מעשה, וי"ך מצות לא תעשה כמא ביינא<sup>445</sup> פי שרח הוריות וכריתות. ת'ם תפקה אלכתאב פי צפה' הד'א אלקרבן ונץ פיה נצוץ, וקאל אן כאן אלשוגג מעם הארץ פיקרב כשבה או שעירה, ואן כאן נשיא פיקרב שעיר, ואן כאן<sup>446</sup> כהן גדול פיקרב פר. ואן כאנת<sup>447</sup> אלשגגה פי ע"ז כ'אצה, פיקרב אלשוגג שעירה סוא כאן<sup>448</sup> נשיא או הדיוט או כהן גדול, וליס באכתלאף אנואע<sup>449</sup> אלחיואן אלד'י יקרב מנה אלקרבן יתכת'ר אלקרבן אלואחד אלד'י הו קרבן שוגג וירגע מצוות הרבה.<sup>450</sup> ולו כאן הד'א הכד'א,<sup>451</sup> ללזם איצ'א אן נעד ק"ו כשבה או שעירה בשתי מצוות וק"ו שתי תרים או שני בני יונה בשתי מצוות, וליס אלאמר כד'לך, בל אלאמר באלקרבן הו<sup>452</sup> מצות עשה. וכון הד'א יג'יב ד'לך אלקרבן בעינה שעירה ואכ'ר יג'יבה שעיר<sup>453</sup> הו מן שראיט ד'לך אלקרבן, וליס כל שרט מן שרוט<sup>454</sup> אלמצוות ינעד במצוה.<sup>455</sup> פאפהם הד'א ג'אד, אן אלגלט פיה כ'פי, לא יאבה אליה אלא נחריר.

ומן הד'א אלקביל איצ'א קולה תעאלי אן נערה מארסה אד'א זנת<sup>456</sup> בסקלה, ואן<sup>457</sup> בת כהן בשרפה, הד'א תתמים חכם קצאץ אשת איש. וקד גלט פי הד'א כל מן סמעת בה ועד אשת איש מצוה, ונערה מארסה מצוה,<sup>458</sup> ובת כהן מצוה. וליס אלאמר כד'לך בל כמא אביין, וד'לך אן מצוה ואחדה מן ג'מלה' אלמצוות הו<sup>459</sup> ק"ו ת"ע לא תנאף, וג'א אלנקל אן הד'א אללאו אזהרה לאשת איש. ת'ם ג'א אלנץ בעד הד'ה אלאזהרה אן יקתל אלמתעדי עלי הד'א אללאו, והו קולה מות יומת הנאף והנאפת. ת'ם תמם אלכתאב<sup>460</sup> פקה חכם הד'א אלקצאץ ואשתרט פיה אשתראטאת, וקאל אן קולי מות יומת הנאף והנאפת פיה תפציל, אן כאנת<sup>461</sup> הד'ה אלאשת איש בת כהן פהי תחרק, ואן כאנת נערה מארסה<sup>462</sup> בתולה פהי תרגם,

435 [אמר] ר: אמרנא  
 436 [אמר] א: אמרנא (כתוב "אמר" ואז "נא" הוסף מעל השורה)  
 437 [הי] ה: הו  
 438 [והו] פ: (חסר)  
 439 [אן] א: אן יכון  
 440 [על] ג, ט: עלי  
 441 [כד'א] ת: אלכד'א  
 442 [ימכן] ק: יכון  
 443 [עלי] ב, ס, ג, ט, ג, ר, ל: על  
 444 [והי] ב, ת, ה: והו  
 445 [ביינא] ת: ביינת  
 446 [כאן] ה: (חסר)  
 447 [כאנת] ב, ה: כאן  
 448 [כאן] ב, ת, ס, ק, ג, ה, ר: אן כאן  
 449 [אנואע] ר: הד'י  
 450 [הרבה] ל: כת'ירה  
 451 [הכד'א] ת: הכד'א איצ'א  
 452 [הו] ר: והו, ת: הי  
 453 [שעיר] ר: שעירה  
 454 [שרוט] ג, ט, ג, ט, ה, ר, ל: שראיט  
 455 [במצוה] פ, ת, ג, ט, ג, ה, ר, ל: מצוה  
 456 [זנת] א: זנאת, פ, ת, ס, ק, ט, ג, ה: זינת  
 457 [ואן] ר: ואן כאנת  
 458 [מצוה] ת: (חסר)  
 459 [הו] ב, פ, ס: הי  
 460 [אלכתאב] ה: (חסר)  
 461 [כאנת] ג, ט, ג, ה, ר, ל: כאן  
 462 [מארסה] א: (חסר)

ואן כאנת בעולה וליסת<sup>463</sup> בת כהן פהי תכ'נק. וליס באשתראטה פי תנויע אלמות תתכת'ר אלמצוות לאנא פי הד'א כלה מא כ'רגנא ען חרמאן אשת איש. ובביאן קאלוא פי סנהדרין הכל היו בכלל נואף ונאפת הוציא הכתוב את בת ישראל לסקלה<sup>464</sup> ואת בת כהן לשרפה.<sup>465</sup> יריד בד'לך אן חרמאן אשת איש יעם אלכל אלד'י ג'א אלנץ פיהא<sup>466</sup> מות יומת הנאף והנאפת, לכן פרק אלכתאב פי הד'ה אלמיתה וג'על בעץ' אלאשכ'אץ בשרפה ובעצ'הם בסקלה.

ולו כאן ינבגי אן יעד פקה אלמצוה אד' וד'כר פי אלתורה, ללזמנא אן לא נעד מכה נפש בשגגה גולה מצוה אחת, אד' אלנץ קד תפקה פי הד'ה אלמצוה. וכנא נעד הכד'א: קול<sup>467</sup> אלכתאב ואם בכלי ברזל הכהו כ"ו מצוה אחת, ואלמצוה אלת'אניה ק"ו ואם באבן יד אשר ימות בה הכהו כ"ו, ואלמצוה אלג' ק"ו או בכלי עץ יד אשר ימות בה<sup>468</sup> הכהו, ואלמצוה אלד' ק"ו גאל הדם הוא ימית את הרוצח, ואלמצוה אלה' ק"ו ואם בשנאה יהדפנו, ואלמצוה אל' ק"ו או השליך עליו בצדיה וימת,<sup>469</sup> ואלמצוה אל' ק"ו או באיבה הכהו בידו, ואלמצוה אלח' ק"ו ואם בפתע בלא איבה הדפו, ואלמצוה אלט' ק"ו<sup>470</sup> או השליך עליו כל כלי בלא צדיה, ואלמצוה אלי' ק"ו או בכל אבן אשר ימות בה בלא ראות, ואלמצוה אלי"א ק"ו ויפל עליו וימת והוא לא אויב לו,<sup>471</sup> ואלמצוה אלי"ב ק"ו והצילו העדה את הרצח, ואלמצוה אלי"ג ק"ו והשיבו אתו העדה<sup>472</sup> אל עיר מקלטו, ואלמצוה אלי"ד ק"ו וישב בה עד מות הכהן הגדל, ואלמצוה אלט"ו ק"ו ואם יצא יצא הרצח, ואלמצוה אלי"ו ק"ו ואחרי מות הכהן הגדל ישוב הרצח.<sup>473</sup> ול' ו<sup>474</sup> פעלנא הכד'א פי כל מצוה ומצוה אנתהא ערד אלמצוות נאיף עלי אלפינ, והד'א ביין אלפסאד לאן הד'א כלה פקה אלמצוה<sup>475</sup> הו. ו<sup>476</sup> ואנמא אלמצוה אלמעדודה פהי<sup>477</sup> דין מכה נפש בשגגה, והו אלתשריע אלד'י שרענא באן נחכם פיה בהד'ה<sup>478</sup> אלאחכאם אלמצוה. והכד'א סמאהא אללה משפטים ולם יסמיהא מצוות, וקאל<sup>479</sup> ושפטו העדה בין המכה ובין גאל הדם על המשפטים האלה.<sup>480</sup>

וקד תנבה צאחב הלכות גדולות עלי בעץ' הד'א אלמעני<sup>481</sup> וחאם חומה וצאר יעד פרשיות פרשיות, ויקול פי ערדה פרשת נחלות, פרשת נדרים ושבועות,<sup>482</sup> פרשת מוציא שם רע. ועד הכד'א פרשיות כת'ירה לכנה למ יתלכ'ן לה הד'א אלמעני עלי אלכמאל ולא תחצל לה,<sup>483</sup> ולד'לך עד פי תלך אלפרשיות מא קד<sup>484</sup> תקדם לה ערדה והו לא ישער. ולמא גפל גירנא פי<sup>485</sup> הד'א אלאצל צאר אלי אן עד פי מצות צרעת י"א מצוה, ולם יעלם אן הי<sup>486</sup> מצוה אחת, וכל מא ד'כר

<sup>463</sup> [וליסת] א: וליס

<sup>464</sup> [לסקלה] פ:ק: בסקילה

<sup>465</sup> [לשרפה] פ: בשרפה

<sup>466</sup> [פיהא] ג,ט,ג,ה,ר,ל: פיה

<sup>467</sup> [קול] ת: קאל

<sup>468</sup> [בה] ה: בו

<sup>469</sup> [וימת] א: (חסר)

<sup>470</sup> [ק"ו] ק: (חסר)

<sup>471</sup> [לא אויב לו] ר: לא שנא לו, ט: לא אויב לו ולא מבקש רעתו, ת: לא אויב לו ולא

<sup>472</sup> [והשיבו אתו העדה] פ: והשיבו העדה אותו, ס:ק: והשיבו העדה אותו, ה: והשיבו העדה

<sup>473</sup> [ישוב הרצח] פ: (חסר)

<sup>474</sup> [ולו] ג,ט,ג,ה,ר,ל: פלו

<sup>475</sup> [אלמצוה] א: אלמסאלה

<sup>476</sup> [הו] ת: הי

<sup>477</sup> [פהי] ק: פהו

<sup>478</sup> [פיה בהד'ה] ה: פי הד'ה

<sup>479</sup> [וקאל] ת: קאל

<sup>480</sup> [האלה] ת: (חסר)

<sup>481</sup> [הד'א אלמעני] ה: הד'ה אלמעני

<sup>482</sup> [פרשת נדרים ושבועות] ג,ט,ג,ה,ר: פרשת נדרים ופרשת שבועות

<sup>483</sup> [לה] פ:ר: לה ד'אלך

<sup>484</sup> [קד] פ: (חסר)

<sup>485</sup> [פי] ל: מן

<sup>486</sup> [אן הי] פ,ס,ק: אנהא

פי אלנץ אנמא הו פקה ואשתראט. וביאן ד'לך אנה<sup>487</sup> שרענא אן צרעת אדם תנג'סה פיציר טמא וילזמה<sup>488</sup> מא ילזם אלטמאים מן אג'תנאב אלמקדש ואלקדשים<sup>489</sup> ואלכ'רוג' חוץ למחנה שכינה. ונחן לא<sup>490</sup> נעלם אי צרעת תנג'ס ואייהא<sup>491</sup> לא תנג'ס, פאכ'ד' אלכתאב יביין ויפצל אלחכם, אנה אן<sup>492</sup> כאן כד'א פהו טהור, ואן כאן כד'א פהו טמא, ואן כאן עלי חאלה' כד'א פיסתוקף מדה' כד'א. ובביאן קאלוא לטהרו או לטמאו כשם שמצוה לטהרו כך מצוה לטמאו, פאלמצוה אנמא הי אן<sup>493</sup> תקול טמא או טהור. אמא תפציל אלאשיא אלתי<sup>494</sup> בהא יכון<sup>495</sup> טמא או טהור<sup>496</sup> פלא ינבגי עדדהא לאנהא אשתראטאת ותפקהאת. והד'א מת'ל קולנא אן תקריב בעל מום מנהי ענה והי מצות לא תעשה, בקא עלינא אן נעלם אי שי הי אלמומין. אתרי נעד כל מום ומום במצוה? אן כאן ד'לך כד'לך פסתנתהי<sup>497</sup> קריב אלסבעין מום. פכמא לא נעד אלמומין מא מנהא<sup>498</sup> מום ומא מנהא<sup>499</sup> לים מום<sup>499</sup> בל אלנהי אלד'י נהינא ען<sup>500</sup> בעל מום פקט, כד'לך איצ'א לא ינבגי עד עלאמאת אלצרעת מא מנהא טמא ומא מנהא טהור בל כון אלמצורע טמא פקט, ותלך כלהא הי תביין מא הי אלצרעת. ועלי הד'א אלוג'ה ינבגי אן יעד כל נוע ונוע<sup>501</sup> מן אנואע אלטמאות מצוה אחת, ולא תעד פקהיאת ד'לך אלנוע מן אלטמאות ואשתראטאתה<sup>502</sup> כמא יבין מן עדדנא. פאפהם הד'א אלאצל אנה עמוד התוך פי מא נחן בסבילה.

**אלאצל<sup>503</sup> אלת'אמן** אנה לא ינבגי אן יעד אלנפי מע אלנהי.

אעלם אן אלנהי הו מן קסמי אלאמר, וד'לך אנך תאמר אלמאמור אן יפעל שי מא או לא יפעלה, מת'ל אן תאמרה באלאכל פתקול<sup>504</sup> לה כל, או תאמרה באן יג'תנב אלאכל פתקול לה לא תאכל. וליס פי אללסאן אלערבי אסם יעם הד'ין אלמעניין ג'מיעא, וקד ד'כר ד'לך אלמתכלמון פי צנאעה' אלמנטק, וקאלוא הד'א אלנץ: ואמא<sup>505</sup> אלאמר ואלנהי פליס להמא פי אללסאן אלערבי אסם יג'מעמהמא, פאצ'טרנא אלי אן נסמיהמא<sup>506</sup> ג'מיעא<sup>507</sup> באסם אחדהמא, והו אלאמר. פקד תביין לך אן אלנהי הו מן<sup>508</sup> מעני אלאמר, ואלחרף אלמשהור פי אללסאן אלערבי אלמוצ'וע לאלנהי הו<sup>509</sup> חרף לא. והד'א אלמעני בעינה הו<sup>510</sup> מוג'וד בלא שך פי כל לסאן, אעני אנך תאמר אלמאמור באן יפעל או לא יפעל. פביין הו אן מצוות עשה ומצוות לא תעשה כלאהמא אמר מחץ', אשיא אמרנא בפעלהא ואשיא נהינא ען פעלהא, אסם<sup>511</sup>

487 [אנה] ס: אנה  
 488 [וילזמה] פ:ת: פילזמה  
 489 [ואלקדשים] ל: (חסר)  
 490 [לא] פ: לם  
 491 [ואייהא] ה: ואי צרעת  
 492 [אן] פ: אד'א  
 493 [אן] ת: (חסר)  
 494 [אלתי] ט: אלד'י  
 495 [בהא יכון] ס,ק,ל: יכון בהא  
 496 [טמא או טהור] נ: טהור או טמא  
 497 [פסתנתהי] ס,ט,ה,ר: פסתנתהי  
 498 [מנהא] ט,ל: מנהם  
 499 [מום] א: במום, ט: מום פכמא  
 500 [ען] ל: ען תקריב, ס,ט: ("תקריב" כתוב מעל השורה)  
 501 [כל נוע ונוע] ה: כל נוע  
 502 [ואשתראטאתה] פ: ואשבאההא, ת: ואשתראטאת  
 503 [אלאצל] א,ב: ואלאצל  
 504 [פתקול] פ: ותקול  
 505 [ואמא] פ: אמא  
 506 [נסמיהמא] ב: נסמיהמא באסם  
 507 [גמיעא] פ: (חסר)  
 508 [מן] ט,ר: (חסר)  
 509 [הו] ת: והו  
 510 [הו] א: (חסר)  
 511 [אסם] ה: אמא

אלמאמור בפעלהא מצוות עשה ואסם<sup>512</sup> אלמנהי ענהא מצוות לא תעשה. ואלאסם אלד'י יעמהמא ג'מיעא פי אללסאן אלעבראני גזירה, וכד'לך יסמון אלחכמים כל שריעה כאנת עשה או לא תעשה גזירת מלך.

אמא אלנפי פהו<sup>513</sup> מעני אכ'ר, והו אן תסלב מחמול ען מוצ'וע, וליס פיה מן<sup>514</sup> מעני אלאמר שי<sup>515</sup> בתה. מת'ל קולך מא אכל פלאן אמס, ומא ישרב פלאן אלכ'מר, ומא זיד אבו עמר ונחו ד'לך. פאן הד'א כלה נפי,<sup>516</sup> לא ראיחה' אמר פיה. ואלחרף אלד'י ינפי בה<sup>517</sup> פי אלערבי<sup>518</sup> עלי אלאכת'ר הו חרף מא, וינפון איצ'א בחרף לא ובליס. אמא<sup>519</sup> אלעבראניין<sup>520</sup> פאכת'ר נפיהם בחרף לא בעינה<sup>521</sup> אלד'י בה איצ'א ינהון, וינפון איצ'א<sup>522</sup> באין ומא<sup>523</sup> יתצל<sup>524</sup> בה מן אלצ'מאיר, אינו<sup>525</sup> ואינם ואינכם וגירהא.<sup>526</sup> אמא אלנפי פי אלעבראני בחרף לא פנחו<sup>527</sup> קולה ולא קם נביא עוד בישראל כמשה, לא איש אל ויכזב, לא תקום פעמים צרה, לא<sup>528</sup> עמד איש, ולא קם ולא זע ממנו,<sup>529</sup> וכת'יר מת'ל<sup>530</sup> הד'א. ואלנפי באין נחו ק"ו ואדם אין,<sup>531</sup> והמתים אינם יודעים מאומה, וגיר ד'לך כת'יר איצ'א.

פקד תביין לך אלפרק<sup>532</sup> בין אלנהי ואלנפי,<sup>533</sup> וד'לך אן אלנהי מן<sup>534</sup> מעני אלאמר ולא יכון<sup>535</sup> אלא מת'ל פעל אלאמר סוא, אעני אנה כמא אן פעל אלאמר מסתקבל אבדא כד'לך אלנהי. ולא<sup>536</sup> יג'וז פי אללגה<sup>537</sup> אלאמר באלמאצי והכד'א אלנהי. ולא וג'ה לדכ'ול אלאמר פי אלכ'בר,<sup>538</sup> לאן אלכ'בר מפתקר למחמול ומוצ'וע ואלאמר קול תאם כמא תביין פי אלכתב אלמוצ'ועה להד'א,<sup>539</sup> וכד'לך אלנהי איצ'א לא ידכל פי<sup>540</sup> אלכ'בר. וליס כד'לך אלנפי, לאן אלנפי ידכל פי אלכ'בר, ותנפי פי אלמאצי ואלמסתקבל ואלחאל. והד'א כלה ביין בנפסה ענד אלתאמל. פאד'א<sup>541</sup> כאן ד'לך כד'לך

- 512 [ואסם] ה: ואמא  
513 [פהו] פ: הו  
514 [מן] ת: שי מן  
515 [שי] ת: (חסר)  
516 [נפי] ל: נפי מחץ'  
517 [ינפי בה] ת: יקע בה אלנפי  
518 [פי אלערבי] פ: באלערבי  
519 [אמא] ה: מא  
520 [אלעבראניין] ת: אלעבראני  
521 [בעינה] פ: (חסר)  
522 [איצ'א] ה: (חסר)  
523 [ומא] פ: ובמא  
524 [יתצל] ק: אתצל  
525 [אינו] ג,ט,ג,ה,ר,ל: מת'ל אינו  
526 [וגירהא] ל: וג'ירהם  
527 [פנחו] נ: מת'ל, פ,ר: נחו  
528 [לא] א: ולא  
529 [ממנו] ת: (חסר)  
530 [מת'ל] פ: מן  
531 [ואדם אין] ת,ג,ט,ג,ה,ר,ל: ואדם אין לעבד את האדמה  
532 [אלפרק] פ: אן אלפרק  
533 [אלנהי ואלנפי] ס,ק,ט,ג,ל: אלנפי ואלנהי  
534 [מן] פ: הו מן  
535 [יכון] ס: יכון איצ'א  
536 [ולא] פ: לא  
537 [אללגה] א: ("אללגה" נמחק ומתוקן ל"כלאם")  
538 [פי אלכ'בר] פ: באלכ'בר  
539 [להד'א] נ: לד'אלך  
540 [פי] א: (חסר)  
541 [פאד'א] פ: פאן

פלא<sup>542</sup> ינבגי אן תעד אללאוין אלתי<sup>543</sup> הי נפי במצוות לא תעשה בוג'ה. והד'א אמר<sup>544</sup> ברהאני, לא יחתאג' עליה שאהד גיר מא ד'כרנאה<sup>545</sup> מן תחציל מעאני אלאלפאט' חתי יפרק בין אלנהי ואלנפי.<sup>546</sup>

וקד ג'הל גירנא הד'א, פצאר לאן יעד<sup>547</sup> 548 לא תצא תצאת העבדים, ולם יעלם אנה נפי לא נהי. וביאן ד'לך כמא אצף, וד'לך אן אללה קד חכם פי אלד'י יצ'רב עבדו או אמתו הכנענים, ויעדמה פי חאל אלצ'רב אחד ראשי<sup>549</sup> אברים, אנה<sup>550</sup> יכ'רג' חר. פכאן יקום בבאלנא אן ד'לך פי אמה עבריה באלאחרא ואלאג'דר, ואנה אד'א עדמהא אחד מראשי<sup>551</sup> אברים תכ'רג' חרה. פנפא ענהא הד'א אלחכם בקולה לא תצא תצאת העבדים, כאנה יקול מא<sup>553</sup> ילזם כ'רוג'הא חרה ענד תעדים ג'ארחא מן ג'וארחא, פהד'א נפי חכם מא<sup>554</sup> ענהא לא נהי. והכד'א<sup>555</sup> שרח אלנאקלין, וקאלוא פי אלמכילתא לא תצא תצאת העבדים אינה יוצאה בראשי אברים<sup>556</sup> כדרך שהכנענים יוצאין. פקד תביין לך אנה נפי חכם מא<sup>557</sup> וסלבה ענהא, לא אנה נהאחא ען אלשי.<sup>558</sup>

ולא פרק בין קולה לא תצא תצאת העבדים או קולה לא יבקר הכהן לשער הצהב טמא הוא אלד'י הו נפי מחץ' לא נהי. וד'לך אנה יכ'ברנא אן<sup>559</sup> לא יחתאג' מע הד'א אלסימן<sup>560</sup> הסגר, ולא יתרדד פיה אנה טמא. וכד'לך קולה לא יומתו כי לא חפשה לאנה<sup>561</sup> איצ'א נפי לא נהי, אנה<sup>562</sup> קאל מא<sup>563</sup> ילזמהא<sup>564</sup> אלמות אד' ולם תכמל<sup>565</sup> אלחרייה. ולא ינבגי אן ישרח הד'א<sup>566</sup> באן יקאל<sup>567</sup> לא יקתלא פיכ'רג' מן מעני אלנפי למעני אלנהי. לאן קולה הנא<sup>568</sup> לא יומתו כי לא חפשה מת'ל קולה אין לנערה חטא מות, אלד'י<sup>569</sup> נפא ענהא לזום אלקתל מן אג'ל אלקהר. וכד'לך<sup>570</sup> הנא<sup>571</sup> נפא ענהמא לזום אלקתל מן אג'ל אלרק,<sup>572</sup> כאנה יקול אין להם חטא מות כי לא חפשה.

542 [פלא] פ: לא

543 [אלתי] ת: אלד'י

544 [אמר] ק: אלמר

545 [ד'כרנאה] ס: ד'כרנא

546 [אלנהי ואלנפי] ס,ג,ט,ג,ה,ר,ל: אלנפי ואלנהי

547 [לאן יעד] ג,ט,ג,ה,ר: יעד, פ,ס,ק,ל: אלי ען עד

548 [לא] ת: לאו לא

549 [ראשי] א: מראשי

550 [אנה] פ: אן

551 [מראשי] פ,ג,ט,ג,ה,ר,ל: ראשי

552 [תכ'רג] ק: אנהא תכ'רג

553 [מא] ת: כד'א

554 [נפי חכם מא] פ: חכם מא נפי

555 [והכד'א] פ: וכד'אלך

556 [אברים] פ: אברים היא

557 [מא] נ: מא ענהא

558 [אלשי] א: שי

559 [אן] א: אנה

560 [אלסימן] ת: סימן

561 [לאנה] א: פאנה

562 [אנה] פ: לאנה

563 [מא] ג,ט,ג,ה,ר: אנה מא, ק: לא

564 [ילזמהא] פ: ילזמהא

565 [תכמל] פ: תכמל להא

566 [הד'א] ה: כד'א

567 [יקאל] פ: יקול

568 [הנא] ת: הוא

569 [אלד'י] פ: (חסר)

570 [וכד'לך] ל: כד'אלך

571 [הנא] ב,ת,ק,ה: הו

572 [אלרק] ג,ט,ג,ה,ר: אלקהר

וכד'לך<sup>573</sup> קולה ולא יהיה כקרח וכעדתו הו נפי. וביינוא אלחכמים אנה נפי, ואוצ'חוא מענאה וקאלוא אנה תעאלי אכ'ברנא אן כל<sup>574</sup> כ'ארגי<sup>575</sup> יכ'רג עלי אלכהונה וידעיהא לים יחל בה מא חל בקרח ועדתו, יעני אלגרק ואלחרק, בל אנמא תכון<sup>576</sup> עקובתה<sup>577</sup> כאשר דבר יי"י ביד משה לו, יעני אלצרעת, והו קולה תעאלי לה הבא נא ידך בחיקך<sup>578</sup> כ"ו, ואסתדלוא במא חדת' בעזיהו מלך יהודה. ואן כנא קד וג'דנא להם נץ אכ'ר פי גמר סנהדרין, והו קולהם כל המחזיק במחלוקת עובר בלא תעשה שנאמר ולא יהיה כקרח וכעדתו, פהד'א עלי ג'הה' אלועט' לא אן<sup>579</sup> פשטיה דקרא פי הד'י אלגרץ'. ואנמא אלנהי ען הד'א אלגרץ' פהו<sup>580</sup> משתמל תחת לאו ת'אני כמא סאביין<sup>581</sup> פי מוצ'עה.

וליס ת'ם שי יבין לך בה<sup>582</sup> אלנפי מן אלנהי<sup>583</sup> גיר מן מעני אלכלאם, אמא מן אללפט' פלא<sup>584</sup> אד' וחרף אלנפי ואלנהי<sup>585</sup> פי אלעבראני חרף ואחד, והו חרף לא. פ'חתאג' אלמתאמל אן יכון לה פהם למעני אלכלאם, פהו ידרך בסהולה אי לאו הו נפי ואי לאו הו נהי, כמא<sup>586</sup> תקדם לנא ביאנה<sup>587</sup> וקד נבהוא<sup>588</sup> עליהם אלסלאם עלי הד'א אלמעני, וד'לך במא<sup>589</sup> וג'דנא להם מן אכ'תלאף וקע בינהם פי לאו מן אללאוין הל הו נפי או נהי. וד'לך קולה<sup>590</sup> תעאלי פי חטאת העוף ומלק את ראשו ממול ערפו ולא יבדיל, פאן תנא דידן, והו<sup>591</sup> אלמתכלם פי נץ אלמשנה, יעתקד הנא<sup>592</sup> נהי, ולד'לך<sup>593</sup> יקול אם הבדיל פסל. פ'לזם עלי<sup>594</sup> הד'א אן יכון הד'א אללאו מצות לא תעשה, לאנה מתי מא<sup>595</sup> אבאן אלאס פסל, מת'ל<sup>596</sup> לו<sup>597</sup> הקריב שאור או דבש. ור' אלעזר בי ר' שמעון יעתקד<sup>598</sup> אן הד'א אללאו נפי לא נהי, ואן קולה לא<sup>599</sup> יבדיל יריד בה מא יחתאג' אן<sup>600</sup> יבין אלאס, בל יג'זיה קטעה עלי מקדאר מא, פלד'לך אן<sup>601</sup> הבדיל ענדה כשר. והכד'א נצוא פי גמר זבחים, אומר היה ר' אלעזר בי ר' שמעון שמעתי שמבדילין בחטאת העוף מאי לא יבדיל<sup>602</sup> אינו צריך להבדיל. ואעתרצ'וא עלי הד'א אלקול, וקאלוא אלא מעתה גבי בור נמי דכתיב ולא יכסנו הכי נמי דאינו צריך לכסות, וכאן אלג'ואב התם דכיב בעל הבור ישלם מכלל דבעי כסוי. פקד תביין אן מן<sup>603</sup> מעני אלכלאם יסתדלון הל

573 [וכד'לך] ה: כד'אלך  
574 [כל] ת: (חסר)  
575 [כ'ארגי] א: כארגי  
576 [תכון] ל: יכון  
577 [עקובתה] ג,ט,ג,ה,ר,ל: עקאבה  
578 [בחיקך] פ: אל חיקך  
579 [אן] ב: לאן  
580 [פהו] פ,ר: (חסר)  
581 [סאביין] ת: סיבין  
582 [בה] ת: (חסר)  
583 [אלנפי מן אלנהי] פ: אלנהי מן אלנפי  
584 [פלא] ק: פליס  
585 [אלנפי ואלנהי] פ,ת,ס,ל: אלנהי ואלנפי  
586 [כמא] ב,ס,ק: במא  
587 [ביאנה] ת,ק,ה: ביאנא  
588 [נבהוא] ג,ט,ג,ה,ל: נבהונא  
589 [במא] א: ("במא" נמחק ומתוקן ל"ממא"), ר: כמא  
590 [קולה] פ: מת'ל קולה  
591 [והו] ר: הו  
592 [הנא] א: הדא, ג,ט,ג,ה,ר,ל: אנה  
593 [ולד'לך] ת: ואלד'אלך  
594 [עלי] ס,ק: ען  
595 [מא] ב: (חסר)  
596 [מת'ל] ר: פמת'ל  
597 [לן] ת: אלא  
598 [יעתקד] ק: יקול אן יעתקד  
599 [לא] ל: ולא  
600 [אן] פ: (חסר)  
601 [אן] פ: אם  
602 [יבדיל] ג,ט,ג,ה,ר,ל: הבדיל  
603 [מן] פ: (חסר)

הו<sup>604</sup> נפי או נהי, ותביין איצ'א אן<sup>605</sup> קולה לא<sup>606</sup> יבדיל מצות לא תעשה עלי מא נצת אלמשנה, ומן הנא יבין אן קולה פי עולת העוף ושסע אתו בכנפיו לא יבדיל לא יבגיי עדה<sup>607</sup> לאנה<sup>608</sup> נפי אדי<sup>609</sup> ולדברי<sup>610</sup> הכל אם הבדיל כשר. לאנה למא קאל פי עולת בהמה ונתח אתו לנתחיו,<sup>611</sup> כאן יקום באלבאל אן עולת העוף כד'לך, פקאל אינו צריך להבדיל בל ישסע פקט, ואם הבדיל כשר כמה באן פי מוצ'עה.

ומן ג'מלה' הד'ה אללאוין אלנפי איצ'א קולה כל חרם אשר יחרם מן האדם לא יפדה,<sup>612</sup> ואנמא יבין לך אן הד'א נפי לא נהי אד'א עלמת מעני הד'א אלכלאם מא הו. וד'לך אן אלנץ קד חכם באת'מאן מקטועה פי אלערכים בחסב סן<sup>613</sup> אלנערך וכונה ד'כר או אנת'י. ולא פרק פי<sup>614</sup> ד'לך בין אן יקול ערכי עלי או יקול<sup>615</sup> ערך פלוני עלי, פאנא ננט'ר ד'לך אלפלוני מן הו וכס סנה ויזן בחסב ד'לך. פאן כאן אלנערך ש'כץ קד נתחייב מיתת בית דין ואבת<sup>617</sup> חכמה, ובעד<sup>618</sup> גמר<sup>619</sup> דינו קאל מן קאל ערך זה עלי, פלא ילזמה וזן<sup>620</sup> שי לאנה מחסוב כאלמיית אלד'י לא ערך לה מנד' נגמר דינו. והד'א אלמעני יריד בקולה לא יפדה, יעני לא דיה לה פיחתאג' ד'לך<sup>621</sup> אלמעריך<sup>622</sup> אן יזנהא, פהד'א חכם מן אחכאם אלערכים ופקההא ד'כרה אלנץ וליס הו נהי. ונץ אלמשנה הגוסס והיוצא ליהרג לא נידר ולא נערך,<sup>623</sup> ובין<sup>624</sup> אלתלמוד אן ד'לך בשרט אן יכון<sup>625</sup> יוצא מבית דין ישראל<sup>626</sup> ליהרג. ונץ אלמכילתא חייבי מיתות בית דין אין להם פדיון שנאמר כל חרם אשר יחרם מן האדם לא יפדה,<sup>627</sup> ותאמל<sup>628</sup> תחריר אלכלאם ותדקיק אלנצ'ר פיה כף ביינוא אן הד'א אללאו נפי לא נהי בקולהם אין להם פדיון, ולם יקול אין פודין אותן. והד'א אלמעני בעינה ביינוא<sup>629</sup> פי ספרא פי פרשת ערכים, וקאלוא מניין למחוייבי מיתות בית דין לאחר<sup>630</sup> שאמר ערכי<sup>631</sup> עלי תלמוד לומר חרם,<sup>632</sup> יעני מנין אן<sup>633</sup> לא ילזמה ערך.

604 [הו] ת: הי  
605 [איצ'א אן] פ: אן איצ'א  
606 [לא] ל: ולא  
607 [עדה] ב, ט, ג, ר, ל: עדדהא  
608 [לאנה] ס: אנה  
609 [אד'א] א: ("אד" כתוב מעל השורה, ואז נמחק), ק: (חסר)  
610 [ולדברי] ק: לדברי  
611 [לנתחיו] נ: לנתחיה  
612 [יפדה] פ: יפדה מות יומת  
613 [סן] פ: (חסר)  
614 [פי] ב: בין, ק: (כתוב "בין" ומעליו כתוב "פי" ביד אחרת)  
615 [יקול] ת: (חסר)  
616 [ד'לך] ה: סן אלנערך  
617 [ואבת] א: ואבת  
618 [ובעד] נ: ובעד ד'אלך  
619 [גמר] ת: ניגמר  
620 [וזן] ת: (חסר)  
621 [ד'לך] א: תלך, ק: (חסר)  
622 [אלמעריך] ה: אלנערך  
623 [לא נידר ולא נערך] ל: לא נערך ולא נידר  
624 [ובין] ת: פבין  
625 [יכון] ס: (חסר)  
626 [ישראל] פ, ר, ל: של ישראל  
627 [יפדה] פ: יפדה מות יומת  
628 [ותאמל] פ, ס, ק, ג, ט, ג, ה, ר, ל: ביינוא, פ: (חסר)  
629 [בינוא] ב, ס, ק, ג, ט, ג, ה, ר, ל: ביינוא, פ: (חסר)  
630 [לאחר] א: לאחד  
631 [ערכי] ק, ג, ט, ה, ר: ערכו  
632 [חרם] א: כל חרם, נ: (חסר)  
633 [מנין אן] ה: מן אין

וקד בינא הד'א אלמעני<sup>634</sup> גאיה' חתי אקול אנה מא בקא אן ישכל ולו עלי אגלט' אלנאס ד'הנא. ואד' ותכלמנא פי הד'י אלגרין', פלתעלם אן אלאחרף<sup>635</sup> אלת<sup>636</sup> יאתי בהא אלנהי<sup>637</sup> פי אלשריעה ארבעה' אחרף, וכל מא ינהי ענה<sup>638</sup> באחד<sup>639</sup> הד'ה אלארבעה<sup>640</sup> יתסמי מצות לא תעשה. והי השמר פן<sup>641</sup> ואל ולא. ובביאן קאלוא כל מקום שנאמר השמר פן ואל<sup>642</sup> אינו אלא מצות לא תעשה.

ובקי עלינא תביין<sup>643</sup> שי ואחד ליכמל בה גרין' הד'א אלבאב, וד'לך<sup>644</sup> אנה אד'א וצף פי אלתורה וכלפנא אן נברי אנפסנא באן ננפי ענהא אלפעל אלפלאני ואלפלאני<sup>645</sup>, פד'לך אלפעל ינעד מן ג'מלה' מצוות לא תעשה, ועלי<sup>646</sup> אן אללאו אלד'י ג'א' פיה<sup>647</sup> הו נפי לא נהי. <sup>648</sup>לאן<sup>649</sup> מנד' כלפנא אן ננפי ען אנפסנא ונקול אני מא פעלת כד'א ולא פעלת כד'א, עלם צ'רורה<sup>650</sup> אן פעל<sup>651</sup> ד'לך אלכד'א ואלכד'א מנהי ענה. וד'לך נחו תכליף אלכתאב לנא אן נקול לא אכלתי באני ממנו ולא בערתי ממנו בטמא<sup>652</sup> ולא נתתי ממנו למת, דל ד'לך עלי כון כל פעל<sup>653</sup> מן הד'ה<sup>654</sup> מנהיא ענה, וסיאתי ביאן ד'לך<sup>655</sup> פי מוצ'עה ענד כלאמנא עלי<sup>656</sup> הד'ה אלמצוות.

**אלאצל**<sup>657</sup> **אלתאסע** אנה לא ינבגי אן יעד<sup>658</sup> אללאוין ואלעשה בל אלאשיא אלמנהי ענהא ואלמאמור בהא.

אעלם אן ג'מיע אואמר אלשריעה ונואיהיא פהי פי<sup>659</sup> ארבעה' אשיא, פי אלארא ופי אלפעאל ופי אלכ'לאק ופי אללאקאוויל. וד'לך אנהא תאמרנא באעתקאד ראי מא, נחו מא אמרנא באעתקאד אלתוהיד<sup>660</sup> ומחבה' אללה ת"ע וכו'ופה, או תנהינא ען אעתקאד ראי מא, נחו מא נהינא ען אעתקאד ארבווייה לגירה. וכד'לך<sup>661</sup> תאמרנא בפעל מא, נחו מא אמרנא בתקריב אלקראבין ובניאן אלהיכל, <sup>662</sup>ותנהינא ען פעל מא, נחו מא נהינא<sup>663</sup> ען אלתקריב לגירה ת"ע וען אלסג'וד<sup>664</sup> למעבוד סואה. וכד'לך תאמרנא באן נתכל'ק באכ'לאק מא, נחו מא אמרנא באלראפה ואלרחמה ואלשפקה ואלתודד, והו קולה ואהבת לרעך כמוך, ותנהינא ען אכ'לאק מא, נחו מא נהינא ען אלחקד ואלאנתקאם וטלב אלת'אר

<sup>634</sup> [הד'א אלמעני] נ: מעני הד'א אלכלאם אלמעני

<sup>635</sup> [אלאחרף] ק: אחרף

<sup>636</sup> [אלתי] ר: אלד'י

<sup>637</sup> [בהא אלנהי] א: אלנהי בהא

<sup>638</sup> [ענה] ג, ט, ג, ה, ר, ל: (חסר)

<sup>639</sup> [באחד] א: באחדי

<sup>640</sup> [אלארבעה] ר: אלארבעה אלאחרף

<sup>641</sup> [פן] פ, ת, ה: ופן

<sup>642</sup> [ואל] פ, ת, ק, ה: ואל ולא, ב: ("ולא" מוסף בשוליים), ג: ("לא" מוסף בשוליים)

<sup>643</sup> [תביין] א: (בטקסט כתוב "תכמיל" אבל בשוליים כתוב "תבין"), ת: נביין

<sup>644</sup> [וד'לך] ק: ד'אלך

<sup>645</sup> [אלפעל אלפלאני ואלפלאני] ל: אלאמר אלפלאני

<sup>646</sup> [ועלי] ב, ק: עלי

<sup>647</sup> [פיה] ג, ט, ג, ה, ר, ל: בה

<sup>648</sup> [לא נהי] ג, ט, ג, ה, ר: (חסר)

<sup>649</sup> [לאן] נ: לאנה

<sup>650</sup> [צ'רורה] פ: באלצ'רורה

<sup>651</sup> [פעל] ק: פעלה

<sup>652</sup> [ולא בערתי ממנו בטמא] ת: (חסר)

<sup>653</sup> [פעל] ק: פעל ופעל

<sup>654</sup> [הד'ה] פ: ד'אלך, ת: הד'א

<sup>655</sup> [ד'לך] ה: (חסר)

<sup>656</sup> [עלי] א: פי

<sup>657</sup> [אלאצל] א: ואלאצל

<sup>658</sup> [יעד] ת: תעד

<sup>659</sup> [פי] ב, ר: (חסר)

<sup>660</sup> [באעתקאד אלתוהיד] ק: באעתקאד ראי אלתוהיד, פ: באלתוהיד

<sup>661</sup> [וכד'לך] פ: וכד'אלך איצ'א

<sup>662</sup> [אלהיכל] ס, ג, ט, ג, ה, ל: אלהיכל

<sup>663</sup> [ען פעל מא נחו מא נהינא] ט: (חסר)

<sup>664</sup> [אלסג'וד] פ: אלסג'וד לסואה אעני

וגיר ד'לך מן אלאכ'לאק אלרדייה כמא סאביין. ותאמרנא בקול אקאויל מא, נחו מא אמרנא בשכרה ואלדעא לה ואלאעתראף באלאת'אם<sup>665</sup> ונחו ד'לך ממא סיבין, ותנהינא ען קול מא, נחו מא נהינא ען אלימין אלהאנת'ה ואלנמימה ואלגיבה ואלשתימה וגיר ד'לך.

פאד'א חצלת הד'ה אלמעאני<sup>666</sup>, פינבגי אן תעד הד'ה<sup>667</sup> אלמעאני אלמאמור בהא או אלמנה<sup>668</sup> ענהא, כאן פעלא או קולא או ראיא<sup>669</sup> או כ'לקא. ולא ילתפת לכת'רה<sup>670</sup> אלאואמר<sup>671</sup> אלתי<sup>672</sup> ג'את פי ד'לך אלמעני אן כאן מן אלמאמור<sup>673</sup> בה, או לכת'רה' אלנואהי אלתי<sup>674</sup> ג'את ענה<sup>675</sup> אן כאן<sup>676</sup> מן אלמנהי ענה, לאנהא כלהא לאלתאכיד פקט, לאן קד ירד<sup>677</sup> פי אלמעני בעינה נהי בעד נהי לאלתאכיד וכד'לך יג'י פיה אמר בעד אמר לאלתאכיד איצ'א. אלהם אלא אד'א וג'דת נץ לאלחכמים<sup>678</sup> פי<sup>679</sup> תפציל אלמעאני ויבינו<sup>680</sup> לך אלשארחון<sup>681</sup> אן כל לאו מנהא או כל עשה יתצ'מן מעני גיר אלמעני אלד'י יתצ'מן אללאו אלאכ'ר או אלעשה, פאנה חנינד' ינבגי עדה בלא שך לאנה חנינד' מא בקי אנה<sup>682</sup> לאלתאכיד בל לזיאדה' מעני, ועלי אן ט'אהר אלנץ אנה פי מעני ואחד, לאנא לא נלתג'י אן<sup>683</sup> נקול אן<sup>684</sup> הד'א אלנץ תכרר לאלתאכיד וליס הו לזיאדה' מעני חתי נעדם קול אלשארחין אלראויין פי ד'לך. אמא אד'א וג'דנא אלרוואיה אן<sup>685</sup> הד'א אלאמר<sup>686</sup> או אלנהי<sup>687</sup> יתצ'מן מעני<sup>688</sup> כד'א, והד'א אלאמר אלמתכרר או אלנהי<sup>689</sup> יתצ'מן מעני אכ'ר, <sup>690</sup> פהד'א הו אלאולא ואלאחק אן לא יתכרר נץ אלא למעני, וחנינד' ינבגי עד הד'א עלי חדתה ועד<sup>691</sup> הד'א עלי חדתה. אמא אד'א לם יכון ת'ם מעני זאיד פג'איה' מא תכרר לאלתאכיד, וליעלם איצ'א אן הד'א אלד'נב ע'טים ג'דא אד'י<sup>692</sup> וג'א<sup>693</sup> פיה נהי בעד נהי, או תכרר לתכמיל חכם<sup>694</sup> אלמצוה, או יתעלם<sup>695</sup> מנה חכם מא פי מצוה אכ'רי כמא יבין אלתלמוד ויקול מופנה להקש לדון ממנו גזירה שווה.

<sup>665</sup> [באלאת'אם] ל: באלאת'אם בין ידיה  
<sup>666</sup> [אלמעני] פ: אלאשיא  
<sup>667</sup> [הד'ה] א: (חסר)  
<sup>668</sup> [או אלמנהי] ק: ואלמנהי  
<sup>669</sup> [או קולא או ראיא] ק: או ראיא או קולא  
<sup>670</sup> [לכת'רה] פ: לכת'ר  
<sup>671</sup> [אלאואמר] ר: אלאמור  
<sup>672</sup> [אלתי] ת, ר: אלד'י  
<sup>673</sup> [אלמאמור] א: מאמור  
<sup>674</sup> [אלתי] ר: אלד'י  
<sup>675</sup> [ענה] ל: פי ד'אלך אלמעני, ס: פיה  
<sup>676</sup> [כאן] ת: יכון, ק: כאנת  
<sup>677</sup> [ירד] ת: יריד  
<sup>678</sup> [נץ לאלחכמים] ל: לאלחכמים נץ  
<sup>679</sup> [פי] פ: פיה  
<sup>680</sup> [ויבינו] א: ויבינון  
<sup>681</sup> [אלשארחון] ר: ד'אלך אלשארחון  
<sup>682</sup> [אנה] פ: (חסר)  
<sup>683</sup> [נלתג'י אן] פ: (חסר)  
<sup>684</sup> [אן] ת: (חסר)  
<sup>685</sup> [אן] ל: יקולון אן  
<sup>686</sup> [הד'א אלאמר] ל: אלאמר הד'י  
<sup>687</sup> [או אלנהי] ס: ואלנהי  
<sup>688</sup> [מעני] ג, ט, ה: (חסר)  
<sup>689</sup> [או אלנהי] ק: (חסר)  
<sup>690</sup> [אכ'ר] ג, ט, ה: (חסר)  
<sup>691</sup> [ועד] א: ויעד  
<sup>692</sup> [אד'י] ה: אד'א  
<sup>693</sup> [וג'א] ג, נ, ה: גא  
<sup>694</sup> [חכם] א: לחכם  
<sup>695</sup> [יתעלם] ל: ליתעלם

וקד וג'דנאהם ע"ל אל"ס נבהוא עלי הד'א אלמעני פי גמר פסחים פי אלפרק אל'ת'אני, וד'לך אנהם קצדוא לאחד אללאוין אלתי יט'הר אנהא תכררת אד' ואלנהי<sup>696</sup> חצל מן ג'רהא, וראמו את'באתה במעני זאיד. פקיל פי ד'לך עלי ג'הה' אללאעתראץ' אמר ליה רבינא לרב אשי ואימא לעבור עליו בשני לאוין, יעני<sup>697</sup> הד'א אלד'י תריד אן תת'בת הד'א אללאו אנה<sup>698</sup> פי מעני<sup>699</sup> ג'יר אלמעני אלד'י חצל מן אללאו<sup>700</sup> אלאכ'ר, לאי שי ילתג'א להד'א,<sup>701</sup> לעלה<sup>702</sup> תכרר פי אלמעני בעינה ליכון פאעל ד'לך אלמעני חייב בשני לאוין. פכאן אלג'ואב אמר ליה כל היכא דאיכא למדרש דרשינן ולא מוקמינן בלאו<sup>703</sup> יתירי. פקד<sup>704</sup> תבין לך אן כל לאו לא יאתי לזיאדה' מעני פאנה יתסמי יתר, אעני<sup>705</sup> אנה תכרר. ולו קאל<sup>706</sup> אנה לעבור עליו בשני לאוין, פאנה מע ד'לך לאו יתר הוא כמא יבין מן הד'א אלכלאם וד'לך לא ינבגי עדדה אד' ותכרר.

פקד באן<sup>707</sup> אן ליס בכת'רה' אללאוין או אלעשה תתכת'ר<sup>708</sup> אלמצוות. קד עלם אן אלאמר באלעטלה פי אלסבת תכרר פי אל'תורה את'נתי<sup>709</sup> עשר<sup>710</sup> מרה, אתרי יתסע לאחד יעד<sup>711</sup> אלמצוות פיקול<sup>712</sup> אן מן ג'מלה' מצוות עשה אלעטלה פי אלסבת והו<sup>713</sup> י"ב מצוה. וכד'לך ג'א אלנהי ען<sup>714</sup> אכל אלדם ז' מראת, איתסע איצ'א לעאקל יקול<sup>715</sup> אן תחרים אלדם ז' מצוות. הד'א מא<sup>716</sup> לא יגלט פיה אחד, אעני פי<sup>717</sup> שביתת שבת אנהא מצוה אחת מן ג'מלה' מצוות עשה ופי אלנהי ען אכל אלדם אנהא מצוה אחת<sup>718</sup> מן מצוות לא תעשה.

ואעלם אנך ולו<sup>719</sup> וג'דת נץ אלחכמים<sup>720</sup> אן מן ירתכב אלנהי אלפלאני פקד תעדי עלי כד'א וכד'א לאו, או מן יעטל אלאמר<sup>721</sup> אלפלאני פקד תעדי עלי כד'א וכד'א עשה, ליס<sup>722</sup> ילזם מן הד'א אן תעד תלך אללאוין כלהא כל ואחד<sup>723</sup> עלי אנפראדה, ולא כל עשה עלי אנפראדה, אד' ואלמעני ואחד וליס פיה תכריר. ואנמא קאלוא אנה עובר בכד'א וכד'א עשה או עלי כד'א לאו מן<sup>724</sup> אג'ל תכראר אלאמר או אלנהי פי תלך אלמצוה, פאנה קד תג'אוז עלי נוהי כת'ירה או

<sup>696</sup> [ואלנהי] ר: אלנהי

<sup>697</sup> [יעני] ב: יעני אן

<sup>698</sup> [אנה] ג,ג,ה,ה,ר,ל: (חסר)

<sup>699</sup> [מעני] ג,ג,ה,ה,ר: אלמעני

<sup>700</sup> [אללאו] ר: אלמעני

<sup>701</sup> [להד'א] ת: להד'ה

<sup>702</sup> [לעלה] ב,ת: אלעלה

<sup>703</sup> [בלאו] ה: בלאו

<sup>704</sup> [פקד] ב,ת,ג,ה: פאן

<sup>705</sup> [אעני] א: יעני

<sup>706</sup> [קאל] א: קאלוא

<sup>707</sup> [באן] ק: באן לך

<sup>708</sup> [תתכת'ר] ת,ג,ג,ה,ה,ל: תתכרר, ק: תכת'ר

<sup>709</sup> [את'נתי] פ,ה,ה,ל: את'ני

<sup>710</sup> [עשר] ת: עשרה

<sup>711</sup> [יעד] פ,ס: אן יעד

<sup>712</sup> [פיקול] פ: ויקול

<sup>713</sup> [והו] פ,ת,ס,ג,ג,ה,ה,ר,ל: והי

<sup>714</sup> [ען] פ: פי

<sup>715</sup> [יקול] ל: אן יקול

<sup>716</sup> [מא] פ: ממא

<sup>717</sup> [פי] ל: אן

<sup>718</sup> [מצוה אחת] ב,פ,ג,ג,ה,ה,ל: (חסר), ס: מצוה ואחדה, ת: מצוה, ק: ואחדה

<sup>719</sup> [ולו] ס: לו

<sup>720</sup> [אלחכמים] ק: לאלחכמים

<sup>721</sup> [אלאמר] פ: אלפעל

<sup>722</sup> [ליס] ר: (חסר), ס: לם

<sup>723</sup> [ואחד] פ: לאו

<sup>724</sup> [מן] ג,ג,ה,ה,ר: ומן

ואומר כת'ירה. אלהם אלא אן וג'דתהם<sup>725</sup> יקולון לוקה שתיים או לוקה שלש, פחיניד' תעד כל ואחדה<sup>726</sup> עלי חדתה<sup>727</sup> לאן לא יצ'רב אחד שתי מלקיות על שם אחד כמא סאבין ממא<sup>728</sup> שהר פי אלתלמוד פי מכות וחולין וגירהמא,<sup>729</sup> ואנמא יצ'רב שתי מלקיות על שני שמות, אעני מעניין ג'א אלנהי פי כל מעני מנהמא<sup>730</sup> עלי אנפראדה. והד'א הו אלפרק בין קולהם עובר משום כך ומשום כך ובין קולהם לוקה שתיים או לוקה שלש.

ואלדליל עלי<sup>731</sup> ג'מיע<sup>732</sup> מא קלנאה<sup>733</sup> קולהם כל שאין לו ציצית בבגדו עובר בחמשה עשה לאן תכרר פיה<sup>734</sup> נץ אלאמר<sup>735</sup> כ'מס<sup>736</sup> מראת, ועשו להם ציצת, ונתנו על ציצת, והיה<sup>737</sup> לכם לציצת,<sup>738</sup> גדלים תעשה לך, על ארבע כנפות כסותך.<sup>739</sup> ווג'דנא להם נץ ג'לי פי מצות ציצת אנהא מצוה אחת, כמא סאבין ענד ד'כרנא להד'ה אלמצוה.<sup>740</sup> ועלי הד'א אלנחו בעינה קאלוא כל שאינו מניח תפלין עובר בשמונה עשה לתכרר<sup>741</sup> אלאמר בהא<sup>742</sup> ח' מראת, אעני פי של ראש ושל יד. וכד'לך קולהם כל כהן שאינו עולה לדוכן עובר בשלשה עשה לתכרר<sup>743</sup> אלאמר<sup>744</sup> ג' מראת. ולא יתסע לאחד יעד<sup>745</sup> אלמצוות פיקול<sup>746</sup> ברכת כהנים שלש מצוות, וציצת חמש מצוות, ותפלין שמונה מצוות. פאד'א<sup>747</sup> כאן ד'לך כד'לך, פלא ינבגי איצ'א<sup>748</sup> אן נעד אונאת הגר בשלש מצוות לתכרר<sup>749</sup> אלנהי<sup>750</sup> פיה מן אג'ל קולהם פי גמר מציעאה המאנה את הגר עובר בשלשה לאוין והלוחצו<sup>751</sup> בשלשה לאוין, כל הי שתי מצוות פקט, לא תונה ולא תלחצנו, ותכרר אלנהי פי ד'לך והד'א בין, לא אשכאל פיה. ובביאן קאלוא פי גמר מציעאה מפני מה הזהירה תורה בשלשים וששה מקומות על הגר מפני שסורו רע. אימכן אחד אן<sup>752</sup> יקול איצ'א אן הד'ה ל"ו מצוה מן ג'מלה שש מאות ושלוש עשרה מצוות, הד'א מא לא יתסע קולה. פקד תביין ואתצ'ח אנה לא ינבגי אן יעד כל לאו יוג'ד פי אלתורה ולא כל עשה לאנה קד יכון מכרר, ואנמא ינבגי אן תעד אלמעאני אלמאמור בהא או אלמנהי ענהא.

ולא ימכן מערפה' אללאו ואלעשה אלמתכרר אנה ג'א לזיאדה' מעני אלא במוקף יוקף עלי ד'לך והם רואה' אלתפסיר ע"ל אל"ס. ולא יגלטך איצ'א כון אלנהי<sup>753</sup> תכרר באלפאט' מכתלפה, נחו ק"ו ת"ע וכרמך לא תעולל, ושכחת עמר

<sup>725</sup> [וג'דתהם] ה: וגדהם

<sup>726</sup> [ואחדה] ס: ואחד

<sup>727</sup> [חדתה] ה: חדתהא

<sup>728</sup> [ממא] ת: מן מא, ק: עלי מא, א: ("ממא" כתוב בטקסט אבל "מ" הראשון נמחק ו"עלי" כתוב מעליו)

<sup>729</sup> [מכות וחולין וגירהמא] ק: מכות וג'ירהא

<sup>730</sup> [אלנהי פי כל מעני מנהמא] ל: פי כל מעני מנהמא לאו

<sup>731</sup> [עלי] פ: עלי ד'לך אעני

<sup>732</sup> [ג'מיע] ס: (חסר)

<sup>733</sup> [קלנאה] ת: קלנא

<sup>734</sup> [פיה] ת: פי

<sup>735</sup> [נץ אלאמר] פ,ה: אלנץ, ק: אלנץ פי אלאמר

<sup>736</sup> [כ'מס] ה: כ'מסה

<sup>737</sup> [והיה] ק: והיו

<sup>738</sup> [לציצת] פ: לציצת הכנף פתיל

<sup>739</sup> [כסותך] ת: כסותך אשר תכסה בה

<sup>740</sup> [ד'כרנא להד'ה אלמצוה] פ: ד'כרנא אלמצות

<sup>741</sup> [לתכרר] פ,ס: לתכראר

<sup>742</sup> [בהא] פ,ת: פיהא, ה: להא

<sup>743</sup> [לתכרר] פ,ס,ה: לתכראר

<sup>744</sup> [אלאמר] פ: אלאמר פיהא

<sup>745</sup> [יעד] פ: אן יעד

<sup>746</sup> [פיקול] פ,ק: ויקול

<sup>747</sup> [פאד'א] ג,ה: פאן

<sup>748</sup> [איצ'א] ה: (חסר)

<sup>749</sup> [לתכרר] פ: לתכראר

<sup>750</sup> [אלנהי] ל: אלאמר

<sup>751</sup> [והלוחצו] ת: והלוחצו עובר

<sup>752</sup> [אן] ב,פ,ס,ק,ג,ג,ה,ר,ל: (חסר)

<sup>753</sup> [אלנהי] פ: אלנהי איצ'א

בשדה<sup>754</sup> לא תשוב לקחתו,<sup>755</sup> וקאל כי תחבט זיתך לא תפאר אחריו, לאן ליס הד'ה<sup>756</sup> שני לאוין בל הו<sup>757</sup> נהי ואחד ען מעני ואחד, והו אן לא יאכ'ד' מא נסי מן אלתבואה או אלת'מאר ענד ג'מאעהא, ואתא מן ד'לך במת'אלין, בענבים<sup>758</sup> וזיתים, שרח לא תפאר לא תקטע מא נסית פי<sup>759</sup> אטראף אלפארות<sup>760</sup> והי<sup>761</sup> אלאגצאן.

וממא ינבגי אן ינצ'אף אלי הד'א אלאצל מא אנא ואצפה, וד'לך אן הד'א אלדי קלנא אנה<sup>762</sup> תעד אלמעאני<sup>763</sup> אלמאמור בהא ואלמנהי ענהא בשרט אן יכו<sup>764</sup> פי אלמעני אלמנהי ענה לאו מג'רד פי כל מעני ומעני או דליל יקולונה אלנאקלין אנה פצל אלמעאני בעצ'הא<sup>765</sup> מן בעץ' ולזם<sup>766</sup> אלנהי לכל מעני<sup>767</sup> מנהא. אמא אד'א כאן לאו אחד<sup>768</sup> ישתמל עלי מעאני כת'ירה,<sup>769</sup> פאנה חנינד' יעד אללאו וחדה לא כל מעני ומעני מן אלמעאני אלתי<sup>770</sup> ישתמל עליהא ד'לך אללאו, והד'א הו לאו שבכללות אלדי אין לוקין עליו כמא נבין אלאן. וד'לך אן ק"ו ת"ע לא תאכלו על הדם, קאלו<sup>771</sup> פי שרחה מניין לאוכל מבהמה קודם שתצא נפשה שהוא בלא תעשה ת"ל לא תאכלו על הדם, דבר<sup>772</sup> אחר לא תאכלו על הדם<sup>773</sup> לא תאכלו בשר ועדיין דם<sup>774</sup> במזרק, ר' דוסא אומר מניין שאין מברין על הרוגי בית דין ת"ל לא תאכלו על הדם לא תאכילו על הדם,<sup>775</sup> ר' עקיבה אומר מניין לסנהדרין שהרגו את הנפש שאין טועמין כלום כל אותו היום ת"ל לא תאכלו על הדם, אמר ר' יוסי בן חנינה<sup>776</sup> אזהרה לבן סורר ומורה מניין ת"ל לא תאכלו על הדם. פהד'ה כ'מסה מעאני, כלהא מנהייה ענהא והי כלהא משתמלה תחת הד'א אללאו. ובביאן קאלוא פי גמר סנהדרין ענד תעדידהם הד'ה אלמעאני על<sup>777</sup> כולם אינו לוקה משום דהוה ליה לאו שבכללות וכל לאו שבכללות אין לוקין עליו, וביינוא איצ'א אן לאו שבכללות הוא<sup>778</sup> דאתו<sup>779</sup> תרי תלתה אסורי מחד<sup>780</sup> לאו. פלא ינבגי אן יעד כל איסור ואיסור ממא אשתמל עליה הד'א אללאו מצוה בפני עצמה, בל יעד אללאו וחדה אלמעאני<sup>781</sup> עלי הד'ה אלאשיא כלהא. ומת'ל הד'א אללאו איצ'א, אעני לא תאכלו על הדם, קולה ולפני עור לא תתן מכשל לאנה איצ'א<sup>782</sup> ישתמל עלי מעאני כת'ירה כמא סנביין.<sup>783</sup> וכד'לך

754 [בשדה] ק: (חסר)  
755 [לקחתו] א: (חסר), ב,ק: לקחתה  
756 [הד'ה] ת: הד'א  
757 [הו] ה: הי  
758 [בענבים] א: ("בענבים" כתוב בטקסט, ומתוקן ל"בעמר" בשוליים). ק: ענבים  
759 [פי] ת,ג: מן  
760 [אלפארות] ל: אלפארות, ס: אלפירות  
761 [והי] ק: והו  
762 [אנה] ת: אן  
763 [אלמעאני] ת: הד'ה אלמעאני  
764 [יכו] ג: (חסר)  
765 [בעצ'הא] פ: כלהא בעצ'הא  
766 [ולזם] ה: ולזום  
767 [מעני] פ: מעני ומעני מן אלמעאני  
768 [אחד] ק,ה,ל: ואחד, ת: וחדה  
769 [כת'ירה] ת: מכת'לפה  
770 [אלתי] א,ת,ר: אלדי  
771 [קאלו] ק: קאל  
772 [דבר] ת: ודבר  
773 [לא תאכלו על הדם] ר: לא תאכלו על הדם לא תאכלו על הדם  
774 [דם] פ,ת,ס,ה,ל: הדם  
775 [לא תאכילו על הדם] ת,ס,ק,ג,ג,ה,ר,ל: (חסר), פ: ואיצ'ן לא תאכלו על הדם  
776 [חנינה] א: חנניא  
777 [על] ג: ועל  
778 [הוא] פ: אין לוקין עליו והוא, ה: הו  
779 [דאתו] ב,פ,ת,ק,ג,ג,ה,ר,ל: דאתי  
780 [מחד] ק: בחד  
781 [אלמעאני] ס: אלדי ישתמל  
782 [איצ'א] א: (חסר)  
783 [סנביין] פ: סאביין

קולה לא תשא שמע שוא, פאנה איצ'א ישתמל עלי מעאני כת'ירה כמא סנביין. והד'א הו<sup>784</sup> אלנוע אלואחד מן נועי לאו שבכללות.

ואלנוע אלת'אני הו אן יאתי לאו אחד יחרם אשיא כת'ירה<sup>785</sup> מעטופה בעצ'הא עלי<sup>786</sup> בעץ', והו אן יקול לא תפעל אלכד'א ואלכד'א<sup>787</sup> והד'א<sup>788</sup> אלנוע ינקסם קסמין, פאן מנה מא ביינוא<sup>789</sup> פי אלתלמוד אנה חייב מלקות עלי כל שי ושי<sup>790</sup> מן תלך אלאשיא אלמעטופה, ומנה מא קאלוא אנה<sup>791</sup> אינו חייב אלא אחת<sup>792</sup> לכונה<sup>793</sup> לאו שבכללות. פתלך אללאוין אלתי ביינוא אנה חייב עלי<sup>794</sup> כל אחת ואחת<sup>795</sup> הי אלתי נעד כל שי מנהא מצוה בפני עצמה, ואלד'י ביינוא אנה חייב אחת על הכל נעדה מצוה אחת עלי מא אצלנא פי הד'א אלאצל, אן לא יצ'רב אחד שתי מלקיות משם<sup>796</sup> אחד<sup>797</sup> בוג'ה. פמנד'י<sup>798</sup> לזמוא<sup>799</sup> בביאן פי כל מעני ומעני מן תלך אלמעאני אלמעטופה אנה<sup>800</sup> לוקין עלי<sup>801</sup> כל אחד ואחד, ואנה אד'א פעלהא כלהא<sup>802</sup> בבת אחת לוקה מלקיות הרבה, עלמנא באלצ'רורה אנהא שמות הרבה וינעד כל מעני<sup>803</sup> עלי<sup>804</sup> אנפראדה. ואנא אד'כר אלמת'אלאת אלכת'ירה מן קסמי הד'א<sup>805</sup> אלנוע אלת'אני, וקד רבמא ד'כרת תלך אללאוין כלהא<sup>806</sup> אלתי מן הד'א אלנוע<sup>807</sup> חתי יתביין אלמעני<sup>808</sup> אלמקצוד גאיה' אלביאן.

מן ד'לך, קולה תעאלי פי כ'רוף אלפסח אל<sup>809</sup> תאכלו ממנו נא ובשל מבשל, <sup>810</sup> לאנא נעד הד'א אללאו מצוה אחת ולא נעד לא <sup>811</sup> תאכלו <sup>812</sup> נא במצוה <sup>813</sup> ולא <sup>814</sup> תאכלו מבשל במצוה <sup>815</sup> אד' ולם יפרד <sup>815</sup> לכל מעני לאו בפני עצמו ולא

- 784 [הו] פ: (חסר)  
785 [כת'ירה] ר: (חסר)  
786 [בעצ'הא עלי] ק,ג,ג,ה,ה,ר,ל: עלי בעצ'הא  
787 [אלכד'א ואלכד'א] ב,פ,ג,ג,ה,ה,ל: אלכד'י ואלכד'י ואלכד'י  
788 [והד'א] ס: והי  
789 [ביינוא] פ: ביין  
790 [ושי] ק,ל: (חסר)  
791 [אנה] ג,ה: (חסר)  
792 [אחת] ק,ג,ג,ה,ה,ר,ל: אחת על הכל  
793 [לכונה] ה: לאנה  
794 [על] א: עלי  
795 [אחת ואחת] ל: אחד ואחד  
796 [משם] ה,ר: משום  
797 [אחד] נ: איסור אחד  
798 [פמנד'י] ת: פמד'  
799 [לזמוא] ת: פלזמוא  
800 [אנה] ק: אעני אנה  
801 [על] ה: עלי  
802 [כלהא] ה: (חסר)  
803 [מעני] פ: מעני ומעני  
804 [עלי] ת: על  
805 [הד'א] פ: (חסר)  
806 [כלהא] פ: (חסר)  
807 [אלנוע] ק,ג,ט,ג,ה,ה,ר,ל: אלנוע אלת'אני  
808 [אלמעני] פ: (חסר)  
809 [אל] ק: לא  
810 [מבשל] פ,ת,ג: מבשל במים  
811 [לא] ג,ט,ג,ה,ה,ר,ל: אל  
812 [תאכלו] פ,ת,ק: תאכלו ממנו  
813 [במצוה] פ: במצוה אחת  
814 [ולא] ר: ואל  
815 [יפרד] ת,ט,ה: ינפרד

קאל<sup>816</sup> אל<sup>817</sup> תאכלו ממנו<sup>818</sup> נא ולא בשל מבושל<sup>819</sup>, בל אתי בלאו אחד<sup>820</sup> יעם מעניין ועטף אחדהמא<sup>821</sup> עלי אלאכ'ר. ופי ת'אני פסחים קאלוא אמר אביי אכל נא לוקה שתיים מבשל לוקה שתיים נא ומבשל לוקה שלש, וד'לך אנה יעתקד לוקין על לאו שבכללות, פענד מא אכל נא תעדי עלי<sup>822</sup> שני לאוין, אחדהמא אל תאכלו ממנו נא<sup>823</sup> ואלת'אני לאו יוכ'ד<sup>824</sup> מכללא, כאנה<sup>825</sup> קאל<sup>826</sup> לא<sup>827</sup> תאכלו<sup>828</sup> אלא עלי, וקד אכלה גיר עלי<sup>829</sup>. ואד'א אכל נא ומבושל לוקה ענדה שלש, ואחד עלי אכלה נא ות'אני<sup>830</sup> עלי אכלה מבשל ואלת'אלת' עלי אכלה גיר עלי. וקאלוא הנאך פי תבע הד'א אלכלאם ורבא אמר אין לוקין על לאו שבכללות איכא דאמרי חדא מיהא לקי<sup>831</sup>, יעני אד'א אכל נא ומבושל לוקה אחת, ואיכא דאמרי חדא נמי לא לקי משום דלא<sup>832</sup> מיחד לאויה כלאו דחסימה, יעני קולה תעאלי לא תחסם שור בדישו אלד'י הו<sup>833</sup> לאו אחד<sup>834</sup> ינהי ען שי ואחד, אמא הד'א אללאו אלד'י ינהי<sup>835</sup> ען שיין, נא ומבשל, אין לוקין עליו. וקד עלמת<sup>836</sup> אנה קד תביין פי גמר סנהדרין אין לוקין על לאו שבכללות, פלד'לך קול אביי מדפוע, ואלצחיה אנה לוקה אחת סוי<sup>837</sup> אכל נא או מבשל או נא ומבשל, אחת בלבד לוקה. <sup>838</sup>פלד'לך נעד<sup>839</sup> קולה תעאלי אל תאכלו ממנו נא<sup>840</sup> ובשל מבושל<sup>841</sup> מצוה<sup>842</sup> אחת.

והנאך קיל איצ'א<sup>843</sup> אמר אביי אכל<sup>844</sup> זג לוקה שתיים חרצן לוקה שתיים<sup>845</sup> זג וחרצן לוקה שלש ורבא<sup>846</sup> אמר אין לוקין על לאו שבכללות, יעני קולה מכל אשר יעשה מגפן היין אלד'י יזעם<sup>847</sup> אביי אנה לוקין עליו. וכד'לך קאלוא פי ראבע מנחות המעלה משאור ודבש<sup>848</sup> על גבי המזבח אמר אביי לוקה משום שאור ולוקה משום<sup>849</sup> דבש ולוקה משום

- 816 [קאל] ת: קאלו  
817 [אל] ט: לא  
818 [ממנו] ג,ט,ג,ה,ר: (חסר)  
819 [בשל מבושל] ג,ט,ג,ה,ר,ל: מבושל  
820 [אחד] ל: ואחד  
821 [אחדהמא] ב: אחדהמא  
822 [עלי] ב,פ,ס: על  
823 [נא] ת: (חסר)  
824 [ואלת'אני לאו יוכ'ד] ג,ט,ג,ה,ר,ל: ואלת'אני יוכ'ד, ק: ואלת'אני יוכ'ד לאו  
825 [כאנה] ה: כאן  
826 [קאל] ת,ס,ק: יקול  
827 [לא] ת,ק,ג,ט,ג,ה,ר,ל: אל  
828 [תאכלו] ת: תאכלו ממנו  
829 [וקד אכלה גיר עלי] ג,ט,ג,ה,ר,ל: (חסר)  
830 [ות'אני] ה,ר: ואלת'אני  
831 [לקי] ת: לוקה  
832 [דלא] ת: דלאו  
833 [הו] ר: (חסר)  
834 [אחד] ת,ס,ק,ל: ואחד  
835 [ינהי] ק: נהי  
836 [עלמת] ת: עלמת קולהם  
837 [סוי] ק: וסוי  
838 [אחת בלבד לוקה] ל: לוקה אחת בלבד, ג,ט,ג,ה,ר: אחת בלבד לאקי  
839 [נעד] ת: נעד איצ'א  
840 [נא] ה: (חסר)  
841 [ובשל מבושל] ת,ס,ג,ט,ג,ה,ר,ל: ובשל, ק: ומבשל  
842 [מצוה] ק: במצוה  
843 [איצ'א] פ: (חסר)  
844 [אכל] ר: יאכל  
845 [חרצן לוקה שתיים] ל: וחרצן לוקה שתיים, ג,ט,ג,ה,ר: (חסר)  
846 [ורבא] ט,ה: ואבא  
847 [יזעם] פ: יעני  
848 [ודבש] ב,פ,ת,ס,ג,ג,ה,ר,ל: [ומדבש]  
849 [ולוקה משום] ק: ומשום

עירוב שאור ולוקה משום עירוב<sup>850</sup> דבש, יעני אן קולה כל יעם שיין, אן לא יקרב במפרדה ולא יקרב שי<sup>851</sup> אכ'תלט פיה מנה אי<sup>852</sup> קדר כאן. <sup>853</sup> והד'א כלה עלי אצל מד'הבה אלד'י קד עלמתה לוקין על לאו שבכללות. וקיל הנאך רבא אמר<sup>854</sup> אין לוקין על לאו שבכללות איכא דאמרי חדא מיהא לאקי<sup>855</sup> ואיכא דאמרי חדא נמי לא לאקי משום דלא<sup>856</sup> מיחד לאויה כלאו דחסימה. פאד<sup>857</sup> קד<sup>858</sup> תביין אן קולה אל<sup>859</sup> תאכלו ממנו נא ובשל מצוה אחת, וכד'לך קולה כל שאר וכל דבש מצוה אחת, כד'אלך נעד איצ'א לא יבא עמוני ומואבי במצוה אחת, וכד'לך קולה<sup>860</sup> כל אלמנה ויתום לא תענון, <sup>861</sup> וכד'לך קולה<sup>862</sup> לא תטה משפט גר יתום, <sup>863</sup> וכד'לך קולה שארה כסותה וענתה לא יגרע, נעד כל לאו<sup>864</sup> מנהא במצוה אחת לאן כל ואחד<sup>865</sup> מן הד'ה אללאוין מת'ל ק'ו אל תאכלו ממנו<sup>866</sup> נא ובשל<sup>867</sup> ומת'ל<sup>868</sup> כל שאר וכל דבש סוי, <sup>869</sup> לא פרק בינהא. <sup>870</sup> וכד'לך קולה לא תביא אתנן זונה ומחיר כלב<sup>871</sup> הו לאו ואחד, <sup>872</sup> וכד'לך קולה יין ושכר אל תשת<sup>873</sup> בבאכם<sup>874</sup> כ'ו ולהבדיל ולהורות, אעני<sup>875</sup> נהיה בלאו אחד<sup>876</sup> ען דכול אלמקדש או אלפתוי פי אלשריעה והו שתוי. והד'א הו אלקסם אלוואחד מן קסמי אלנוע אלת'אני מן נועי<sup>877</sup> לאו שבכללות.

ואלקסם אלת'אני הו מת'ל לפט' הד'א אלקסם אלמתקדם סוי, לכנה ג'א פי אלתפסיר אלמרוי אן כל שי ושי מן אלאשיא אלמעטופה לוקין עליו בפני עצמו, ואנה אד'א פעלהא כלהא לוקה על כל אחד ואחד<sup>878</sup> מן תלך אלמעטופה ועלי אנה פעלהא<sup>879</sup> בבת אחת, פהד'ה<sup>880</sup> ינבגי אן יעד כל ואחד וואחד בנהי מפרד. מן ד'לך קולה תעאלי לא תוכל לאכל בשעריך מעשר דגנך תירשך ויצהרך כ'ו, קאלוא<sup>881</sup> פי גמר כריתות אכל מעשר דגן תירוש ויצהר חייב על כל אחת ואחת.<sup>882</sup> ואעתרצ'וא ד'לך וקאלוא וכי לוקין על לאו שבכללות, פכאן אלג'ואב קרא<sup>883</sup> יתירא כתיב מכדי כתיב ואכלת לפני יי'י

<sup>850</sup> [שאור ולוקה משום עירוב] ב,פ,ת,ס,ג,ט,ג,ה,ר,ל: (חסר)

<sup>851</sup> [שי] ק: כל שי

<sup>852</sup> [מנה אי] ק: מנהא

<sup>853</sup> [כאן] נ: (חסר)

<sup>854</sup> [רבא אמר] ק,ג,ט,ג,ה,ר: אמר רבא

<sup>855</sup> [לאקי] ת: לוקה

<sup>856</sup> [דלא] ג,ט,ה,ר: שלא

<sup>857</sup> [פאד'] נ: פאד'ן

<sup>858</sup> [קד] ל: וקד

<sup>859</sup> [אל] ת,ר: לא

<sup>860</sup> [קולה] א: קולה איצ'א

<sup>861</sup> [תענון] ת: תענון במצוה אחת

<sup>862</sup> [קולה] ל: (חסר)

<sup>863</sup> [יתום] ב: יתום ואלמנה

<sup>864</sup> [לאו] ר: שי

<sup>865</sup> [ואחד] א: ואחדה, פ,ק: לאו

<sup>866</sup> [ממנו] ק: (חסר)

<sup>867</sup> [ובשל] פ: ובשל מבושל במים, ק: ובשל מבשל

<sup>868</sup> [ומת'ל] פ: ומת'ל קולה

<sup>869</sup> [סוי] ת: (חסר)

<sup>870</sup> [בינהא] פ,ת,ק: בינהא

<sup>871</sup> [כלב] ק: (חסר)

<sup>872</sup> [ואחד] א: אחד

<sup>873</sup> [תשת] א: תשת אתה ובניך אתך ("אתה ובניך אתך" בשוליים)

<sup>874</sup> [בבאכם] ג,ט,ג,ה,ר,ל: (חסר)

<sup>875</sup> [אעני] ת: יעני

<sup>876</sup> [אחד] ת,ה: ואחד

<sup>877</sup> [נועי] ת: מעני

<sup>878</sup> [אחד ואחד] ס: אחת ואחת

<sup>879</sup> [פעלהא] ק, ג,ט,ג,ה,ר: פעלהא כלהא

<sup>880</sup> [פהד'ה] פ,ט,ק,ג,ט,ג,ה,ר,ל: פהד'א

<sup>881</sup> [קאלוא] ר: וקאלו

<sup>882</sup> [אחת ואחת] ל: אחד ואחד

<sup>883</sup> [קרא] ק: בקרא

אלהיך מעשר דגנך תירשך ויצהרך למה לי למכתב לא תוכל לאכל בשעריך, וכי תימא ללא אם כן לימא קרא לא תאכלום, למה ליה<sup>884</sup> למהדר מכתבינהי כולהי שמע מיניה לחלק. והנאך תביין איצ'א<sup>885</sup> אן קולה תעאלי ולחם וקלי וכרמל לא תאכלו אנה חייב על כל אחת ואחת,<sup>886</sup> קאלוא אכל לחם וקלי<sup>887</sup> וכרמל חייב על כל אחת ואחת,<sup>888</sup> וכי לוקין על לאו שבכללות, קרא יתירא כ"ת לכתוב רחמנא חד וליתי אידך מיניה. ותביין בעד מנאט'רה אן קולה קלי כאן מגנייא ענה, ואנה אנמא<sup>889</sup> ד'כר לחלק אנה<sup>890</sup> ילזמה מלקות על<sup>891</sup> קלי<sup>892</sup> בפני עצמו. ולמא קאלוא פי אלמלמוד עלי וג'ה<sup>893</sup> אלמדאפעה פלעלה ילזמה מלקות עלי<sup>894</sup> קלי<sup>895</sup> בפני עצמו אד' ואנמא ד'כר לד'לך, ויכון חייב עלי<sup>896</sup> לחם וכרמל מלקות אחת,<sup>897</sup> פג'אובוא למאי הלכתא כתביה רחמנא לקלי באמצע, לומר<sup>898</sup> לחם כי קלי וקלי<sup>899</sup> כי כרמל ויכון חייב<sup>900</sup> על כל אחד ואחד. ועלי הד'א אלקיאס בעינה אקול מן<sup>901</sup> קולה תעאלי לא ימצא בכ מעביר בנו ובתו באש קוסם קסמים מעונן ומנחש ומכשף וחבר חבר ושאל אוב וידעני ודרש אל המתים, פאן כל ואחד מן הד'ה<sup>902</sup> אלמסעה אשיא<sup>903</sup> אלמעדודה לאו בפני עצמו, וליסת הי כלהא מן אלקסם אלאול מן קסמי אלנוע אלמ'אני. ודליל ד'לך קולה<sup>904</sup> באמצע מעונן ומנחש, וקד<sup>905</sup> תביין פי כל ואחד מנהמא<sup>906</sup> לאו בפני עצמו והו קולה תעאלי לא תנחשו ולא תעוננו, פכמא<sup>907</sup> מעונן ומנחש<sup>908</sup> לחלק וד'כרהמא<sup>909</sup> באמצע, כד'לך כל מא קבלהמא ובעדהמא מת'ל מעונן ומנחש, כמא ביינוא<sup>910</sup> פי לחם וקלי וכרמל.<sup>911</sup>

וקד גלט גירנא פי הד'א אלמעני, אמא לאנה לם תחצל<sup>912</sup> הד'ה אלמעאני<sup>913</sup> פי עלמה ג'מלה או סהא פיהא, פעד קולה תעאלי פי אלכהנים אשה זונה וחללה לא יקחו ואשה גרושה מאישה לא יקחו מצוה אחת, וקד תביין פי גמר קידושין אנה חייב על כל אחת ואחת ולו באשה אחת, כמא נביין<sup>914</sup> פי מוצ'עה. ולקד נוסעה עד'רא פי עד<sup>915</sup> זונה וחללה

884 [ליה] א, ל: לי  
885 [איצ'א] ת: (חסר)  
886 [אחת ואחת] נ: אחד ואחד  
887 [וקלי] ג, ט, ג, ל: קלי  
888 [אחת ואחת] ב, ס, ג, ט, ג, ה, ל: אחד ואחד, ר: אחד  
889 [ואנה אנמא] ת: ואנמא, ק: (אנמא)  
890 [אנה] פ: אנה אנמא  
891 [על] ב, ת, ק, ה, ר: עלי  
892 [קלי] ה: אלקלי  
893 [וג'ה] ג, ט, ג, ה, ר, ל: ג'ה'  
894 [עלי] פ, ס, ט: על  
895 [קלי] ה: אלקלי  
896 [עלי] פ, ת, ס, ק, ט, ל: על  
897 [אחת] ר: (חסר), ס: ("אחת" כתוב מעל השורה)  
898 [לומר] ר: לומר לך  
899 [וקלי] ר: קלי  
900 [ויכון חייב] ר: לחייבו  
901 [מן] א: (חסר), פ, ת: אן מן, ק: אן  
902 [הד'ה] פ: האולי  
903 [אשיא] ת, ק, ה, ר: אלאשיא  
904 [קולה] ק: קולה תע'  
905 [וקד] ת: פקד  
906 [ואחד מנהמא] ת: ואחדה מנהא  
907 [פכמא] ס: פכמא אן  
908 [מעונן ומנחש] ק: מנחש ומעונן  
909 [וד'כרהמא] ה: והמא  
910 [ביינוא] ת, ס: ביינוא  
911 [וכרמל] פ: (חסר)  
912 [תחצל] א: יתחצל, ת, ס, ה: תחצל לה  
913 [הד'ה אלמעאני] א: הד'י אלמעני  
914 [נביין] ג, ט, ג, ה, ר, ל: יביין  
915 [עד] ק: עדד

באחת<sup>916</sup> לאנה ט'נה לאו שבכללות אן כאן קד חצל ג'זאיאת לאו שבכללות. וכאן ענדה עלי גאלב<sup>917</sup> אלט'ן קולה תעאלי אשה<sup>918</sup> זונה וחללה לא יקחו מת'ל<sup>919</sup> קולה אל תאכלו ממנו נא ובשל מבושל,<sup>920</sup> ולם יעלם אן הד'א<sup>921</sup> לחלק והד'א<sup>922</sup> אינו לחלק, כמא לם יפרקו איצ'א בין קולה ולחם וקלי וקרמל לא תאכלו<sup>923</sup> ובין קולה שארה כסותה וענתה לא יגרע. ולא אטאלבה<sup>924</sup> במת'ל הד'א, אמא עדה גרושה בכלל זונה וחללה וג'על אלכל מצוה אחת, פלא עד'ר לה פיה<sup>925</sup> אלבתה לאנהא, אעני<sup>926</sup> אלגרושה,<sup>927</sup> בלאו בפני עצמו מביין, והו קולה תעאלי ואשה גרושה מאישה לא יקחו.<sup>928</sup> פקד לכ'צנא הד'א אלאצל אלכביר, אעני לאו שבכללות, וביינא משכלאתה וערפנא מא מנה לחלק<sup>929</sup> ומא מנה לאו שבכללות פקט ואין חייבין עליו אלא אחת, ואן אלד'י לחלק ינעד במצוות הרבה ואלד'י אינו לחלק ינעד במצוה אחת.<sup>930</sup> ואג'על הד'א אלפצל<sup>931</sup> בג'מלתה הד'א עיניך דאימא פאנה מפתאח כביר ג'דא לתחקיק ענד אלמצוות.

**אלאצל**<sup>932</sup> אלעאשר אנה לא ינבגי עד אלתוטיאת אלתה הי לגאיאת אכ'רי.<sup>933</sup>

קד תג'י אואמר פי אלתורה מא תלך אלאואמר הי אלמצוה לכנהא מקדמאת לעמל אלמצוה,<sup>934</sup> כאנה יצף כיף ינבגי אן תעמל תלך<sup>935</sup> אלמצוה. מת'אל<sup>936</sup> ד'לך קולה<sup>937</sup> ולקחת סלת וג', פאנה לא ינבגי אן יעד אכ'ד אלסלת במצוה וכ'בזה במצוה, בל אלמעודד אנמא הו קולה ונתת<sup>938</sup> על השלחן לחם פנים לפני תמיד, פאלמצוה אנמא הי<sup>939</sup> כון כ'בז<sup>940</sup> דאים לפני יי". ת'ם וצף כיף יכון הד'א אלכ'בז וממא<sup>941</sup> ד'א יכון, פקאל אנה יכון מן סמד<sup>942</sup> ויכון<sup>943</sup> י"ב רג'ף. ועלי הד'א אלנחו בעינה לא ינבגי אן יעד קולה ויקחו אליך שמן זית זך, בל יעד קולה<sup>944</sup> להעלת נר תמיד, והד'ה הי הטבת הנרות כמא תביין<sup>945</sup> פי תמיד.<sup>946</sup> ועלי הד'א אלנחו בעינה לא יעד<sup>947</sup> קח לך סמים, בל יעד הקטרת הקטרת בכל יום כמא<sup>948</sup>

<sup>916</sup> [באחת] ס: כאחת

<sup>917</sup> [גאלב] ק: גלב

<sup>918</sup> [אשה] ת: אן אשה

<sup>919</sup> [מת'ל] ר: ומת'ל

<sup>920</sup> [מבושל] ל: (חסר)

<sup>921</sup> [הד'א] פ: הד'ה

<sup>922</sup> [והד'א] פ: והד'ה

<sup>923</sup> [לא תאכלו] ת: (חסר)

<sup>924</sup> [אטאלבה] ב,פ,ת,ס,ק,ג,ט,ג,ה,ל: אטלבה

<sup>925</sup> [פיה] ת: (חסר)

<sup>926</sup> [אעני] פ: עד

<sup>927</sup> [אלגרושה] ב: גרושה

<sup>928</sup> [לא יקחו] ת: (חסר)

<sup>929</sup> [מא מנה לחלק] פ,ר: מא מנה לחלק ומא מנה אינו לחלק

<sup>930</sup> [אחת] ת: ואחדה

<sup>931</sup> [אלפצל] ב,פ,ס,ק,ט,ג,ר,ל: אלאצל

<sup>932</sup> [אלאצל] א: ואלאצל

<sup>933</sup> [אכ'רי] ב,פ,ת,ס,ק: מא

<sup>934</sup> [אלמצוה] ק: מצוה

<sup>935</sup> [תלך] ט: (חסר)

<sup>936</sup> [מת'אל] ת: מת'ל

<sup>937</sup> [קולה] ל: קולה תע'

<sup>938</sup> [ונתת] ת,ג,ט,ג: ונתתה

<sup>939</sup> [אנמא הי] ס,ט: אנמא הו, ק: הי אנמא

<sup>940</sup> [כ'בז] פ: אלכ'בז

<sup>941</sup> [וממא] פ: ומא

<sup>942</sup> [מן סמד] ל: סמד, א,ג: מן סמיד

<sup>943</sup> [ויכון] ק: ויכון איצ'א

<sup>944</sup> [קולה] ס: (חסר)

<sup>945</sup> [תביין] פ: באן

<sup>946</sup> [תמיד] ת: אלתמיד

<sup>947</sup> [יעד] פ: יעדו

<sup>948</sup> [כמא] פ: במא

ג'א בה אלניץ בבקר בבקר<sup>949</sup> בהיטיבו את הנרות יקטירנה ובהעלת אהרן.<sup>950</sup> והד'ה הי אלמצוה אלמעדודה, וקולה קח לך סמים תוטיה פי אלומר אנה יביין כיף תנעמל<sup>951</sup> הד'ה אלמצוה, והד'א אלבכ'ור מן אי שי יכון. וכד'לך<sup>952</sup> קולה קח לך בשמים ראש<sup>953</sup> לא ינעד, ואנמא ינעד אלומר<sup>954</sup> אלד'י אמרנא באן<sup>955</sup> נדהן כהנים גדולים ומלכים וכלי הקדש<sup>956</sup> בשמן המשחה אלמוצוף. ועלי הד'א פקס כל<sup>957</sup> מא שאבהה, חתי לא יתכת'ר ענדך מא לא ינבגי תכת'רה. והד'א גרצ'נא פי הד'א אלמצוה וזהו אמר ביין,<sup>958</sup> ואנמא ד'כרנאה ונבהנא<sup>959</sup> עליה לאנה קד גלט פיה איצ'א, ועד בעץ' מקדמאת אלמצוה מע אלמצוה נפסהא בשתי מצוות כמא<sup>960</sup> יבין למן תאמל עדד אלפרשיות אלד'י<sup>961</sup> יד'כר שמעון קיירא ז"ל, הו וכל מן תבעה מן ד'אכרי אלפרשיות פי עדהם.

**אלאצל**<sup>962</sup> **אלחאדי עשר** אנה לא ינבגי עד<sup>963</sup> אג'זא אלשריעה עלי אלנפראד ג'ז ג'ז אד'א כאן מג'מועהא<sup>964</sup> מצוה אחת.

קד תכון אלשריעה אלואחדה אלתי הי מצוה אחת להא אג'זא כת'ירה, מת'ל מצות לולב אלתי הי ארבעה מינין. פלא יקאל אן פרי עץ<sup>965</sup> מצוה בפני עצמה וכפות תמרים מצוה בפני עצמה<sup>966</sup> ועץ<sup>967</sup> עבות מצוה בפני עצמה וערבי נחל מצוה בפני עצמה,<sup>968</sup> לאן הד'ה כלהא הי אג'זא אלמצוה<sup>969</sup> לאנה אמר בג'מעהא, ובעד ג'מעהא תכון אלמצוה אכ'ד' אלג'מלה פי אליד פי אליום אלמעלום. ועלי הד'א אלקיאס בעינה לא ינבגי אן יעד קולה פי אלמצוה אנה יטהר בשתי צפרים ועץ ארז ואזוב ושני תולעת ומים חיים וכלי<sup>970</sup> חרס בסתה אואמר, בל טהרת מצוה אחת בג'מיע צפאתהא מא יחתאג' פיהא מן הד'ה וגירהא, אעני אלחלאק, אן ג'מיע ד'לך הו אג'זא<sup>971</sup> אלמצוה אלמשרע בהא, והי טהרת מצוה והו<sup>972</sup> אן תכון עלי צפה' כד'א ועלי צפה' כד'א. והד'א<sup>973</sup> אלקיאס בעינה פי<sup>974</sup> אלמאזה אלתי<sup>975</sup> אמרנא לנעמל<sup>976</sup> לאלמצוה פי חאל נג'אסתה כי יג'תנב, והי בגדיו יהיו פרמים וראשו יהיה פרוע ועל שפם יעטה וטמא יקרא, ליס

949 [בבקר בבקר] ס: בבקר  
950 [ובהעלת אהרן] ת: ובהעלת אהרן את הנירות  
951 [תנעמל] ר: תעמל  
952 [וכד'לך] ר: וד'אלך  
953 [ראש] ג,ט,ג,ה,ר,ל: (חסר)  
954 [אלומר] א: אמר  
955 [באן] ת: באן  
956 [הקדש] א: ("הקדש" מתוקן ל"המשכן" בשוליים)  
957 [כל] ב: וכל  
958 [ביין] ת: בין ג'דא  
959 [ונבהנא] ר: ואנבהנא  
960 [כמא] ב: כמו  
961 [אלד'י] ת: אלתי  
962 [אלאצל] א: ואלאצל  
963 [עד] פ: אן יעד  
964 [מג'מועהא] ת: מג'מועהמא, ה: מג'מועה  
965 [עץ] א: עץ הדר  
966 [וכפות תמרים מצוה בפני עצמה] פ,ס,ק: (חסר)  
967 [ועץ] ת,ס,ל: וענף עץ, [ועץ עבות מצוה בפני עצמה] פ: (חסר)  
968 [וערבי נחל מצוה בפני עצמה] ס: וכפות תמרים מצוה בפני עצמה וערבי נחל מצוה בפני עצמה וכפות תמרים מצוה בפני עצמה  
969 [אלמצוה] פ: אלשריעה  
970 [וכלי] ת: בכלי  
971 [אג'זא] ל: (חסר)  
972 [זהו] ק,ג,ט,ג,ה,ל: והי  
973 [ועלי צפה' כד'א והד'א] א: והד'א, ת,ג,ט,ג,ה,ר: ועלי צפה' כד'א והד'א הו, ל: ועלי צפה' כד'א ועלי הד'י  
974 [פי] פ: הו  
975 [אלתי] פ: אלד'י  
976 [לנעמל] ת: נעמל, ק: אן נעמל

כל פעל מן הד'ה<sup>977</sup> מצוה בפני עצמה, בל מג'מועהא הי<sup>978</sup> אלמצוה. והו<sup>979</sup> אנה אמרנא באן נמיז אלמצורע חתי יעלמה כל מן יראה ויג'תנבה' ותמיזוה<sup>980</sup> יכון באלכד'א ואלכד'א<sup>981</sup> כמת'ל מא אמרנא אן נפרח לפני יי'י אול יום מן סכות' וביין אן ד'לך אלפרח יכון באכד'א אלכד'א ואלכד'א.<sup>982</sup>

והד'א אלאצל<sup>983</sup> עויץ אלפהם<sup>984</sup> ג'דא ג'דא, ווג'ה עוצה מא אצף לך. וד'לך אן כל מא ג'א לאלחכמים פיה נץ<sup>985</sup> אן אלאמר<sup>986</sup> אלפל'אני ואלפל'אני מעכבין זה את זה, פהו ביין אנהא מצוה אחת נחו ארבעה' מינין שבלולב ולחם הפנים מע לבונה זכה אלתי תעמל מעה אלתי<sup>987</sup> נצוא פי ד'לך הסדרים והבזכים מעכבין זה את זה, פהד'א<sup>988</sup> ביין אנה<sup>989</sup> מצוה אחת. וכד'לך כל מא יתבין לך אן אלגאיה אלמטלובה לם תחצל בג'ז ואחד מן תלך אלג'זא,<sup>990</sup> פהו איצ'א ביין אן מג'מועהא הו אלמעני אלמעדוד, מת'ל<sup>991</sup> אמאזה' אלמצורע אלד'י<sup>992</sup> יתביין<sup>993</sup> לך אנה לו כאנת בגדיו פרומים פקט ולא פרע ראשו<sup>994</sup> ולא עטה על<sup>995</sup> שפם ולא קרא טמא טמא, אנה לם יעמל שי ולא חצלת<sup>996</sup> אמאזה<sup>997</sup> חתי יעמלהא כלהא. וכד'לך טהרתו לא<sup>998</sup> תחצל אלא בכל מא ד'כר מן אלצפרים ואלעץ ארז<sup>999</sup> ואזוב ושני תולעת ואלחלאק, וחיניד' תחצל לה טהארה.<sup>1000</sup>

ואנמא מוצ'ע אלצעובה פי אלאשיא אלתי קאלוא פיהא אינן מעכבין זה את זה. פאן אלד'י יסבק לאלכ'אטר אן מנד' הד'ה אלג'זא כל ג'ז מנהא גיר מפתקר לצאחבה, פיכון כל ג'ז<sup>1001</sup> מצוה בפני עצמו, מת'ל קולהם התכלת אינה מעכבת את הלבן והלבן אינו מעכב את התכלת. פלקד כנא נקול אן לבן ותכלת תנעד בשתי מצוות, לולא מא וג'דנא להם נץ ביין פי מכילתא<sup>1002</sup> דר' ישמעאל, והו קולהם הנאך יכול שהן שתי מצוות תכלת ומצות לבן ת"ל והיה לכם לציצת מצוה אחת היא<sup>1003</sup> ואינה<sup>1004</sup> שתי מצוות. פקד באן לך אן ולו אלג'זא אלתי אינן מעכבין זה את זה קד<sup>1005</sup> תכון מצוה אחת אד'א כאן אלמעני<sup>1006</sup> ואחד, לאן אלקצד באלציצת למען תזכרו, פג'מלה' אלשי אלמוג'ב לאלד'כר מצוה אחת ינעד. פלם

<sup>977</sup> [מן הד'ה] פ: מנהא, ק: מן הד'ה אלאפעאל

<sup>978</sup> [הי] פ: ה, ה: פהי

<sup>979</sup> [והו] ג, ט, ג, ה, ר, ל: והי

<sup>980</sup> [ותמיזוה] ר: ויתמיזוה

<sup>981</sup> [באלכד'א ואלכד'א] א: אלכדא ואלכדא, פ: בכד'י וכד'י

<sup>982</sup> [אלכד'א ואלכד'א] פ, ס, ג, ט, ג, ה, ר: אלכד'א ואלכד'א ואלכד'א

<sup>983</sup> [אלאצל] ב: אצל

<sup>984</sup> [אלפהם] נ: (חסר)

<sup>985</sup> [נץ] ל, ס: נץ גלי

<sup>986</sup> [אלאמר] פ: אלשי

<sup>987</sup> [אלתי] א, ל: אלד'י

<sup>988</sup> [פהד'א] פ: פהד'א איצ'א

<sup>989</sup> [אנה] פ, ת, ס, ג: אנהא

<sup>990</sup> [אלג'זא] ר: אלאשיא

<sup>991</sup> [מת'ל] א: מתלא

<sup>992</sup> [אלד'י] ב, ת, ק, ג, ט, ג, ה: אלתי

<sup>993</sup> [יתביין] ג, ט, ג, ה, ר: תביין

<sup>994</sup> [ראשו] ב, ת: (חסר)

<sup>995</sup> [על] ת, ק: (חסר)

<sup>996</sup> [חצלת] ס: חצלת לה

<sup>997</sup> [אמאזה] ה: אמאזה

<sup>998</sup> [לא] ס, ק: לם

<sup>999</sup> [ואלעץ ארז] פ: ועץ ארז, ק: ואלעץ אלארז

<sup>1000</sup> [טהארה] ב, ק: טהרה

<sup>1001</sup> [כל ג'ז] פ: (חסר), ט: כל

<sup>1002</sup> [מכילתא] פ, ק: אלמכילתא

<sup>1003</sup> [היא] ג, ט, ג, ה, ר, ל: (חסר)

<sup>1004</sup> [ואינה] ק, ג, ט, ג, ה, ר, ל: ואינן

<sup>1005</sup> [קד] א: פקד

<sup>1006</sup> [אלמעני] ס: אלמעני בעינה

יבק<sup>1007</sup> אד'א<sup>1008</sup> אן<sup>1009</sup> נלתפת פי עדד אלמצוות לקולהם מעכבין ואינן מעכבין, בל לאלמעני פקט, הל הו מעני ואחד או מעאני כתי'רה עלי מא ביינא פי אלאצל אלתאסע מן הד'ה אלאצול אלת'י נחן מחאולין תביינהא.

**אלאצל**<sup>1010</sup> **אלת'אני עשר** אנה לא תעד<sup>1011</sup> אג'זא צנאעה' מא מאמור בהא<sup>1012</sup> כל ג'ז עלי אנפראדה.

מעלום אנה קד<sup>1013</sup> נשרע בעמל מא מן אלאעמאל ת'ם יאכ'ד' אלנץ פי תביין כיפייה' ד'לך אלעמל<sup>1014</sup> וישרח אלאסם אלד'י ד'כר, ויקול עלי מאד'א<sup>1015</sup> ישתמל. פלא ינבגי אן יעד כל אמר ג'א פי ד'לך אלשרח מצוה בפני עצמו, <sup>1016</sup> מת'ל קולה ועשו לי מקדש, פאן הד'ה מצות עשה ואחדה מן גמלה' אלמצוות. והי<sup>1017</sup> אן יכון לנא בית מקצוד, נחזה יכון אלסעי, פיה יכון אלתקריב, ואליה יקע אלאג'תמאע פי אלפצול ת'ם אכ'ד' יצף אג'זאיה וכיף תנעמל, פלא ינבגי אן יעד כל מא קאל<sup>1018</sup> פיה ועשית ועשית<sup>1019</sup> מצוה בפני עצמה. ועלי הד'א אלנחו בעינה יג'רי אלאמר פי אלקרבנות אלמד'כורה פי ויקרא, וד'לך אן אלמצוה אלואחדה הי ג'מלה' אלצנאעה<sup>1020</sup> אלמוצופה פי נוע נוע מן אנואע אלקרבנות. מת'ל<sup>1021</sup> ד'לך אלעולה, פאנא<sup>1022</sup> שרענא באן תכון צנאעה<sup>1023</sup> אלעולה הכד'א, והי<sup>1024</sup> אן תד'בח<sup>1025</sup> ותסלך' ותגז'א וירש דמהא עלי צפה' כד'א ויקרב שחמהא, ת'ם יחרק לחמהא בג'מלה' מע מקדאר כד'א<sup>1026</sup> מן אלסמיד<sup>1027</sup> אלמלתות באלזית ומקדאר כד'א מן אלכ'מר, והי אלנסכים, ואן<sup>1028</sup> יכון<sup>1029</sup> ג'לדהא לאלכהן אלד'י יקרבהא. פהד'ה<sup>1030</sup> אלצנאעה בג'מלה'הא הי מצות עשה<sup>1031</sup> ואחדה, והי תורת העולה, לאן מת'ל הד'ה אלצנאעה לזם אלשרע אן תעמל כל עולה. וכד'לך איצ'א<sup>1032</sup> צנאעה' אלחטאת כלהא מן ד'בחהא וסלכ'הא ותקריב מא<sup>1033</sup> יקרב מנהא וגסל אלכלים אלת'י ירתש<sup>1034</sup> מן דמהא עליהא<sup>1035</sup> וגסל אלאואני<sup>1036</sup> אלת'י תטבך<sup>1037</sup> פיהא<sup>1038</sup> או כסרהא, אלכל הי<sup>1039</sup> תורת

<sup>1007</sup> [יבק] ק: יבקא

<sup>1008</sup> [אד'א] ט,ג,ר,ל: אד'ן

<sup>1009</sup> [אן] ב: (חסר)

<sup>1010</sup> [אלאצל] א: ואלאצל

<sup>1011</sup> [לא תעד] ת,ס,ק,ה,ר,ל: לא ינבגי אן תעד, פ: ("ינבגי אן" כתוב מעל השורה)

<sup>1012</sup> [בהא] ק,ג,ט,ג,ה,ר,ל: בעמלהא

<sup>1013</sup> [קד] א: (חסר)

<sup>1014</sup> [ד'לך אלעמל] ק: אלאעמאל

<sup>1015</sup> [מאד'א] ב,ק,ה: מא

<sup>1016</sup> [עצמו] ת: עצמה

<sup>1017</sup> [והי] ה: והו

<sup>1018</sup> [קאל] פ: גא

<sup>1019</sup> [ועשית ועשית] ק: ועשית

<sup>1020</sup> [אלצנאעה] ט,ה: אלצנאיע

<sup>1021</sup> [מת'ל] ק,ט,ה: מת'אל

<sup>1022</sup> [פאנא] ב: אנה

<sup>1023</sup> [צנאעה'] פ: (חסר)

<sup>1024</sup> [והי] ק: והי

<sup>1025</sup> [תד'בח] ק: תד'בח אלעולה

<sup>1026</sup> [כד'א] ת: כד'א וכד'א

<sup>1027</sup> [אלסמיד] ב,ת,ק,ג,ה,ר,ל: אלסמד

<sup>1028</sup> [ואן] ק: והו ואן

<sup>1029</sup> [יכון] פ: יכון גמלה

<sup>1030</sup> [פהד'ה] ת: פאן הד'ה, פ: פהד'ה גמלה

<sup>1031</sup> [מצות עשה] פ: מצוה

<sup>1032</sup> [וכד'לך איצ'א] פ: וכאן איצ'א כד'אלך

<sup>1033</sup> [מא] ק: כל מא

<sup>1034</sup> [אלתי ירתש] ת: אלד'י ירש

<sup>1035</sup> [עליהא] ת: עליה

<sup>1036</sup> [אלאואני] א: אואני

<sup>1037</sup> [תטבך'] ת: תנטבך'

<sup>1038</sup> [פיהא] פ: בהא

<sup>1039</sup> [הי] פ: (חסר)

החטאת<sup>1040</sup> והי מצוה אחת.<sup>1041</sup> וכד'לך תורת האשם מצוה אחת,<sup>1042</sup> ותורת זבח השלמים איצ'א,<sup>1043</sup> וכונה על תודה בכ'בו או דון כ'בו, ואכ'ד'<sup>1044</sup> אלכהן מנה חזה ושוק והנפתו,<sup>1045</sup> אלכל מן ג'מלה'<sup>1046</sup> צנאעה' זבח השלמים והי מצוה אחת.

והד'ה הי'<sup>1047</sup> ג'מלה' אנואע אלקרבנות אלת'<sup>1048</sup> יתעאוד<sup>1049</sup> לזומהא ליחיד וצבור,<sup>1050</sup> גיר אלאשם אנה<sup>1051</sup> קרבן יחיד אבדא כמה ביינא פי צדך<sup>1052</sup> סדר קדשים. פהד'ה אלתבה מן אלצנאיע הי מצות עשה,<sup>1053</sup> ולא<sup>1054</sup> ינבגי עד כל ג'ז וג'ז מן אג'זא אלצנאעה במצוה, אללהם אלא אן<sup>1055</sup> כאנת ת'ם אואמר תעם אנואע אלקראבין כלהא ולא<sup>1056</sup> תכ'תץ בנוע דון נוע מנהא, פאן כל אמר<sup>1057</sup> מנהא ינבגי אן יעד מצוה בפני עצמו<sup>1058</sup> לאן ליס הו חנינד' ג'ז מן אג'זא צנאעה' קרבן מא. וד'לך מת'ל'<sup>1059</sup> נהיה תעאלי ען תקריב בעל מום, או אמרה באן<sup>1060</sup> יכון תמים, ואמרה באן יכון גיר מחוסר זמן, והו קולה ומיום השמיני והלאה,<sup>1061</sup> ואמרה<sup>1062</sup> באן ימלח כל קרבן, והו קולה<sup>1063</sup> על כל קרבנך תקריב מלח, ונהיה ען תעטילה כמה קאל<sup>1064</sup> ולא תשבית מלח,<sup>1065</sup> ואמרה באכל<sup>1066</sup> מא יוכל מנה, פאן כל ואחד מן הד'ה אלאואמר מצוה בפני עצמה לאנהא<sup>1067</sup> ליס מנהא ולא ואחד ג'ז מן צנאעה' קרבן מכ'צוץ,<sup>1068</sup> בל אואמר תעם כל קרבן כמה סנביין<sup>1069</sup> ענד עדנא.

וביין הו אן כון אלכהן יאכ'ד'<sup>1070</sup> מא לה אן יאכ'ד' הו ג'ז מן אג'זא אלמצוה מת'ל מא ד'כרנא פי עור העולה. וכד'לך איצ'א'<sup>1071</sup> ראשית הגז, ג'מלה' אלמצוה הי'<sup>1072</sup> אן נכ'רג' ראשית הגז ונדפעה לאלכהן, וכד'לך אן<sup>1073</sup> נכ'רג' מעשר

- 1040 [החטאת] ב,ק: חטאת  
 1041 [אחת] ט: ואחדה  
 1042 [אחת] ר: (חסר)  
 1043 [איצ'א] ת: מצוה איצ'א  
 1044 [ואכ'ד'] ת: ויאכ'ד'  
 1045 [והנפתו] ל: והנפתו  
 1046 [מן ג'מלה'] פ: מן, ק: גמלת  
 1047 [הי] פ: (חסר), ת: מן  
 1048 [אלתי] ת: אלד'י  
 1049 [יתעאוד] ב,ס,ג,ט,ג,ה,ר,ל: יתעוד  
 1050 [וצבור] ת,ט: ולצבור  
 1051 [אנה] פ: פאנה  
 1052 [צדך] פ: (חסר)  
 1053 [עשה] א,ת,ק: (חסר), ב,ס,ג: ("עשה" כתוב בשוליים)  
 1054 [ולא] ק: לא  
 1055 [אן] ת: אד'א  
 1056 [ולא] ק: והי לא  
 1057 [אמר] ת: נוע  
 1058 [עצמו] פ: עצמה  
 1059 [מת'ל] פ: מת'ל קולה פי  
 1060 [באן] ג,ט,ג,ה,ר: אן  
 1061 [והלאה] ב,ק: והלאה ירצה, פ: והלאה ירצה לקרבן אשה ליו'  
 1062 [ואמרה] ה: ואמר  
 1063 [קולה] א: קול' תעא'  
 1064 [כמא קאל] א: כקול', פ: כמא קאלו, ג,ט,ג,ה,ר,ל: והו קולה  
 1065 [מלח] ת,ה: מלח ברית  
 1066 [באכל] ת: באן אכל  
 1067 [לאנהא] ת: לאן, ק: לאנה  
 1068 [מכ'צוץ] ט: מכ'צוץ  
 1069 [סנביין] ה: סאביין  
 1070 [יאכ'ד'] ה: אכ'ד'  
 1071 [איצ'א] א: איצ'א פי  
 1072 [הי] ק,ה: הו  
 1073 [אן] ט: (חסר)

ראשון ונדפעה לאלויו. וקד גלט פי הד'א חתי עדוא מתנות כהונה אלארבעה<sup>1074</sup> ועשרין<sup>1075</sup> מתנה בארבעה ועשרין מצוה, בעד עדדהם בעין' אלמצוות אלתי<sup>1076</sup> תלך אלמתנה ג'ז מנהא עלי נחו מא ביינא פי עור העולה וחזה ושוק משלמים. ולמא אנפל גירנא הד'א אלאצל ולא אבה אליה ג'מלה ולא לחט'ה, צאר אלי אן יעד מצוות בפני עצמן יציקות בלילות פתיתות מליחות הגשות תנופות וקמיצות והקטרות, ולם יעלם אן הד'ה כלהא אג'זא צנאעה' אלמנחה. וד'לך אנא שרענא באן נקרב מנחה, ת'ם אכ'ד<sup>1077</sup> יביין הד'א אלאסם עלי אי<sup>1078</sup> שי יקע, והי תורת המנחה. פקאל אנהא תכון מן אלסמיד<sup>1079</sup> או מן אלכ'בו אלמכ'בוז עלי צפה' כד'א או צ'פה<sup>1080</sup> כד'א, אעני מחבת או מרחשת או מאפה תנור, וילת באלזית<sup>1081</sup> עלי מקדאר כד'א, ויפתת, ויג'על<sup>1082</sup> עליה אלמלח ואללבאן, ויגיש ויניף ויקמוץ מנה, <sup>1083</sup> ויקטיר עלי אלוג'ה<sup>1084</sup> אלתי<sup>1085</sup> ביינא ואוצ'חנא פי מוצ'עה מן<sup>1086</sup> מסכת מנחות. והד'ה כלהא אג'זא צנאעה', ועלי<sup>1087</sup> אלשי אלמצנוע<sup>1088</sup> עלי הד'ה אלצפה<sup>1089</sup> כלהא יקע אסם מנחה, פאלמצוה הי אלאמר אלד'י אמרנא באן תכון צנאעה' קרבן<sup>1090</sup> אלכ'בוז או אלסמיד<sup>1091</sup> אלד'י נקרבה עלי הד'ה אלתבה כלהא. ומת'ל<sup>1092</sup> הד'ה אלאשיא פי מצות מנחה, אעני אליציקה ואלבלילה ואלפתיתה ואלמליחה ואלתנופה ואלהגשה ואלקמיצה ואלהקטרה, מת'ל<sup>1093</sup> קולה פי אלחליצה וחלצה נעלו וירקה בפניו וענתה ואמרה. פכמא מצות חליצה ואחזה, ולא<sup>1094</sup> נעד חליצה ורקיקה וקריאה<sup>1095</sup> אד' ומג'מועהמא<sup>1096</sup> הי צנאעה' אלחליצה והי מצוה אחת, כד'לך איצ'א לא יעד<sup>1097</sup> ויצקת עליה שמן ושמת עליה לבנה במלח תמלח והניף והגיש וקמץ והקטיר. והד'א לא<sup>1098</sup> כ'פא בה אלא עלי מן יאכ'ד' אלאמור באוול כ'אטר<sup>1099</sup> ולא תתרדד<sup>1100</sup> אלמעאני פי פכרה, כמא יקולון עליהם אלסלאם אגב שיטפא<sup>1101</sup> אמרה, יענון דון תאמל כל אוול מעני כ'טר

<sup>1074</sup> [אלארבעה] ה: אלא ארבעה

<sup>1075</sup> [ועשרין] ב,ת,ק: ואלעשרין

<sup>1076</sup> [אלתי] פ: אלד'י

<sup>1077</sup> [אכ'ד] פ: אכ'ד' אן

<sup>1078</sup> [אי] ת: (חסר)

<sup>1079</sup> [אלסמיד] ב,ת,ק,ג,ה,ר,ל: אלסמד

<sup>1080</sup> [או צפה] ר: עלי צפת, פ: וצפה

<sup>1081</sup> [באלזית] ת: בזית

<sup>1082</sup> [ויגעל] ר: וירגע, פ: (חסר)

<sup>1083</sup> [מנה] פ: (חסר)

<sup>1084</sup> [אלוג'ה] ה: אלוגוה

<sup>1085</sup> [אלתי] פ,ס,ק: אלד'י

<sup>1086</sup> [מן] נ: פי

<sup>1087</sup> [ועלי] ר: עלי

<sup>1088</sup> [אלמצנוע] ה: אלמצנוע אלמוצ'וע

<sup>1089</sup> [אלצפה] ק: אלצנעה

<sup>1090</sup> [קרבן] ל: קרבאן, פ: (חסר), ס: אלקרבן

<sup>1091</sup> [אלסמיד] ב,פ,ת,ק,ג,ה,ר,ל: אלסמד

<sup>1092</sup> [ומת'ל] ט,ג,ה,ל: ומת'אל

<sup>1093</sup> [מת'ל] ל: (חסר)

<sup>1094</sup> [ולא] ק: לא

<sup>1095</sup> [וקריאה] א: קריאה

<sup>1096</sup> [ומג'מועהמא] ת,ס,ק,ג,ט,ג,ה,ר,ל: ומג'מועהמא

<sup>1097</sup> [יעד] פ,ת: נעד

<sup>1098</sup> [לא] ק: כלה לא

<sup>1099</sup> [כ'אטר] ק: אלכ'אטר

<sup>1100</sup> [תתרדד] ס,ר: תרדד

<sup>1101</sup> [אגב שיטפא] פ,ס,ת,ק,ג,ה,ר,ל: אכפשטה, ט: (היה כתוב "אכפשטה" אבל המלה הוחלפה ל"אגבשטפה" ובשוליים כתוב "צריך עיון")

באלד'הן קיל. והד'א אלאצל לכ'ץ לנא אמר<sup>1102</sup> אלקרבנות כלהא וכיף ינבגי אן תעד,<sup>1103</sup> חתי לא יחדת' פיה<sup>1104</sup> שי מן אלכ'לל ולא אכ'תלאט בתה<sup>1105</sup> כמא<sup>1106</sup> סנביין פי עדדנא אן שא אללה.<sup>1107</sup>

**אלאצל**<sup>1108</sup> **אלת'אלת' עשר** אן אלמצוות<sup>1109</sup> לא יתכת'ר עדדהא בעדד אלאיאם אלתי תלזם פיהא תלך אלמצוה.

מן אלביין<sup>1110</sup> אן ת'ם מצוות לאזמה פי מדה' מא מן זמאן מעיין,<sup>1111</sup> קד תכון תלך אלמדה מתצלה והו<sup>1112</sup> אן ילזם פעל תלך אלמצוה<sup>1113</sup> פי יום בעד יום מת'ל אלסוכה ואללולב, וקד תכון<sup>1114</sup> פי איאם מעלומה מת'ל אלקרבנות. פאד'א קלנא<sup>1115</sup> מת'לא מוסף ראש חדש אנה מצוה אחת, והו אלמר אלד'י אמרנא באן נקרב קרבן<sup>1116</sup> זאיד מתי מא<sup>1117</sup> הל אלקמר. פאן קאל קאיל פלאי שי לא תעד מוסף כל שהר ושהר<sup>1118</sup> מצוה בפני עצמו,<sup>1119</sup> קלנא לה אן כאן ד'לך כד'לך פעד איצ'א<sup>1120</sup> תמיד כל יום מצוה בפני עצמו,<sup>1121</sup> והקטרת אלקטורת<sup>1122</sup> כל יום מן איאם אלסנה מצוה בפני עצמה, והטבת הנרות<sup>1123</sup> אללאזמה<sup>1124</sup> כל יום ויום<sup>1125</sup> מצוה בפני עצמה. פמן<sup>1126</sup> חית' לא תעד אלא אלמעני אלמאמור בה לזם פי אי זמאן לזם, כד'לך לא תעד מוסף ראש חדש גיר מצוה אחת ומוסף<sup>1127</sup> שבת מצוה אחת. וכד'לך מוסף כל מועד ומועד מן אלחמשה מועדים, ואן כאן ילזם פי איאם כת'ירה מתואליה, לאנה כמא קאל ושמתם לפני יי"י אלהיכם שבעת ימים, כד'לך קאל<sup>1128</sup> שבעת ימים תקריבו אשה,<sup>1129</sup> פכמא<sup>1130</sup> מצות לולב אחת כד'לך מוסף פסח אחת<sup>1131</sup>

<sup>1102</sup> [אמר] ת: אן

<sup>1103</sup> [תעד] פ: יעד

<sup>1104</sup> [פיה] ל: פיהא, ר: פי

<sup>1105</sup> [בתה] ג,ט,ג,ה,ר,ל: בוג'ה

<sup>1106</sup> [כמא] א: ממא

<sup>1107</sup> [אללה] ת,ג,ר,ל: אללה תעאלי

<sup>1108</sup> [אלאצל] א: ואלאצל

<sup>1109</sup> [אלמצוות] ר: אלמצוה

<sup>1110</sup> [אלביין] א: אלביאן

<sup>1111</sup> [זמאן מעיין] פ: אלזמאן אלמעיין

<sup>1112</sup> [והו] ל: והי

<sup>1113</sup> [אלמצוה] ק: אלמצוות

<sup>1114</sup> [תכון] ת: יכון

<sup>1115</sup> [קלנא] א: קאלוא

<sup>1116</sup> [קרבן] ת: קרבאן

<sup>1117</sup> [מא] ת: (חסר)

<sup>1118</sup> [כל שהר ושהר] ל: כל שהר, ס: כל חדש וחדש

<sup>1119</sup> [עצמו] ת,ס,ק: עצמה

<sup>1120</sup> [איצ'א] ב: (חסר)

<sup>1121</sup> [עצמו] ס: עצמה

<sup>1122</sup> [אלקטורת] פ,ת,ק,ג,ט,ג,ה,ר,ל: הקטורת

<sup>1123</sup> [הנרות] ס: אלנירת

<sup>1124</sup> [אללאזמה] ב: לאזמה, ר: (חסר)

<sup>1125</sup> [ויום] ר: מן איאם אלסנה, פ: (חסר)

<sup>1126</sup> [פמן] א: מן

<sup>1127</sup> [ומוסף] ט: וכד'אלך מוסף

<sup>1128</sup> [קאל] ה: כל

<sup>1129</sup> [אשה] פ: אשה ליו'י

<sup>1130</sup> [פכמא] ב: כמא

<sup>1131</sup> [פסח אחת] פ: פסח מצוה אחת, ק: שבת אחד

וכד'לך מוסף כל<sup>1132</sup> פצל ופצל<sup>1133</sup> עלי<sup>1134</sup> הד'א יתביין אן אלחגיגה איצ'א מצוה אחת, ואן כאנת לאזמה פי ג' פצול, וכד'לך אלראייה ואלשמחה. והד'א<sup>1135</sup> ממא לם<sup>1136</sup> יגלט פיה אחד ולא ד'הב לסואה.

לכן גלט פי מא יתעלק בהד'א אלאצל גלטה עט'ימה ג'דא שניעה, וד'לך אנהם עדוא אלמוספין כלהא במצוה<sup>1137</sup> אחת, מוסף שבת ומוסף ראש חדש ומוספי מועדות. ועלי הד'א אלנחו מן אלעדד ילזמהם אן יעדוא שביתת כל יום טוב מצוה אחת, ומא פעלוא כד'לך. ואן כאן עלם אללה מא<sup>1138</sup> ינבגי טלבהם בשי<sup>1139</sup> מן הד'א, לאנהם<sup>1140</sup> מא לזמוא פי עדדהם קאנון ואחד בוג'ה, בל יעלו שמים ירדו תהומות. ואלחק אלואצ'ח הו מא ד'כרנאה<sup>1141</sup> לך, אן כל מוסף ומוסף מצוה בפני עצמה<sup>1142</sup> כמא אן שביתת כל יום ויום מצוה בפני עצמה, והד'א הו אלקאנון אלמסתקים.

**אלאצל<sup>1143</sup> אלראבע עשר** כיף ינבגי אן תעד אקאמה' אלחדוד מצות<sup>1144</sup> עשה.

אעלם אן ג'מיע אלמצוות עשה ולא תעשה תנקסם קסמה אולייה בחסב גרץ<sup>1145</sup> הד'א אלבאב אלי קסמין, קסם לם<sup>1146</sup> יביין אלנץ פיה<sup>1147</sup> עקאב בוג'ה בל אמר ונהי ולם<sup>1148</sup> יוג'ב עלי אלמתעדי קצאץ ולא תואעדה בעקאב מכל'צוץ<sup>1149</sup> לתעדיה<sup>1150</sup> עלי הד'א אלאמר או אלנהי אלמעין, וקסם ביין פיה<sup>1151</sup> אלעקאב ואלקצאץ. אמא אלקסם אלד'י ביין פיה אלקצאץ<sup>1152</sup> פאן מן תלך אלמצוות מא אמרנא ת"ע באן נרג'ם באלחג'ר מן תעדא עליהא, ומנהא מא אמרנא באן<sup>1153</sup> נחרק באלנאר אלמתעדי עליהא, ומנהא מא אמרנא באן<sup>1154</sup> נצ'רב באלסיף<sup>1155</sup> רקה' אלמתעדי עליהא כמא באן פי אלתפסיר אלמרוי, ומנהא מא אמרנא באן נכ'נק אלמתעדי עליהא כמא ג'א פי<sup>1157</sup> אלתפסיר, ומנהא מא אמרנא באן נצ'רב אלמתעדי עליהא באלסוט<sup>1159</sup>, ומנהא מא תואעד<sup>1160</sup> עליהא תעאלי<sup>1161</sup> בכרת, והו אן לא יכון לאלמתעדי<sup>1162</sup>

<sup>1132</sup> [מוסף כל] ה: ומוסף

<sup>1133</sup> [פצל ופצל] ת: פצל ופצל מן אלג' אלפצול

<sup>1134</sup> [עלי] ס: ועלי

<sup>1135</sup> [והד'א] ב: והד'ה

<sup>1136</sup> [לם] ס,ק,ה: לא

<sup>1137</sup> [במצוה] ת,ג: מצוה

<sup>1138</sup> [מא] ת: ממא

<sup>1139</sup> [בשי] פ: פי שי

<sup>1140</sup> [לאנהם] ב: באנהם, ס: ואנהם

<sup>1141</sup> [ד'כרנאה] ת: ד'כרנא

<sup>1142</sup> [עצמה] פ: עצמו

<sup>1143</sup> [אלאצל] א: ואלאצל

<sup>1144</sup> [מצות] ב,ק,ל: במצות

<sup>1145</sup> [גרץ] פ: (חסר)

<sup>1146</sup> [לם] ר,ל: לא

<sup>1147</sup> [אלנץ פיה] פ,ה,ר: פיה אלנץ

<sup>1148</sup> [ולם] ר: ולא

<sup>1149</sup> [מכל'צוץ] א: מנצוץ

<sup>1150</sup> [לתעדיה] פ,ה,ר: אלתעדיה

<sup>1151</sup> [פיה] א: בין

<sup>1152</sup> [אלקצאץ] ק: אלעקאב אלקצאץ

<sup>1153</sup> [באן] ק: אן

<sup>1154</sup> [ומנהא מא אמרנא באן נחרק באלנאר אלמתעדי עליהא] נ: (חסר)

<sup>1155</sup> [באן] א,ק: אן

<sup>1156</sup> [באלסיף] ת: בסיף

<sup>1157</sup> [פי] א: (חסר)

<sup>1158</sup> נ: (כאן מופיע "ומנהא מא אמרנא באן נחרק באלנאר אלמתעדי עליהא")

<sup>1159</sup> [נצ'רב אלמתעדי עליהא באלסוט] פ,ס,ט: נצ'רב באלסוט אלמתעדי עליהא

<sup>1160</sup> [תואעד] ה: תועד

<sup>1161</sup> [עליהא תעאלי] ס,ג: עליהא, ק: תעאלי עליהא

<sup>1162</sup> [לאלמתעדי] ה: לאלמתעדי עליהא

אלדי ימות מצר עלי ד'נבה חלק<sup>1163</sup> לעולם הבא<sup>1164</sup> כמה ביינא פי פרק חלק, ומנהא מא תואעד<sup>1165</sup> עליהא<sup>1166</sup> תעאלי<sup>1167</sup> במיתה פקט, והו אן ימיתה אללה בד'נבה ויגפר לה במותה. וקד ביינא<sup>1168</sup> פי אול<sup>1169</sup> מכות אן כל נהי ילזם אלמתעדי עליה כרת פקט<sup>1170</sup> או מיתה בידי שמים, אד'א צח תעדי אלמתעדי עלי ד'לך<sup>1171</sup> אלנה<sup>1172</sup> וורתכאבה ד'לך אלד'נב בעדים והתראה,<sup>1173</sup> צ'רב מלקות, ועלי אן אצל חכמה אן יכון דינו מסור לשמים. ומנהא מא אמרנא תעאלי אן נקאצץ אלמתעדי עליהא פי מאלה פקט, לא פי ג'סמה, כמה חד פי אלגזלן זיאדה' אלכ'מס ופי אלגונב<sup>1174</sup> גרם<sup>1175</sup> אצ'עאף מא סרק.<sup>1176</sup> ומנהא מא אמר אללה<sup>1177</sup> תעאלי באן יקרב<sup>1178</sup> אלמתעדי קרבן עלי ד'נבה פיגפר לה.

פאקאמה' הד'ה אלחודד כלהא מצוות עשה, אנה אמרנא באן נקתל<sup>1179</sup> הד'א ובאן<sup>1180</sup> נצ'רב הד'א<sup>1181</sup> ואן<sup>1182</sup> נרג'ם הד'א<sup>1183</sup> ואן נקרב קרבן<sup>1184</sup> עלי מא תעדינא עליהא.<sup>1185</sup> ווג'ה עדדהא אנה<sup>1186</sup> נעד אלארבע מיתות בית דין<sup>1187</sup> בארבע מצוות מן מצוות עשה, ונץ אלמשנה זו מצוות הנסקלין,<sup>1188</sup> וכד'לך קאלוא כיצד מצוות הנשרפין,<sup>1189</sup> כיצד מצוות הנחנקין, כיצד מצוות הנהרגין. וקאלוא איצ'א אן קולה תעאלי<sup>1190</sup> לא תבערו אש<sup>1191</sup> ג'א<sup>1192</sup> לאלנה<sup>1193</sup> ען אקאמה' אלחודד פי אלסבת, וד'לך אנה נהי<sup>1194</sup> ען שריפת מצוה, וקאל בכל<sup>1195</sup> מושבותיכם, יעני פי מושב בית דין, יעני לא תקד<sup>1196</sup> נאר ועלי אנה מצוות עשה. קאלוא<sup>1197</sup> שריפה בכלל היתה ויצאת<sup>1198</sup> ללמד מה שריפה מיוחדת שהיא אחת

- 1163 [חלק] ב: אין לו חלק  
1164 [הבא] ט: (חסר)  
1165 [תואעד] ה: תועד  
1166 [עליהא] ב, פ, ג, ט, ג, ה, ר, ל: עליה  
1167 [תעאלי] פ: (חסר)  
1168 [ביינא] ק: ביינא  
1169 [אול מכות] ס: אול אלת'אלת' מן מכות  
1170 [פקט] נ: (חסר)  
1171 [ד'לך] ה: הד'ה  
1172 [אלנה] פ: (חסר)  
1173 [והתראה] ה: וההתראה  
1174 [אלגונב] נ, ל: אלגונב  
1175 [גרם] פ: זיאדה  
1176 [סרק] ק: יסרק  
1177 [אמר אללה] א: אמרנא  
1178 [יקרב] ר: נקרב  
1179 [באן נקטל] ט: בקטל  
1180 [ובאן] פ, ת, ג, ט, ג, ה, ר, ל: ואן  
1181 [הד'א] ג, ג, ה: (חסר)  
1182 [ואן] א: ובאן, פ: ואן נכ'נק ואן  
1183 [ואן נרג'ם הד'א] ט: (חסר)  
1184 [קרבן] ת: קרבאן  
1185 [תעדינא עליהא] ר: תעדא  
1186 [אנא] פ: אן  
1187 [בית דין] ג, ט, ג, ה: (חסר)  
1188 [זו מצוות הנסקלין] ר: זו מצוות הנסקלין זו מצוות הנשרפין  
1189 [כיצד מצוות הנשרפין] ר: (חסר)  
1190 [תעאלי] ט, ס: (חסר)  
1191 [אש] ק, נ, (חסר), ת: אש בכל מושבותיכם  
1192 [ג'א] א: אנמא ג'א  
1193 [לאלנה] ק: אלנה  
1194 [נהא] ת: נהאנא  
1195 [בכל] ת: (חסר)  
1196 [תקד] א: יקד  
1197 [קאלוא] ת, ה: וקאלוא  
1198 [ויצאת] ס: ולמה יצאת

ממיתות בית דין ואינה דוחה את השבת אף כל שאר מיתות בית דין לא ידחו את השבת, והד'א ביין לא ישכל עלי<sup>1199</sup> אחד.

וכד'לך איצ'א ינבגי אן נעד צ'רב אלסוט מצוה,<sup>1200</sup> ולא ינבגי אן<sup>1201</sup> נעד כל חד משכ'ץ מצוה בפני עצמה, חתי נקול מת'לא אן אלאמר אלד'י אמרנא ברג'ם מחלל שבת מצות עשה ואחדה, ורג'ם בעל אוב מצוה ת'אניה, ורג'ם עובד ע"ז מצוה ת'אלת'ה, חתי<sup>1202</sup> תכון עדה אלמצוות עלי עדה<sup>1203</sup> אלאשכ'אין אלד'י<sup>1204</sup> הם מחויבי מיתות בית דין, כמא פעל גירנא בגיר רויה. לאנה אן כאן הד'א<sup>1205</sup> הכד'א, פינבגי איצ'א אן נעד<sup>1206</sup> כל מלקות ומלקות מצוה בפני עצמה צ'רורה, חתי יכון צ'רב אוכל נבלה מצוה בפני עצמה,<sup>1207</sup> וצ'רב<sup>1208</sup> אוכל חזיר<sup>1209</sup> מצוה ת'אניה, וצ'רב אוכל בשר בחלב מצוה ת'אלת'ה, וצ'רב לובש שעטנז מצוה ראבעה. פיכון איצ'א ענדנא<sup>1210</sup> מצוות עשה עלי עדה אללאוין אלתי<sup>1211</sup> לוקין עליהן, פסתכת'ר<sup>1212</sup> חנינדי מצוות עשה ותניף עלי ארבע מאיה מצוה צ'רורה. פכמא לא נעד כל מחויבי מלקות בל אנמא נעד נוע אלעקובה פקט, והו<sup>1213</sup> אלצ'רב באלסוט, כד'לך לא נעד פי אלמיתות גיר נוע אלעקובה, והי<sup>1214</sup> סקילה שריפה<sup>1215</sup> חנק והרג.

וכד'לך איצ'א לא נעד כל מחויב<sup>1216</sup> קרבן עלי אלאנפראד,<sup>1217</sup> חתי נקול חטאת שגגת שבת מצוה וחטאת שגגת ע"ז מצוה, בל נעד נוע אלקרובן<sup>1218</sup> איצ'א פקט, כמא ענדנא נוע אלמיתת. וקד עלמת אן אנואע אלקרובן תכ'תלף באכ'תלאף אלד'נוב אלתי ילזם עליהא ד'לך אלקרובן, לאן מן אלד'נוב מא ילזם עליה<sup>1219</sup> חטאת קבועה, ומנהא מא ילזם עליה<sup>1220</sup> אשם תלוי,<sup>1221</sup> ומנהא מא ילזם עליה<sup>1222</sup> אשם ודאי,<sup>1223</sup> ומנהא מא ילזם עליה<sup>1224</sup> קרבן עולה ויורד. פלד'לך לא נעד אלחטאת מע אלאשם, בל נעד לזום חטאת<sup>1225</sup> קבועה במצוה,<sup>1226</sup> ולזום אשם תלוי במצוה,<sup>1227</sup> ולזום אשם ודאי

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- 1199 [עלי] א: (חסר)  
1200 [מצוה] ק: מצוה בפני עצמה  
1201 [אן] א: (חסר)  
1202 [חתי] ת: חתי אן  
1203 [עדה] ב: (חסר)  
1204 [אלד'י] ת, ס, ק, ל: אלד'ין  
1205 [הד'א] ב: (חסר)  
1206 [נעד] א: יעד  
1207 [בפני עצמה] ל: (חסר)  
1208 [וצ'רב] א: וצ'רב  
1209 [חזיר] פ, ק, ל: בשר חזיר  
1210 [איצ'א ענדנא] ט: עדה  
1211 [אלתי] ל: אלד'י  
1212 [פסתכת'ר] ק, ר, ל: פסתכת'ר, ס, ת: פסתכת'ר, ט: (כתוב "פסתכת'ר" אבל בשוליים מתוקן ל"פסתכת'ר")  
1213 [והו] ג, ט, ג, ה, ר: והי  
1214 [והי] פ, ג, ט: והיא  
1215 [סקילה שריפה] פ: שריפה סקילה, ת: סקלה ושרפה  
1216 [מחויב] ת, ק, ה, ר: מחויבי  
1217 [אלאנפראד] ת: אלאנפראדה  
1218 [אלקרובן] נ: כל אלקרובן  
1219 [עליה] פ, ס, ג, ט, ג, ה, ר: עליהא  
1220 [עליה] פ: עליהא  
1221 [תלוי] ה: ודאי  
1222 [עליה] פ, ק: עליהא  
1223 [ודאי] ה: תלוי  
1224 [עליה] פ: עליהא  
1225 [חטאת] פ: אלחטאת  
1226 [במצוה] ת: מצוה  
1227 [במצוה] ת: מצוה

במצוה, <sup>1228</sup> ולזום קרבן עולה ויורד במצוה. <sup>1229</sup> לזום ד'לך אלקרבן לכל מן <sup>1230</sup> לזום, ולא <sup>1231</sup> נלתפת לאכ'תלאף אלד'נוב אלתי <sup>1232</sup> ילזום עלי כל ואחד מנהא ד'לך אלנוע מן אלקרבן כמה נעד אלמלקות במצוה ולא נלתפת לאכ'תלאף אלד'נוב אלתי <sup>1233</sup> ילזום עלי כל ואחד מנהא מלקות. והכד'א ג'על אלנץ לכל נוע מנהא פרשה בפני עצמה.

וקד כ'לט גירנא פי הד'א <sup>1234</sup> אלאצל תכליט לא יחתאג' עליה רד, ולא איצ'א יסהל אלרד עליה לשדה' תכליטה אלמעאני. אעתבר ואעג'ב מן רג'ל יעד מחויבי מיתות בית דין כלהא <sup>1235</sup> שכ'צא שכ'צא, <sup>1236</sup> ומחויבי כרת ומחויבי מיתה מן ג'מלה' מצוות לא תעשה, ת'ם יעד אלאשיא אלמנהי ענהא אלתי תלזום עליהא תלך אלמיתה איצ'א פי <sup>1237</sup> ג'מלה' מצוות לא תעשה. מת'ל מא עד צאחב הלכות גדולות המחלל את השבת פי ג'מלה' מחויבי סקלה ת'ם עד לא תעשה כל מלאכה. פמא בקי אל'א <sup>1238</sup> אנהם יט'נון לא <sup>1239</sup> שך אן אקאמה' אלחדוד מצות לא תעשה, אול'א <sup>1240</sup> פכ'יף יעד פיהא אלקצאץ ואלשי אלד'י <sup>1241</sup> ילזום עליה ד'לך אלקצאץ. ואשד מן הד'א, תעדיד <sup>1242</sup> מחויבי <sup>1243</sup> כרת אלתי <sup>1244</sup> לא מיתה פיהא, <sup>1245</sup> אעני פי <sup>1246</sup> מצוות לא תעשה, והם יתוהמון אן לזום אלכרת ואלקצאץ בה הי <sup>1247</sup> אלמצוה אלמעודדה, חתי אן צאחב כתאב אלשראיע צרח בד'לך, וקאל פי אוול פצל ענד תג'מילה מא ישתמל עליה ד'לך אלפצל כלאם, הד'א נצה, קאל ומנהא את'נין ות'לאת'ין מעני אכ'ברנא באנה תבארך ות'ע יתוולא פעלהא לא נחן גמיעהא מצ'מון. אמא <sup>1248</sup> ק"ו ומנה, <sup>1249</sup> יעני מן אלשי אלד'י ישתמל עליה דלך אלפצל. ואלאת'נין ואלת'לאת'ין מעני הם ת'לאת'ה ועשרין שכ'ץ אלד'י <sup>1250</sup> ילזמהם כרת <sup>1251</sup> פקט, ותסעה מחויבי מיתה בידי שמים כמה ענד. <sup>1252</sup> ומעני ק"ו גמיעהא מצ'מון, יעני אנה תעאלי צ'מן <sup>1253</sup> אנה <sup>1254</sup> יכרית זה וימית זה. פלא שך אן הד'א מא בקי ענדה אן יעתקד שש מאות ושלש עשרה מצוות כלהא לאזמה לנא, בל מנהא לאזום לנא ומנהא לאזום לה תעאלי, כמה קאל וביין אנה יתוולא פעלהא לא נחן. והד'י עלם אללה כלה ענדי אכ'תלאט מח'ץ, לא ינבגי אלכלאם פיה בוג'ה אנהא אקאויל ביינה' אלפסאד. ודכ'ל <sup>1255</sup> עליהם כלהם אלד'י כלה פי כונהם יעדון אלקצאצא במצוות ויתחירון פיהא, תארה יעדונהא במפרדהא ותארה יעדון אלקצאץ ואלשי אלד'י יקאצץ עליה, ויג'עלון ד'לך כלה פי מצוות לא תעשה בגיר תאמל.

- <sup>1228</sup> [ולזום אשם ודאי במצוה] נ: (חסר), [במצוה] ת: מצוה  
<sup>1229</sup> [במצוה] ת: מצוה  
<sup>1230</sup> [לכל מן] פ: למן  
<sup>1231</sup> [ולא] ק: ולם  
<sup>1232</sup> [אלתי] ק: אלד'י  
<sup>1233</sup> [אלתי] ק: אלד'י  
<sup>1234</sup> [הד'א] ק: הד'ה  
<sup>1235</sup> [כלהא] ב,פ,ת,ס,ג,ט,ג,ר,ל: כלהם  
<sup>1236</sup> [שכ'צא שכ'צא] ק: שכ'צא  
<sup>1237</sup> [פי] פ: מן  
<sup>1238</sup> [אלא] א: לא  
<sup>1239</sup> [לא] ל: בלא  
<sup>1240</sup> [אול'א] ק: אוולא  
<sup>1241</sup> [אלד'י] ת: אלתי  
<sup>1242</sup> [תעדיד] ט: תעדידה  
<sup>1243</sup> [מחויבי] ה: מחויבי  
<sup>1244</sup> [אלתי] ב,פ,ת,ק,ג,ט,ג,ה,ר,ל: אלד'י  
<sup>1245</sup> [פיהא] ל: פיהם  
<sup>1246</sup> [פי] ג,ט,ג,ה,ר,ל: (חסר)  
<sup>1247</sup> [בה הי] ק: בהד'י  
<sup>1248</sup> [אמא] ג,ט,ה,ר,ל: ואמא, נ: פאמא  
<sup>1249</sup> [ומנה] פ,ל: ומנהא  
<sup>1250</sup> [אלד'י] פ,ג,ט,ג,ה,ר: אלד'י  
<sup>1251</sup> [כרת] ה: אלכרת  
<sup>1252</sup> [ענד] ת: עד  
<sup>1253</sup> [תעאלי צ'מן] ל: צ'מן תעאלי  
<sup>1254</sup> [אנה] פ: אן  
<sup>1255</sup> [ודכ'ל] ג,ט,ג,ה,ר,ל: וידכ'ל

ווג'ה אלעדד<sup>1256</sup> אלצחיה הו מא ד'כרתה, מן כון כל נוע עקובה מצות עשה, חתי יכון דין תשלומי גנב<sup>1257</sup> מצות עשה אנא<sup>1258</sup> אמרנא באן גג'רמה הד'א אלמקדאר, ודין תוספת<sup>1259</sup> חומש מצוה,<sup>1260</sup> ודין חיוב חטאת קבועה מצוה,<sup>1261</sup> ודין חיוב אשם ודאי מצוה, ודין חיוב אשם תלוי מצוה, וקרבן עולה ויורד מצוה. וכד'לך לסקול ולשרוף ולהרוג<sup>1262</sup> ולחנוק ולתלות, כל ואחדה מן הד'ה אלעקובאת מצוה בפני עצמה, לזמת לכל מן לזמת מן אלאשכ'איץ, כמא אן אלצ'רב באלסוט מצוה אחת לזם אלמלקות לכל מן לזם. פהד'א מא ארדנא תקדימה<sup>1263</sup> פי הד'א אלאצל, ובה כמלת אלאצול אלת<sup>1264</sup> ינפע תקדימהא פי מא נחן בסבילה.

וינבגי איצ'א אן ינצ'אף<sup>1265</sup> אלי ד'לך<sup>1266</sup> הד'ה אלמקדמה, והי אן<sup>1267</sup> כל מא ילזם עליה<sup>1268</sup> מיתת בית דין או כרת<sup>1269</sup> פהו מצות לא תעשה צ'רורה, גיר פסח ומילה אנהמא בכרת ואן כאנא<sup>1270</sup> מצוות עשה כמא ד'כרוא<sup>1271</sup> פי אול מסכת כריתות, וליס ענדנא בוג'ה מן מצוות גירהמא ילזם אלמתעדי עליה<sup>1272</sup> כרת, נאהיך מיתת בית דין. פכל מא ג'א פי נץ אלתורה אן מן פעל אלפעל אלפלאני יקתל או ילזמה אלכרת, עלמנא יקין אן ד'לך אלפעל מנהייא ענה ואנה בלא תעשה. פקד יבין<sup>1273</sup> פי אלנץ אלנהי פיה<sup>1274</sup> כ'ארג ען תביין אלעקאב, ויכון אלעונש מד'כור ואלאזהרה מד'כורה נחו חלול שבת וע"ז אלד'י<sup>1275</sup> קאל לא תעשה כל מלאכה<sup>1276</sup> ולא תעבדמ, ת'ם לזם אלסקלה למן עשה מלאכה<sup>1277</sup> או למן<sup>1278</sup> עבד. וקד לא יבין אלנהי פי אלנץ בלאו גרידא, בל יד'כר אלעונש פקט ויתרך אלאזהרה, לכן אלאצל ענדנא לא ענש הכתוב אלא אם כן הזהיר, פלא בד מן וג'וב<sup>1279</sup> אלאזהרה לכל מן<sup>1280</sup> לזם פיה עונש,<sup>1281</sup> פלד'לך יקולון פי כל מוצ'ע עונש שמענו<sup>1282</sup> אזהרה מנין ת"ל כך וכך. פאד'א לם יכון<sup>1283</sup> אלנהי בנץ תעלמוה<sup>1284</sup> בקיאס מן אלמקאיס<sup>1285</sup>

- 1256 [ווג'ה אלעדד] פ: ואלעדד  
 1257 [גנב] ב: גונב  
 1258 [אנא] ס: אנה, ק: אמא אנא  
 1259 [תוספת] ב: תוספת  
 1260 [מצוה] ג, ט, ג, ה, ר, ל: מצות עשה  
 1261 [מצוה] ה: מצות עשה  
 1262 [ולשרוף ולהרוג] ק: ולהרוג ולשרוף  
 1263 [תקדימה] ל: תקיידה  
 1264 [אלתי] פ, ת, ג, ט, ג, ה, ר: אלד'י  
 1265 [ינצ'אף] ג, ג: תצ'אף  
 1266 [אלי ד'לך] ב: (חסר)  
 1267 [אן] א: (חסר)  
 1268 [עליה] פ: (חסר)  
 1269 [מיתת בית דין או כרת] ת: כרת או מיתות בית דין  
 1270 [כאנא] ב, פ, ס, ק, ג, ט, ג, ר, ל: כאנת  
 1271 [ד'כרוא] ט: ד'כרנא  
 1272 [עליהא] ג, ט, ג, ה, ר: עליהמא, ס: (כתוב "עליהא" אבל יש "מ" מעל המלה)  
 1273 [יבין] א: ביין, פ: (חסר)  
 1274 [פיה] א: פי  
 1275 [אלד'י] ק: אלתי  
 1276 [כל מלאכה] א, ה: (חסר)  
 1277 [מלאכה] פ: מלאכה בשבת  
 1278 [למן] ת: מן  
 1279 [וג'וד] ר: נגום  
 1280 [מן] ס, ק: מא  
 1281 [עונש] פ: אלעונש  
 1282 [שמענו] פ, ת, ס, ג, ט, ג, ה, ר, ל: שמעינן  
 1283 [יכון] פ, ת, ס, ק, ג, ט, ג, ה, ר, ל: יבין  
 1284 [תעלמוה] א, ה: תעלמה  
 1285 [אלמקאיס] א: מקאיס

אלפקהיה, נחו מא ד'כרוא פי אזהרת מקלל אביו<sup>1286</sup> ומכה אביו<sup>1287</sup> אלת<sup>1288</sup> לם תביין<sup>1289</sup> פי אלניץ<sup>1290</sup> ג'מלה, לם יקול לא תקלל אביך ולא קאל לא<sup>1291</sup> תכה אביך, לכנה אלזם<sup>1292</sup> אלקתל למן הכה או קילל, פעלמנא אנהמא<sup>1293</sup> מצוות לא תעשה ואסתכ'רג'נא<sup>1294</sup> להמא ולאשבאההמא אלאזהרה מן מוא'צע אכ'רי בוג'ה קיאס. <sup>1295</sup> והד'א לא ינאק'ץ קולהם אין מזהירין מן הדין, ולא קולהם דאימא וכי מזהירין מן הדין לאן<sup>1296</sup> גאיה' מא נקול אין מזהירין מן הדין לנחרם מא לם<sup>1297</sup> יבין לה חרמאן ראסא בוג'ה קיאס. אמא אד'א וג'דנא אלעקאב בביאן פי אלתורה לפאעל הד'א אלפעל, עלם<sup>1298</sup> באלצ'רורה אנה פעל<sup>1299</sup> חראם מנהיאי ענה, <sup>1300</sup> ואנמא נסתכ'רג' באלקיאס אלתנביה עלי אלנהי ליטרד לנא אצל לא ענש הכתוב<sup>1301</sup> אלא אם כן הזהיר. ואן בעד חצול אלנהי<sup>1302</sup> ען<sup>1303</sup> ד'לך אלשי, <sup>1304</sup> חיניד<sup>1305</sup> לזם מן<sup>1306</sup> תעדי ופעל אמא כרת או מיתת בית דין. פאעלם הד'ה אלמקדמה ואחפט'הא<sup>1307</sup> מע אלאצול אלמתקדמה פי כל מא יאתי ד'כרה.

ואלאן אבתדי<sup>1308</sup> בד'כר ג'מיע אלמצוות מצוה מצוה, ואביינהא עלי ג'הה' שרה<sup>1309</sup> אלאסם כמא צ'מננא<sup>1310</sup> אול<sup>1311</sup> כלאמנא, אד'א<sup>1312</sup> הד'א הו גר'ץ' אלמקאלה. ולקד חסן ענדי אן אצ'יף אלי הד'א אלגר'ץ' זיאדה, והו אן ענד ד'כרי<sup>1313</sup> אלמצוה אלת עליהא קצאן, אמא<sup>1314</sup> עשה או לא תעשה, אד'כר קצאצהא. פאקול ואלמתעדי עלי ד'לך ילזמה מיתה, או כרת, או קרבן<sup>1315</sup> כד'א, או מלקות, או אחדי<sup>1316</sup> מיתות בית דין, או תשלומין. וכל<sup>1317</sup> מא לם יד'כר פיה חד מן אלהודו, פלתעלם אנה אן כאן מן<sup>1318</sup> מצוות לא תעשה פאנה כמא קאלוא כעובר על מצות<sup>1319</sup> מלך, וליס לנא אן נעאקבה נחן. אמא מצוות עשה בג'מלתהא, פאן כל מצוה מנהא ענד לזום פעלהא לנא<sup>1320</sup> אן נצ'רב באלסוט<sup>1321</sup>

- 1286 [אביו] ת,ס,ק: אביו ואמו  
 1287 [אביו] ת: (חסר)  
 1288 [אלתי] פ,ת,ל: אלדי  
 1289 [תביין] ג,ט,ג,ה,ר: יתביין  
 1290 [פי אלניץ] פ: באלניץ  
 1291 [קאל לא] ג,ט,ג,ה,ר,ל: (חסר)  
 1292 [אלזם] ס,ק,ל: לזם  
 1293 [אנהמא] פ,ג,ט,ג,ה: אנהא  
 1294 [ואסתכ'רג'נא] פ: ואסתכ'רג'נא  
 1295 [קיאס] ת: אלקיאס  
 1296 [לאן] א: לכן  
 1297 [לם] א: לא  
 1298 [עלם] ה: (חסר)  
 1299 [אנה פעל] פ: אן הד'א, ה: אנה  
 1300 [מנהיאי ענה] נ: ומנהיאי  
 1301 [הכתוב] ק: (חסר)  
 1302 [אלנהי] ר: אלשי  
 1303 [ען] ה: עלי  
 1304 [אלשי] ר: אלנהי  
 1305 [חיניד'] ט: (חסר)  
 1306 [מן] ל: לכל מן  
 1307 [ואחפט'הא] א: ואחפט'הא  
 1308 [אבתדי] ג,ט,ג,ה,ר: נבתדי  
 1309 [שרח] ב,ה: אלשרח  
 1310 [צ'מננא] ל: צ'מננא  
 1311 [אול] ס,ק: פי אול  
 1312 [אד'א] פ,ת,ס,ק,ט,ה: אד'  
 1313 [ד'כרי] ק: ד'כר  
 1314 [אמא] ק: מא  
 1315 [קרבן] ר: קרבן או  
 1316 [אחדי] ל: אחד  
 1317 [וכל] ק: פכל  
 1318 [אנה אן כאן מן] א: אן כאן מן, ב: אנה מן, ה: אנה אן כאן  
 1319 [מצות] ג,ט,ג,ה,ר,ל: גזירת  
 1320 [לנא] ת: פלנא  
 1321 [באלסוט] פ: (חסר)

אלממתנע מן פעלהא חתי ימות או יפעל או ירתפע זמאן אללזום. לאן מן תעדי ולם יג'לס פי אלסוכה, מת'לא, ליס לנא אן נצ'רבה בעד סכות עלי תעדייה, פאעלם הד'א.

ואיצ'א ענד ד'כרי אלשראיע<sup>1322</sup> אלתי לא תלזם אלנסא, כאנת עשה או לא תעשה, אקול והד'ה לא תלזם אלנסא. ומעלום אן אלנסא לא יחכמן, ולא ישהדן, ולא יתולין אלתקריב באידיהן, ולא יקאתלן<sup>1323</sup> פי מלחמת<sup>1324</sup> רשות. פכל מצוה תתעלק בבית דין או בשהוד או באלעבודה או במלחמת רשות,<sup>1325</sup> לא אחתאג' אן<sup>1326</sup> אקול פיהא<sup>1327</sup> והד'ה לא תלזם אלנסא, אד' הד'א חשו מן אלכלאם לא יחתאג'. ואיצ'א, ענד ד'כרי אלשראיע אלתי<sup>1328</sup> לא תלזם אלא<sup>1329</sup> פי ארץ<sup>1330</sup> ישראל או בפני הבית, כאנת עשה או לא תעשה, אקול והד'ה לא תלזם אלא פי ארץ<sup>1331</sup> ישראל אן<sup>1332</sup> בפני<sup>1333</sup> הבית. ומעלום איצ'א אן אלקראבין כלהא לא תקרב אלא במקדש,<sup>1334</sup> ואן לא תג'וז<sup>1335</sup> עבודה<sup>1336</sup> כ'ארג'<sup>1337</sup> אלעזרה. וכד'לך דיני נפשות לא תחכם אלא בוג'וד<sup>1338</sup> אלמקדש,<sup>1339</sup> ונץ אלמכילתא<sup>1340</sup> מניין שאין ממיתין אלא בפני הבית ת"ל מעם מזבחי<sup>1341</sup> הא אם<sup>1342</sup> יש לך בית אתה ממית ואם לאו<sup>1343</sup> אין אתה ממית. והנאך קיל איצ'א מניין שתהא סנהדרין<sup>1344</sup> סמוכה למזבח<sup>1345</sup> ת"ל מעם מזבחי.<sup>1346</sup>

ומעלום איצ'א אן אלנבווה ואלסלטנה קד רפעא<sup>1347</sup> מנא אלי אן נזול ען אלד'נוב אלתי<sup>1348</sup> נחן מצרין עליהא, פיגפר<sup>1349</sup> לנא וירחמנא כמא ועדנא וירדהמא כמא קאל פי רד אלנבווה והיה אחרי כן אשפך את<sup>1350</sup> רוחי על כל בשר ונבאו בניכם ובנותיכם. וקאל<sup>1351</sup> פי רד אלמלך ואלסלטאן,<sup>1352</sup> ביום ההוא אקים את סוכת דוד הנפלת וגדרתי את פרציהן<sup>1353</sup> והריסותיו<sup>1354</sup> אקים ובניתיה כימי עולם. ומעלום אן אלקתאל ואסתפתאח אלמדן<sup>1355</sup> לא יכון אלא בסלטאן וען ראי

- 1322 [אלשראיע] ב,פ,ת: שראיע  
1323 [יקאטלן] א: יקאטלוא  
1324 [פי מלחמת] ק: במלחמת  
1325 [רשות] ס: הרשות  
1326 [אן] פ: (חסר)  
1327 [פיהא] ס: פיה  
1328 [אלתי] פ: אלדי  
1329 [אלא] ר: ג'יר  
1330 [פי ארץ] ק: בארץ  
1331 [פי ארץ] ק: בארץ  
1332 [אן] ב,פ,ת,ג,ט,ג,ה,ל: (חסר)  
1333 [בפני] ה: ובפני  
1334 [במקדש] נ: באלמקדש, ס,ת: פי אלמקדש  
1335 [תגוז] פ: תכון  
1336 [עבודה] ס: אלעבודה  
1337 [כ'ארג] פ: ולא תגוז כ'ארג  
1338 [בוג'וד] ט: בוגה  
1339 [אלמקדש] פ: אלמזבח  
1340 [ונץ אלמכילתא] פ: ופי אלמכילתא קאלוא  
1341 [מעם מזבחי] פ,ת,ס,ק,ג,ט,ג,ה,ר,ל: מעם מזבחי תקחנו למות  
1342 [אם] ת: (חסר)  
1343 [ואם לאו] ת: ואם אין לך בית  
1344 [סנהדרין] ת,ה: הסנהדרין  
1345 [למזבח] ת: (חסר)  
1346 [מעם מזבחי] ק: מעם מזבחי תקחנו למות  
1347 [רפעא] א: רפעת, ר: רפענא  
1348 [אלתי] ת,ה: אלדי  
1349 [פיגפר] ר: ויג'פר, ק: פיג'פר אללה  
1350 [את] ת,ג,ט,ג,ה,ל: (חסר)  
1351 [וקאל] א: וקיל  
1352 [ואלסלטאן] ר: לישר'  
1353 [פרציהן] ג,ה,ר: פרצותיהן  
1354 [והריסותיו] ר: והריסותיה  
1355 [אלמדן] ק: אלבלאד

סנהדרי גדולה וכהן גדול, כמא קאל ולפני אלעזר הכהן יעמד. פלשהרה' הד'ה אלמעאני כלהא ענד אלאכת'ר, כל<sup>1356</sup> מצוות עשה או לא תעשה<sup>1357</sup> תתעלק בקרבנות או בעבודות<sup>1358</sup> או במיתות בית דין או בסנהדרין או בנביא ומלך<sup>1359</sup> או מלחמת<sup>1360</sup> מצוה או מלחמת<sup>1361</sup> רשות, לא אחתאג' אן אקול פיהא והד'ה<sup>1362</sup> לא<sup>1363</sup> תלזם אלא בפני הבית, אד' ד'לך ביין למא ד'כרנאה. ומא ימכן אן ישכל ויוהם אנבה עליה אן שא אללה.<sup>1364</sup>

ואלאן אבתדי בד'כר<sup>1365</sup> מצוה מצוה בעזרת שדי.<sup>1366</sup>

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1356 [כל] ס: פכל  
 1357 [או לא תעשה] ג,ט,ג,ה,ר: (חסר)  
 1358 [או בעבודות] ר: (חסר)  
 1359 [ומלך] ר: ומלך או בעבודות  
 1360 [מלחמת] ק: במלחמת  
 1361 [מלחמת] ק: במלחמת  
 1362 [והד'ה] ק: והד'ה אלמצוה  
 1363 [לא] ג: לם  
 1364 [אללה] ל: אללה תעאלי  
 1365 [בד'כר] ס: בד'כרה  
 1366 [שדי] א: שדי בריך רחמנא דסייען, ה,ר,ל: שדי ברוך הוא

## Appendix B: Translations of Principles Discussed in the Dissertation<sup>1</sup>

### Principle One

The first principle of these, that it is not appropriate to count in this sum *commandments* which are *rabbinic*.

Know that this matter should not require noting due to its obviousness, for if the formulation of the *Talmud* is “*six hundred and thirteen commandments were said to Moses at Sinai,*”<sup>2</sup> how can we say about something *rabbinic* that it is included in that number?

Nevertheless, we have noted this since [some] have already erred with regard to it and counted *Hanukkah lights* and *megillah recitation* in the sum of *positive commandments*. So too *one hundred benedictions every day*,<sup>3</sup> and *comforting mourners*, and *visiting the sick*, and *burying the dead*, and *clothing the naked*, and *calculating the seasons*, and *eighteen days on which Hallel is completed*. Consider and be amazed at one who hears their formulation “*were said to Moses at Sinai*” and counts the recitation of *Hallel*, by which *David* praised God,<sup>4</sup> may He be exalted, as if it was legislated to *Moses*, as well as counting *Hanukkah lights*, which *the sages* established in *the second Temple*, and likewise *megillah recitation*. As for [the idea] that it was stated to *Moses* at *Sinai* that he command us that if at the end of our dominion<sup>5</sup> such and such would befall us

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<sup>1</sup> Italics represent Hebrew or Aramaic

<sup>2</sup> See Babylonian Talmud, *Makkot*, 23b. Printed editions of the Talmud do not include the last two words “at Sinai.” Given that Maimonides, in this and other principles, attaches great significance to this clause and uses it to argue against previous enumerators, it is worth noting that those enumerators may have had a variant text which did not mention Sinai at all.

<sup>3</sup> See Numbers Rabbah, 18:21, which states that David enacted the requirement of uttering one hundred benedictions every day.

<sup>4</sup> The text of Hallel, a liturgical edition on holidays, is taken from the book of Psalms, attributed to David.

<sup>5</sup> The story of Hanukkah having taken place in the latter part of Judean autonomy in Palestine.

with the Greeks, he would require us to establish *Hanukkah lights*, I do not see how anyone could conceive of this or have it arise in his imagination.<sup>6</sup>

What seems to me to have tripped them up on this is our blessing on these things “*that He sanctified us with His commandments and commanded us about megillah recitation,*” and “*...to light a candle,*” and “*...to complete Hallel,*”<sup>7</sup> and the *Talmud*<sup>8</sup> asks “*from where are we commanded,*” and they say “*from ‘do not stray.’*”<sup>9</sup> If they counted [these rabbinic laws] for this reason, they should count everything that is *rabbinic*, as everything that the *sages* commanded be done or from which they prohibited us has already been commanded to *Moses our master at Sinai* that he command us to follow it; this is His statement “*according to the law that they teach you and the judgement they say to you, do.*”<sup>10</sup> And He prohibited us from violating anything they established or derived,<sup>11</sup> saying “*do not stray from the words they tell you right or left.*” So if everything *rabbinic* is counted in the sum of *six hundred and thirteen commandments* because it is subsumed in His statement, may He be exalted, “*do not stray,*” and “*the judgement they say to you, do,*” why specify these and not others? Just as they counted *Hanukkah lights* and *megillah recitation*, they should have counted *washing hands* and *the commandment of eruv*; we bless “*that He sanctified us with His commandments and commanded us about washing hands*” and

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<sup>6</sup> His target here is likely Saadya Gaon, as this is quite close to how Saadya explains what he sees as the divine origins of the commandment to light Hanukkah candles, see Moshe Zucker, “Iyyunim ve-He‘arot,”: 97-99.

<sup>7</sup> That is to say, this benediction, recited just prior to performing these rituals, states that God commanded them, not the rabbis.

<sup>8</sup> Babylonian Talmud, *Shabbat*, 23a.

<sup>9</sup> Deuteronomy 17:11. The verse prohibits disobeying a judge’s ruling, and the Talmud here is presenting this verse as a divine source which sweepingly requires that all pronouncements of the rabbis be obeyed. Therefore, it may indeed be possible to say that God commanded these rabbinic laws.

<sup>10</sup> Deuteronomy 17:11. This is the beginning of the verse previously cited, which ends “do not stray from the thing they tell you right or left.”

<sup>11</sup> *Rattabūhu aw qāsūhu*. See Mishneh Torah, *Hilkhot Mamrim* 1:2 where he uses this verse in the same way. By “established,” he is referring to the decrees the rabbis promulgated, and by “derived,” he means the laws they extracted from the text of the Torah through the use of hermeneutical principles. The word *qāsuhu* is the verbal form of the word *qiyās*, Maimonides’ term for Rabbi Yishmael’s thirteen hermeneutical principles which he discusses more extensively in the next principle.

“...on the commandment of *eruv*,” like we bless “...about *megillah* recitation” and “...to light a candle for *Hanukkah*,” and all are *rabbinic*. They explicitly said “washing hands before a meal is a commandment. What is the commandment? *Abaye* said: It is a commandment to listen to the words of the sages,”<sup>12</sup> just as they said about *megillah* recitation and *Hanukkah* lights “from where are we commanded? From ‘do not stray.’” It has already been clarified that anything established by the prophets, peace be upon them, who were active after *Moses our master* is also *rabbinic*. They<sup>13</sup> explicitly said: “At the time *Solomon* established the [laws of the] *eruv* and washing hands, a heavenly voice emanated and said ‘be wise, my son, and make my heart happy,’<sup>14</sup> and they clarified in other places that *eruv* is *rabbinic* and washing hands is of the words of the scribes.<sup>15</sup> So it has been clarified to you that anything established after *Moses our master* is called *rabbinic*. I have clarified this to you so you would not think that *megillah* recitation, since it is an enactment of the prophets, is counted as *biblical*, since *eruv* is *rabbinic* even though it is an enactment of *Solomon son of David and his court*.

This is what our counterpart missed in counting *clothing the naked* when he found in *Isaiah* “when you see a naked person, clothe him.”<sup>16</sup> He did not know that this is subsumed under His statement, may He be exalted, “sufficient for his lack that he is lacking,”<sup>17</sup> as the

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<sup>12</sup> Babylonian Talmud, *Hullin*, 106a.

<sup>13</sup> The sages in the Talmud, not the aforementioned prophets. See Babylonian Talmud, *Eruvin*, 21b.

<sup>14</sup> Proverbs 27:11. The standard printed editions of the Talmud read: “...a heavenly voice emanated and said: ‘my son, if your heart is wise, my heart will be happy, even mine,’ (Proverbs 23:15) and it says ‘be wise, my son, and my heart will be happy.’”

<sup>15</sup> “Scribes,” here, refers to the sages. With regard to *eruv*, Maimonides uses the Aramaic “*mi-derabbanan*,” translated here as “*rabbinic*,” the term he usually employs in this principle to denote *rabbinic* laws. He uses the Hebrew “*mi-divre sofrim*” with regard to the laws of hand-washing, though, and I have tried to preserve the difference in terminology by translating the first instance as “*rabbinic*” and the second as “of the words of the scribes.” However, the phrase *divre sofrim* as used by Maimonides is the subject of much debate, and on the disputed sense of “*mi-divre sofrim*,” see above, 112-113.

<sup>16</sup> *Isaiah* 58:7.

<sup>17</sup> Deuteronomy 15:8. The verse commands providing a needy person with everything that person needs, and Maimonides is claiming that the requirement to clothe the naked should be understood as a detail of this overarching command to provide for the poor. The fact that *Isaiah* mentions *clothing the naked* specifically does not, Maimonides argues, mean that it can be treated as a unique law within the list of 613 commandments.

meaning of that commandment is, without a doubt, that we feed the hungry, clothe the naked, provide household furnishings<sup>18</sup> for one who has no household furnishings and a cover<sup>19</sup> for one who has no cover, marry off one who is single and does not have the means to get married, and provide a mount for one who is in the habit of riding<sup>20</sup> as is well-known in the formulations of the *Talmud*;<sup>21</sup> this is all subsumed under His statement, may He be exalted, “*sufficient for his lack*.” For these,<sup>22</sup> the text of the *Talmud* was composed *with stammering lips and in a different language*,<sup>23</sup> otherwise they would not have counted *megillah recitation* and its like<sup>24</sup> among *commandments said to Moses at Sinai*. As is stated at the end of *Shevu‘ot*:<sup>25</sup> “*I only know [that the Jewish people were made to accept] the commandments commanded on Mt. Sinai, whence do we know about commandments which would be introduced in the future, such as megillah recitation? It is taught: ‘they confirmed and accepted’*<sup>26</sup>—*they confirmed what they had already*

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<sup>18</sup> *Farsh*. Both Ibn Tibbon and Kafih both translate this word as “bedding [*matza* ],” a more specific sense of this word. Nevertheless, *farsh* can also have a more general meaning of household furnishings or belongings, and when Maimonides codifies this law in his legal code, he does not mention bedding, but rather “household utensils [*klei bayyit*];” see Mishnah Torah, *Hilkhot Matanot ‘Aniyyim*, 7:3. I have chosen to translate *farsh* in a way which makes it consistent with that passage.

<sup>19</sup> *Ghitā’*. Kafih specifies that this should be read as a cover for sleeping, and takes Ibn Tibbon to task for translating it as a “covering [*kesut*],” which might imply that Maimonides may be referring to any clothing item; see Kafih, ed., 11, n. 78. Like *farsh*, the word *ghitā’* could mean “cover” in a non-specific sense or it could refer particularly to a blanket for sleeping. I have chosen the general denotation for both *farsh* and *ghitā’*, though I concede that Kafih may just as likely be correct that Maimonides is thinking specifically of bedding.

<sup>20</sup> Maimonides is explaining that the requirement of providing “what is sufficient for his lack” means that the needy person be supported to the degree to which he or she had previously been accustomed before becoming impoverished; if that person had had the means to ride a horse regularly, providing a horse to ride upon would be a necessary part of the charity in this case.

<sup>21</sup> See Babylonian Talmud, *Ketubbot*, 67b.

<sup>22</sup> I.e., these people who count rabbinic laws in their lists of the 613 commandments.

<sup>23</sup> Isaiah 28:11. Maimonides is using the language of Isaiah to accuse his counterparts of not understanding the Talmud. As it happens, though, the people he criticizes may, in fact, have had a different text of the Talmud in front of them; see above, 255, n. 2. If they did not have the phrase “at Sinai,” some of Maimonides’ challenges would be weakened, as he constantly references Sinai in contrast to later commandments.

<sup>24</sup> That is, other rabbinic laws like the commandment to recite the megillah of Esther on Purim.

<sup>25</sup> Babylonian Talmud, *Shevuot*, 39a.

<sup>26</sup> Esther 9:27.

accepted,”<sup>27</sup> which is that they believe in<sup>28</sup> every *commandment* the prophets or sages establish in the future.<sup>29</sup>

Oh how I am astounded! Why did they count *positive commandments* which are *rabbinic*, as we mentioned, and they did not count *negative commandments* which are *rabbinic* as well? Just as they counted *Hanukkah lights, megillah recitation, one hundred benedictions, and Hallel*, they should also count in the sum of *negative commandments twenty secondary relations*<sup>30</sup> in *twenty negative commandments* because, just as each *forbidden relation*<sup>31</sup> is a *biblical prohibition*, each *secondary relation* is similarly a *rabbinic prohibition*, as they clarified and said: “*Secondary relations are the words of the rabbis.*”<sup>32</sup> It has been clarified in the *Talmud*<sup>33</sup> that the statement of the *Mishnah* “*forbidden through a commandment*,” refers to *secondary relations*,<sup>34</sup> and it says “*what is the commandment? The commandment to listen to the words of the sages.*” Likewise, they should have counted the sister of one’s *ḥalutzah*<sup>35</sup> which is *the words*

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<sup>27</sup> Meaning, in the aftermath of the Purim story recounted in the book of Esther, the Jewish people confirmed what they had already accepted at Sinai.

<sup>28</sup> *Ya ‘taqidū*. Kafih, who does not like translating the root ‘-q-d as “believing,” renders this “accept upon themselves;” see Kafih, ed., 11, n. 83. That certainly conveys Maimonides’ meaning here, but I have chosen to adopt a more literal translation which, I think, similarly preserves the meaning.

<sup>29</sup> Again, Maimonides is making the point that while the Talmud states that those present at Sinai accepted that they would believe in all future commands of the rabbis, this does not mean that those future commandments are to be considered among those promulgated at Sinai. In this passage, there is a distinction drawn between “commandments commanded at Mt. Sinai” and “commandments which would be introduced in the future.”

<sup>30</sup> Relatives that the Torah does not prohibit one to marry, but that the rabbis, broadening the category of incest, did forbid; see Babylonian Talmud, *Yevamot*, 21a-22a.

<sup>31</sup> Relatives with whom marital relations are forbidden by the Torah.

<sup>32</sup> *Mishnah, Yevamot*, 2:4

<sup>33</sup> Babylonian Talmud, *Yevamot*, 20a.

<sup>34</sup> The Talmud is analyzing a passage from the *Mishnah* which mentions different categories of relatives, some “forbidden through a commandment” and some “forbidden through holiness.” The Talmud explains that when the *Mishnah* refers to relatives “forbidden through a commandment,” it means secondary relatives who are forbidden by rabbinic decree.

<sup>35</sup> Levirate marriage can be avoided through the procedure of *ḥalitzah*, see Deuteronomy 25:7-10, in which case the man in question is forbidden from marrying the sister of the woman with whom he performed *ḥalitzah* (the woman is referred to as a *ḥalutzah*). This prohibition of relations with the *ḥalutzah*’s sister is rabbinic, not biblical.

of the rabbis.<sup>36</sup> In summary, if we were to count every *rabbinic positive commandment* and every *rabbinic negative commandment*, that [list] would reach many thousands.

This is an obvious matter without any secret to it at all; that is, that anything which is *rabbinic* is not counted in the sum of *six hundred and thirteen commandments*, as this sum consists exclusively of formulations from the *Torah*—it has nothing *rabbinic* in it, as we explain. As for their counting some things which are *rabbinic* and leaving off some as they choose, this is something impossible to accept in any way, no matter who said it.<sup>37</sup> We have clarified the matter of this principle and its proof<sup>38</sup> to the point that no uncertainties remain for anyone.

## Principle Two

The second principle, that not everything derived from one of *the thirteen hermeneutical devices through which the Torah is interpreted*, or through *superfluity*,<sup>39</sup> should be counted.

We have already clarified in the introduction to our composition commenting on the *Mishnah*<sup>40</sup> that most laws in the legal corpus<sup>41</sup> were extracted<sup>42</sup> using *the thirteen hermeneutical devices through which the Torah is interpreted*<sup>43</sup> and that a law extracted through one of these *hermeneutical devices* might be subject to dispute,<sup>44</sup> while there are laws which are transmitted

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<sup>36</sup> See Babylonian Talmud, *Yevamot*, 40b.

<sup>37</sup> See Herman, “Systematizing God’s Law,” 167, for a suggestion that the phrase “no matter who said it” might imply that the target of Maimonides’ challenge here is Saadya, for whom Maimonides’ readers would have a great deal of respect. Indeed, as Zucker has shown, there is good reason to assume that Maimonides had Saadya in mind when writing this principle (see above, 107).

<sup>38</sup> *Wa-burhānahu*. This word, in an Aristotelian context, refers to philosophical demonstration. Ibn Tibbon maintains this sense by translating it “*u-moftav*” (see Heller, ed., 7), following his family’s tradition of using *mofet* to translate *burhān* in Maimonides’ philosophical writings.

<sup>39</sup> *Ribbuy*. See above, 111, n. 17.

<sup>40</sup> See *Mishnah ‘im Perush Rabbenu Moshe ben Maimon*, vol. 1, 4.

<sup>41</sup> I have translated *sharī’a* here as “legal corpus.”

<sup>42</sup> *Yustakhrij*.

<sup>43</sup> See the opening to the Sifra on Leviticus.

<sup>44</sup> *Ikhtilāf*. Maimonides is referring to the many rabbinic disputes recorded in the Talmud.

interpretations<sup>45</sup> from Moses our master which are not subject to dispute even if they are indicated by one of the *thirteen hermeneutical devices*<sup>46</sup> because the wisdom of the text<sup>47</sup> is such that it is possible to find hints in it which indicate these transmitted interpretations, or hermeneutical analysis<sup>48</sup> may indicate them, and we clarified this issue there.<sup>49</sup> If that is accurate, not everything we find that the *sages* extracted through one of the *thirteen hermeneutical devices* can we say was *told to Moses at Sinai*. We similarly cannot say that everything we find in the Talmud that they attributed<sup>50</sup> to one of the *thirteen hermeneutical devices* is *rabbinic*, since it could be a traditional interpretation. The approach for this is that anything for which a textual source in the *Torah* cannot be found and the Talmud has learned it through one of the *thirteen hermeneutical devices*, if they themselves<sup>51</sup> clarified and said that this is “the *essence of Torah*”<sup>52</sup> or that it is “*biblical*,” then it is appropriate to count it since the transmitters of tradition<sup>53</sup> said that it is *biblical*. If they do not clarify that or expressly state it, it is *rabbinic* since there is no textual source indicating it.

This is another principle which our counterpart got wrong, so he counted *fear of the sages* in the sum of *positive commandments*. What led him to that, it seems to me, is the statement of *Rabbi Akiva* “*Fear the Lord, your God*”<sup>54</sup> *includes sages*,<sup>55</sup> and he thought that anything

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<sup>45</sup> *Tafāsīr marwiyya*.

<sup>46</sup> In other words, even if the Talmud presents a certain law as having been derived through one of these hermeneutical techniques, that law may actually have been passed down as a tradition from Moses, and the hermeneutical device is just a support or mnemonic for that law, in which case no dispute is possible.

<sup>47</sup> That is, the text of the *Torah*.

<sup>48</sup> I have translated *qiyās* as hermeneutical analysis here. For more on this term, a loaded one in Arabic-language legal writings, see chapter three, above, in the section on the second principle.

<sup>49</sup> In the commentary to the *Mishnah*.

<sup>50</sup> *Yusnidūnahu*.

<sup>51</sup> I.e., the sages themselves.

<sup>52</sup> *Guf Torah*.

<sup>53</sup> *Al-rāwiyyin*.

<sup>54</sup> Deuteronomy 6:13.

<sup>55</sup> Babylonian Talmud, *Pesaḥim*, 22b. The Talmud recounts that Neḥemiah Ha-Imsoni had an interpretation for every instance of the direct object marker “*et*” in the *Torah*, maintaining that this particle always added something. When confronted with the “*et*” in the verse “fear the Lord, your God,” he conceded defeat, apparently not willing to

obtained through *superfluity*<sup>56</sup> is in the aforementioned sum. If it is as they claimed, why did they not count *honoring one's stepfather and stepmother as an individual commandment* apart from *honoring one's father and mother*, and similarly *honoring one's older brother*, as the requirement to *honor* these people was learned from *superfluity*; they said: “‘*your father*’<sup>57</sup> to include your older brother and to include your stepfather, ‘and your mother’ to include your stepmother,”<sup>58</sup> just as they said “‘*the Lord*’ to include the sages. So why did they count these and do not count these?

Their negligence has brought them to more serious [errors] than this; that is, if they found *an interpretation of a verse* which requires, through that *interpretation*, performing certain actions or avoiding certain things—all of which are without a doubt *rabbinic*—they count them in the sum of *the commandments* even though the *sense of the text*<sup>59</sup> does not indicate any of these things, despite the principle which [the sages], peace be upon them, laid down for us. That is their statement “*the Biblical text does not leave its apparent sense*,”<sup>60</sup> and the *Talmud* investigates in every instance, saying “*the essence of the verse*<sup>61</sup>—*what is it talking about?*”<sup>62</sup> if they find a text from which many things are derived by means of commentary<sup>63</sup> and inference.<sup>64</sup>

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say that anything aside from God should be feared in that sense. Rabbi Akiva is then said to have explained the “*et*” here as requiring that the sages be feared as well.

<sup>56</sup> The word I translated here as “includes,” “*le-rabbot*,” is the verbal form of the noun “*ribbuy*,” which I have translated as “superfluity.” In this case, the “*et*” was deemed superfluous, so Rabbi Akiva sees its appearance as including the sages in this command.

<sup>57</sup> Exodus 20:12.

<sup>58</sup> Babylonian Talmud, *Ketubbot*, 113a.

<sup>59</sup> *Peshateh de-gera*. See chapter three, above, for more on this term in Maimonides’ writing.

<sup>60</sup> Babylonian Talmud, *Shabbat*, 63a. See Cohen, *Opening the Gates*, 495-499, for more on this phrase and its possible meanings.

<sup>61</sup> *Gufeh de-gera*.

<sup>62</sup> This phrase does not appear in the Talmud, though Kafih (Kafih, ed., 14, n. 5) is correct to note that similar statements abound; see Cohen, *Opening the Gates*, 293, n. 41 for some examples.

<sup>63</sup> *Al-sharh*.

<sup>64</sup> *Al-istidlāl*.

Due to their reliance on this delusion,<sup>65</sup> they counted in the sum of *commandments* the *positive commandments* of *visiting the sick, comforting mourners, and burying the dead* because of the *interpretation* mentioned with regard to His statement, may He be exalted, “*and you shall show them the path upon which they should walk and the deed that they should do.*”<sup>66</sup> Their statement on this is “‘*the path*’—*this is performing kindness, ‘they should walk’—this is visiting the sick, ‘upon which*’<sup>67</sup>—*this is burying the dead, ‘and the deed’—these are the laws, ‘that they should do’—this is exceeding the letter of the law.*”<sup>68</sup> They thought that each of these actions is an *independent commandment*, and they did not know that all these actions, and ones like them, are subsumed under *one commandment* in the sum of *commandments* which is clearly expressed in the *Torah*, which is His statement, may He be exalted, “*love your neighbor like yourself.*”<sup>69</sup> In this exact manner they counted *calculating the seasons* as a *commandment* because of the *interpretation* mentioned with regard to His statement “*for it is your wisdom and understanding in the eyes of the nations;*” this is their statement “*what is the wisdom and understanding which is in the eyes of the nations? This is the calculation of seasons and constellations.*”<sup>70</sup> Were he to count things even clearer than this or things more possible to imagine that they should be counted—that is, anything derived from the *thirteen hermeneutical devices through which the Torah is interpreted*—the number of *commandments* would reach many thousands.

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<sup>65</sup> Meaning, due to previous enumerators’ belief that laws derived from hermeneutical interpretation should be counted in the list of 613 *commandments*...

<sup>66</sup> Exodus 18:20.

<sup>67</sup> In the syntax of the Hebrew verse, “upon which [*bah*]” appears after “they should walk [*yelkhu*].”

<sup>68</sup> See Babylonian Talmud, *Bava Kamma*, 100a.

<sup>69</sup> Leviticus 19:18.

<sup>70</sup> Babylonian Talmud, *Shabbat*, 75a. See Kafih, ed., 14, n. 10, for an explanation of some difficulties with Maimonides’ presentation of this issue, including that Maimonides does not take into account the reason Saadya himself says he counted calculating the seasons.

Perhaps you think that we eschew counting them because they are not certain, and that a rule derived from these *hermeneutical devices* might be correct or incorrect, but this is not the reason. Rather, the reason is that all which are derived are branches from the roots which were *said to Moses at Sinai* explicitly; that is, *the six hundred and thirteen commandments*. Even if *Moses* himself were the one deriving them, they should not be counted. An indication of all this is their statement at the end of *Temurah*: “*One thousand and seven hundred instances of a fortiori reasoning, textual parallels,<sup>71</sup> and specifications of the scribes<sup>72</sup> were forgotten in the days of mourning for Moses, but Otniel ben Qenaz returned them through his analysis, as it says: ‘Caleb said, whoever smites Qiryat Sefer and takes it, etc., and Otniel ben Qenaz took it.’*”<sup>73</sup> If these were what were forgotten, what is the sum from which this number was forgotten, as it is also absurd to say that all that was learned was forgotten?<sup>74</sup> Doubtless, the rules derived through *a fortiori reasoning* and the other *hermeneutical devices* totaled many thousands, and these were all obtained *in the days of Moses our master* since *they were forgotten in the days of his mourning*. So it has been clarified for you that even *in the days of Moses our master* we say “*specifications of the scribes*” because anything not heard at Sinai explicitly is “*the words of the scribes.*”<sup>75</sup> And it has been clarified that *the six hundred and thirteen commandments which were said to Moses at Sinai* should not have counted among them anything learned from *the thirteen hermeneutical devices* even if [it was derived] in his time, peace be upon him, and how much

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<sup>71</sup> *Gezerot shavot*. This refers to the hermeneutical technique of deriving a detail of a law through noting a linguistic parallel between the verse which explicates the law in question and another verse. The case of effectuating a marriage through transferring money or something of monetary value, discussed above, p. 112-113, is an example of this technique.

<sup>72</sup> As noted above with regard to the phrase *divre sofrim*, the term “scribes” refers to the sages.

<sup>73</sup> Joshua 15: 16-17. The name of the city to be taken, Qiryat Sefer, literally means “city of the book.” The Talmud is reading this as saying that Otniel took back the teachings which were forgotten when the nation was mourning Moses’ death.

<sup>74</sup> Meaning, if 1700 hermeneutical derivations were forgotten in the mourning period for Moses, and there must have been some which were not forgotten, the total number of such derivations must have been quite high.

<sup>75</sup> Again, “the words of the scribes” is used to mark a rabbinic command; see above, 257, n. 15.

more so [would it would be inappropriate] to count among them something derived at a later time. Rather, only something which is a transmitted interpretation should be counted, which is when the scholars of tradition clarify and say that this thing is forbidden to do and this prohibition is *biblical*, or they say that it is *the essence of Torah*. Then we will count it because it was learned through tradition and not through hermeneutical analysis;<sup>76</sup> rather, hermeneutical analysis or inference through *one of the thirteen hermeneutical devices* were mentioned with regard to it to reveal the wisdom of the text,<sup>77</sup> as we clarified in the commentary to the *Mishnah*.<sup>78</sup>

### **Principle Three**

The third principle, that one should not count *commandments which are not in effect for [all] generations*.

Know that [the sages'] statement “*six hundred and thirteen commandments were told to Moses at Sinai*”<sup>79</sup> indicates that this number is the number of *commandments which are in effect for [all] generations*, since *commandments which are not in effect for [all] generations* have no connection to *Sinai*. They were transmitted either at *Sinai* or elsewhere, whereas the intended meaning of the statement “*Sinai*” is the principal Law-giving<sup>80</sup> which was legislated at *Sinai*, as in His statement, may He be exalted, to him<sup>81</sup> “*come up to Me on the mountain and be there, and I will give you...*”<sup>82</sup> [The sages] explicitly said, “*what is the textual evidence for [there being 613*

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<sup>76</sup> *Bi-l-naqal lā bi-l-giyās*.

<sup>77</sup> He explains this earlier in this principle; see above, 261.

<sup>78</sup> See the reference above, 260, n. 40.

<sup>79</sup> Babylonian Talmud, *Makkot* 23b.

<sup>80</sup> *Aṣl al-tashrī*'.

<sup>81</sup> I.e., God's statement to Moses.

<sup>82</sup> Exodus 24:12. The complete verse reads “...and I will give you the tablets of stone and the Law [*ha-torah*] and the commandment [*ha-mitsvah*] which I have written so that you can teach them.”

commandments]? ‘Moses commanded us a Law [torah],’<sup>83</sup> referring to the numerical value of the word “Torah” which is “611, with ‘I [am the Lord your God]’ and ‘Do not have for yourselves [any other gods]’<sup>84</sup> having been heard from God Himself,<sup>85</sup>” and through that the sum of 613 commandments is reached.<sup>86</sup> What is intended by this *hermeneutic* is that what was commanded to us by Moses, and what we only heard from him, is the sum of the *Torah*. That is called “an inheritance for the congregation of Jacob,”<sup>87</sup> and a commandment which is not in effect for [all] generations is not an inheritance for us; rather, what is called an “inheritance”<sup>88</sup> is that which lasts through the generations, as He stated “as the days of the heavens on the earth.”<sup>89</sup> Also, part of [the sages’] statement is that it is as if every limb orders the person to perform a commandment and it is as if every day forbids him a transgression, an indication that this number will not ever decrease;<sup>90</sup> were there commandments which are not in effect for [all] generations among the total number, this total would decrease at the time at which the obligation of that commandment expires and this statement would only be fulfilled at a particular time.<sup>91</sup>

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<sup>83</sup> Deuteronomy 33:4.

<sup>84</sup> Exodus 20:2, the first two of the ten commandments.

<sup>85</sup> *Mi-pi ha-gevurah*; lit. “from the Mouth of Mightiness.”

<sup>86</sup> *Makkot* 23b-24a.

<sup>87</sup> The continuation of the verse cited above, Deuteronomy 33:4.

<sup>88</sup> Here, the term is *yerushah* instead of *morashah*, the word used in the verse. Maimonides’ great-great-grandson, Yehoshua ha-Naggid, is asked about this and he concedes that in his time, the two terms are not precisely equivalent. Nevertheless, he posits that Maimonides meant them as synonyms. See Yehoshua, *Teshuvot R’ Yehoshua ha-Naggid (al-Masā’il)*, Yehuda Ratzaby, ed. (Jerusalem: Makhon Mishnat ha-Rambam, 1989), 98 for Judeo-Arabic original and see note 39 on Ratzaby’s Hebrew translation, p. 36.

<sup>89</sup> Deuteronomy 11:21

<sup>90</sup> The passage from *Makkot* cited above records an opinion that there are 248 positive commandments, corresponding to the limbs on the body, and 365 negative commandments, corresponding to the days of the year, as if to say that all the limbs of one’s body tell the person to perform commandments with them and that every day a person is warned to avoid transgressions.

<sup>91</sup> Michael Guttman offers an extended criticism of this entire principle primarily responding to Maimonides’ use of what he sees as exclusively *aggadic*, and not *halakhic*, talmudic passages such as the proof from the numerical value of the word “Torah” and, especially, the reference to the limbs of a person and the days of the year. He argues that we cannot take these passages seriously from a legal standpoint; for instance, Maimonides states that if a temporary commandment were included among the positive commandments, the statement about the limbs of a person would only be true for a time. Guttman points out that even if one were to only count permanent commandments, this statement would *never* be true since there is no one person who can actually perform every single commandment—some are incumbent only for priests, or only for the king, or only for judges on a rabbinical

In erring with regard to this principle as well, our counterpart counted, when what is wide was narrowed for him,<sup>92</sup> “*they shall not come in to see the covering up of the holy things,*”<sup>93</sup> and he counted “*they shall no longer serve*” regarding the Levites;<sup>94</sup> these too *were only in effect in the wilderness*. Even though it has been said that “*an allusion to one who steals the vessels is ‘they shall not come in to see,’*”<sup>95</sup> it is enough that they say “*allusion,*” as the *plain meaning of the text*<sup>96</sup> is not that. It<sup>97</sup> is also not in the list of *those liable for capital punishment by divine hands* as put forth in the *Tosefta* and in *Sanhedrin*.<sup>98</sup> I also wonder about this one<sup>99</sup> who counts these *prohibitions*, why did he not count His statement about the *manna* “*a person should not leave any of it over until morning,*”<sup>100</sup> and His statement, may He be exalted, “*do not show hostility to Moab and do not contend with them in war,*”<sup>101</sup> and likewise the prohibition about the

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court, etc.; see Guttman, *Behinat ha-Mitsvot* (Breslau: 1928), 49-52, with the particular critique mentioned here found on p. 50. However, Guttman’s criticism here likely misrepresents Maimonides’ use of these passages. They may indeed be non-legal homiletical expositions themselves, but they can be read as reflecting the underlying legal dimension. For example, perhaps the sermon about the limbs of a person does not literally mean that every individual is required to perform all 248 positive commandments, but it does reflect that there *are* 248 commandments. Maimonides seems to be arguing that if a temporary commandment made it into this list, there would be a time when there would not be 248 commandments, and this passage about the limbs of a person would not even work from a homiletical perspective.

<sup>92</sup> *Lammā dāq bihi al-muttasi* . I have translated this somewhat enigmatic phrase literally, as did ibn Ayyub in his medieval translation; see Heller ed., 9, n. 7. Ibn Tibbon translated this “since his ability was constrained;” Heller ed., 9. Kafih renders it “when he was pressed by something which is not pressing,” and suggests that Maimonides means that the author of the *Halakhot Gedolot* found it hard to identify the 613 commandments when that should not have been a difficult task; see Kafih ed., 16, n. 30.

<sup>93</sup> Numbers 4:20. The verse refers to the priestly family of Kohath, whose job was to carry the vessels of the Tabernacle as the Israelites travelled in the wilderness. They were to enter the Tabernacle after other priests had finished covering the vessels (see Numbers 4:15), and this verse warns against them coming in while the vessels were being covered.

<sup>94</sup> Numbers 8:25. The verse precludes Levites over 50 years of age from serving.

<sup>95</sup> Babylonian Talmud, *Sanhedrin* 81b. The Talmud rules that, while one who steals a holy vessel may be killed by zealots while the theft is in progress, the thief cannot be charged in court. This ruling applies in all generations, and the Talmud sees an allusion to it in the verse about the covering of the vessels.

<sup>96</sup> *Peshateh de-qera*.

<sup>97</sup> The punishment for one who steals a holy vessel.

<sup>98</sup> The *Tosefta*, in *Zevahim* chapter 12 and in *Keritut* chapter 1, and the Talmud in *Sanhedrin* 83a, include lists of those who earn this punishment, and these lists do not mention one who steals a holy vessel.

<sup>99</sup> I.e., the author of the *Halakhot Gedolot*.

<sup>100</sup> Exodus 16:19.

<sup>101</sup> Deuteronomy 2:9.

people of Amon “do not show hostility to them and do not contend with them?”<sup>102</sup> He also should have counted in the sum of *positive commandments* His statement “make a serpent and place it on a standard”<sup>103</sup> and His statement “take a jar and place in it an ‘omer-worth of manna,”<sup>104</sup> as he counted *the tribute donation*<sup>105</sup> and *the dedication of the Tabernacle*.<sup>106</sup> Likewise, he should have counted “be ready for three days,”<sup>107</sup> and also “do not let sheep or cattle feed,”<sup>108</sup> and “lest they break through to come up to God,”<sup>109</sup> and there are many like this. Anyone with sense will not doubt that while all these *commandments were told to Moses*, both the commandments and prohibitions, nevertheless they were all *for a specific time and not in effect for [all] generations*, and therefore they should not be counted.

Due to this principle, one should not count the *blessings and curses* that were commanded [to be recited] on *Gerizim and Ebal*<sup>110</sup> nor the building of the *altar* which was commanded to be built upon our arrival to the *Land of Canaan*<sup>111</sup> since these are all *commandments for a specific time*. Nor [should one count] the commandment we were commanded to offer every animal we wish to eat as a *shelamim* sacrifice, since that was obligatory specifically in the *wilderness*. That is His statement “bring them to God,”<sup>112</sup> [and the sages] said in the *Sifra* “‘bring them to God,’ this is a positive commandment,”<sup>113</sup> but it is only

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<sup>102</sup> Deuteronomy 2:19.

<sup>103</sup> Numbers 21:8.

<sup>104</sup> Exodus 16:33.

<sup>105</sup> The tribute that Moses is commanded to offer to God in Exodus 31:28.

<sup>106</sup> See Numbers 7.

<sup>107</sup> Exodus 19:15.

<sup>108</sup> Exodus 34:3. These last two commandments were stated in advance of the revelation at Sinai.

<sup>109</sup> This exact wording does not correspond to any verse, though it is close to “lest they break through to God” in Exodus 19:21 or “do not break through to come up to God” in Exodus 19:24. These last three examples of commandments limited to a particular time were all stated in advance of the revelation at Sinai.

<sup>110</sup> Deuteronomy 11:29.

<sup>111</sup> Deuteronomy 27:4-6.

<sup>112</sup> Leviticus 17:5.

<sup>113</sup> *Sifra, Aharei Mot*, 6:9.

for the wilderness as is clarified in *Deuteronomy* [with] the allowance for *desired meat*<sup>114</sup> for [all] generations, and that is His statement “according to all your soul desires, you may eat meat.”<sup>115</sup> Were it appropriate to count all that is in this category,<sup>116</sup> then what *Moses* was commanded from the day of his [first] prophecy to the day he died, aside from *commandments in effect for [all] generations*, would exceed three hundred *commandments* if we were to count every commandment which came in Egypt and all that came at the time of the *milu'im*<sup>117</sup> or elsewhere; they are all explicit in the *Torah*, and there are both *positive and negative commandments* among them. Since one cannot count all of them, it necessarily follows that not one of them should be counted, not as our counterpart did in taking some of them as a means of assistance when the number wore him down.<sup>118</sup> This is what we intended to summarize in this principle.

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<sup>114</sup> *Besar ta'avah*; that is, the permission to eat meat whenever it is desired without the need to offer a sacrifice.

<sup>115</sup> *Deuteronomy* 12:20. According to this presentation, whenever the Israelites wanted to eat meat in the wilderness, they were required to offer it as a *shelamim* sacrifice, a type of sacrifice from which the one offering it may eat a portion. When they entered the Land, the obligation to offer it as a sacrifice was dropped; they simply needed to ritually slaughter the animal in order to eat it. This is based on a passage from the Babylonian Talmud, *Hullin* 16b-17a, and Maimonides codifies it in *Mishneh Torah* in *Hil. Sheḥiṭṭah* 4:17-18. His presentation in *Mishneh Torah*, however, differs from the brief summary of this rule he offers here. The Talmud records what it portrays, at least initially, as a disagreement between R. Yishmael and R. Akiva. The former interprets *Deuteronomy* 12:20 as meaning, essentially, what Maimonides states here; in the wilderness, the Israelites were forbidden to eat meat outside the context of a *shelamim* sacrifice, and that prohibition was waived upon their entrance to Canaan. R. Akiva, interpreting the next verse, 12:21, offers a different account of this history. In the wilderness, the Israelites could kill an animal any way they chose in order to eat it; ritual slaughter was not required. When they got to Canaan, they were now required to ritually slaughter any animal they wanted to eat. In *Mishneh Torah*, Maimonides seems to combine these opinions; he writes that in the wilderness, they could kill an animal in a way other than ritual slaughter and eat it without offering it as a sacrifice (R. Akiva), but if they did slaughter it in a ritually acceptable way, it needed to be offered (R. Yishmael). In Canaan, they were no longer permitted to kill the desired animal in any manner aside from ritual slaughter, but they did not then need to offer it as a sacrifice. See the *Lehem Mishneh* commentary to *Mishneh Torah* on *Hil. Sheḥiṭṭah* 4:17 for a suggested resolution—Maimonides read the progression of this talmudic passage as implying that R. Akiva actually agreed that ritual slaughter in the wilderness was limited to sacrifices. Additionally, the *Tosafot* commentary to *Hullin* 17a, s.v. *R. Akiva savar*, raises the possibility that, since the two rabbis are commenting on different verses, it is not necessary to see this as a disagreement at all. While the *Tosafists* ultimately reject this possibility, perhaps Maimonides did not.

<sup>116</sup> The category of temporary commandments.

<sup>117</sup> The seven-day ceremony for consecrating the Tabernacle described in *Leviticus* 8.

<sup>118</sup> Maimonides appears to argue that the author of *Halakhot Gedolot* had trouble coming up with 613 commandments, so he reached for other commandments which should not be included to help him get to that number.

## Principle Four

The fourth principle, that one should not count commandments which encompass all the laws.

There appear in the *Torah* commands and prohibitions which are not about a particular thing but encompass all the laws, as if He said “obey all that I have commanded you and refrain from all that I have forbidden you,” or “do not diverge from anything I have commanded you.” There is no way to count this command as *an independent commandment*, as it does not command performing a certain specified action for it to be a *positive commandment*, and it likewise does not forbid a particular action for it to be a *negative commandment*. This is like His statement “*about all that I have commanded you, be on guard*,”<sup>119</sup> and like His statement “*keep my statutes*,”<sup>120</sup> “*you shall do my ordinances*,”<sup>121</sup> “*keep my covenant*,”<sup>122</sup> “*keep my charge*,”<sup>123</sup> and many like these.

They erred<sup>124</sup> regarding this principle as well, to the point that they counted “*you shall be holy*”<sup>125</sup> as a *commandment* in the sum of *commandments*, and they did not know that His statement “*you shall be holy*” and “*sanctify yourselves and you will be holy*” are commands to obey the entire law,<sup>126</sup> as if He is saying “be holy through your doing all that I commanded you and your refraining from all I have forbidden you.” The text of the *Sifra* is ““*you shall be holy*”—*you shall be set apart*,”<sup>127</sup> meaning, “keep away from all the forbidden abominations.” In the

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<sup>119</sup> Exodus 23:13.

<sup>120</sup> Leviticus 19:19.

<sup>121</sup> Leviticus 18:4.

<sup>122</sup> Exodus 19:5.

<sup>123</sup> Leviticus 18:30.

<sup>124</sup> *Ghalaṭ* is singular, but I translated it “they erred” in order to make it consistent with the rest of the sentence, in which the subject is always in plural.

<sup>125</sup> Leviticus 19:2.

<sup>126</sup> *Jamī‘a al-sharī‘a*.

<sup>127</sup> *Sifra, Qedoshim* 1.

*Mekhilta*, they said “‘you shall be holy men to Me’<sup>128</sup>—*Issi ben Yehuda* says: *When the Holy One Blessed Be He introduces a commandment to Israel, He adds holiness to them,*”<sup>129</sup> meaning that this command<sup>130</sup> is not a specific command itself, but that it follows the *commandment* that is commanded; if one obeys that command, he will be called “*holy*.” There is no difference between His statement “*you shall be holy*” and if He had said “*do my commandments*,” would we say that this is a *positive commandments* in addition to the aforementioned *commandments*<sup>131</sup> which are commanded to be performed? Likewise, we would not say about “*you shall be holy*” and its like that it is a *commandment* since it did not command doing anything other than what we know.<sup>132</sup> The text of the *Sifre* is “*and you shall be holy*”<sup>133</sup>—*this is holiness of commandments.*”<sup>134</sup> So we have clarified what we intended. This principle also applies to His statement “*circumcise the foreskin of your heart,*”<sup>135</sup> which is to say, obey and listen to all the *commandments* mentioned previously, and similarly “*do not be stiffnecked anymore,*”<sup>136</sup> which is to say, do not be difficult in accepting what I have obligated you and do not diverge from it.<sup>137</sup>

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<sup>128</sup> Exodus 22:30.

<sup>129</sup> *Mekhilta de-Rabbi Yishmael, Mishpatim 20.*

<sup>130</sup> The command of “you shall be holy to me.”

<sup>131</sup> *Al-mitsvot al-mushār ilayhā.* He seems to be indicating his above reference to the commandments which the general commands “follow.”

<sup>132</sup> *Mā ‘alimnā.* Meaning, these commandments do not command anything new. My translation aligns with both Kafih’s and Ibn Tibbon’s; see Kafih, ed., 19, and Heller, ed., 11. Ibn Ayyub, though, seems to have read this as *mā ‘allamnā*, translating it “*ma she-kevar hodi ‘anu* [what we have already informed/taught];” see Heller, ed., 11, n. 13. If this reading is correct, Maimonides would be saying that these overarching commands do not require anything aside from what he explained earlier, that they demand following all the laws in general.

<sup>133</sup> Numbers 15:40.

<sup>134</sup> *Sifre, Shelah*, 115. The text in published editions of the *Sifre* reads: “And you shall be holy to your God”—this is the holiness of all the commandments.” The quoted selection represents one side in a debate in this passage from the *Sifre* about whether the holiness mentioned in the verse comes from performing all the commandments or the commandment of *tsitsit* in particular.

<sup>135</sup> Deuteronomy 10:16.

<sup>136</sup> This is the continuation of Deuteronomy 10:16.

<sup>137</sup> In contrast, see *Guide* III:33, in which Maimonides cites Deuteronomy 10:16 as an example of a commandment which requires exhibiting gentleness; see Munk, ed., 389.

## Principle Five

The fifth principle, that one should not count the reason<sup>138</sup> for a *commandment as an independent commandment*.

Reasons for *commandments* may appear similar to *prohibitions*, and one may think that they are part of the sum of things which are to be counted individually. That is as in His statement “*her first husband, who sent her away, is not able to take her again...and you shall not cause the land to sin;*”<sup>139</sup> His statement “*you shall not cause the land to sin*” is the reason for prohibiting what preceded it, as if to say that if you do this, you will increase corruption<sup>140</sup> in the land. Similarly, His statement “*do not debase your daughter to make her a harlot, and the land will not be promiscuous;*”<sup>141</sup> His statement “*and the land will not be promiscuous*” is the reason, as if He says that the reason<sup>142</sup> for prohibiting that is so “*the land will not be promiscuous.*” Like that is his statement “*do not defile yourselves with them, that you will be defiled through them.*”<sup>143</sup> After He mentioned the prohibition regarding species which are forbidden to be eaten, He explained that by saying do not be defiled through eating them, as if He is informing that violating this prohibition defiles the soul. [The sages] said explicitly in the *Sifre* regarding His statement, may He be exalted, after preceding with the prohibition of taking monetary

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<sup>138</sup> *Ta ‘lil*.

<sup>139</sup> Deuteronomy 24:4. The case involves a divorced woman who marries for a second time. If her second husband dies or divorces her, the first husband is forbidden from remarrying her.

<sup>140</sup> *Al-fasād*. In the *Guide*, Maimonides deals with the reasons for sexual sins in III:49. As part of that discussion, he mentions that precautions against adultery have prevented “corrupting the arrangement of a number of houses,” see *Guide*, 443. In this section of *Sefer ha-Mitsvot*, the prohibition in question is not adultery per se, but might be related because allowing men to switch wives or temporarily marry someone else’s wife could be used as a loophole for adultery. Maimonides does not explain what exactly he means by *fasād* here, but it is reasonable to assume that it is connected to the  $\text{זאב}$  with which he is concerned in that section of the *Guide*.

<sup>141</sup> Leviticus 19:29.

<sup>142</sup> *‘Illa*.

<sup>143</sup> Leviticus 11:43. As Maimonides indicates, the verse prohibits eating certain types of insects.

compensation from a murderer, “and do not defile the land:”<sup>144</sup> “the verse teaches that shedding blood defiles the land.”<sup>145</sup> So it has been made clear to you that this *lav* is a reason for the previous *lav*,<sup>146</sup> not that it is a different thing. Like that is His statement “from the Temple he shall not leave, and he shall not profane [the Temple of his God];”<sup>147</sup> so if he leaves, he profanes.<sup>148</sup>

Our counterpart was mistaken concerning this principle too, and he counted all of these *lavin* without contemplation. Indeed, he who counts them will be exposed<sup>149</sup> if one asks and says to him: this prohibition, what does it prohibit? He will not, at that time, have an immediate answer,<sup>150</sup> and with this, the futility of his count is clarified. This is what we intended to clarify in this principle.

### **Principle Eight**

The eighth principle, that one should not count a negation with a prohibition.

Know that a prohibition is one of two classes of a command, as in when you command the one being commanded that he do a certain thing or that he not do it, as when you command him to eat and you tell him “eat,” or you command him to refrain from eating and you tell him “do not eat.”<sup>151</sup> In the Arabic language there is not a term which comprises these two meanings

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<sup>144</sup> Numbers 35:34.

<sup>145</sup> I could not find this passage anywhere in the Sifre. However, the Sifre deals with a verse from the same chapter (Numbers 35:25), and with regard to that verse, the Sifre does say that a “murderer defiles the land.” However, Maimonides’ verse is not cited as the source for that. See Sifre, *Mas’ e* 160.

<sup>146</sup> The first usage of *lav* in this sentence does not fit its general rabbinic usage, though the second *lav* in this sentence does.

<sup>147</sup> Leviticus 21:12. The verse is referring to the high priest.

<sup>148</sup> See Babylonian Talmud, *Zevahim*, 16a.

<sup>149</sup> *Yafsaḏih*. That is, the following question will expose him as being in error.

<sup>150</sup> *Fa-lā yakūn lahu ḥīna ’idhin jawāb rāsan*. Both Kafih and ibn Tibbon translate *rāsan* as “at all,” whereas I have rendered it “immediate.”

<sup>151</sup> Indeed, Maimonides structures this whole book according to these two parts, with one section devoted to the commandments that require one to do something, and the other section to those that prohibit one from doing something.

together. Those who speak about the art of logic have already mentioned this, and they said in these words: “As for the command and the prohibition, they do not have, in the Arabic language, a term which combines the two of them, so we are compelled to call the two of them together with the term for one of them, and that is ‘command.’”<sup>152</sup> Thus it has become clear to you that a prohibition belongs to the category of command, and the well-known particle in the Arabic language which is established for a prohibition is the particle *la*.

This very matter is doubtless found in every language; I mean that you command the one being commanded that he act or not act. So it is clear that *a positive commandment* and a *negative commandment* are both absolutely commands, things we are commanded to do and things we are prohibited from doing. The term for that which is required to be done is *positive commandment* and the term for that which is prohibited is *negative commandment*, and the term which comprises them together in the Hebrew language is *gezerah* [decree]. Thus, the *sages* called every law, whether *positive* or *negative*, a “*decree of the king*.”<sup>153</sup>

As for negation, it is a different matter; namely, that which negates a predicate from a subject.<sup>154</sup> There is nothing about it which is related to a commandment at all, as in your saying “so-and-so did not eat yesterday,” and “so-and-so did not drink wine,” and “Zayd is not the father of ‘Amr,” and others like that. For all this is a negation; there is not a whiff of a command in it. The particle by which one negates in the Arabic language, mostly, is the particle *mā*. One also negates with the particle *lā* and with *laysa*. As for the Hebrews, most of their negation is

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<sup>152</sup> Alfarabi, “*Kitāb al-‘Ibāra*,” 140.

<sup>153</sup> *Gezerat ha-melekh*. It is worth pointing out that this phrase is used in rabbinic literature to refer to commandments (see Tosefta, *Nega‘im* 3:7), but also to things which are not technically commandments and simply the will of God in a more general way (see Babylonian Talmud, *Yoma*, 10a).

<sup>154</sup> See Maimonides, *Maimonides’ Treatise on the Art of Logic*, ed. Efros, ch. I. For the Arabic original, p. 5 of the Hebrew section, for Efros’ English translation, p. 34 of the English section.

through the particle *lo* itself, which they also use for prohibitions; they also negate with *en* and the pronouns connected to it: *eno*, *enam*, *enekhem* and others.

As for negation in Hebrew with the particle *lo*, it is as in His statement “*there has not since arisen a prophet in Israel like Moses,*” “*God is not a man, that He would lie,*” “*trouble shall not arise twice,*” “*a man did not stand with him,*” “*and he did not stand up, nor did he move for him,*” and many like this. The negation with *en* is as in His statement “*there was not a man,*” “*the dead do not know anything,*”<sup>155</sup> and there are many others like that as well.

So the difference between negation and prohibition has become clear to you; that is, a prohibition is part of the category of command and it cannot but be similar and equal to the verb of a command. I mean, just as the verb of a command is always in the future tense, a prohibition is like that; it is not possible in a language<sup>156</sup> for a command to be in the past tense, and so too for a prohibition. There is no way for a command to pertain to information because information requires a predicate and a subject,<sup>157</sup> while the command is a complete statement<sup>158</sup> as is made clear in the books set forth for this;<sup>159</sup> similarly, a prohibition will also not pertain to information.

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<sup>155</sup> Citations are from Deuteronomy 34:10, Numbers 23:19, Naḥum 1:9, Genesis 45:1, Esther 5:9, Genesis 2:5, Ecclesiastes 9:5. Regarding my translations of biblical verses throughout this section, some allow for various interpretations depending on how one understands them. I have attempted to keep my translations consistent with the way Maimonides explains them.

<sup>156</sup> *Al-lugha*, according to most manuscripts. However, the Oxford manuscript has a line over *al-lugha* and the scribe (it seems to be in the same hand) corrected it to *al-kalām*. That correction may work better here, as the text would then read “it is not possible in a sentence...”

<sup>157</sup> Meaning, a command cannot act as a proposition expressing information. Maimonides is referring to something he explained more explicitly in his *Treatise on Logic*. A proposition relates information about a subject and is comprised of a subject and a predicate. See *Maimonides' Treatise*, ed Efras, p. 6 of the Arabic, p. 35 of the English. Here, Maimonides is explaining that a command does not have that structure and therefore cannot convey information in a proposition.

<sup>158</sup> *Qawl tāmm*. See following note.

<sup>159</sup> He is likely referring to Alfarabi's epitome of *De Interpretatione* again, in which Alfarabi explains that there are five types of complete sentences: the statement, the imperative, the entreaty, the request, and the vocative. Statements “are those that are true or false, being composed of a predicate and a subject,” while the imperative, entreaty, request, and vocative are complete sentences in their own right, and “are neither true nor false, except by accident.” Instead of being statements of information with subjects and predicates, the imperative, entreaty, and request (which are grammatically equivalent, the only difference between them being the relationship of the speaker to the listener) are “composed of a noun and a verb in the future tense,” while the vocative is a similar construction,

But not so a negation, for a negation will pertain to information, and negates in the past tense, in the future tense, and in the present tense. All this is self-evident with contemplation.

Since this is so, it is not appropriate that the *lavin*<sup>160</sup> which are negations be counted among the negative commandments in any manner. This rule is evident,<sup>161</sup> no proof for it is necessary other than that which we mentioned regarding learning the meanings of the expressions,<sup>162</sup> so that one may differentiate between the prohibition and the negation.

Our counterpart<sup>163</sup> was ignorant of this to the point that he counted “*she does not leave the way male slaves leave*”<sup>164</sup> without perceiving that it is a negation, not a prohibition. Rather, the explanation is as I will describe. That is, God already ruled that in the case of one who strikes *his male or female Canaanite slave* and deprives him through that striking of one of the *tips of*

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but “leaves the verb in the future tense unexpressed.” See “*Kitāb al-‘ibāra*,” 139-140. The translation above is Fred W. Zimmerman’s; see Alfarabi, *Al-Farabi’s Commentary and Short Treatise on Aristotle’s De Interpretatione*, translated by F. W. Zimmerman (London: The British Academy, 1981), 226. When Maimonides writes that a command is a complete statement, he does not mean that a proposition expressing information (such as a negation) is *not* complete, but rather that a command is not comprised of a subject and predicate; it is complete without them, unlike a proposition.

<sup>160</sup> I have left this untranslated because it is a rabbinic term referring to technical prohibitions, but in this section, Maimonides curiously uses it as a general term which could include negations. A few of the many examples of the rabbinic usage can be found in Mishnah, *Makkot* 3:9-11, Babylonian Talmud, *Bava Metsia*, 59b, and Babylonian Talmud, *Yoma*, 22b. Maimonides himself explicitly uses this term in the rabbinic sense to mean a statement prohibiting something elsewhere in this work, including later in this section.

<sup>161</sup> *Burhānī*. In the technical, philosophical sense, “demonstrable.”

<sup>162</sup> Kafih interprets this to mean that the way to determine whether a sentence is a negation or a prohibition is to understand the meaning of the statement in question (See Kafih ed., 27 note 40). However, Maimonides is not dealing with the question of how to tell if a certain sentence is a negation or a prohibition. Rather, he is saying that the only evidence necessary to teach that one should not count negations among the 613 commandments is what he has previously mentioned—that the grammatical use of a negation is different from that of a prohibition. The expression “meanings of the expressions” here refers to the meanings of the logical terms he has previously explained here and in his *Treatise on Logic*, rather than the context of a particular statement under consideration. Kafih is likely influenced by a similar statement later in this chapter, made in a different context. See below, 279, n. 190.

<sup>163</sup> This is generally taken to refer to the author of the *Halakhot Gedolot*; certainly Nahmanides, in his comments on this principle, assumes the *Halakhot Gedolot* to be his target in this statement; see Chavel’s *Sefer Ha-mitsvot ‘im hasagot ha-ramban*, 88. However, I have not found this listed as a commandment anywhere in Hildesheimer’s edition of the *Halakhot Gedolot*. This should not be completely unexpected, as the text of the *Halakhot Gedolot* has had a fairly rocky history of transmission, and it is very likely that significant textual variations exist.

<sup>164</sup> Exodus 21:7.

*his limbs*, he leaves a free man.<sup>165</sup> It would have arisen in our minds that that would be even worthier and more appropriate in the case of a *Hebrew female slave*, and if he deprives her of one of the *tips of the limbs*, she should leave a free woman. So He negated this ruling from her by saying “*she does not leave the way male slaves leave*,” as if He is saying her leaving a free woman is not required at the deprivation of one of her limbs. So that is a negation of a certain ruling from her; it is not a prohibition. The scholars of tradition expounded in this way, and they said in the *Mekhilta* “‘*she does not leave the way male slaves leave*,’ *she does not leave through the tips of her limbs in the manner that Canaanites leave*.”<sup>166</sup> So it has become clear to you that it is a negation of a certain ruling and a denial of it, not that it is a prohibition of anything.<sup>167</sup>

Additionally, there is no difference between His statement “*she does not leave the way male slaves leave*,” and His statement “*the priest shall not seek a yellow hair, he is impure*,”<sup>168</sup> which is absolutely a negation, not a prohibition. That is, it informs us that *hesger*<sup>169</sup> is not

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<sup>165</sup> See Exodus 22: 26-27. The rabbis expanded the biblical ruling to include not just eyes and teeth, but all the “*rashe evarim*,” “tips of the limbs.” See Babylonian Talmud, *Qiddushin*, 24a-25a (on 25a, the Talmud lists the body parts that are considered “tips of the limbs”), and Maimonides’ ruling in *Mishneh Torah*, “Laws of Slaves” 5:3-17.

<sup>166</sup> *Mekhilta de-Rabbi Yishmael, Mishpatim*, 1. Maimonides’ quotation differs from the formulation in the *Mekhilta*, in a way which makes his reading of this verse clearer; Maimonides’ quote reads “*einah yotz ‘ah be-rashe evarim*,” while the *Mekhilta* reads “*lo tetze be-rashe evarim*.”

<sup>167</sup> Maimonides contends that this verse does not prohibit the master from setting his female Hebrew slave free after injuring her, and is only teaching that he is not obligated to free her as he is for other types of slaves. Nahmanides, in his glosses to this chapter, suggests that perhaps the *Halakhot Gedolot* counted this as a negative commandment because the author felt that the verse’s intention was to prohibit a master from using the female slave’s injury as an excuse to free her, thus freeing himself from his obligation to support her. However, Nahmanides himself is inclined to think that this verse is indeed a negation and not a prohibition, though his reasons for thinking that differ from those of Maimonides. In any case, in the end, Nahmanides admits that he cannot be completely sure whether this verse is a prohibition or a negation. See Chavel ed., 87-90.

<sup>168</sup> Leviticus 13:36. This chapter describes the procedure through which a priest investigates whether an appearance of leprosy on a person renders that person ritually impure or not. Starting in verse 29, the chapter describes what the priest needs to do if a leprous spot appears on a person’s head. In that case, if the priest sees that the spot does not look “deeper than the skin” and there is no black hair, he quarantines the person (this quarantining is called *hesger* in rabbinic writing based on verse 31) for seven days. If after seven days, the spot has not become larger nor has it grown yellow hair, the person is quarantined for another seven days. Verse 36, quoted by Maimonides, is dealing with a case in which the spot did grow, and it rules that the priest need not even look for yellow hair (a sign of impurity) because if the spot became enlarged, it is clear the person is impure.

<sup>169</sup> See previous note.

needed with this *sign*,<sup>170</sup> and he [the priest] does not waver about it; indeed, he [the afflicted man] is impure. The same applies to His statement “*they do not die for she was not free*,”<sup>171</sup> that is also a negation, not a prohibition, in that He said the two of them do not require death, since her freedom was not complete. It is not appropriate to expound this as if He is saying “they shall not die,”<sup>172</sup> as that would remove it from a matter of negation to a matter of prohibition. For His statement here, “*they do not die, for she was not free*,” is like His statement “*the maiden has no sin [worthy] of death*,”<sup>173</sup> which negates from her the obligation of being killed due to the coercion.<sup>174</sup> So too here, due to the slavery, it negates their obligation of being killed,<sup>175</sup> as if He is saying “*they have no sin [worthy] of death for she was not free*.”

His statement “*and he will not be like Korah and his company*,”<sup>176</sup> is likewise a negation,<sup>177</sup> and the *sages* explained that it is a negation.<sup>178</sup> They elucidated its meaning and said that He, may He be exalted, informed us that any dissident who rebels<sup>179</sup> against the priesthood and lays claim to it,<sup>180</sup> what happened to *Korah and his company*, that is, sinking and incineration,<sup>181</sup> will not happen to him. Rather, his punishment will merely be “*as God spoke to*

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<sup>170</sup> “This sign” being the enlargement of the afflicted spot.

<sup>171</sup> Leviticus 19:20. This is the law of a “*shifḥah ḥarufah*,” a female, Canaanite slave who has been designated for a male, Hebrew slave to marry, but has only so far been partially freed. If someone sleeps with her before she is freed fully, they are not put to death.

<sup>172</sup> *Lā yuqṭalā*. That translation, which Maimonides warns against, is exactly how Saadya renders this verse in his *Tafsir*, see Saadya, 173.

<sup>173</sup> Deuteronomy 22:26. The verse teaches us that if a betrothed woman is raped, only the rapist is killed, and the woman is not punished.

<sup>174</sup> Since she was coerced, she does not get punished in the way a betrothed woman would for engaging in sexual relations.

<sup>175</sup> Since she was not fully freed, they are not killed as they would have been had she been free.

<sup>176</sup> Numbers 17:5.

<sup>177</sup> The *Halakhot Gedolot* does in fact consider this a prohibition; see N. Hildesheimer, ed., 46.

<sup>178</sup> See Midrash Tanḥuma, *Tsav*, 11.

<sup>179</sup> *Kul khārij yakhruj*. Given the word’s association with the Kharijite sect in Islam, as well as its use by Rabbanite Jewish writers to refer to the Karaites, perhaps a more accurate translation would be “any sectarian.”

<sup>180</sup> That is, if a non-priest demands that he be granted priesthood.

<sup>181</sup> See Numbers 16:33-35. See also Babylonian Talmud, *Sanhedrin*, 110a, and the commentary of Abraham ibn Ezra to Numbers 16:35.

him by the hand of Moses,”<sup>182</sup> meaning *leprosy*, which refers to His statement, may He be exalted, “bring your hand into your cloak.”<sup>183</sup> They [the sages] drew evidence from what happened to *Uzziah, king of Judah*.<sup>184</sup> And though we have found another text of theirs at the *end of Sanhedrin*, and this is their statement, “anyone who embroils himself in a conflict violates a prohibition, as it says ‘and he will not be like Korah and his company,’”<sup>185</sup> this is by way of admonition,<sup>186</sup> not that the *plain sense of the verse* is for this purpose. Indeed, the prohibition for this purpose<sup>187</sup> is included under a second prohibition,<sup>188</sup> as I will explain in its place.<sup>189</sup>

There is nothing that will distinguish a negation from a prohibition for you other than the meaning of the sentence,<sup>190</sup> but not from the expression,<sup>191</sup> since the particle for a negation and a prohibition in Hebrew is the same, and that is the particle *lo*. So it is necessary that the one considering it possess understanding of the meaning of the sentence, and then he will easily grasp which *lav* is a negation and which *lav* is a prohibition, as we have previously explained.

[The sages], peace be upon them, already noted this matter in what we found to be a disagreement which occurred among them about *one of the negative commandments*, whether it

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<sup>182</sup> This is the continuation of Numbers 17:5, quoted above.

<sup>183</sup> Exodus 4:6. That is to say, the phrase “by the hand of Moses” in Numbers 17:5 is a reference to Moses’ hand becoming leprous in Exodus 4:6.

<sup>184</sup> II Chronicles 26:19.

<sup>185</sup> Babylonian Talmud, *Sanhedrin*, 110a.

<sup>186</sup> *Al-wa’z*. Ibn Tibbon translates this as *asmakhta*, a rabbinic term for a textual hint to something that is not the text’s primary meaning. That translation may be based on the continuation of this sentence but does not capture the meaning of the Arabic word itself. Or, as Mordechai Cohen suggests, this might simply be evidence that Ibn Tibbon’s Arabic text was not identical to ours. See Cohen, 321, note 116.

<sup>187</sup> The purpose of forbidding conflict.

<sup>188</sup> *Lav thānī*. Though I have left the word *lav* untranslated elsewhere, here Maimonides is using it in a way that is consistent with the rabbinic sense of a technical prohibition, so I tried to translate it in a way which reflects that.

<sup>189</sup> See negative commandment 45, the prohibition based on the rabbinic reading (Babylonian Talmud, *Yevamot*, 13b) of Deuteronomy 14:1.

<sup>190</sup> *Ma’na al-kalām*. The “meaning of the sentence” might refer to the context of the phrase, but as the subsequent examples show, this is not necessarily the case. It seems there are other elements which one needs to consider in trying to determine this “meaning,” such as the rabbinic interpretation. See above, 133-136.

<sup>191</sup> Meaning, not from the word *lo* itself.

is a negation or prohibition. That is His statement, may He be exalted, about the *fowl sin-offering*, “and he shall pinch its head close to its neck, and he shall not separate it.”<sup>192</sup> Our *tanna*—he is the speaker in the text of *the Mishnah*<sup>193</sup>—believed this is a prohibition, and therefore he says “if he separated it,<sup>194</sup> he rendered it unfit.”<sup>195</sup> It necessarily follows from this that this *lav* is a negative commandment, for when he separates the head, he renders it unfit, as if he were to offer leaven or honey.<sup>196</sup> But *Rabbi Elazar be-Rabbi Shimon* believes that this *lav* is a negation, not a prohibition, and what is meant by His statement “he shall not separate it” is that it is not necessary to separate the head, but rather to divide it to a certain degree, and therefore if he separated it, it is valid. That is what they recorded at the end of *Zevahim*,<sup>197</sup> “*Rabbi Elazar be-Rabbi Shimon would say ‘I heard that they separate for the fowl sin-offering.’ So what does ‘he shall not separate’ mean? One does not need to separate.*” They objected to that statement, and they said “if so, with regard to a pit, when it says ‘and he does not cover it,’<sup>198</sup> there too he should not need to cover it.”<sup>199</sup> The answer was “there, when it says ‘the owner of the pit shall pay,’<sup>200</sup> it implies that covering is required.”

It has become clear that it is from the meaning of the sentence that one should seek guidance as to whether it is a negation or a prohibition. It is also clear that His statement “he

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<sup>192</sup> Leviticus 5:8.

<sup>193</sup> *Mishnah, Zevahim*, 6:6.

<sup>194</sup> That is, if he fully severed the bird’s neck.

<sup>195</sup> The full text of the *Mishnah* reads “if he separated it for a sin-offering, or if he did not separate it for a burnt-offering, he rendered it unfit.”

<sup>196</sup> See Leviticus 2:11 and negative commandment 98.

<sup>197</sup> *Babylonian Talmud, Zevahim*, 65b-66a.

<sup>198</sup> Exodus 21:33. This verse, along with the next one, teaches that if somebody digs a pit and does not sufficiently cover it, and then somebody else’s animal falls in, the one who dug the pit is liable to pay damages.

<sup>199</sup> Meaning, if *Rabbi Elazar* is correct, and the word *lo* can simply mean that one does not need to perform whatever action is being described, then when the verse in Exodus 21, regarding one who digs a pit, remarks that he does not cover it (*lo yekhassennu*), maybe it means that he does not need to cover it.

<sup>200</sup> Exodus 21:34.

*shall not separate*” is a negative commandment, based on what the *Mishnah* conveyed.<sup>201</sup> From here it becomes clear that His statement about the *fowl burnt-offering* “and he shall tear it open by its wings, he shall not separate it”<sup>202</sup> is not appropriate to be counted because it is a negation according to all; “if he separates it, it is valid.”<sup>203</sup> Because He said about the *animal burnt-offering* “and he shall cut it into its pieces” it may have arisen in the mind that the *fowl burnt-offering* is like that, so He said *he does not need to separate it*, just that he should tear it, and if *he does separate it, it is valid* as has been explained in its place.<sup>204</sup>

Among the *lavin* are negations also, as in His statement “*anything dedicated that is dedicated from a man shall not be redeemed.*”<sup>205</sup> Indeed, it is clear to you that this is a negation, not a prohibition, when you know the meaning of this sentence. That is, that the text had already ruled that the fixed sums for *assessments* be in relation to the age of the one being assessed and whether the person is male or female.<sup>206</sup> There is no difference in that regard between one saying “*I dedicate my value*” or “*I dedicate the value of so-and-so;*” indeed, we see who that person is

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<sup>201</sup> See negative commandment 112.

<sup>202</sup> Leviticus 1:17.

<sup>203</sup> *Mishnah Zevaḥim* 6:5. Compare to Daniel al-Qumisi, who seems to argue that it is actually *mandatory* for the priest to fully separate the head from the neck, based on his understanding of Leviticus 1:15. See Schechter, 513. However, the manuscript is sufficiently incomplete that we may not be able to precisely determine al-Qumisi’s opinion on this.

<sup>204</sup> Meaning, the priest does not need to completely sever the bird, he just needs to tear it open. Though in this case he offers a contextual explanation for why a negation is necessary based on the procedure for an animal burnt-offering, his proof that it *is* a negation comes from the *Mishnah*, not the context of the verse. Again, the meaning of the verse is determined by rabbinic sources.

<sup>205</sup> Leviticus 27:29. The case at hand is one in which someone vowed to donate the value of a certain person (either himself or another) to the Temple. This chapter had previously taught that if one dedicated an animal or piece of land to the Temple, under certain circumstances the one who dedicated it can redeem that animal or land; meaning, one may pay the value (increased by a fifth) of whatever was dedicated. According to Maimonides, this verse teaches that this type of redemption is not applicable in a case where the one whose value has been dedicated has been sentenced to death.

<sup>206</sup> Leviticus 27 lists set amounts for the value of any person, and those amounts are based on the age and sex of the person being evaluated. For example, if a thirty-year-old male wants to donate his own value, he will pay the price set for a male between the ages of twenty and sixty; that is, fifty shekels. See verses 1-7 for the complete list.

and how old he is, and he is evaluated<sup>207</sup> in relation to that.<sup>208</sup> But if the *one being assessed* is a person who has previously been *sentenced to death by ruling of the court*<sup>209</sup> and his judgment has been settled, and after *his verdict* is pronounced the speaker says “*I dedicate this man’s value*,”<sup>210</sup> he [the one who said that] is not obligated for any payment because he [the one who was sentenced] is considered like a dead man who has no *value* since the time *his verdict was pronounced*. This is the matter intended in His statement “*he shall not be redeemed*,” meaning, there is no monetary compensation for him which would obligate the *one who pledged the value* to pay. This is one of the rules for *valuations* and their laws which the text mentioned, and it is not a prohibition. The text of the *Mishnah* is “*a person at the point of death*<sup>211</sup> *or one who is set to be executed cannot have his value pledged and he cannot have his worth assessed*,”<sup>212</sup> and the *Talmud* explained that this is on the condition that *he was sentenced to death by a Jewish court*.<sup>213</sup> The text of the *Mekhilta* is: “*Those who are sentenced to death by the court have no*

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<sup>207</sup> *Wa-yuzin*. This could also be translated in the active voice—the one donating evaluates how much he owes based on the age and sex of the one whose value he is donating—but it seems more likely that the passive is intended. Kafih, however, translates this as *ve-yishalem*, and ibn Tibbon as *ve-yiten*, possibly indicating that they read this as an active verb.

<sup>208</sup> Meaning, there is no difference between a case in which a person donates his or her own value and a case in which the value of another person is being donated; the only factors involved in the evaluation are the age and sex of the person whose value is being donated.

<sup>209</sup> *Qad nithayev mitat bet din*. That is, he was sentenced to a death to be administered by the court, as opposed to having committed a capital crime that is not enforceable by a court and left to divine resolution.

<sup>210</sup> In other words, somebody vows to donate the value of the man who has been sentenced to death.

<sup>211</sup> The term is *goses*, used of a terminally ill person who is expected to die shortly.

<sup>212</sup> *Mishnah* ‘*Arakhin* 1:3. The final clause of this phrase is “*lo nidar ve-lo ne’erakh*.” The word *nidar*, which I have translated as “have his value pledged,” refers to a different type of vow than that with which we have been dealing. In this case, the one pledging the value of the person specifies that the pledge is for the *actual* value of the person, which is based on how much this person would be worth if he or she were hypothetically sold at a slave market. The word *ne’erakh*, here translated as “have his worth assessed,” refers to the type of vow Maimonides has been discussing; i.e., a case in which the one pledging the value of a person vows to donate his worth, which is evaluated based on the age and sex of the person in question, as described in Leviticus 27. Maimonides himself, in *Mishneh Torah*, spells out the difference between these two types of vows. See “*Hilkhot ‘Arakhin*” chapter 1, and law 9 in particular.

<sup>213</sup> The *Talmud* never actually explicitly says this in the context of these assessments, and interestingly, in *Mishneh Torah*, Maimonides also mentions that the court must be a Jewish one; see “*Hilkhot ‘Arakhin*” 1:13. Maimonides may be basing his ruling on a discussion found in Babylonian *Talmud*, *Gittin*, 28b, in which one opinion cited in the *Talmud* suggests that if someone is sentenced to death in a Jewish court, he is considered dead, whereas he is not if he was sentenced by a gentile court. However, that opinion was stated in regard to the question of when the wife of

redemption, as it says: ‘anything dedicated that is dedicated from a man shall not be redeemed.’”<sup>214</sup> Consider the exactness of the words and the precision of the insight in it; how they clarified that this *lav* is a negation and not a prohibition by saying “they have no redemption,” rather than saying “one cannot redeem them.” They explained this very matter in the *Sifra*, in the section about assessments. They said: “How do we know [the ruling] regarding those sentenced to death by the court in a case where someone said ‘I dedicate his value?’ Scripture teaches ‘anything dedicated...shall not be redeemed.’”<sup>215</sup> That is to say, how do we know that there is no *value* obligated for him? We have explained this matter to the fullest extent of explanation, to the point that I say that there does not remain anything which would obscure it even for the most boorish of people with regard to intelligence.

Since we spoke about this purpose, you should know that the particles<sup>216</sup> which indicate a prohibition in the Torah<sup>217</sup> are four, and anything which is prohibited with one of these four is called a *negative commandment*. They are: *hishamer*, *pen*, and *al*, and *lo*. [The sages] explicitly said: “Anywhere it says *hishamer*, *pen*, and *al*, and *lo* is nothing other than a negative commandment.”<sup>218</sup>

One thing is left for us to clarify in order to complete the purpose of this chapter. That is, that when something is described in the *Torah* as having charged us to cleanse our souls<sup>219</sup>

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the one who was sentenced is allowed to remarry, and the laws of assessments of personal value are not mentioned at all. See the commentary of *Mishnah la-melekh* to Maimonides, “*Hilkhot ‘Arakhin*” 1:13.

<sup>214</sup> Mekhilta de-Rabbi Yishmael, *Mishpatim*, 10.

<sup>215</sup> Sifra, *Behuqotai*, 5.

<sup>216</sup> Kafih’s edition has *al-harf*, “the particle,” but all manuscripts I have seen have it as *al-ahraf*, “the particles.”

<sup>217</sup> *Fī-l-sharī‘a*. Again, the meaning of the word *sharī‘a* seems to be inconsistent throughout this work. In this case, Maimonides seems to be using it to refer to the entire corpus of the Torah (or at least its legal sections).

<sup>218</sup> This statement appears numerous times in the Babylonian Talmud (see Sotah 5a, Menaḥot 99b, among others), but in the Talmud, the list only includes the first three terms, not *lo*.

<sup>219</sup> *Anfusnā*. Possibly “cleanse ourselves.” Ibn Tibbon renders it “to cleanse our souls,” while Kafih translates it “to cleanse ourselves.”

through negating such-and-such an action from us, that action is counted in the sum of *negative commandments*, even though the *lav* through which it comes is a negation, not a prohibition. For once it obligated us to negate from our souls so that we say “I did not do that and I did not do that,” it is known with certainty that this or that action is prohibited from us, as in the Book’s obligation for us to say “*I did not eat from it in my mourning, and I did not dispose of it in a state of impurity, and I have not given of it for the dead.*”<sup>220</sup> This shows that each of these actions is prohibited, and the explanation of this will come in its place in our discussion of these *commandments*.<sup>221</sup>

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<sup>220</sup> Deuteronomy 26:14.

<sup>221</sup> Indeed, Maimonides counts all three of these clauses as separate commandments. Following rabbinic tradition, he explains that this is referring to the tithe of *ma’aser sheni*, a portion of one’s produce that needs to be taken to Jerusalem to be eaten. Upon taking it to Jerusalem, the one bringing the produce must recite this formula, called *viduy ma’aser*. He explains that the first clause, that it was not eaten in mourning, prohibits eating the *ma’aser sheni* immediately after a close relative has died, before the burial. The second clause, that he did not dispose of it in a state of uncleanness, prohibits him from eating the *ma’aser sheni* while either he or the produce itself is in a state of ritual impurity. The third clause, that he did not give of it for the dead, is a general prohibition against using the produce for anything other than eating, and the verse is simply giving an example of such prohibited usage; one must not sell the produce in order to raise money for a coffin or burial shrouds. This is all explained in greater detail in positive commandment 131 and negative commandments 150-152.

### **Appendix C: Maimonides' Fourteen Principles, Paraphrased**

1. Only biblically mandated laws should be counted, not laws enacted by the rabbis.
2. Not every commandment which is derived from the Torah through hermeneutical devices should be considered biblically mandated.
3. Non-permanent commandments should not be counted.
4. General commandments which encompass the whole legal system and do not mandate a specific activity should not be counted.
5. Reasons for commandments should not be counted as commandments.
6. Laws which include both a positive and a negative commandment should have the positive one counted among the positive commandments and the negative one with the negative commandments.
7. One should not count the individual cases in which a particular commandment applies as separate commandments.
8. A negation should not be counted; only a prohibition can be part of the list.
9. The biblical statements which prohibit or require a certain action should not be included in the list; only the actions themselves should be counted.
10. One should not count actions which are required only to set up or prepare for the performance of a commandment.
11. Individual components of a particular commandment should not be counted.
12. Different stages of a performance of a commandment should not be counted.
13. Commandments which are to be performed on multiple days should only be counted once.
14. Only the requirements for imposing different types of punishments in general should be counted as positive commandments, not the requirements to punish particular actions.

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