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A TALMUDIST'S HALAKHIC HERMENEUTICS: A NEW UNDERSTANDING OF MAIMONIDES' PRINCIPLE OF *PESHAT* PRIMACY*

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While Moses Maimonides (1138-1204) is recognized as a profound Jewish philosopher and master talmudist, his biblical exegesis has received less attention and is generally viewed in isolation from the celebrated Andalusian exegetical school that had reached its zenith in his time, as reflected by his older contemporary Abraham Ibn Ezra (1089-1164). Fleeing from Spain in 1140, Ibn Ezra spent the rest of his life wandering from town to town throughout Italy, France and

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England, writing commentaries according to the philological-contextual "way of *peshat*," as opposed to midrashic interpretation (*derash*). In his new host communities in Christian Europe, Ibn Ezra vied with the commentaries of the supremely influential northern French exegete Rashi (1040-1105), who had pioneered a *peshat* method of his own, taking as his motto the talmudic maxim "Scripture (or: a biblical verse) does not leave the realm (lit. hands) of its *peshat*" (אין מקרא יוצא מידי פשוטו).[1] While Ibn Ezra embraced that maxim as his touchstone, he regarded Rashi's commentaries as a poor example, since they actually drew heavily upon midrashic interpretation. (It is unclear how much Ibn Ezra knew of the "purer" *peshat* commentaries of Rashi's students, Joseph Qara [c. 1055-1130] and Rashbam [c. 1080-1160].[2]) Instead, Ibn Ezra turned to the tradition of philological analysis pioneered by the Babylonian Geonim Saadia (882-942) and Samuel ben Hofni (d. 1013), and refined by their successors in Muslim Spain, including the great linguists Menahem ben Saruq (mid-tenth century), Judah Hayyuj (late tenth century) and Jonah Ibn Janah (early eleventh century), as well as the great commentators Moses Ibn Chiquitilla and Judah Ibn Bal'am (both eleventh century). Since those authors (with the exception of Menahem) wrote in Judeo-Arabic, their works were unavailable to Jews in Christian lands, an imbalance Ibn Ezra redressed in his Hebrew commentaries.

Maimonides, who fled Muslim Spain as a youth and eventually settled in Egypt, may have read Ibn Ezra's writings,[3] but he certainly had direct access to the Geonic-Andalusian heritage. Against this backdrop, it is significant that the talmudic *peshat* maxim appears prominently in his *Book of the Commandments* (*Sefer ha-Miṣwot*), a halakhic-exegetical work that enumerates the 613 biblical commandments. To ensure that this is done systematically, he begins by establishing fourteen cardinal principles, the second of which is that only laws stated in Scripture are to be counted as biblical laws. By contrast, those derived through the midrashic hermeneutical rules known as *ribbuy* ("redundancy") and the so-called "thirteen *middot* (hermeneutical rules) by which the Torah is interpreted" are classified

[1] On my translation of the Talmudic *peshat* maxim, see Appendix A of the monograph announced in n. * above. On its use by Rashi, see Kamin, *Categorization*, 57-110; Ahrend, "Concept," 244-259.

[2] See Mondschein, "Inter-Relationship"; for further references see Cohen, *Three Approaches*, 12-13.

[3] See below, n. 54.

as rabbinic and excluded from the enumeration.[4] To support this bold assertion, Maimonides cites the talmudic rule that "a biblical verse does not leave the realm of its *peshat*" (hereafter: "the *peshat* maxim").[5]

The Book of the Commandments, like most of Maimonides' major writings (the exception being his great Code of Jewish Law, *Mishneh Torah*), was written in Judeo-Arabic. A query from a Provençal reader unable to read Arabic prompted him to refer to Principle #2 in a Hebrew responsum, where he writes by way of summary:

> No matter derived by analogy (*heqqesh*), *a fortiori* reasoning (*qal wa-ḥomer*), verbal congruity (*gezerah shawah*) or through any of the "thirteen *middot* by which the Torah is interpreted" is biblical unless the sages say so explicitly…. There is nothing that is biblical except for that which is explicit in the Torah (*meforash ba-Torah*), such as *sha'tnez*, *kil'ayim*, the Sabbath and the forbidden sexual unions, or something that the Rabbis said is from the Torah—and those are but three or four things.[6]

In clearing the thicket of rabbinic halakhic exegesis to return to Scripture itself, it would appear from these programmatic statements that Maimonides took up Ibn Ezra's campaign for the primacy of "the way of *peshat*." This, in any case, was the perception of the great Catalan talmudist Nahmanides (1194-1270), who remarks:

> The second principle… is shockingly beyond my comprehension, and I cannot bear it, for… if so… then the truth is the *peshat* of Scripture alone, not the matters derived midrashically, as he mentions from their dictum, "a biblical verse does not leave the realm of its *peshat*." And as a result we would uproot the "thirteen *middot* by which the Torah is

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[4] On *ribbuy* and the thirteen *middot* (listed in the introduction to *Sifra*, the halakhic midrash on Leviticus), see Kasher, "Interpretation," 584-586.

[5] *Book of the Commandments*, Kafih ed., 12-14. In this study, we will focus on Maimonides' explicit references to the *peshat* maxim—which are the clearest applications of Principle #2. It is true, however, that this principle underlies Maimonides' legal hermeneutics at large: see below, n. 277.

[6] *Responsa* #355, Blau ed., II:632; *qal wa-ḥomer* and *gezerah shawah* are actually two of the thirteen *middot*. This responsum was to a query of R. Pinhas ha-Dayyan of Alexandria, an émigré from Provence who evidently did not read Arabic comfortably. See Frenkel, *Elite*, 122; Blau, *Responsa*, III:45.

> interpreted," as well as the bulk of the Talmud, which is based on them.[7]

Much as Nahmanides elsewhere speaks disparagingly of Ibn Ezra as a "pursuer of *peshat*" oblivious to rabbinic tradition,[8] here he rejects Maimonides' notion of a halakhic system based exclusively on *peshat*. To be sure, Nahmanides himself was an insightful practitioner of the *peshat* method, for which he was primarily indebted to Ibn Ezra and his Provençal devotee David Kimhi (c. 1160-1235).[9] However, as a staunch talmudist (influenced by northern French learning), he could not regard it as the exclusive key to unlocking the meaning of Scripture.

Nahmanides' critique highlights the intriguing questions raised by Maimonides' bold second principle, especially since *The Book of the Commandments* was a blueprint for *Mishneh Torah*. Did he in fact intend to construct a system of *halakhah* in which biblical authority would be ascribed only to what is "explicit in Scripture"? Such scripturalism might be appropriate in a Karaite work,[10] but it seems inconceivable that "the way of *peshat*"[11] could provide the exclusive core stratum of a code of Talmudic law. Indeed, even Ibn Ezra and other (Rabbanite) practitioners of the "way of *peshat*" specifically avoided drawing halakhic implications from their philological exegesis.[12] In fact, even a cursory glance at Maimonides' halakhic

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7 *Hassagot Ramban*, critique of Principle #2, Chavel ed., 44-45.

8 Usually outside the realm of *halakhah*: see, e.g., Nahmanides on Gen 11:2 (Chavel ed., I:71); see also below, n. 12.

9 See Septimus, "Open Rebuke," 17-23. It is unclear if Nahmanides, residing in what had long been a Christian section of Spain, could read Arabic: see Jospe, "Ramban," 67-93. A similar question is raised about David Kimhi; see Talmage, *Kimhi*, 63-64. It is evident, however, that both were far more comfortable reading Hebrew and absorbed the heritage of Andalusian learning largely from Hebrew digests (e.g., Ibn Ezra's works) and translations.

10 Whereas talmudic law is largely based on the "Oral Law" recorded in the Mishnah, Scripture is the central—though hardly the exclusive—source of Karaite *halakhah*: see below, at n. 65 and Frank, "Literature," 529-530 (with references cited there). See also below, n. 98.

11 I.e., the philological method. Nahmanides, of course, is projecting his understanding of the term *peshat* (shaped by Ibn Ezra and Kimhi) onto Maimonides: see below, n. 22.

12 Maimonides would have been aware of Ibn Janah's programmatic statement distinguishing between *peshateh di-qera* and *halakhah*; see Maman, "Linguistic School," 271. The same basic view (with some adjustment) was shared by

writings reveals his reliance on talmudic halakhic exegesis—often of the type that Ibn Ezra (and Nahmanides, for that matter) excluded from *peshat*. If so, what did the great codifier have in mind when invoking the *peshat* maxim in his *Book of the Commandments*? The goal of the current essay is to answer this question and define a central feature of Maimonides' unique halakhic hermeneutics through an investigation of what became his principle of *peshat* primacy.

As we shall see, Maimonides recruited the talmudic *peshat* maxim to develop a boldly novel hermeneutical theory that indeed served to establish Scripture as the basis of Rabbanite *halakhah*. This legal-exegetical integration—which others deemed problematic—was possible only within the rubric of the stratified halakhic theory that Maimonides devised, in part by appropriating concepts and terminology from Muslim jurisprudence.[13] Here he followed Geonic and Andalusian predecessors who drew upon Arabic learning to account for the relationship between *halakhah* and Scripture, especially in light of the Karaite challenge.[14] But Maimonides was the first to do so in conjunction with a strong reading of the *peshat* maxim.

Before proceeding, it is necessary to clarify two preliminary methodological issues. First, a cautionary note regarding the meaning of the term *peshat* itself, which is often taken for granted and left unclarified. A number of recent studies have aimed to rectify this matter by seeking to define this rather complex and elusive notion precisely.[15] It has become evident that we can discern various usages of the term *peshat* in the medieval tradition, which was usually contrasted with *derash*, i.e., fanciful homiletics. At times it is used to connote (1) *the literal sense* (sometimes termed the "plain" sense) as opposed to a metaphorical or symbolic (midrashic) reading. While this

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Abraham Ibn Ezra: see *Yesod Mora*, Cohen and Simon ed., 39-41. In the northern French school, this approach is articulated by Rashbam: see Japhet, "Tension," 403-422.

[13] Maimonides' familiarity with this discipline has been amply demonstrated in recent scholarship: see, e.g., Libson, "Parallels"; Kraemer, "Influence"; Bloomberg, "Legal Terms."

[14] See Sklare, *Samuel ben Hofni*, 55, 143-165; Faur, *Studies*, 61-99. Regarding the overall influence of Muslim jurisprudence on the Geonim, see Libson, *Custom*.

[15] See Kamin, *Categorization*, 11-17; Garfinkel, "Clearing"; Ahrend, "Concept," 237-259; Schwartz, "*Peshat* and *Derash*," 72-76; Japhet, *Job*, 54-75; idem, "Tension"; Touitou, *Exegesis*, 29-30; Cohen, "Two Perspectives"; idem, "Qimhi," 396-415; idem, *Three Approaches*, 3-16, 323-331.

definition of *peshat* is prevalent nowadays, it has been proven inadequate. What if a verse was intended figuratively, e.g., "The Lord is my shepherd" (Ps 23:1), or "Come let us build us a city and a tower with its top *in the sky*" (Gen 11:4)? Some therefore argue that *peshat* should be defined as (2) *the straightforward sense*, i.e., the meaning determined by reasonable, contextual-philological exegesis, which may call for a figurative reading, as opposed to the midrashic penchant for hyper-literal readings.[16] But even this definition does not capture other nuances of this term, which is also used as a label of approbation, i.e., to signify (3) *the correct sense* of a verse, or *the intent of the author*, as opposed to artificial midrashic readings.

For our purposes it is important to note that these definitions were devised to account for the widespread use of the term *peshat* from the turn of the twelfth century onwards in Rashi's school, and by Ibn Ezra and his successors Kimhi and Nahmanides. As recent studies have demonstrated, however, the term *peshat*—and the *peshat* maxim—were actually used in a completely different sense in the Talmud.[17] (This, of course, would explain why the sages of the Talmud did not hesitate to engage in manifestly non-philological, midrashic biblical interpretation.) The use of the term *peshat* in the medieval tradition as the basis of the philological-contextual method thus represents an appropriation of talmudic terminology, recast to support an essentially novel exegetical approach.[18]

Where would Maimonides have stood vis-à-vis this terminological innovation? By all indications, he knew very little about the northern French *peshat* school,[19] and for him Ibn Ezra was a newcomer on the Andalusian intellectual horizon still dominated by earlier authors of the Judeo-Arabic school.[20] In that tradition, no consensus had yet been

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[16] This can be seen, e.g., by comparing Rashi (following the Midrash) with Rashbam and Ibn Ezra on the phrase "a tower with its top in the sky" (Gen 11:4): see Cohen, "Two Perspectives," 268-270.

[17] Kamin, *Categorization*, 23-43; Ahrend, "Concept," 237-244; Halivni, *Peshat & Derash*, 52-79; see also below, n. 203.

[18] See Kamin, *Jews and Christians*, xxxi-xxxii; idem, *Categorization*, 57-59.

[19] This is the general scholarly consensus (to which I subscribe), since neither Rashi nor his students are ever mentioned by Maimonides, though some indirect evidence might be taken to suggest that he saw Rashi's talmudic commentary in Egypt. See Friedman, "Use of Rashi," 403-438.

[20] Ibn Ezra began writing commentaries in the 1140s in Italy and continued until his death in 1164. Even if Maimonides eventually knew of his writings (see below, n. 54), they may not have been disseminated in Muslim Spain quickly enough to became part of his formative early education there in the 1150s.

reached regarding the concept of *peshat*; in fact, those authors—like their Karaite colleagues—relied heavily on Arabic hermeneutical terminology and used the terms *peshuto shel miqra* and *peshateh di-qera* sparingly.[21] In the tradition that shaped Maimonides' outlook, *peshat* was a marginal concept, perhaps still colored by its talmudic usage, but certainly open for reinterpretation by a bold thinker like him.

Recent studies of Maimonides' notion of *peshat* tend to sidestep these considerations and simply borrow the commonly-used definitions coined in modern scholarship for Rashi, Ibn Ezra and Nahmanides.[22] For example: "The meaning of the biblical text is identical to its obvious and simple understanding";[23] "Scripture never loses its straightforward sense";[24] "…the word *peshuto*… mean[s] simple or plain meaning… no text can be deprived of being interpreted exclusively according to *peshat*."[25] Invariably, however, these renderings lead to contradictions, since Maimonides often disregards the "straightforward" sense of Scripture, as much of his biblical exegesis is drawn from the Talmud and midrashic literature.[26] But in light of his milieu—which was distinct from the emerging culture of "the way of *peshat*" among Hebrew writers in Christian Europe—it is unreasonable to expect that Maimonides would have used the term *peshat* in that sense. In the current study we shall demonstrate that Maimonides, in fact, developed a unique definition of *peshat* that reflects his immersion in Talmud and his Arabic learning, as well as the pre-twelfth century Geonic-Andalusian heritage.

Our second preliminary methodological point highlights a factor that no doubt contributed to the confusion just mentioned. When seeking to define Maimonides' concept of *peshuto shel miqra* it is, of

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[21] See Cohen, "Hermeneutical Terms." The Arabic term *ẓāhir* was sometimes used to connote the obvious, contextually indicated sense of Scripture: see below, at n. 33.

[22] This tendency can be traced to none other than Nahmanides, who assumed that Maimonides used the term *peshat* as he did: see above, at n. 11. On the fallacy of projecting onto Maimonides conceptions that developed in Christian Europe rather than analyzing his words in light of his Geonic-Andalusian heritage and Arabic cultural milieu, see (rather polemically), Faur, *Studies*, 1-11.

[23] משמעות הטקסט המקראי זהה להבנתו הגלויה והפשוטה; Sagi, "Nahmanides," 128.

[24] Davidson, *Maimonides*, 132.

[25] Halivni, *Peshat & Derash*, 80.

[26] This has been noted, e.g., by Davidson, *Maimonides*, 132; Halivni, *Peshat & Derash*, 83. See also below, at nn. 29, 130.

course, necessary to identify the relevant passages of his writings for the purpose of the analysis. Naturally, this includes Principle #2, where he actually discusses the implications of the *peshat* maxim. Maimonides explicitly invokes that principle another nine times in *The Book of the Commandments*, either with the Aramaic term *peshateh di-qera* (i.e., "the *peshat* of Scripture"), but sometimes with the term *gufeh di-qera* ("Scripture itself", or "the essence of Scripture"), which he takes to be closely related (as discussed below). These ten passages (Principle #2 and its nine applications)—the focus of the current study—represent Maimonides' essential discussion of "the *peshat* of Scripture" in his major writings. The term *peshat* never appears in the Mishnah Commentary or in the *Guide of the Perplexed*, even though Maimonides seemingly had ample opportunity to use it in his extensive exegetical discussions in both works. In the entire expanse of *Mishneh Torah*, the term appears in only four marginal instances, none of which relate to the *peshat* principle.[27]

Some readers may be surprised by this assessment, since the term *peshat* appears numerous times in the Hebrew versions of the Mishnah Commentary and the *Guide*. In fact, a leitmotif of the latter work is Maimonides' vociferous claim that the biblical text often cannot be taken "according to its *peshat*" (*ki-peshuto*), i.e., literally, for example, in its anthropomorphic depictions of God. J. Stern refers to this as the Maimonidean "devaluation" of *peshat* in the *Guide*,[28] which seems to contradict the aforementioned Principle #2.[29] But when we consult the original Judeo-Arabic texts of the *Guide* and Mishnah Commentary, we discover that in those works, Maimonides in fact never used the term *peshat*, which was chosen (perhaps less than fortunately) by the translators—both medieval and modern—to render Arabic *ẓāhir* (lit. apparent, obvious), a term drawn from Qur'anic hermeneutics and used regularly in the Judeo-Arabic exegetical tradition to denote the *obvious* or *literal* sense of the biblical text.[30] Only in *The Book of the Commandments* does he use *peshat* as a technical talmudic term, which (like other citations from rabbinic literature) stands out in

[27] These examples are discussed in Appendix B of my monograph announced in n. * above, which also includes a discussion of Maimonides' occasional use of the term *peshat* in his *Responsa*.

[28] Stern, *Problems*, 84.

[29] This contradiction was noted by Harris, *Fragmentation*, 292-293; see also Kaplan, "*Problems*," 362.

[30] See Ben-Shammai, "Tension," 36-40; Fenton, *Jardin*, 258-298.

Hebrew (*peshuto shel miqra*) or Aramaic (*peshateh di-qera*) against the background of his Judeo-Arabic prose.

While in some contexts it might not be unreasonable to use the term *peshat* to render *ẓāhir*,[31] Maimonides did not equate the two when invoking the principle of *peshat* primacy, which for him implies that "the *peshat* of Scripture" is the inviolate, unique source of biblical law. By contrast, what he devalues in the *Guide* is merely the obvious—or apparent—literal sense (*ẓāhir*) of Scripture.[32] Indeed, in *The Book of the Commandments* he also uses the term *ẓāhir* to denote the literal or philological-contextual sense of Scripture, but not to grant it the authority of *peshateh di-qera*.

It is important to emphasize that within the exegetical tradition that Maimonides inherited, the *ẓāhir* (or: *ẓāhir al-naṣṣ*; i.e., the apparent sense of the text) hardly had absolute authority. Most prominently, Saadia articulated the fundamental axiom that —

> One must... take the book of the Torah according to the apparent sense (*ẓāhir*) of its words, I mean the well-known meaning (*mashhūr*) understood among speakers of its language... unless (1) sense perception or (2) rational knowledge contradicts the well-known meaning of that phrase, or if (3) the well-known meaning contradicts another verse that is unambiguous or (4) a tradition [transmitted by the rabbis]... [in which case]... the verse is not [said] according to its apparent sense, but contains a word or words that are *majāz* (i.e., non-literal language). When one discerns the type of

[31] Indeed, this corresponds to the common (though incomplete) definition of *peshat* as *the literal sense*. A more precise Hebrew translation of *ẓāhir* would be *nigleh* (apparent [sense]), which is used occasionally by the medieval translators. But the technical exegetical term *ẓāhir* actually has a range of meanings. While in some instances it connotes the "plain"—and manifestly correct—sense, elsewhere it connotes a misleading superficial literal reading, as we shall demonstrate currently. (For further detail, see chapter 2 of my monograph announced in n. * above.) In such cases translating *ẓāhir* as *peshat* is misleading—especially given the authority Maimonides ascribes to *peshateh di-qera*. Pines, in his translation of the *Guide*, renders *ẓāhir* "the external sense," which often captures Maimonides' intent, especially where it is contrasted with *bāṭin* (the "inner," or "hidden" sense).

[32] For Stern (above, n. 28) we can say that Maimonides devalued what Nahmanides—who was influenced by the Hebrew translations of the *Guide*—referred to as *peshat*.

> *majāz* it is… then the verse will conform to sensory and rational knowledge, the other verse and tradition.[33]

For Saadia, the apparent sense is merely an initial exegetical assumption (sort of a default position) to be adjusted based on a variety of considerations. In the four cases he enumerates here, proper exegesis requires a non-literal interpretation—what he refers to elsewhere as *ta'wīl* (a term commonly used in Qur'anic hermeneutics to denote an interpretation that diverges from *ẓāhir al-naṣṣ* [see n. 121 below]). To illustrate, Saadia cites Gen 3:20, "And Adam called his wife's name Eve, because she was the mother of *all living beings* (אם כל חי)":

> If we leave the expression "all living beings" according to its well known meaning… we forsake sense perception, for this implies that the lion, ox, donkey and other animals are Eve's children. Now since there is no trick that will dislodge sense perception, we maintain that there is a concealed (i.e., implied) word in this verse, through which it can be brought into agreement with the unmistakable [facts], as I shall explain.[34]

Saadia's *ta'wīl* here entails positing that the word "speaking" is understood from context. Accordingly, in his commentary on that verse he writes:

> In my translation of אם כל חי I added [the words] חי נאטק (human beings; lit. speaking living beings) in order to make this expression exclude animals such as the horse, donkey and others, which sense perception contradicts.[35]

Saadia repeats his fundamental exegetical rule elsewhere in his writings and applies it frequently in his translations and commentaries.[36] Furthermore, it was endorsed almost universally within the subsequent Geonic-Andalusian exegetical tradition.[37] Yet,

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[33] *Saadya on Genesis*, Introduction, Zucker ed., 17-18 (Ar.); 190-191 (Heb.).
[34] Ibid., 18 (Ar.); 191 (Heb.).
[35] Ibid., 78 (Ar.); 296 (Heb.)
[36] The rule appears in his introductions to Isaiah and Job, and in *Beliefs and Opinions* 7:1; see Ben-Shammai, "Tension," 34-36; idem, "Introduction," 380-382; Brody, "Geonim," 80-81.
[37] See Fenton, *Jardin*, 266-321; Cohen, *Three Approaches*, 36-42.

the unfortunate translation of *ẓāhir* as *peshat* in the modern Hebrew translations of Saadia's writings[38] has led to a misimpression, as evident in the following remark by D. Weiss-Halivni:

> The first Rabbi to ascertain the superiority of peshat over derash was R. Saadya Gaon…. who says in several places… that "Everything that is found in the Bible has to be understood according to peshat except when the peshat is against the senses, or against reason, or if it contradicts another verse in the Bible or if it opposes tradition." In the exceptional cases one has to interpret the text according to *derash*.[39]

But the *peshat-derash* opposition is a talmudic one that Saadia does not use in the context of his fundamental axiom. Rather, to arrive at Scripture's correct sense, he argues that where the apparent sense (not the "*peshat*"!) is untenable (because it is inconsistent with reason or other types of certain knowledge), one must apply *ta'wīl*—which is not the same as *derash*.[40] As Saadia conceived it, *ta'wīl* (where genuinely required) is the methodologically sound sense of Scripture in light of reason. It is worth noting that Abraham Ibn Ezra formulates a Hebrew version of Saadia's rule using the term *tiqqun* to render *ta'wīl*, which he regards as a necessary component of the "way of *peshat*," i.e., a rational, philological-contextual reading of Scripture.[41]

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[38] See Zucker's translation, cited above, n. 34. In the parallel in *Beliefs and Opinions* 7:1, Kafih follows suit, using Hebrew הרי הוא כפשוטו to render Saadia's Arabic פהו עלי ט'אהרה (Kafih ed., 219). The medieval translator Judah Ibn Tibbon here renders *ẓāhir* with Hebrew *nir'eh* (כל אשר בספרי הנביאים הוא כאשר נראה ממשמעו והידוע ממלותיו; Kafih ed., 328). It should be noted, however, that he had a different version of the Arabic original (than the one published by Kafih), which reads: ג'מיע מא פי כתב אללה אלמנזלה לנא עלי ט'אהר מסמועה ומשהור לפט'ה (Bacher ed., 102). This matches Saadia's definition of *ẓāhir* as "the well-known meaning understood among speakers of its language" (see above, at n. 33).

[39] Halivni, *Peshat & Derash*, 79-80. Halivni refers to Saadia's formulation in *Beliefs and Opinions*, which he evidently read in Hebrew translation (see previous note).

[40] This point has been made by Ben-Shammai, "Prognostic Midrash," 2; idem, "Tension," 36, 45n. Other commentators, however, do seem to use the pair of terms *ẓāhir- ta'wīl* to express the *peshat-derash* dichotomy: see, e.g., Shy, *Tanhum*, לח, מב, 15, 111.

[41] Ibn Ezra, Pentateuch Commentary, Introduction (alternative version), "the fourth approach." See also Cohen, *Three Approaches*, 42.

We have digressed to expose the fallacy of automatically equating *ẓāhir* with *peshat* in Maimonides' literary milieu, thereby rectifying the optical illusion created by the Hebrew translations of his works, which give a skewed impression of how he used the term *peshat* in his Arabic writings. His own multifaceted use of the term *ẓāhir* and its complex relationship to his conception of *peshat* are beyond the scope of the current essay, and I deal with them elsewhere.[42] Here we shall focus on the ten passages in *The Book of the Commandments* that actually feature the terms *peshateh di-qera* and *gufeh di-qera*, yielding a circumscribed Maimonidean usage that reflects a consistent legal-hermeneutical theory based on his understanding of the talmudic rule of *peshat*. Indeed, unlike other exegetes who used this maxim to construct an overall theory of biblical interpretation, Maimonides applied it exclusively in the context of *halakhah* as a legal rather than purely exegetical principle.

Having clarified these preliminary matters, we can proceed with our study, which is divided into five sections: (1) A brief survey of Maimonides' exegetical heritage, in which we identify the range of sources he used and the key hermeneutical issues confronting the Geonic-Andalusian school that informed his outlook; (2) An outline of the classification of rabbinic readings of Scripture in Maimonides' first halakhic work, the Mishnah Commentary, where he traces the history of the development of *halakhah* in a discussion upon which the second principle in *The Book of the Commandments* is predicated; (3) A detailed analysis of Principle #2; (4) A survey of the nine additional passages throughout *The Book of the Commandments* in which Maimonides invokes the rule of *peshat* in accordance with Principle #2; (5) Conclusions about his conception of *peshat* and its role within his unique system of halakhic hermeneutics.

1. Exegetical Heritage

Although Maimonides is sometimes portrayed as a boldly original thinker who recast Scripture and rabbinic literature in a new light (aided by his Greco-Arabic learning), it is important to emphasize that his outlook was firmly anchored in the Geonic-Andalusian tradition. In many instances, his agenda was dictated by the pressing issues of concern to his predecessors in that school. Moreover, without denying his ability to devise novel solutions and approaches, recent scholarship

[42] In the studies announced in nn. *, 21 above.

suggests that for this purpose Maimonides often drew upon notions already developed in his Andalusian Jewish milieu. As a first step in our study, we therefore briefly explore the range of sources that would have informed his interpretation of Scripture, as well as the relevant hermeneutical conceptions of his Geonic-Andalusian predecessors.

a. Sources

Maimonides' aversion to documenting his sources is well-known; but his post-talmudic Jewish predecessors fared worse in this respect than others.[43] He often draws explicitly upon rabbinic literature to interpret the biblical text, and he will occasionally even mention how the teachings of Greek and Arab philosophers shed light on Scripture. By contrast, there is hardly a mention in his writings of the great linguists and exegetes influential in twelfth-century al-Andalus, whose names are mentioned frequently by Ibn Ezra. This tendency has perpetuated a portrait of Maimonides as a talmudist-philosopher disconnected with the mainstream Geonic-Andalusian exegetical tradition; but just beneath the surface we can detect the impact of this tradition on his biblical interpretation.[44] In particular, we can discern four streams of post-talmudic Jewish scholarship upon which he seems to have drawn.

(1) While Maimonides makes vague references to the collective Babylonian "geonim," modern research has documented his substantial debt to this school by tracing many aspects of his literary output to the works of specific Geonic authors. In particular, his references to Saadia, though sporadic and usually oblique, suggest the broad and deep impact of that Gaon's views, especially on biblical interpretation, which Maimonides at times challenges, but otherwise relies upon.[45] The imprint of Samuel ben Hofni, who carried on Saadia's tradition, can likewise be detected in Maimonides' writings.[46]

(2) Maimonides' occasional discussions of Hebrew grammar and philology indicate his knowledge of this discipline, which perhaps more than anything else characterizes the Andalusian exegetical method. Echoes of Menahem ben Saruq and Hayyuj can be detected in

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[43] See Pines, "Introduction," cxxxii-cxxxiv; Twersky, "*Guide*"; idem, "Influence," 21*, 39-42*.

[44] See Bacher, *Bibelexegese*, vi-vii, 168-174; Twersky, *Code*, 58; Cohen, *Three Approaches*, 14-15, 98, 179-180, 213; Davidson, *Maimonides*, 118.

[45] This is especially evident in Schwarz's notes in his translation of the *Guide of the Perplexed*: see, e.g., I:25 (p. 38, n. 6); I:65 (p. 168, n. 22); III:18 (p. 480, n. 45). See also Rawidowicz, *Studies*, 178-230; Cohen, "Disagreement."

[46] See Havazelet, *Geonites*, 71-74; Libson, "Two Sureties"; Sklare, *Samuel ben Hofni*, xi, 174n, 189.

his writings.[47] Ibn Janah is mentioned by name only once in the *Guide*; but his imprint is manifest throughout the numerous lexicographic chapters of that work.[48] Maimonides was also expert in the Greco-Arabic discipline of logic, *'ilm al-manṭiq*, a type of meta-grammar that explored the fundamental workings of language, to which he devoted his *Treatise on Logic*.[49] Throughout his works, he invokes linguistic concepts clarified in the *Treatise*, such as sentence structure, predication and the construction of an argument, as well as literal and metaphorical usage, all of which would align him with the Andalusian philological school, rather than the midrashic methods of the Rabbis.[50]

(3) Sporadic references to the "Andalusian commentators" in Maimonides' writings[51] usually offer little more than tantalizing hints at his debt to the great exegetes who flourished in al-Andalus. But in his *Treatise on Resurrection* he is more forthcoming in the course of responding (among other things) to a critique leveled against his figurative reading of Isaiah's famous messianic prophecy ("the wolf shall dwell with the lamb …" [11:6-11]) in *Mishneh Torah* (*Hilkhot Melakhim* 12:1). Following his usual style in the Code, Maimonides had originally presented this reading without attribution. In the *Treatise on Resurrection*, however, he responds to his critic by noting that in this understanding of Isaiah's prophecy he simply followed "the men of learning among the commentators, such as R. Moses ben

[47] See Mishnah commentary on *Terumot* 1:1, *Sotah* 5:5 (with Kafih's notes ad loc.); see also *Guide* I:67.

[48] In *Guide* I:43; see Strauss, "How to Begin," xlvi; Cohen, *Three Approaches*, 104-106.

[49] See Stern, "Language," 179-185. It is believed that Maimonides penned the *Treatise*, a summary of Alfarabi's logic, in his youth: see Kraemer, "Portrait," 20, 48-49. This traditional attribution has been questioned by Davidson, *Maimonides*, 313-322. His objections, however, are not conclusive: see Hasnawi, "Réflexions," 69-78; Cohen, "Imagination," 420-421. Moreover, Maimonides' tendency to draw upon logic in his writings (see following note) would seem to support the traditional attribution.

[50] See, e.g., below, nn. 143, 144 and examples (4) and (5) of section 4. The importance of logic for biblical interpretation was also recognized by Ibn Ezra (who refers to it in Hebrew as חכמת המבטא): see *Yesod Mora*, Cohen and Simon ed., 80, 89, 91, 93-94.

[51] See Shailat, *Letters*, I:328 [Ar.], 357 [Heb.]; *Guide* I:42 (Pines trans., 92); *Responsa* #267, Blau ed., II:509.

Chiquitilla and [Judah] Ibn Bal'am."[52] This remark opens a window into Maimonides' exegetical thought, not only by identifying the anonymous Andalusian commentators he had in mind, but also by indicating that they may be the source of unattributed commentaries elsewhere in his writings.[53] This may account for at least some of the numerous and occasionally striking parallels between Maimonides and Abraham Ibn Ezra (who frequently acknowledged his debt to Ibn Chiquitilla and Ibn Bal'am), although there are also numerous indications that Maimonides was directly influenced by Ibn Ezra's writings.[54]

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[52] Shailat, *Letters*, I:329 [Ar.]; 359 [Heb.]. This interpretation is not found in Ibn Bal'am's extant commentary on Isaiah (see Goshen-Gottstein and Perez ed., 75-77). Ibn Chiquitilla, however, is cited by Abraham Ibn Ezra (comm. on Isa 11:1) as interpreting this entire prophetic passage (11:1-11)—which begins with a prediction that a righteous king from the "stock of Jesse" will restore justice—as a reference to King Hezekiah, who implemented sweeping religious reforms (see II Chr 29-32; II Kgs 18-20; Jer 26:17-19). Evidently, Ibn Chiquitilla assumed that Isa 11:6-11 was meant figuratively, and this seems to be the precedent Maimonides had in mind, even though he interpreted this as a messianic prophecy.

[53] E.g., in his commentary on m. *Yevamot* 2:8, Maimonides evidently relied on Ibn Bal'am's reading of Deut 25:6: see Perez ed., 59 [Ar.], 111 [Heb.]. Maimonides' silent reliance on the writings of Ibn Bal'am and Ibn Chiquitilla is a matter that requires further research.

[54] For a dedicated study of this matter, see Twersky, "Influence." For much of the twentieth century, scholars pointed to the remark in the ethical will Maimonides purportedly wrote to his son, Abraham: "Rabbi Abraham Ibn Ezra, may the memory of the righteous be blessed… brought many matters to my attention, and I did not know them until after I had compiled the Mishnah commentary… *Mishneh Torah* and… the *Guide of the Perplexed*" (*Qoveṣ*, Lichtenberg ed., II:39-40). Shailat (*Letters* II:697-699), however, deems this document a forgery, though he notes that Maimonides elsewhere refers in passing to "R. Abraham ben Ezra, may he rest in paradise" (*Letters*, II:530). Relying on this more modest reference, Twersky cautiously rebuilds the case for influence, collecting parallels between the two authors, while noting that they may simply reflect a shared Andalusian outlook. Subsequent studies, however, have raised many more parallels that strengthen the impression that Maimonides actually had Ibn Ezra's writings: see Ben-Menahem, "Jurisprudence"; Cohen, *Three Approaches*, 14-15; Harvey, "First Commandment," 209-211. Notwithstanding Shailat's determination regarding the text of Maimonides' purported ethical will, it is evident that his son, Abraham, did indeed study Ibn Ezra's commentaries, which are cited copiously in his own biblical commentary: see Wiesenberg, *Commentary*, 539.

(4) We must also consider Maimonides' exposure to the substantial linguistic and exegetical work of the great tenth- and eleventh-century Karaite scholars, notwithstanding his fierce battles with the members of that sect in Egypt in his time. Although Maimonides generally mentions the doctrines of the Karaites dismissively, there is evidence that he was familiar with Karaite scholarship and used it where he saw fit, as Ibn Ezra and other Rabbanite exegetes did.[55]

b. Earlier Attitudes toward Rabbinic Halakhic Exegesis

All four of the above-mentioned schools that informed Maimonides' hermeneutical outlook would have made it difficult for him to accept talmudic exegesis of Scripture at face value. Indeed, the philological method pioneered by Saadia created a theological challenge for all Rabbanite scholars, since talmudic *halakhah* is based on manifestly midrashic readings of Scripture, a point often raised by their Karaite counterparts. This situation engendered a dual allegiance that required a delicate balance. Ibn Ezra, for example, professes adherence to "grammar and… reason," as opposed to Jewish Bible commentaries he found in Christian Europe, which "do not regard the rules of grammar, but rely on the way of *derash*."[56] Still, he pledges allegiance to "the transmitters [of tradition], who were all righteous" and promises to "rely on their [words of] truth" rather than turning to heresy by "join[ing] with the Sadducees (i.e., Karaites) who say that their tradition contradicts Scripture and grammar."[57] To balance these opposing values, he posits that Rabbinic exegesis must be read critically: "One who has a mind will be able to discern when they speak *peshat* and when they speak *derash*, for their words are not all of one type."[58] For Ibn Ezra, the Rabbis themselves "knew the *peshat*," whereas their far-fetched "readings" of Scripture were never intended as genuine exegesis, but merely as *derash*, i.e., fanciful homiletics.[59]

This solution can be traced to Saadia, who devised his hermeneutical model using Arabic terminology rather than the *peshat*-

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[55] See Lasker, "Karaism"; Melammed, *Commentators*, 676-678; Simon, "al-Kanzi," 372-373.

[56] See introduction to his (standard) Torah commentary (Weiser ed., I:1,7); Simon, "Ibn Ezra," 378.

[57] Torah commentary (standard), introduction (Weiser ed. I:10); see Maori, "Approach," 43, 50 (n. 12); idem, "Attitude," 208-215.

[58] *Yesod Mora*, Cohen and Simon ed., 130-131; see Maori, "Attitude," 213.

[59] See alternative Torah commentary, introduction (Weiser ed., I:141); Simon, "Ibn Ezra," 381; Harris, *Fragmentation*, 82-85.

derash dichotomy. On the one hand, the *halakhah* itself, he argued, was faithfully transmitted from the time the Torah was given. Saadia, in fact, leaves little room for rabbinic legislation in his sweeping application of this claim to every detail of talmudic law. As he writes in his essay that "establishes (or: confirms) the tradition known from the Mishnah and Talmud" –

> Just as the fundamental principles (*uṣūl*; lit. roots) of the law have come to us in the same way that they came to our ancient authorities, by way of [the senses], and they then transmitted them to us, so the applications (or: derivatives; *furū'*; lit. branches) [of the law] have come to us from knowledge which the forefathers knew by way of the senses.[60]

Using a standard dichotomy of Muslim jurisprudence, Saadia argues that the *halakhah* in its entirety—both the principles ("roots," *uṣūl*) and applications ("branches," *furū'*)—were given at Sinai.[61] Ever concerned with epistemology, Saadia makes this claim in order to confirm the validity of the *halakhah* as a true reflection of God's will. For this purpose he invokes the Mu'tazilite idiom "knowledge of the senses," by which he means something that one actually witnessed, which yields *'ilm ḍarūri* (immediate or compelling knowledge), as opposed to *'ilm muktasab* (acquired knowledge), arrived at through *naẓar* (speculation, reflection).[62] The latter might be subject to debate; the former, however, is incontrovertible. Saadia thus establishes the truth of talmudic law by arguing that the generation that stood at Sinai

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[60] See Sklare, *Samuel ben Hofni*, 160-161 (Arabic text and English translation; the text was originally published in Zucker, *Genesis*, 13). Saadia makes this claim elsewhere: see, e.g., his comm. on Genesis, Zucker ed., 13-17 [Ar.], 181-190 [Heb.] 181-190. This theme is repeated by Ibn Ezra: see his comm. on Lev 25:9 (Weiser ed., III:94); *Yesod Mora*, Cohen and Simon ed., 70, 130-131.

[61] The *uṣūl-furū'* dichotomy was used widely in Judeo-Arabic discussions of *halakhah*: see Libson, *Custom*, 197-198; Zucker, "Hefeṣ," 9 and below at nn. 79, 89, 134.

[62] See Sklare, *Samuel ben Hofni*, 146-147, 161; compare Hallaq, *History*, 61; see also n. 86 below. Regarding "acquired knowledge," Sklare writes: "Such knowledge is acquired through reflection on an indication (*dalīl*) placed in the world by God, which leads to a conclusion based on it…. If this act of reflection meets all the requirements for soundness (*naẓar ṣaḥīḥ*) it will generate certain knowledge" (*Samuel ben Hofni*, 147). Sklare (ibid.) also notes that *'ilm muktasab* is used interchangeably with *'ilm istidlālī* in Judeo-Arabic sources. This terminology will be significant in our study of Maimonides below.

heard it completely for themselves, and then transmitted it orally over the centuries until it was recorded in writing in the Mishnah and Talmud.

On the other hand, Saadia regarded the midrashic activity of the Rabbis to be a later development intended to artificially link the laws known from tradition to Scripture. Speaking about the "thirteen *middot* by which the Torah is interpreted" he writes:

> The Rabbis of blessed memory did not write down these thirteen because they infer (*yastadilluna*) [anything] through them, but rather because they found that the laws they had correspond to (lit. tend toward) these thirteen types [פן; i.e., of inference], not that they… are the foundation confirming (or: establishing) the laws. And just as we say about the *Massorah* (the discipline of counting words in Scripture) that it clarifies that תיעשה [appears in Scripture] ten [times], בטוב nine, בבבל eight [etc.]… these words did not come into being because of the *Massorah*, but rather it counted and found thus.[63]

By arguing that the oral tradition is the exclusive source of the full range of Rabbanite *halakhah*, Saadia denies that the *middot* serve any creative legal function.[64]

Karaite scholars, on the other hand, viewed the *middot* as interpretive tools by which the Rabbis derived *halakhah* from Scripture, akin in their eyes to what was known in Muslim jurisprudence as *qiyās*, i.e., legal derivation based on analogical inference, which Karaite scholars likewise used to create their system of *halakhah*.[65] Obviously, this was based on *naẓar*, human speculation to ascertain the will of God. Responding to Saadia's criticism of that endeavor, the tenth-century Karaite scholars Abu Yusuf Ya'aqub al-Qirqisani and Yefet ben Eli accused him of hypocrisy, since he rejected the validity of *qiyās* while accepting the Rabbis' analogous

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[63] Zucker, "*Taḥṣīl*," 378 (Arabic text with Hebrew translation). On *istidlāl*, see previous note and below, n. 82.

[64] See Harris, *Fragmentation*, 76-80.

[65] See Zucker, "Fragments," 321-331, 342; Faur, *Studies*, 89-99; Frank, *Search*, 9, 24-25. On *qiyās* in Muslim jurisprudence, see below, n. 79. It has been suggested, based on the terminological similarity to the talmudic term *heqqesh* (analogy), that this notion was borrowed from rabbinic jurisprudence: see Libson, *Custom*, 5, 192-193.

use of the *middot*.[66] Evidently, Saadia's claim regarding the *middot* was intended to undercut this accusation by characterizing them as nothing more than a method for classifying laws transmitted through an authoritative ancient tradition that the Karaites lacked.[67]

Saadia's debate with the Karaites (as well as subsequent discussions of halakhic theory in the Andalusian tradition, including those of Maimonides) can be understood in light of the discipline of *uṣūl al-fiqh* (the roots [i.e., sources] of the law), which aimed to account for the development of Islamic law from the Qur'an to the prevailing legal system centuries later.[68] By the tenth century, legal scholars recognized four primary sources of Muslim law (*fiqh*, an Arabic term that Jewish authors also used to render the Hebrew term *halakhah*):[69] (1) the Qur'an, a written record of the divine word itself, and (2) *ḥadīth*, oral "narratives" or "reports" of the practices (*sunna*) of the Prophet and his companions, which were subsequently committed to writing.[70] The proliferation of these narratives, which were often fabricated, made it necessary to establish their authenticity based on the principle of *tawātur* (lit. "recurrence"), i.e., the notion that reports transmitted through many different ("recurrent") channels could not possibly be fabricated (and only these were deemed genuine).[71] Beyond the Qur'an and *ḥadīth*, which were regarded as "foundational texts,"[72] further laws were established based on (3) *ijmā'* (consensus), i.e., legal decisions accepted by a consensus of Islamic scholars, or, according to some, the Muslim community.[73]

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66 See Zucker, "*Taḥṣīl*," 374-375.

67 See Zucker, "*Taḥṣīl*," 373-379.

68 See Weiss, *Search*, 13-15, 24-28. For a revisionist account of this discipline (which also summarizes the traditional approach), see Jackson, "Functional Analysis."

69 See Weiss, *Search*, 151-157; idem, *Spirit*, 38, 66-68, 122-127; Hallaq, *Origins*, 122-128; Schacht, *Introduction*, 59-61, 114-115; Lowry, "Shāfi'ī."

70 See Weiss, *Search*, 161-180; Hallaq, *Origins*, 69-76, 128-134.

71 See Weiss, *Search*, 271-282; Hallaq, *Origins*, 102-109, 134-138; idem, *History*, 58-68. Aiming to reflect the proportion of authentic to inauthentic reports, Hallaq writes: "Indicative of the range of such forgeries is the fact that the later traditionists—who flourished during the third/ninth century—accepted as 'sound' only some four of five thousand *ḥadīth*s out of a corpus exceeding half a million. This is one of the most crucial facts about the *ḥadīth*, a fact duly recognized by the Muslim tradition itself" (*Origins*, 104).

72 See Weiss, *Spirit*, 38, Hallaq, *Origins*, 119.

73 See, Weiss, *Search*, 181-258; Hallaq, *Origins*, 138-140.

What came to be regarded as the fourth source of law—*qiyās*—has a long, controversial history. Before the absolute authority of the *ḥadīth* was established (at the end of the eighth century), many jurists made legal decisions based upon what was stated explicitly in the Qur'an, supplemented by their own discretionary legal intuition and reasoning, referred to as *ra'y* (lit. opinion). As the body of *ḥadīth* grew, however, a split divided two schools of Islamic legal scholars: traditionalists known as *ahl al- ḥadīth* (lit. the folk of *ḥadīth*), who asserted that all laws must be based on what was stated explicitly by the Prophet (as recorded in the Qur'an) and his companions (as reported in the *ḥadīth*), as opposed to rationalist legal thinkers known as *ahl al-ra'y* (lit. the folk of *ra'y*), who believed that law could also be determined independently, based on legal reasoning.[74] Once the authority of the *ḥadīth* had been firmly established, the traditionalists took the upper hand and *ra'y* suffered a decline, its very validity questioned.

The place of rationalism in Muslim jurisprudence would be restored, albeit in a more circumscribed form, in what is termed by W. Hallaq, a contemporary scholar of *uṣūl al-fiqh*, the "great rationalist-traditionalist synthesis" that took hold finally toward the end of the tenth century and signaled the maturation of Muslim legal theory. The roots of this synthesis can be traced to the seminal Muslim legal theorist Muhammad b. Idris al-Shāfi'ī (d. 819), who argues that *ra'y* on its own, as broadly defined, i.e., pure legal reasoning, is arbitrary and cannot be used as a source of law. On the other hand, Shāfī'i acknowledged the validity of *qiyās*, a more strictly defined form of legal inference based on laws stated explicitly in the Qur'an and *ḥadīth*.[75] This type of reasoning, alone, can truly reveal the will of the Divine legislator.[76] But, as Hallaq has shown, the terminological differentiation between *ra'y* and *qiyās* is somewhat misleading, since the former term originally was used for all types of legal reasoning, including those that would come to be known as *qiyās*.[77] Effectively, then, Shāfi'ī defined the type of *ra'y*—i.e., the subset that met the standard of what he termed *qiyās*—that could be regarded as a valid source of law. While influential, Shāfi'ī's view was not universally accepted, and some important theorists rejected even the more restricted category of *qiyās*, insisting on basing Muslim law only on

[74] See Hallaq, *Origins*, 53-54, 74-76, 113.
[75] See Hallaq, *Origins*, 114-120.
[76] See Weiss, *Spirit*, 66-87.
[77] See Hallaq, *Origins*, 114.

the other three sources. It was only toward the end of the tenth century that these traditionalist opponents of legal rationalism were truly marginalized, and the four-fold system of *uṣūl al-fiqh* became generally accepted in the mainstream of (Sunni) Muslim jurisprudence.[78]

The term *qiyās* (lit. to measure) itself was borrowed to denote legal inference by analogy, which was conceived as "measuring" one thing (i.e., a legal case) against another. Much effort was expended by Muslim legal theorists to define the parameters of this procedure precisely.[79] In applying *qiyās*, a jurist would use reasoning (or: speculation; *naẓar*) to draw an inference from an established law (termed the *aṣl*, i.e., root [pl. *uṣūl*]) stated in the Qur'an or *ḥadīth*, or one accepted by consensus. Upon determining the rationale (*'illa*; lit. reason) for the established law, he could then apply it to a new case to yield the appropriate derivative law (the *far'*, i.e., branch [pl. *furū'*]). The classic example cited to illustrate this procedure is the determination of the status of date wine. Drinking grape wine is prohibited explicitly in the Qur'an, presumably because it is intoxicating. Since this *'illa* applies to date wine, it, too, is prohibited. Apart from simple analogy, other logical forms of reasoning were also subsumed under the category of *qiyās*, such as the *a fortiori* argument. For example, the Qur'an prohibits disrespecting parents by saying "Fie!" to them; from this it is deduced *a fortiori* that striking a parent is prohibited.

The notion of *qiyās* was of interest not only in the field of jurisprudence. In the Greek-influenced Arabic discipline of logic (*al-manṭiq*), the term *qiyās* was used specifically to denote the syllogism, i.e., a structured formal argument that draws a conclusion based on specific premises—expressed in at least two propositions—in accordance with the rules of logic.[80] Maimonides, for example,

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[78] See Hallaq, *Origins*, 122-128. Shi'i legal theory, as well as some other minor schools (including the now extinct Ẓāhiri school), did not accept *qiyās*: see Weiss, *Spirit*, 70.

[79] See Weiss, *Search*, 155, 551-557, 633-654; idem, *Spirit*, 66-87; Hallaq, *Origins*, 140-145; idem, *History*, 61, 82-107; idem, "Non-Analogical Arguments."

[80] While *qiyās* ultimately became the standard term for the *syllogism* in Arabic works on logic, we do find an occasional reference to this Greek notion as *sulujismus* (سولوجسموس): see Lameer, *Syllogistics*, 42. Our general discussion of the syllogism in Arabic logical writings is based upon Black, "Logic"; see also Maimonides, *Treatise on Logic*, chapter eight.

describes the workings of this form of deduction in chapters six through eight of his *Treatise on Logic*, where he largely draws on Alfarabi. The so-called demonstrative syllogism (*al-qiyās al-burhānī*), which is incontrovertible, was the gold standard in the eyes of the logicians and had to adhere to strict criteria; e.g., that its premises be known with certainty, and its conclusions apodictic. By contrast, the dialectical syllogism (*al-qiyās al-jadalī*) allowed for a wider range of premises and modes of reasoning, including analogy, and therefore is not as compelling. Since many Muslim legal theorist were themselves also experts in logic (as, for example, was Maimonides), it is not surprising that the syllogism as a form of reasoning eventually made its way into *uṣūl al-fiqh*. In fact, the logicians referred specifically to the category of the "juridical syllogism" (*al-qiyās al-fiqhī*).[81] Many legal theorists, however, insisted on restricting the legal notion of *qiyās* to the categories listed above (analogy, *a fortiori* reasoning, etc.), and regarded the syllogism merely as *istidlāl* (lit. adducing a *dalīl*, i.e., an "indicator" or proof), a broader category that includes miscellaneous types of derivation outside of the main four sources.[82]

In light of the rationalist-traditionalist divide in *uṣul al-fiqh* in the early tenth century, we now can place the debate between Saadia and his Karaite contemporaries squarely within their larger Muslim context. According to Qirqisani, the Karaites—adopting a rationalist legal approach—relied on three sources to establish their *halakhah*: Scripture, consensus (of the Karaite community), and *qiyās*.[83] Saadia, on the other hand, held a view similar to that of the traditionalist Muslim camp, arguing that authentic Jewish law is based only on Scripture and the distinct oral tradition, to the exclusion of *qiyās*. Indeed, in his introduction to the Pentateuch, Saadia lists and disqualifies four types of *qiyās* for determining *halakhah*: logical (*manṭiqī*), dialectic (*jadalī*), juridical (*fiqhī*), and "the *qiyās* of the sectarians" (i.e., Karaites).[84] By arguing (in the passage cited above at n. 60) that the *halakhah* in its entirety—both "roots" and "branches"—was given at Sinai, Saadia removes *naẓar* from the

[81] See Lameer, *Syllogistics*, 233-258. Maimonides uses this term as well: see *Treatise on Logic*, chapter six, Efros 1938 ed., טז [Ar.], 47 [Eng.]; *Book of the Commandments*, introduction, Kafih ed., 54-55; *Letters*, Shailat ed., 380. See also below, n. 144.

[82] See Hallaq, "Logic"; Weiss, *Search*, 655-660. The terms *dalīl* and *istidlāl* will be discussed below.

[83] See sources cited in Faur, *Studies*, 80-94; Frank, "Literature," 529-530.

[84] *Commentary on Genesis*, Zucker ed., 16-17 [Ar.]; 188-189 [Heb.].

picture.[85] Another component of Saadia's theory was clarified by Samuel ben Hofni, who was asked about the legal status of consensus (*ijmā'*) as a source of *halakhah*. Confirming the primacy of the oral tradition, he responded that consensus alone cannot yield *halakhah*, but that laws agreed upon in the Jewish community are authoritative because they fulfill the requirement of *tawātur*, i.e., their preponderance indicates that they reflect genuine ancient oral traditions.[86]

The "traditionalist"—and thus largely static—Geonic conception of *halakhah* continued to have some adherents in Muslim Spain even though it is difficult to square with the tenor of talmudic literature, where it seems clear that the thirteen *middot* and other midrashic methods are used to interpret Scripture and derive new laws.[87] However, a more balanced approach did emerge, as evident in the following account by Bahya Ibn Paquda, the eleventh-century Saragossa philosopher and religious judge (*dayyan*). In his ethical work *Duties of the Heart*, he speaks in passing about the juridical procedures of the "pious early forefathers," i.e., the sages of the Talmud:

> When a question occurred regarding the applications (*furū'*) of the laws and their peculiarities (i.e., unusual cases), they reflected (*naẓarū'*) upon them (i.e., the laws) at that time with their analogical reasoning (*qiyās*), and they extracted

[85] Saadia invalidates *qiyās* specifically with respect to the "revelational" commandments (*al-sam'iyya*); see Zucker, "*Taḥṣīl*," 388-404. Theoretically, one might infer from this that the Gaon accepted the use of *qiyās* in their counterpart, the "rational" commandments (*al-'aqliyya*). However, as Ravitsky (*Logic*, 43-44) argues convincingly, in practice Saadia excluded *qiyās* altogether as a method of determining *halakhah*. On the possibility that Samuel ben Hofni allowed for limited use of *qiyās* see Sklare, *Samuel ben Hofni*, 218-220.

[86] See Sklare, *Samuel ben Hofni*, 161-165. See also Hallaq, "Corroboration," 10, who writes: "The *mutawātir* report, whose authenticity is absolutely certain, reaches us… [from] people witnessing the Prophet saying or doing a particular thing… [and is thus] based on sensory perception (*maḥsūs*)…. Epistomologically, this report yields necessary or immediate knowledge (*'ilm ḍarūrī*)… in contradistinction to mediate knowledge (*'ilm muktasab* or *naẓarī*)." Some Muslim thinkers, however, disputed this: see Schwarb, "God's Word," 127*.

[87] See Blidstein, "Tradition," 15-20; Harris, *Fragmentation*, 80-86; Halbertal, *People*, 54-59.

> (*istanbaṭu'*)[88] the law from the principles (*uṣūl*) that they safeguarded (i.e., as part of the sacred tradition)…. When the need arose to implement the law, if the law was plainly clear from the principles (*uṣūl*) transmitted by the prophets, peace upon them, then they would implement the law accordingly. And if the question was [a matter] of the applications (*furū'*), the laws of which are to be extracted from the principles (*uṣūl*) of the transmitted tradition, they applied their *ra'y* and *qiyās* to them. And if all of the leading scholars agreed about their law, then it is decided according to their word. And if their *qiyāsāt* (pl. of *qiyās*) disagreed over the law, then the opinion of the greater number among them was adopted. And this is based on their dictum regarding the *Sanhedrin* (the high court in Jerusalem): "If a question was asked before them, if they heard (i.e., had received a tradition about this matter) they told [it to] them (i.e., to the questioners), and if not, they took a vote: if the majority declared it ritually clean, they declared it ritually clean, if the majority declared it ritually unclean, they declared it ritually unclean" (b. *Sanhedrin* 88b).[89]

To conceptualize his talmudic source, Bahya borrows terminology from *uṣūl al-fiqh* (in which, by his time the synthesis of rationalism and traditionalism—and the place of *qiyās*—was well established); accordingly he describes how the applications (*furū'*) of the law not already known from the received sources (which are the *uṣūl*) are derived through *ra'y* and *qiyās*.[90] As a religious judge, Bahya presumably was quite familiar with this halakhic process himself. But since he evidently did not write works of legal theory or even positive law (i.e., *halakhah*), we do not get much further detail from him. In fact, it is reasonable to assume that Bahya did not depart from Saadia's model on his own authority, since he was not known as a particularly distinguished or innovative talmudist.

Until recently, it was difficult to clarify this matter further due to the fragmentary nature of the extant halakhic literature from eleventh-century al-Andalus.[91] However, from the riches of the Cairo Genizah a

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[88] On this term in Muslim jurisprudence and exegesis, see Sviri, "*Istinbāṭ*."

[89] *Ḥovot ha-Levavot* (*Duties of the Heart*), Kafih ed., 28-29; see also Sklare, *Samuel ben Hofni*, 161n.

[90] Although some Muslim scholars distinguished between these two terms, Bahya here evidently uses them synonymously: see above, at nn. 75, 77.

[91] See Ta-Shma, *Commentary*, 160-185.

fresh outlook on this question has emerged in recently discovered (and soon to be published) fragments of *Kitāb al-Ḥāwī* by David ben Saadia ha-Ger (the Proselyte), who served as a *dayyan* in Granada in the mid-eleventh century.[92] This work, which was evidently influential for over a century in the Judeo-Arabic world, included substantial discussions of both positive law (*halakhah*) and jurisprudence, i.e., the "sources of the law" in the spirit of *uṣūl al-fiqh*.[93] David ben Saadia outlines three major sources of Rabbanite *halakhah*:

(1) the text (*naṣṣ*) of Scripture;
(2) the transmitted tradition (*al-ḥadīth al-manqūl*);
(3) interpretation of the matters (*sharḥ al-ma'āni*) by the Sages (lit. folk) of the Talmud.[94]

This tripartite division seems to be based the talmudic dictum "A person must always divide his years [for study] into three: a third in Scripture, a third in Mishnah and a third in Talmud" (b.*Qiddushin* 30a).[95] David ben Saadia identifies Mishnah with the category of *ḥadīth* in *uṣūl al-fiqh*. The Talmud, which seems to be cast here as an interpretation of the Mishnah and perhaps Scripture, is regarded by David ben Saadia as being composite:

> As for the interpretations of the matters by the Sages (lit. folk) of the Talmud, this occurs in two ways: some of them are (a) interpretations transmitted (*manqūl*) explicitly; and others are (b) interpretations extrapolated (*mustakhraj*) through unadulterated judgment (*ra'y*) and sound analogy (*qiyās*). And about this they say: "If it is a tradition (*halakhah*) we must accept it; but if it is a logical inference (*din*), there may be an objection to it" (m.*Keritot* 3:9).[96]

Using the mishnaic categories of "tradition" and logical inference, David ben Saadia distinguishes between two sorts of *sharḥ* (interpretation): some interpretations derive their authority from tradition, while others are the product of independent judicial reasoning—which he term *ra'y* and *qiyās*. This clear statement by

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92 Sklare, "*Ḥāwī*," 109-123.
93 Ibid., 103-109.
94 Stampfer, "Jewish Law," 221.
95 David ben Saadia's adaptation of this talmudic tripartite division adumbrates that of Maimonides in *Hilkhot Talmud Torah* 1:11. See Twersky, *Code*, 489.
96 Stampfer, "Jewish Law," 223. On the notion of *istikhrāj* see n. 139 below. Regarding the rule in m. *Keritot* 3:9, see Jastrow, s.v. הלכה.

David ben Saadia, coupled with Bahya's remarks, suggest that the dynamic model of *halakhah*, powered by concepts from Muslim jurisprudence, had taken root in al-Andalus by the end of the eleventh century.

Unlike Saadia's primarily static model of talmudic *halakhah*, which was tacitly abandoned in al-Andalus, his characterization of (at least some) rabbinic "readings" of Scripture as secondary projections onto the biblical text became a commonplace in al-Andalus.[97] The Spanish philosopher-poet Judah Ha-Levi (1175-1041) draws upon this notion in his *Kuzari* in responding to the perception that "Karaite… arguments seem superior and most fitting with the texts of the Torah,"[98] whereas the Rabbis—

> … interpret verses of the Torah—at times laws, at other times in *derashot*—in ways distant from logical reasoning,[99] for we intuitively know (lit. our soul testifies and our heart tells us) that the intent (*qaṣd*)[100] of that verse is not what they mentioned…. Only rarely does their interpretation match common sense and the obvious meaning (*ẓāhir*) of the language.[101]

To uphold Rabbinic tradition, ha-Levi offers two alternative explanations. In some cases, he suggests, the Rabbis—

> … used the verses by way of [an artificial] prooftext (*isnād*) which they called *asmakhta* (lit. support), used as a sign (*'alāma*) for their tradition. As they made [Gen 2:16] "And the Lord God commanded the man, saying: 'Of every tree of the garden you may freely eat'" a sign for the seven

[97] See Elbaum, *Perspectives*, 65-94; Harris, *Fragmentation*, 80-86.

[98] *Kuzari* III:22, Baneth and Ben-Shammai ed., 112. Ha-Levi here articulates a common Rabbanite perception of Karaite scripturalism. Recent scholarship, however, has shown that the Karaites' professed scripturalism did not always produce a straightforward, contextual-philological reading of the biblical text: see Frank, "Limits"; Erder, "On the *Peshat*."

[99] יבעדהא אלקיאס might also be rendered, "that logical reasoning makes unlikely (lit. distant, remote)." The term *qiyās*, as discussed below, was often used in the specific sense of legal analogy or syllogism, but it also connotes *correct reasoning* and *common sense*, as in this context: see Blau, *Dictionary*, s.v. קיאס; Lobel, *Mysticism*, 62; compare Maimonides, *Guide* II:24, Pines trans., 322, n. 1.

[100] On this term, see below, n. 170.

[101] *Kuzari* III:68-72, Baneth and Ben-Shammai ed., 142-143.

> commandments commanded to the children of Noah: "'And [He] commanded' – these are the social laws; 'the Lord' – this is blasphemy; 'God' this is idolatry; 'the man' – this is bloodshed; 'saying' this is adultery; 'of every tree of the garden' – this is robbery; 'thou mayest freely eat'—this is a limb [torn] from a living animal" (b. *Sanhedrin* 56b). How disparate are these meanings (or ideas; interpretations)[102] and this verse! But these seven commandments were transmitted to the nation by tradition, and they attached it to this verse as a sign (*siman*) to make it easier to remember.[103]

Ha-Levi here uses the talmudic term *asmakhta* to characterize this type of artificial prooftext for laws that are known through tradition, as his younger colleague and friend Abraham Ibn Ezra would also do.[104] But ha-Levi knew that this account is difficult to project onto all rabbinic halakhic exegesis and therefore adds that in such cases another procedure seems to be at work:

> They [must have] had secrets hidden from us in their ways of interpreting (*tafsīr*) the Torah, which came to them as a tradition in the usage of the "thirteen *middot*." …. And perhaps both methods [i.e., this and *asmakhta*] were used by them in the interpretation of the verses.[105]

Unlike Saadia, ha-Levi acknowledges that the Rabbis applied the *middot* independently to interpret Scripture and create new legislation.[106] But he does not go as far as Bahya or David ben Saadia, and resists equating the *middot* with *qiyās*, perhaps because he wished

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[102] *Aghrāḍ* (sing. *gharaḍ*) lit. purposes. On this term, see below, at n. 168.
[103] *Kuzari* III:73, Baneth and Ben-Shammai ed., 143.
[104] See Cohen and Simon, *Yesod Mora*, 39-41. While this concept has its roots in the Talmud, the term *asmakhta* is used there for laws of rabbinic origin artificially "attached" to a biblical verse. But ha-Levi and Ibn Ezra use the term *askmakhta* in association with laws of biblical authority, i.e., ones given orally at Sinai together with the Written Law, i.e., the Pentateuch. For a similar conception of *asmakhta* in Maimonides, see below, n. 169. (Maimonides, however, rules that such laws do not have biblical authority, notwithstanding their Sinaitic origin: see Responsa #355, Blau ed., 632.)
[105] *Kuzari* III:73, Baneth and Ben-Shammai ed., 143.
[106] I would therefore qualify J. Harris' absolute statement that "Halevi denies to rabbinic halakhic midrash any creative role in the fashioning of the halakhic system" (*Fragmentation*, 82).

to avoid validating the parallel Karaite endeavor.[107] Moreover, ha-Levi observes that the *middot* do not resemble any rational exegetical method and he therefore characterizes them as a mysterious cipher,[108] which only the Rabbis knew through a tradition from Sinai.[109]

2. Maimonides' Classification of Rabbinic Readings of Scripture

Despite differences between David ben Saadia and Bahya, on the one hand, and ha-Levi, on the other (most notably regarding the validity of *qiyās*), these three Andalusian scholars represent a more dynamic model of *halakhah* than the one portrayed by Saadia. And it is against this backdrop that we must evaluate Maimonides, who lived in their intellectual milieu and was probably influenced by their writings.[110] Like ha-Levi, he sought to account for the tenuous rabbinic "readings" of Scripture, not least in light of the Karaite challenge. The latter is addressed in his Mishnah Commentary:

> The heretics we call Karaites in Egypt, referred to by the Rabbis as Sadducees and Boethusians… began challenging the tradition (*naql*) and interpreting the [biblical] texts (*ta'wīl al-nuṣūṣ*)[111] according to what seemed most cogent to each individual without yielding to a Sage at all, in violation of His

[107] See *Kuzari* III:23-37; III:49; Lobel, *Mysticism*, 58-68.

[108] In using the term *tafsīr* (interpretation) in this context, ha-Levi implies that the *middot* were used to discover the original intent of Scripture, a view Maimonides would challenge, as discussed below. Ha-Levi thus represents a sort of modification of Saadia's system: he acknowledges the creative use of the *middot*, though he endeavors to differentiate them from *qiyās*, which is based on human reasoning. As Sagi ("Praxis," 306-309, 313-317) shows, ha-Levi believed that in applying the *middot*, the Rabbis were *discovering* the meaning of God's word, adhering to what Sagi terms the "discovery model" of truth, as opposed to the "creative model"; see also below, n. 142.

[109] See Lobel, Mysticism, 62-63, 204. Ha-Levi also argues that the sages of the *Sanhedrin* benefited from a special connection with the divine spirit located in the Temple, another feature that distinguished their legislation from Karaite *halakhah* based on *qiyās*, i.e., human legal reasoning. See Lobel, *Mysticism*, 132-133; Arieli, "Halevi," 45-47.

[110] See Kreisel, "Influence"; Cohen, *Three Approaches*, 180, 208-212. On the influence of David ben Saadia in al-Andalus, see n. 93 above.

[111] On the term *ta'wīl*, see below, n. 121.

> dictum, may He be exalted:[112] "According to the Law (*Torah*) they legislate to you… do not deviate from [it]" (Deut 17:11).[113]

Rather than responding to the Karaites on empirical grounds,[114] Maimonides argues simply that legislative authority was granted only to the Rabbis, undercutting the validity of independent legal exegesis. He based this argument on Deut 17:11, as he explains more fully in *Mishneh Torah*:

> The Torah placed trust [in]… the [sages of the] great religious court (בית דין הגדול) in Jerusalem… as it says: "According to the Law that they legislate to you [you must act]"– this is a positive commandment…. Whoever does not act according to their ruling violates a negative commandment, as it says: "Do not deviate from the matter they tell you either to the right or to the left"…. Whether it be matters they expounded from the tradition (*mi-pi ha-shemu'ah*), which are the Oral Law (*Torah she-be-'al peh*), or matters they deduced through their own understanding with one of the *middot* by which the Torah is interpreted.[115]

Maimonides here makes a critical distinction between two aspects of rabbinic legislative authority. On the one hand, the Rabbis are faithful transmitters of the "Oral Law," i.e., the interpretations of Scripture transmitted in an unbroken chain from Sinai. Indeed, among the thirteen cardinal principles of faith Maimonides lists in the Mishnah Commentary, we find, along with the divine origin of Scripture itself, the belief that "its transmitted interpretation (*tafsīr marwī*) is also from the Almighty."[116] But he also acknowledges the creative role the

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[112] קולה תעאלי; lit. His saying, may He be exalted: see below, n. 229.

[113] Mishnah Commentary, *Avot* 1:3, Kafih ed, IV:410. On the Karaite-Sadducee link (mentioned also by Ibn Ezra [cited above]), see Erder, "Karaites."

[114] I.e., by claiming the rational or philological superiority of rabbinic exegesis, as Ibn Ezra seems to do: see his (standard) introduction to the Torah, Weiser ed., I: 2-6.

[115] *Hilkhot Mamrim* 1:1-2.

[116] Intro. to *Pereq Ḥeleq*, Shailat ed., 372-373 [Ar.]; 144 [Heb.]. Compare the locution אלתפאסר אלמרויה ען משה ("the interpretations handed down / transmitted from Moses"), Intro. to Mishnah, Shailat ed., 338 [Ar.]; 40 [Heb.].

Rabbis played by legislating new *halakhot* derived from Scripture using the thirteen *middot*.[117]

The clarification of this two-tiered system in Maimonides' theory of *uṣūl al-fiqh* (i.e., sources of *halakhah*)[118] is a salient contribution of recent Maimonidean scholarship, addressed in important studies by Y. Levinger, J. Faur, J. Harris, D. Henshke, M. Halbertal and—most extensively—G. Blidstein.[119] As Blidstein writes:

> The term Oral Law… denotes only the divine explanation of Scripture given explicitly at Sinai [as opposed to] subsequent interpretation and legislation…. That which is Oral Law is historically Sinaitic, but rabbinic interpretation and legislation are no less historically man's deed…. Maimonides… anchors much of the Talmudic tradition in objective human creativity.[120]

This focus on human creativity distinguishes the dynamic Maimonidean halakhic model from Saadia's static one, as the above-mentioned scholars have emphasized. Building on their work, we will examine the hermeneutical terms and concepts that he employs in presenting his model.

a. Transmitted Interpretations

Maimonides begins his Mishnah Commentary by reconstructing how the laws of Torah were received at Sinai:

> Every law that God revealed to Moses our master was only revealed to him with its interpretation. God told him the text (*naṣṣ*), and then told him its interpretation (*tafsīr*) and

[117] In order to undercut the analogous Karaite system of *halakhah* based on *qiyās*, he argues that Deut 17:11 grants exclusive legislative-interpretive authority to the Rabbis.

[118] See Blidstein, "Halakhah," 13. On Maimonides as a Jewish *uṣūlī*, see Faur, *Studies*, 9.

[119] See Levinger, *Techniques*, 34-65; Faur, *Studies*, 13-49; Harris, *Fragmentation*, 86-90; Halbertal, "Architecture," 457-473; idem, *People*, 54-63; Henshke, "Basis"; Blidstein, *Authority* 34-45; idem, "Tradition," 14-20; idem, "Oral Law," 108-114.

[120] Blidstein, "Oral Law," 110-111. Maimonides at times uses the term "Oral Law" in a more general sense to connote all laws that are not explicit in the biblical text, including those newly enacted by the Rabbis. See Blidstein, *Authority*, 27; idem, "Tradition," 13n; cf. Henshke, "Basis," 128n.

> explanation (*ta'wīl*)[121] …. And they (i.e., Israel) would write the text and commit the tradition (*naql*) to memory. And thus the Sages, peace upon them say: "the Written Law" and "the Oral Law," and… [that] "all of the commandments (*miṣwot*), their general principles, their details and their particulars (כללותיהן ופרטותיהן ודקדוקיהן), were said at Sinai"… [thus for all] six hundred and thirteen laws.[122]

The distinction Maimonides makes here between the text of the Torah and its original oral interpretation underlies a terminological convention in his citation of biblical proof-texts throughout his writings (in both Arabic and Hebrew), as the following chart illustrates:

	Written Law	Oral Law
Maimonides' Arabic: *Book of the Commandments* [medieval Hebrew trans. by Moses Ibn Tibbon]	נץ אלתורה [=לשון התורה] "the language (or: very wording, text) of the Torah" נצת אלתורה [=בא לשון התורה] "the Torah stated explicitly"[123]	ג'א פי אלתפסיר אלמרוי [=בא בפירוש המקובל] "it came [to us] in the transmitted (Heb. received) interpretation"[125] ג'אנא אלנקל פי תפסיר הד'א אלפסוק [=ובאה הקבלה

[121] *Tafsīr* is a generic term for *interpretation*, and usually connotes one that expresses the most direct, simple meaning of the text. (E.g., Saadia's translation is called the *Tafsīr*.) Although the term *ta'wīl* also means *interpretation* (and was at one time used in Arabic interchangeably with *tafsīr*), it came to connote a deeper, more complex type of interpretation, e.g., a figurative or otherwise non-literal interpretation: see Poonawala, *Ta'wīl*; Zucker, "Fragments," 316-318, 320-321; Weiss, *Search*, 470-479. In using the term *ta'wīl*, Maimonides probably wishes to account for the fact (noted by ha-Levi; above, n. 101) that the Oral Law does not always represent the most obvious or straightforward interpretation: see below, at n. 130.

[122] Introduction to Mishnah, Shailat ed., 327-328 [Ar.]; 27-28 [Heb.].

[123] The term נץ can be a noun (vocalized *naṣṣ*) meaning *text* or *the very wording, formulation, language of a book* (as reflected in the Hebrew translation לשון), or a verb (*nasṣṣa-yanusṣṣū* [=masc.]; *nasṣṣat-tanuṣṣū* [fem.]; past participle *manṣuṣ*) meaning *to specify, to state explicitly*. See Lane, s.v., نصّ; compare Blau, *Dictionary*, s.v., נצץ. Accordingly, נצת אלתורה means *the Torah stated explicitly*, whereas נץ אלתורה (in the construct state) means *the language (or: very wording,*

	ג'א אלנץ [=בא הכתוב] "the text [i.e., Scripture] came [to say]" ביין אלנץ [=ביאר הכתוב] \ תביין פי אלנץ [=התבאר בכתוב] "the text made clear" / "it was made clear in the text" [124]	[בפירוש זה הפסוק "the tradition has come to us in the interpretation of this verse"[126]
Maimonides' Hebrew: *Mishneh Torah*	מפורש בתורה, בפירוש... בתורה "explicit… in the Torah" [127]	מפי השמועה למדו "based on the tradition they expounded"[128]

text) of the Torah. The term *naṣṣ* can also connote a perfectly clear text that is not subject to interpretation: see Weiss, *Spirit*, 122; Hallaq, *Origins*, 209.

[125] The term *tafsīr marwī* might be rendered more literally "handed-down interpretation." Ibn Tibbon renders it *perush mequbbal*, i.e., "received interpretation."

[124] See, e.g., *Book of the Commandments*, Positive Commandment #46, #52, #54, #55, #88, #89, #110, #128, #236, #239, Negative Commandment #5, #90, #192, #195, #228, #318, #328, #355. Compare the locution נץ ג'לי בביאן ("a clearly explicit [biblical] text") in Negative Commandment #194. Maimonides uses similar phraseology dozens of times in his Mishnah Commentary. In *Guide* III:41, Munk-Joel ed., 409, 415, he uses the term *naṣṣ-nuṣūṣ*in his endeavor to interpret Scripture independently of the *halakhah* (which derives from the transmitted interpretation): see Twersky, *Code*, 437n; Blidstein, "*Halakhah*," 15-16, and below, n. 156. In his halakhic works, of course, he accepts the "transmitted interpretation" implicitly: see below, n. 130.

[126] See, e.g., *Book of the Commandments*, Positive Commandment #6, #8, #32, #33, #109, #153, #157, #159, #164, #173, #177, #198; Negative Commandment #20, #21, #30, #132, #336. These expressions occur numerous other times in *The Book of the Commandments*, as well as in the Mishnah Commentary.

[127] See *Mishneh Torah*, *Hilkhot De'ot* 6:10; *Shabbat* 20:2; *Shofar* 7:22; *Issurei Bi'ah* 12:10-11; *Sheḥitah* 5:3, *Ma'akhalot Asurot* 6:1; *Shevu'ot* 5:2; *Shegagot* 10:5, *Ḥovel u-Mazziq* 4:9. In Responsum #355, however, the term is used in a different sense: see n. 191 below.

[128] This expression, which appears over a hundred times in *Mishneh Torah*, has its origins in geonic literature: see Halivni, *Peshat & Derash*, 83; Elbaum, *Perspectives*, 58. The equivalence of *mi-pi ha-shemu'ah* and *tafsīr marwī* can be seen, e.g., by comparing *Book of the Commandments*, Principle #9, Positive

The terminology in the left-hand column reflects Maimonides spirited endeavor to demonstrate that the laws he codifies are among "the commandments written clearly in the text of the Torah,"[129] which even the Karaites would be forced to acknowledge. The price he pays is the implicit admission that in other cases the Rabbanite legal system requires faith in the Oral Law. And, indeed, as a number of scholars have observed, wherever Maimonides employs the phrases "transmitted interpretation" and "based on the tradition they expounded", he tacitly acknowledges that his reading of the biblical proof-text is not a straightforward philological analysis.[130]

Maimonides' initial account of the Oral Law would seem to echo that of Saadia, especially since he cites the rabbinic dictum regarding the "general principles… details and… particulars" of the commandments (above, at n. 122). For him, the "transmitted interpretation" was comprehensive, and left no biblical text unclear. There are, however, some new aspects in Maimonides' account. Unlike Saadia, he does not use the *aṣl-far'* dichotomy to describe the range of laws covered by the "transmitted interpretation," a matter to which we will return shortly. Maimonides also refines Saadia's theory by clarifying the interpretive nature of the Oral tradition, regarding it not merely as a body of laws, but as an actual commentary on the Written Law. More significantly, he makes an additional—and rather striking—claim, which he deems a principle of critical importance: "[t]hat the interpretations transmitted from Moses, there was no debate about them at all… at any time, from Moses to R. Ashi (the last of the talmudic sages)."[131] The implications of this claim—and why it is incompatible with Saadia's model—become clear when we turn to the next source of law that Maimonides describes.

Commandment #198 (Kafih ed., 40, 159) with *Hilkhot Sanhedrin* 18:3, *Malweh we-Loweh* 5:1, respectively. See also Henshke, "Basis," 138-144; cf. Ettinger, "Legal Logic," 21n.

[129] (המצוות הכתובות בתורה בבאור=) אלמצוות אלמנצוצה פי אלתורה בביאן; *Book of the Commandments*, Principle #2, Kafih ed., 14 (cited below); Hebrew translation by Moses Ibn Tibbon (Heller ed., 8, 13-15).

[130] See Levinger, *Techniques*, 40; Neubauer, *Divrei Soferim*, 87; Ettinger, "Legal Logic," 21. Implicitly, then, Maimonides was aware that Scripture could *theoretically* be interpreted differently than as explained at Sinai. His sporadic interest in exploring such non-halakhic readings has attracted much attention in Maimonidean scholarship: see below, n. 156. This matter is addressed at length in chapter three of the monograph announced in n. * above.

[131] See below, at n. 153.

b. The "Thirteen *Middot*"

Maimonides—using language that strongly echoes Bahya—goes on in his account of the development of *halakhah* to explain how it expanded after Moses' time:

> Whatever… the elders received [from Moses] was not subject to discussion or disagreement. But the applications (*furūʿ*) not heard from the Prophet were subject to discussion, the laws being extrapolated (*tustakhraju*) through *qiyās*, with the thirteen rules given to him at Sinai, and they are "the thirteen *middot* by which the Torah is interpreted." And among those extrapolated [laws were] matters that disagreement did not occur in them, but rather there was consensus (*ijmāʿ*) about them; but in some of them there was disagreement between the two syllogisms: for this one devised a syllogism and maintained it strongly, and the other devised a[nother] syllogism and maintained it strongly, for this typically occurs with the dialectic syllogisms (*al-maqāyīs al-jadaliyya*).[132] And if such a disagreement arises, the majority is followed, because of the dictum of God: "Lean toward the many" (Exod 23:2).
>
> … And when Joshua, peace upon him, died, he transmitted to the elders (a) the interpretation (*tafsīr*) that he received, (b) what was extrapolated (*ustukhrija*) in his time about which there was no disagreement, and (c) what was subject to disagreement and was decided according to the opinion of the majority.[133] And it is about them [i.e., those elders] that Scripture says: "And all of the days of the elders who lived on after Joshua" (Josh 24:31). After that, those elders transmitted what they received to the Prophets, peace upon them, and the Prophets one to another. And there was no time at which there was no study of *halakhah* (*tafaqquh*) and [legal] creativity (*tantīj*; or: bringing forth new things, drawing new conclusions). And the people of each generation made the words of those who came before them a principle (*aṣl*), and [laws] would be extrapolated (*yustakhraju*) from it, and new

[132] The plural form *maqāyīs* (rather than the more usual *qiyāsāt* [see, e.g., above, at n. 89]) used by Maimonides here and elsewhere (e.g., in his *Treatise on Logic*, chapters six through eight), is found in Alfarabi's writings: see Lameer, *Syllogistics*, 42-43. See also Blau, *Dictionary*, s.v. קיאס, מקיאס.

[133] On the importance Maimonides places on the distinction between categories (b) and (c), see below at n. 145.

> conclusions would be drawn (*yuntaju natā'ij*); and [as for] the [original] transmitted principles (lit. roots; *al-uṣūl al-marwiyya*) [i.e., from Moses] there was no disagreement about them.[134]

Whereas Saadia had argued that all of talmudic law—*uṣūl* and *furū'*—can be traced directly to Sinai, Maimonides argues that only a relatively small core of laws—the "transmitted principles" (*al-uṣūl al-marwiyya*)—was given there, in the text of the Torah with its "transmitted interpretation." But much of *halakhah* was left to be extrapolated through the *middot*, yielding derivative laws, i.e., *furū'*.[135] As he would clarify in *The Book of the Commandments*, the number of *uṣūl* is fixed at 613, whereas the *furū'* number "in the many thousands" (below, nn. 220, 221).

The terminology Maimonides uses to describe this dynamic process is revealing. He refers to the constant creative legislative activity of the sages as *tafaqquh* and *tantīj*. The first term can be rendered simply "the study of *fiqh*"; but it also seems to have the connotation of the original sense of the root *f-q-h* (understanding, comprehension), which in this form of the verbal noun would yield the notion of probing, aiming for a deep understanding, i.e., of *halakhah*.[136] The term *tantīj*

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[134] Intro. to Mishnah commentary, Shailat ed., 328, 335 [Ar.]; 28-29, 36-37 [Heb.].

[135] Much has been made of Maimonides' supposed originality in this respect. See, e.g., Halbertal, *People*, 59 ("He is the first to claim that the Sages introduced novel interpretations of the Torah of their own invention alongside the received tradition from Moses"). In light of the above-cited passages from Bahya, David ben Saadia and ha-Levi, it seems that the dynamic model was already in place in Maimonides' Andalusian heritage.

[136] For a similar usage of the term *tafaqquh* in Muslim jurisprudence together with *istikhrāj* and *istinbāṭ*, see Sviri, "*Istinbāṭ*," 385-387. Alharizi here renders *tafaqquh* התבוננות (Rabinowitz ed., 28). Maimonides elsewhere identifies this legislative activity with what is referred to in rabbinic sources as *pilpul* (dialectics, probing study) and *diqduq* (scrutiny; as in דקדוקי סופרים [=scrutiny by the scribes/sages]); see *Book of the Commandments*, Principle #2, Kafih ed., 15. On the definition of *fiqh* and its relationship to the notion of understanding and intellectual probing, see Weiss, *Search*, 24-25; Yunis Ali, *Pragmatics*, 1-2; Goldziher-Schacht, "*Fiḳh*." In the *Book of the Commandments* Maimonides speaks in a different vein of Scripture (rather than the Rabbis) engaging in *tafaqquh* (תפקה אלנץ), by which he means that the biblical text *specified the laws* in a particular area: see Principle #7, Positive Commandments #128, #138 (Kafih ed., 22-24, 123, 129). In those passages the medieval translator (Moses Ibn Tibbon) rendered תפקה אלנץ as דקדק הכתוב (Heller ed., 13-14, 68, 70). Compare

means to draw new conclusions;[137] but it also has a figurative overtone of creativity that brings to mind B. Weiss' characterization of Muslim jurisprudence:

> The Arabic term *uṣūl* literally means "roots." The rules [i.e., laws; MC] that the jurists produce are called, on the other hand, "branches" (*furūʿ*) or "fruit" (*thamara*). The extraction of rules from the sources is often called "harvesting" (*istithmār*). The work of the jurists is thus described by means of agricultural metaphors. Only the roots (that is, the sources) are given; the branches, or fruit, are not but rather must be made to appear; and for this human husbandry is required. The jurist is the husbandman who must facilitate the growth of the law… out of the roots.
>
> In carrying out this task, the jurist must first explore… the meaning of the texts in order to determine what rules are contained within that meaning. This task requires him to employ the skills of a philologist and to be well versed in Arabic lexicography, morphology, syntax and stylistics.... When he is satisfied that he has harvested whatever rules of law lie within the text's meaning thus conceived, he may then… attempt to see what further rules may be gleaned by way of *qiyās* with rules already determined.[138]

Although Maimonides does not use the language of harvesting, he does make a clear distinction between the two types of legal analysis delineated by Weiss. For Maimonides, the laws stated in Scripture—according to its transmitted interpretation—are the *uṣūl*, from which further laws are derived using the *middot*. He refers to this process as "extrapolation" (*istikhrāj*; lit., bringing out, extracting[139]), but not *tafsīr*, indicating that it was not used to explain the words of the biblical text, i.e., reveal its basic meaning (what we might call interpretation in its most restricted sense). Indeed, for Maimonides that would be superfluous because, by his account, the written Torah

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Blau, *Dictionary*, s.v. פקה, V ("to treat the specifications and ramifications of a religious law"); see also Schwarz, "*Fiqh*."

[137] Alharizi renders this term חידוש ענינים: see Rabinowitz ed., 28; compare Shailat's modern Hebrew translation הולדת תולדות (p. 37).

[138] Weiss, *Spirit*, 22-23.

[139] Alharizi (Rabinowitz ed., 13, 28) renders *istikhrāj* in Hebrew using the root *y-ṣ-'* in *hifʿil* (להוציא).

was given at Sinai already with a comprehensive oral elucitation (the "transmitted interpretation" [*tafsīr marwī*]) which did exactly that. Rather, the *middot* are principles of *inference* from the laws (*uṣūl*) stated in the biblical text, by which new laws (*furū'*) not specified therein are "extrapolated."[140] Maimonides call this process *tantīj*, i.e., "bringing forth" new laws.

As M. Halbertal has shown, this crucial distinction can be regarded as the centerpiece of Maimonides' hermeneutical theory.[141] Indeed, in making this distinction, Maimonides finds a powerful new solution to an old dilemma. When faced with the inappropriateness of the *middot* for determining the intent (*qaṣd*) of the biblical text, ha-Levi (above, at n. 108) had suggested defining them as a mysterious cipher entrusted to the Rabbis for interpreting (*tafsīr*) the biblical text. Maimonides—a superior talmudist with a better understanding of rabbinic legal hermeneutics—alleviates the problem in more rational way by distinguishing between two types of interpretation: (a) determining the original intent of the language, i.e., *tafsīr*, as opposed to (b) inferring new laws from those stated explicitly, i.e., *istikhrāj*, *tantīj* and *tafaqquh*. By viewing the *middot* as a counterpart to *qiyās* in *uṣūl al-fiqh*, Maimonides removes them from the first category altogether. In his view, when the Rabbis applied the *middot*, they never thought that they were engaging in textual exegesis and uncovering the original meaning of the text; instead they were drawing inferences from it to create new legislation.[142]

Maimonides' conception of *qiyās*—and by extension, the *middot*—would, of course, have also been colored by his background in the discipline of logic. As we have already noted, he devotes three full chapters (six, seven and eight) of his *Treatise on Logic* to *qiyās*, where the term is clearly used to denote the *syllogism*. Echoing the standard hierarchy in Arabic logic, he explains in chapter eight of the *Treatise*

[140] For illustrations of this distinction between interpretation and inference, see below, nn. 159, 223.

[141] See Halbertal, "Architecture," 468-473; idem, *People*, 59-63; idem, *Truth*, 47-52. On the implication of the term *istikhrāj* in particular, see Halbertal, "Architecture," 469; compare Weiss, *Spirit*, 88-89.

[142] We can define this distinction in terms of the two theories of legal hermeneutics defined by Sagi, "Praxis," 305-309: the activity of *tafsīr* fits what he calls the "discovery model," whereas *istikhrāj*, *tantīj* and *tafaqquh* are the hermeneutical operations of the "creative model" (which ha-Levi wished to avoid as part of his anti-Karaite polemic: above, n. 106). On the important implications of this distinction in the realm of legal theory, see below at nn. 144, 173.

that the most forceful type of *qiyās* is the "demonstrative syllogism" (*al-qiyās al-burhānī*), which is incontrovertible, as opposed to the looser and weaker "dialectical syllogism" (*al-qiyās al-jadalī*).[143] In the above-cited passage of the introduction to the Mishnah, Maimonides clarifies that the type of *qiyās* used in *halakhah* (which he refers to elsewhere as the *qiyās fiqhī*) falls under the latter category, and therefore is subject to debate by its very nature.[144]

This does not mean that all derivations through the *middot* were, in fact, debated. As Maimonides notes, some such legislation was accepted universally at the time it was introduced, in which case it enjoyed the special authoritative status of "consensus" (*ijmā'*).[145] However, the very possibility of debate over applications of the *middot* contrasts sharply with the 613 "root" laws contained in Scripture (as explicated by the "transmitted interpretation"), which were never subject to debate according to Maimonides. This strong claim is quite revolutionary, and—as later talmudists noted—overlooks talmudic evidence to the contrary.[146] We must therefore ask why it was so important for Maimonides to make this assertion, which he reiterates in a later passage by vociferously rejecting the alternative:

> Those who suppose that… disagreement occurred… in laws transmitted from Moses… through error of the traditions (or: reception) or forgetfulness…. This, God knows, is a very repugnant and disgraceful statement…. And the thing that prompted this corrupt belief is a deficient grasp of the words of

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[143] *Treatise on Logic*, Efros 1966 ed., 23-24 (Ar.); English trans., Efros 1938 ed., 48-49.

[144] See above, at n. 81. In Muslim jurisprudence, as well, some authors noted that *qiyās*—as a source of law—is inherently subject to debate, referred to as *jadal fiqhī* ("juridical disputation"): see Hallaq, *History*, 94. On the relationship between the notion of *burhān* (demonstration) and the juridical *qiyās*, see Hallaq, "Logic," 320-330, 336-339. In acknowledging the inherent subjectivity of legal reasoning, Maimonides seems to deny that there is necessarily a single correct answer to every halakhic question. On this matter and its theoretical implications, see Sagi, *Elu va-Elu*, 88-117; see also Ettinger, "Controversy." See also Ravitsky, "Arguments," 197-205, who discusses the precise nature of the relationship between the *qiyās fiqhī* and *qiyās jadalī* in terms of Maimonides' syllogistic categories.

[145] As Bahya described (above, n. 89). For a manifestation of the notion of *ijmā'* in Maimonides, see Libson, *Custom*, 198-199 and studies cited there.

[146] See Levinger, *Techniques*, 63-65, 183; Blidstein *Authority*, 46-54.

> the sages found in the Talmud… and [a failure to] distinguish between the transmitted principles and the new conclusions that were extrapolated (אלאצול אלמרויה ואלנתאיג' אלמסתכ'רג'ה).[147]

As M. Halbertal has shown, this rejected position was articulated by Abraham Ibn Daud (Spain, c. 1110-1180), following the Geonic view that limited the creative legislative role of the Rabbis and conceived the halakhic process exclusively "as the transmission from generation to generation of an orally revealed body of *halakhah*."[148] Consequently, debates found in talmudic literature could only be the result of a "crisis in the transmission of tradition."

Highlighting rabbinic legislative creativity, Maimonides could offer an account of halakhic debate that does not apply to the original laws given at Sinai, thereby bolstering the "Oral Law" by arguing that its transmission was never compromised. What comes to mind is the notion of *tawātur* that guaranteed the authenticity of the *ḥadīth* in *uṣūl al-fiqh*. As we have seen, Samuel ben Hofni invoked this notion explicitly in reference to the oral tradition. Although Maimonides does not use this specific term, the idea of *tawātur*—namely, that identical oral accounts from multiple sources guarantee authenticity—would seem to inform his claim that the transmitted interpretations were never debated.[149] Most basically, then, his halakhic model reflects the dichotomy in *uṣūl al-fiqh* between laws known through a chain of transmission (*naql*), i.e., those appearing in the Qur'an and *ḥadīth*, which have the epistemological status of *ilm ḍarūrī*, as opposed to new legislation by jurists applying their powers of intellect and speculation (*'aql, naẓar*) to infer God's will without a direct indication from the sources of revelation.[150] For Maimonides, likewise, our certitude regarding the original laws given to Moses is based on the authenticity of the transmission (*naql*) that can be traced to divine revelation. On the other hand, all further laws were derived by the

[147] Introduction to Mishnah, Shailat ed., 339 [Ar.], 40-41 [Heb.].

[148] Halbertal, *People*, 54-59; see also Blidstein, *Authority*, 38; Harris, *Fragmentation*, 292, n. 55.

[149] Levinger, *Techniques*, 183, regards this as a manifestation of the notion of *ijmā'*. However, as recent scholarship of *uṣūl al-fiqh* has demonstrated, the authenticity of *ḥadīth* reports are guaranteed by *tawātur*, not *ijmā'* (a concept Maimonides applies to some laws "extrapolated" through the *middot*, as mentioned above): see Zysow, "Economy," 19-31, 198-216; see also Hallaq, "Inductive Corroboration," 21-24.

[150] See above, n. 86; Hallaq, "Logic," 338n; Weiss, *Search*, 43-45, 259-260.

application of legal reasoning (*naẓar*, *qiyās*), the "correctness" of which is based on the legislative authority granted to the Rabbis and the soundness of their legal reasoning (*naẓar ṣaḥīḥ*).[151]

Maimonides acknowledges one respect in which his model is difficult to square with the talmudic evidence, since the sages often apply the *middot* to establish the meaning of the biblical text, which, according to him should have already been completely clarified in the "transmitted interpretation." Moreover, such "interpretations" are debated, contradicting his claim that the "transmitted interpretations" enjoyed unanimity. To address these issues, Maimonides writes:

> This is a principle that you must understand…. There is no debate whatsoever about the "transmitted interpretations" from Moses. [For example,] we never found a debate… among the sages, at any time from Moses to Rav Ashi, where one of them said that one who blinds the eye of a[nother] person, his eye should be blinded because of the dictum of God, "eye for an eye" (Deut 19:21), and the other said that he is liable only to pay monetarily. And we likewise did not find a debate about the dictum of God, "the fruit of the beautiful tree" (Lev 21:9), such that one said that it is the citron (*etrog*), and the other one said the quince or the pomegranate or something else…. And anything else like this with respect to any of the commandments—there is no debate about it, because they are interpretations transmitted from Moses, and about these and those that are like them it is said, "All of the Torah, its principles and details were said from Sinai."
>
> However… due to the wisdom of the revealed word (i.e., Scripture), these interpretations can be extrapolated from it by means of syllogisms (*qiyāsāt*), prooftexts (*isnādāt*), allusions (or: hints; *talwīḥāt*), and indications (or: allusions; *ishārāt*) that occur in the text.[152] And when you see them [i.e., the Rabbis] in

[151] See Sklare, *Samuel ben Hofni*, 147; compare Bahya's formulation ...נט'רוא פיהא בקיאסהם (above, n. 89). Maimonides elsewhere invokes the *naql-qiyās* dichotomy explicitly: see below, n. 189.

[152] These three terms (*isnād*, *ishāra* and *talwīḥ*) are used here by Maimonides to denote a type of reasonable inference from Scripture that is equivalent in rank to the syllogism. He uses the term *ishāra* elsewhere in a similar sense: see below, n. 166; see also references cited in Bacher, *Bibelexegese*, 29n; Davidson, *Maimonides*, 131n, 134n (including references to Maimonides' use of the term *talwīḥ*). On the use of this term in Muslim jurisprudence, see, e.g., Hallaq, "Non-

> the Talmud debating (*yatanaẓrūna*) and disagreeing in the manner of speculation (*naẓar*), and they bring a proof for one of these interpretations… it is not because the matter is in doubt for them such that they required to bring these proofs for it… but rather they sought an indication (*ishāra*) occurring in the text for this transmitted interpretation.[153]

Borrowing a version of Saadia's characterization, Maimonides argues that the *middot* are sometimes used in the Talmud to confirm laws known through the tradition, rather than to derive new laws. In such cases, the law was never actually in question; the sages merely applied tools of legal inference to demonstrate that theoretically, the "transmitted interpretation" could have been extrapolated independently from the biblical text. In other words, laws known through *naql* can be confirmed by legal reasoning and speculation (*'aql*, *naẓar*). This, for Maimonides, manifests the "wisdom of the revealed word," i.e., that Scripture was written in such a way that it contains indirect allusions to matters clarified in the oral law.

It is helpful to illustrate this category by considering Maimonides' analysis of the first example he cites, the law of *lex talionis* in Exod 21:24-25 ("eye for eye, tooth for tooth, hand for hand… burn for burn, wound for wound, bruise for bruise") and Lev 24:19-20 ("if a man causes a blemish in his neighbor, as he has done, so shall be done to him… eye for eye, tooth for tooth"), which was interpreted by the Rabbis as monetary compensation, a reading that the Talmud (b. *Bava Qamma* 83b-84a) bases on a number of alternative midrashic inferences.[154] In Maimonides' scheme, however, the meaning of these verses would have had to have been determined already at Sinai. If so, why would the Talmud need to derive it through midrashic inference? He therefore argues that the rabbinic interpretation was, in fact, received at Sinai, a claim he supports by pointing to the absence of any record of a literal reading of these verses in rabbinic literature. This law, then, is known from tradition (*naql*). Yet the Rabbis

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Analogical Arguments," 291 (*ishārat al-naṣṣ*). Maimonides is not consistent, however, in his use of the term *isnād*, which can also mean an artificially devised textual "support" in his lexicon: see below, n. 167. On the term *isnād*—used in a different sense—in Muslim jurisprudence, see Weiss, *Spirit*, 13.

[153] Intro. to Mishnah commentary, Shailat ed., 337 [Ar.]; 38 [Heb.].

[154] Ibid., 337 [Ar.]; 38-39 [Heb.]. This blatant contradiction of the literal sense would have been troubling for authors living in the shadow of Karaite literalism (compare *Kuzari* 3:46-47), as Maimonides was well aware: see below, n. 156.

demonstrated that it could have been inferred independently through the methods of *qiyās*, due to the "wisdom" of Scripture. As Maimonides writes in *Mishneh Torah*:

> "Eye for eye"—based on the tradition (*mi-pi ha-shemu'ah*) they expounded that when it says "for" it is to pay money….
>
> For it says: "You shall take no ransom for the life of a murderer" (Num 35:31)—for a murderer alone there is no ransom, but for loss of limbs or wounds there is ransom….
>
> And how do we know that… "eye for (תחת) eye…" is payment? Since it says in this matter "bruise for (תחת) bruise" (Exod 21:25), and it says explicitly (בפירוש), "If one strikes another with a stone, or with his fist… he shall only pay for the loss of his time, and shall cause him to be thoroughly healed" (Exod 21:18-19), you may deduce that "for" said in connection with a wound is payment. The same rule applies to "for" said in connection with an eye and other limbs.
>
> Even though these matters are apparent from the sense of the Written Law, they are all clearly stated from Moses our Master from Mount Sinai… and our forefathers witnessed that the law was applied in this way in the court of Joshua and in the court of Samuel [the Prophet] of Ramah and in every court that arose from the days of Moses our Master until now.[155]

In theory, Maimonides could simply have codified this law based solely on the authority of "the tradition" (*shemu'ah*)[156] which was "clearly stated from Moses our Master from Mount Sinai" and confirmed by the practice in all subsequent courts of Jewish law. Yet, following the talmudic precedent, he chooses to demonstrate that it can also be inferred from the "sense of the Written Law"[157] using the

[155] *Hilkhot Ḥovel u-Mazziq* 1:2-6.

[156] As noted above, in using the expression "based on the tradition they expounded" he acknowledges that the "transmitted interpretation" does not accord with the straightforward literal reading of Exod 21:24 and Lev 24:20. Maimonides actually discusses the implications of the literal reading in *Guide* III:41, Pines trans., 558: see Levinger, *Philosopher*, 56-67.

[157] Maimonides occasionally makes this type of observation with respect to other laws: see *Hilkhot Nedarim* 3:8; *Miqwa'ot* 1:2, *Shegagot* 10:5, *Melakhim* 9:1; see also discussion of these examples by Twersky, *Code*, 57; Rabinovitch, *Studies*, 135-138.

rabbinic methods of legal reasoning.[158] As Maimonides explains, a restrictive reading of Num 35:31 (in his paraphrase: "for a murderer alone there is no ransom") implies that monetary compensation suffices in lesser offenses.[159] He then notes that an explicit verse—Exod 21:18-19—indicates that "bruise for bruise" in Exod 21:25 must mean monetary compensation and not literal talion; by analogy, the same would apply to all of the offenses listed in Exod 21:24-25, beginning with "eye for eye."[160] While tacitly acknowledging that this is not a literal—or even straightforward—reading of the biblical text, Maimonides, ever the talmudist, shows that it can be supported through reasonable legal inference.[161]

c. *Derashot*

It is important to emphasize that Maimonides regarded the *middot* as reasonable methods of inference,[162] distinct from the truly tenuous rabbinic "readings" of Scripture said in (what he describes elsewhere as) "the manner of the *derashot*… [which have] the status of poetical conceits [and]… are not meant to bring out the meaning (*ma'na*) of

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[158] The endeavor to rationalize the rabbinic interpretation of *lex talionis* was quite common in the tradition Maimonides inherited: see Saadia, comm. on Exod 21:14, Ratzaby ed., 115-116; ha-Levi, *Kuzari* 3:46-47, Baneth and Ben-Shammai ed., 127; Abraham Ibn Ezra, long and short comm. on Exod 21:24 (Weiser ed., II:152, 295).

[159] This is a good example of an *inference* (from A we *infer* B) as opposed to the *interpretation* of the words "eye for eye" (the expression X *means* Y): see above, n. 140.

[160] The inference from Num 35:31 appears in b. *Bava Qamma* 83b. At first glance, Maimonides' analysis of the word תחת resembles the talmudic application of a *gezerah shawah* from Exod 21:36, "He shall surely pay ox for (תחת) …ox": see ibid., 84a. But Maimonides actually is making a type of logical argument by demonstrating that the תחת in Exod 21:25 can only mean monetary compensation; compare *Leḥem Mishneh* (commentary on *Mishneh Torah*), *Ḥovel u-Mazziq* 1:5; see also below, n. 264.

[161] Truth be told, however, the "prooftexts, allusions and indications" cited by the Rabbis are rarely quite as cogent as the ones Maimonides cited in this case (and the others mentioned in n. 157). See, e.g., the types of "indication" (*ishāra*) he cites in the Mishnah Commentary (Shailat ed., 337 [Ar.]; 38 [Heb.]) from b. *Sukkah* 35a-b to confirm that "the fruit of the *hadar* tree" (Lev 23:40) is the citron (*etrog*).

[162] Compare his characterization of inferences based on the *middot* as "more clear" and "more worthy" than mere *derashot* (below, n. 213). This is Maimonides' claim, though, as noted above (n. 161), we might not consider all applications of the *middot* to be distinguishable from mere *derash*.

the [biblical] text (*naṣṣ*)."[163] He clarifies this distinction in the introduction to the Mishnah in connection with the legal standards and measurements used in the Talmud (the size of an olive, a wheat grain, etc.), which he claims have absolutely no scriptural basis.[164] Yet, he acknowledges that the Talmud records an atomistic reading of Deut 8:8, "a land of wheat and barley…" according to which "this entire verse is said for measurements."[165] Maimonides' response is that the set of halakhic measurements, in fact–

> … cannot be extrapolated by syllogism (*qiyās*), nor is there any indication (*ishāra*[166]) for it in all of the Torah, but the verse was used only for support (*isnād*[167]) as a sort of sign (*siman*) so that

[163] This is his characterization of such readings in *Guide* III:43, Munk-Joel ed., 420, Pines trans., 572-573; see also *Guide* II:30; III:45, Munk-Joel ed., 248, 423; Pines trans., 353, 578; *Book of the Commandments*, introduction, Kafih ed., 7. (As Bacher [*Bibelexegese*, 31n] observed, Maimonides uses the term *derash* [pl. *derashot*] to designate a fanciful, non-philological rabbinic reading, whereas the term Midrash in his lexicon denotes a genre of literature, which—in his view—includes exegetically sound readings of Scripture.) Compare the remark in a similar vein by Maimonides' son, Abraham, comm. on Gen 25:29, Wiesenberg ed., 66-67; see also Elbaum, *Perspectives*, 146-168. This portrayal of midrashic exegesis was not uncommon in the Andalusian tradition; compare Abraham Ibn Ezra, introduction to Lamentations; Nahmanides, *Kitvei ha-Ramban*, Chavel ed., I:308.

[164] Intro. to Mishnah commentary, Shailat ed., 337-338 [Ar.]; 39-40 [Heb.]. Maimonides classifies these under the category of "a law to Moses from Sinai" (הלכה למשה מסיני), i.e., a purely oral tradition from Moses that has no inherent connection to the Written Law. On this category, see Levinger, *Techniques*, 50-65.

[165] See b.*'Eruvin* 4a-b.

[166] The contrast with *isnād* (i.e., an artificial or fanciful "prooftext": see following note) makes it clear in this context that Maimonides uses the term *ishāra* (see above, n. 152), similar in rank to *qiyās*, to connote an "indication" that can reasonably be inferred from Scripture, although it is not stated explicitly.

[167] This term (which can be rendered הוסמך [lit. supported] in Hebrew) is not used consistently in Maimonides' lexicon. Generally speaking, by *isnād* he means a prooftext, and the root *s-n-d* (form IV) is used in the sense of *supporting*, i.e., by providing a prooftext. Here and in other passages (see, e.g., below at n. 184) he is referring to an artificial or fanciful linkage with Scripture, which he calls *siman* in Hebrew and *asmakhta* in (Aramaic) talmudic parlance. (The term is used similarly by other authors in the Judeo-Arabic tradition: see, e.g., above at n. 103.) On the other hand, in the above-mentioned discussion (n. 152) Maimonides uses *isnād* to signify a reasonable inference from Scripture akin to a syllogism. It is therefore necessary to determine the precise connotation of this term in

> it would be retained and remembered, but that is not the intent (or: purpose – *gharaḍ*[168]) of the Book (i.e., Scripture), and this is the meaning of their [i.e., the Rabbis'] saying "the verse is merely an *asmakhta*" wherever they said this.[169]

These comments regarding the *derashot* would seem to suggest a sharp dichotomy between fanciful homiletical readings and a circumscribed exegetical method that aims only to reveal the *intent/purpose* (*gharaḍ*; elsewhere: *qaṣd*[170]) and *meaning* (*ma'na*) of Scripture, in the spirit of Ibn Ezra's distinction between *derash* and *peshat* (above, at n. 58). Indeed, the terms *gharaḍ* and *qaṣd* do reflect the hermeneutical axiom—well attested in Andalusian tradition—that equates the meaning of a text with its author's intent.[171] B. Weiss likewise points to this terminology in characterizing Muslim jurists as "intentionalists" committed to "a hermeneutics that focuses on authorial intent as the object of all interpretation."[172]

However, it is only partially accurate to speak of Maimonides as an intentionalist in this sense. While he seems to concur that the meaning of the biblical text itself is limited to the (divine) author's intent, as a staunch talmudist he championed the right—indeed the obligation—of the Rabbis to construct a legal system through expansive analysis and

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Maimonides' writings based on the context; see other references cited in Bacher, *Bibelexegese*, 29n.

[168] The term *gharaḍ* (*goal* or *purpose*) is used by Maimonides and other medieval authors in the sense of *intent* (see, e.g., above at n. 102 and below at n. 238), more or less interchangeably with the term *qaṣd* (goal, aim, intention): see n. 170 below.

[169] Intro. to Mishnah commentary, Shailat ed., 337-338 [Ar.]; 39-40 [Heb.]. The concept of *asmakhta* (which the Talmud [b. *Eruv*. 4b] actually invokes in connection with this reading), was often applied to such far-fetched midrashic readings in the Andalusian tradition: see above n. 104.

[170] See, e.g., *Guide*, introduction, Munk-Joel ed., 9 (ll. 17, 20: אלגרץ' אלמקצוד... לם יקצד); compare Abraham Maimonides, comm. on Gen 25:28, Wiesenberg ed., 66-67 (ומא אחלי בעץ' אלדרשות... ואן לם יכן קצד אלנץ); see also above, n. 100. In theory, one might distinguish between the *meaning* of a language expression and the *purpose* for which it is used, i.e., the speaker's *intention*. But Maimonides, in fact, uses the term *ma'na* interchangeably with *gharaḍ* and *qaṣd*, which suggests that he did not make any such distinction.

[171] See Cohen, *Three Approaches*, 231, 324-326; Stern, "Language," 216-224. This identification of the meaning of a text with its author's intent (now termed "the intentional fallacy") has been challenged in modern literary theory: see Stallman, "Intentions"; see also below, n. 173.

[172] Weiss, *Spirit*, 52-58; the citation is from p. 53.

inference, i.e., *qiyās*, which unquestionably goes beyond Scripture's original intent.[173] The difference between this type of legal interpretation and mere *derash* is more subtle: both go beyond Scripture's original intent, but the former is a genuine, logical process of derivation, whereas the latter is merely an artificial or poetic secondary projection onto the text. In classifying the talmudic "reading" of Deut 8:8 as an *asmakhta*, Maimonides is thus not merely arguing that it does not reflect the original intent of this verse. His point is that it cannot be regarded even as a genuine application of the *middot*; i.e., it is not a true "indication" (*ishāra*) by which the Rabbis extrapolate new legislation from Scripture. We must therefore assume that the law of measurements was known from a purely oral tradition, and was associated with this verse secondarily, as a way to remember it.

In sum, Maimonides delineates three types of "readings" of Scripture recorded in rabbinic literature:

(1) Original interpretations of Scripture that were transmitted from Moses at Sinai;

(2) Logical inferences from Scripture using the thirteen *middot*;

(3) Artificial readings devised as mnemonic aids or poetic elaborations.

Based on this three-fold classification and its role in his halakhic model, we can now proceed to Maimonides' discussion in Principle #2 of *The Book of the Commandments*, which is predicated upon it.

3. The Second Principle in *The Book of the Commandments*

After completing the Mishnah Commentary in 1168, Maimonides began planning *Mishneh Torah*, to which he would devote the next decade of his life. As a first step, he composed *The Book of the Commandments* to enumerate the 613 biblical commandments that form the core of Jewish law. Although the Code would be written in Hebrew, this preliminary work—like the Mishnah Commentary—was written in Arabic, a decision Maimonides would later regret.[174] Be that as it may, its composition in Arabic, sprinkled with citations in Hebrew and Aramaic, highlights his use of technical talmudic terminology against the backdrop of his own formulations, a stylistic matter of significance when we seek to define his understanding of the

[173] On the modern debate over intentionalism in legal theory and its relevance to Maimonides, see Halbertal, *People*, 46-48, 59-63, 157-161.

[174] See *Responsa*, #447, Blau ed., 725; Twersky, *Code*, 333-336.

talmudic expression *peshuto shel miqra/peshateh di-qera*.[175] Additionally, his Arabic prose renders transparent his use of terminology from *uṣūl al-fiqh* in his analogous quest to delineate the sources of Jewish law.

The Book of the Commandments was intended to supplant earlier enumerations of the 613 commandments in the Geonic-Andalusian tradition, especially the one appearing in *Sefer Halakhot Gedolot* by the ninth-century Babylonian author Simon Qayyara, which, as Maimonides observes, influenced later authors who took up this endeavor.[176] Arguing that such works were unsystematic, Maimonides devised fourteen principles to insure a proper enumeration. His first principle, "It is not proper to count… laws that are rabbinic (*de-rabbanan*),"[177] is directed against his predecessors who included rabbinically instituted laws such as kindling the Hanukkah lights and reading the Scroll of Esther.[178] Indeed, as D. Sklare has noted, the emphasis the Geonim placed on the role of the Rabbis as faithful transmitters of the oral tradition, rather than independent legislators, caused them to blur the line between rabbinic and biblical commandments.[179] Maimonides, on the other hand, insists on making this distinction sharply:

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[175] This is an important feature of Maimonides' Arabic writings in general, which helps to distinguish between his voice and the rabbinic statements and coinages he cites. It is important to note subtle differences between some of Maimonides' Arabic terms and the seemingly equivalent Hebrew ones; e.g., Torah and *Sharī'a* (see below, n. 182); שלש עשרה מדות שהתורה נדרשת בהן and *qiyās*; סימן-*asmakhta* and *isnād* (above, n. 167).

[176] See *Book of the Commandments*, introduction and Principle #10 (Kafih ed., 4-5, 43); Davidson, *Maimonides*, 170-171. This introductory list of the 613 commandments—published as *Haqdamat Sefer Halakhot Gedolot*—may have been written by another author and later appended to *Halakhot Gedolot*: see Sklare, *Samuel ben Hofni*, 183n, 222n. Among those influenced by it, Maimonides mentions *Kitāb al-Sharā'i'* of Hefeṣ ben Yaṣliaḥ and the "many *azharot* (poetic listings of the 613 commandments) compiled in our place in al-Andalus," probably a reference to the *azharot* of Solomon Ibn Gabirol and perhaps of Saadia Gaon (though his *azharot* were obviously not written in al-Andalus).

[177] Kafih ed., 9.

[178] This is attested in *Halakhot Gedolot*, Saadia, Hefeṣben Yaṣliaḥ and Ibn Gabirol: see Kafih 9n and Zucker, "Studies," 97-100.

[179] Sklare, *Samuel ben Hofni*, 159-160n. This tendency is reflected in Ibn Ezra: see *Yesod Mora*, Cohen and Simon ed., 113 (with editors' note).

> Nothing rabbinic may be counted in the sum of 613 commandments because this sum [consists] entirely [of] the texts (*nuṣūṣ*) of the Torah.[180]

Although the distinction between biblical and rabbinic law is already found in the Talmud, Maimonides' focus on "the texts of the Torah" signals a revolutionary biblical orientation that emerges with full force in Principle #2: "It is not proper to count everything known through one of the 'thirteen *middot* by which the Torah is interpreted' or a redundancy (*ribbuy*)."[181] As he goes on to clarify:

> We have already explained in the introduction to our commentary on the Mishnah that most of the precepts of the Law (*sharī'a*[182]) are derived through the "thirteen *middot* by which the Torah is interpreted," and that disagreement may occur about a law derived by means of one of those *middot*.

On the other hand,

> Some laws are transmitted interpretations (*tafāsīr marwiyya*) from Moses our Master about which there is no disagreement, but they offer a proof (*yastadillu'*) for them by one of the thirteen *middot*, for it is the wisdom of Scripture that it is possible to find in it an indication (*ishāra*) that proves (*yadullu*) that transmitted interpretation, or a syllogism (*qiyās*) that proves (*yadullu*) it.[183]

Maimonides goes on to make his critical distinction: laws based on Scripture and its transmitted interpretation are biblical, but those derived through the *middot* are merely rabbinic. Yet we cannot automatically assume that all laws presented in the Talmud as being

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[180] Kafih ed., 12.
[181] Kafih ed., 12.
[182] The Arabic term *sharī'a* (usually rendered *Torah* by the medieval Hebrew translators) means *religious law* and is used by Maimonides here to denote Jewish law in the general sense. Often, however, he uses the term interchangeably with Hebrew *Torah* to connote the biblical text, specifically the Pentateuch (which he sometimes refers to specifically as "the Written Law" [*Torah sh-bi-khtav*]). See Blau, *Responsa*, II:446n; Kraemer, "Naturalism," 49-51.
[183] Kafih ed., 12. On the translation of Arabic *yadullu* as *proves*, see below.

based on the *middot* fall into the latter category, since they were sometimes used to confirm laws known from transmitted interpretations. The great codifier therefore formulated his distinction circuitously:

> And since this is so, not everything that we find that the Rabbis extrapolated by one of the thirteen *middot* is to be classified as biblical (lit. do we say that it was said to Moses at Sinai), nor do we classify as (lit. say that it is) rabbinic (*de-rabbanan*) everything for which we find the Rabbis bringing a prooftext (*isnād*) from one of the thirteen *middot*, because it may be a transmitted interpretation (*tafsīr marwī*).[184]

Maimonides thus devises an indirect test to ascertain the status of such laws:

> Anything for which you do not find a [source-]text (*naṣṣ*) in the Torah and you find that the Talmud deduces it through one of the thirteen *middot*, if they [i.e., the Rabbis] themselves clarified and said (or: stated explicitly) that this is a Torah principle (*guf Torah*) or that this is a biblical law (*de-orayta*), then it is proper to enumerate it, since the transmitters of the tradition said that it is biblical (*de-orayta*). But if they do not clarify this and did not say anything explicit about this, then it is a rabbinic law (*de-rabbanan*), since there is no [biblical] text (*naṣṣ*) indicating (*yadullu*) it.[185]

To understand these passages, we must clarify the meaning of the Arabic verb *dalla – yadullu* (lit. point to [*d-l-l*, form I]), which was used in *uṣūl al-fiqh* to speak of how the law is "indicated" by its sources. The source of a law is called a *dalīl*, i.e., an *indicator*. When the law is explicitly written (*manṣūṣ*) in the Qur'an or *ḥadīth*, its indicator—which is a prooftext (*naṣṣ*)—is a *dalīl naqli*, i.e., a transmitted *dalīl*. For laws not explicit in the written texts (*ghayr manṣūṣ 'alayha*), but rather derived through *qiyās*, the indicator is a *dalīl 'aqli*, i.e., a rational or intellectual *dalīl*.[186] That type of *dalīl* is not a prooftext, but rather the legal reasoning that underlies the law.

[184] Kafih ed., 13.
[185] Ibid. For the expression *guf torah*, see, e.g., m. *Hagigah* 1:8, b. *Hagigah* 11b.
[186] See Weiss, *Search*, 42-46; Hallaq, "Non-Analogical Arguments," 290; see also above, at n. 150.

As B. Weiss observes, the two types of "indicators" function differently. *Dalālat al-naṣṣ* ("what the text indicates") is a direct "indication" since the law is stated explicitly by the text. But for laws derived through *qiyās*, the *dalīl* is adduced to *prove* or *demonstrate* the validity of the law; in that case the English translation "to prove" best captures the sense of the verb *dalla – yadullu*, as we have rendered for Maimonides.[187]

The distinction between the *dalīl naqlī* and *dalil 'aqlī* underlies Maimonides' claim that the 613 biblical laws are those stated clearly (*manṣūṣ*) in Scripture, i.e., each has a "text indicating it."[188] On the other hand, laws extrapolated through the *middot* are merely rabbinic, since their *dalīl* is a product of human reason, not the divine word itself. However, in many instances the *middot* are also used to confirm what is already known from a transmitted interpretation, i.e., of the biblical text. In that case, as Maimonides clarifies later in this principle,

> We indeed count it, for it was known through tradition (or: transmission; *naql*), not through a syllogism (*qiyās*), but its syllogism and proof (*istidlāl*) through one of the thirteen *middot* was only [adduced] to reveal the wisdom of the text (i.e., of Scripture), as we explained in the Mishnah commentary.[189]

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[187] The same semantic range applies to the verb *istidlāl* (*d-l-l*, form X; i.e., to adduce a *dalīl*), which can mean simply mentioning (*dhikr*) the prooftext that states a given law explicitly, but is also used to in the sense of seeking a rational proof for a law that has no explicit textual basis: see Weiss, *Search*, 655. The medieval Hebrew translators rendered *istidlāl* הביא ראיה (bringing a proof). As for the verb *yadullu*, Moses Ibn Tibbon (translator of *The Book of the Commandments*) rendered it יורה (lit. to point to), which can likewise mean either *to indicate* (i.e., with an explicit direct prooftext) or to *demonstrate* (through a rational argument). The term *dalāla*, of course, can also mean *to guide* in the sense of indicating the proper path, as in *Dalālat al-Ḥā'irīn* (*Guide of the Perplexed*; Heb. מורה נבוכים). For further discussion of the notion of *dalāla* in Muslim jurisprudence, see Schwarb, "God's Speech," 124*, 128*, 130*, 146-148*.

[188] אין ידל עליה. Admittedly, Maimonides uses this phrase in the opposite connection, i.e., in referring to a law that does not have biblical force, because it lacks "a text indicating it." But the implication is clear: a law is of biblical force if and only if it has a text indicating it.

[189] Kafih ed., 15. Maimonides' reference is to the citation from the Mishnah commentary above, at n. 153.

In this case, the true basis of the law is a *dalīl naqli*, i.e., the underlying transmitted interpretation, whereas the *qiyās* merely shows that it could have been demonstrated rationally as well.

At this point we must observe a certain terminological inconsistency (perhaps a calculated sleight of hand?) in Maimonides' use of the term *naṣṣ* in reference to the biblical text. As mentioned above (at nn. 123, 129), he employs this term throughout his writings to connote that which is explicit in the Written Law, without any need to consult its "transmitted interpretation" (*tafsīr marwī, naql*). But Maimonides could not have had this connotation in mind when establishing that the 613 commandments consist only of "the texts of the Torah" (Principle #1), since he goes on to exclude laws derived through the thirteen *middot* (Principle #2), *unless they actually come from the transmitted interpretations*, in which case they are to be counted. The implication is clear: a law that derives from Scripture according to its transmitted interpretation is biblical—even if it is not necessarily clear from the biblical text alone (what he elsewhere refers to as *naṣṣ*). And indeed, this is confirmed by the many entries in *The Book of the Commandments* in which the biblical prooftext is accompanied by a transmitted interpretation—specifically labeled as such.[190] When using the term *naṣṣ* in connection with Scripture in Principles #1 and #2, Maimonides evidently means *the biblical text, as elucidated by the transmitted interpretation*.[191]

We are now equipped to address Maimonides' construal of the *peshat* maxim, which he introduces to undermine the methods of enumeration in the *Halakhot Gedolot* and works of like-minded authors:

> When they found a *derash* on a verse that… requires performing certain actions or avoiding certain things, and all of those are undoubtedly rabbinic (*de-rabbanan*), they counted them in the sum of the commandments, even though the *peshat* of Scripture (*peshateh di-qera*) does not indicate (*yadullu*) any of those things.[192]

[190] See above, n. 126.

[191] A similar observation applies to the Hebrew expression *meforash ba-Torah* that Maimonides used in *Responsa* #355: see above, nn. 6, 127. This point was made by Levinger, *Techniques*, 40.

[192] Kafih ed., 14. On the term *yadullu* in this context, see above, n. 183.

A law based on mere *derash* cannot be regarded as having a genuine textual indicator (*dalālat al-naṣṣ*); i.e., it has no true source in "the *peshat* of Scripture." Invoking talmudic authority for support, Maimonides notes that *Halakhot Gedolot* violated the famous rabbinic dictum:

> They [i.e., the Rabbis] of blessed memory taught us…: "A biblical verse does not leave the realm of its *peshat*", and the Talmud in many places inquires: "The verse itself (*gufeh di-qera*), of what does it speak?"[193] when they found a verse from which many matters are deduced by way of commentary (*sharḥ*) and inference (or: bringing a proof; *istidlāl*).[194]

The Talmud will at times offer an expansive reading of a verse, but then inquire what "the verse itself" actually says. Based on the talmudic maxim, "A biblical verse does not leave the realm of its *peshat*," Maimonides argues that the Rabbis granted biblical authority only to the latter. Evidently he took the maxim to mean that "a biblical verse does not go beyond its *peshat*," i.e., only what *peshateh di-qera* says ("indicates") has biblical authority.[195]

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[193] As Kafih here notes, this precise expression (גופיה דקרא במאי קמדבר) is not found in rabbinic literature, though this type of inquiry is certainly attested in the Talmud. Compare the talmudic locutions: פשטיה דקרא במאי כתיב ("the *peshat* of the verse, of what is it written?") and ב... משתעי קרא ("the verse speaks [of]…").

[194] Kafih ed., 14. On the terms *sharḥ* and *istidlāl* in this context see below.

[195] If we use the talmudic idiom, we might say that Scripture remains exclusively "in the hands of" its *peshat*. Maimonides' construal of this maxim was understood in this way already by Nahmanides, who rejects it, writing –

> They did not say אין מקרא אלא כפשוטו ("A biblical verse is nothing but its *peshat*"), but rather we have its midrash (מדרשו) with its *peshat* and it does not leave the realm (lit. "hands") of either one of them. But Scripture can bear all [meanings], both being true. (Critique of Principle #2, *Hassagot*, Chavel ed., 44-45)

According to Nahmanides the maxim means that although *derash* is a legitimate interpretation, the *peshat* still stands (as though the verse still remains in the possession or realm of the *peshat* even though the *derash* has control over it as well). On this debate, see Wolfson, "Way of Truth," 126-129; Schwartz, "*Peshat* and *Derash*," 74-75. Based on Nahmanides' position, which seems to reflect the hermeneutical assumption of Rashi's school (see Kamin, *Jews and Christians*, xxviii-xxxiii), the *peshat* maxim is sometimes rendered "Scripture (or: a biblical verse) cannot be deprived of (or: never loses) its *peshat*" (see above, nn. 24, 25).

What does the term *peshat* itself mean for Maimonides? If Principle #2 were penned by Ibn Ezra or Nahmanides, we could assume *peshat* to be the *straightforward* or *philological-contextual sense* of Scripture. But Maimonides accepted the "transmitted interpretation" of Scripture implicitly, even while acknowledging its divergence from the straightforward sense. We must therefore seek an alternative definition of the term that would reflect his usage. Some basic observations can be made based on what we have already seen in Principle #2, which we will confirm in our examination of the other passages in the *Book of the Commandments* in which it is applied explicitly.[196]

(1) Maimonides equates *peshateh di-qera* and *gufeh di-qera*.

a. This is evident in his paraphrase (deliberate misquote? [above, n. 193]) of the talmudic query "the *peshat* of the verse of what is it written?" (פשטיה דקרא במאי כתיב), which he renders "the verse itself, of what does it speak" (גופיה דקרא במאי קמדבר).

b. This equivalence is also reflected by Maimonides' interchangeable use of the two expressions elsewhere in *The Book of the Commandments*.[197]

(2) The Arabic equivalent of *peshat* in Maimonides' lexicon would appear to be *naṣṣ*.

This emerges from a comparison of the following two locutions:

– "*peshateh di-qera* does not indicate (פשטיה דקרא לא ידל) any of those things"

– "…there is no [biblical] text (*naṣṣ*) indicating (ליס ת'ם נץ ידל) any of those things"[198]

This parallel suggests that when Maimonides uses the term *peshateh di-qera* he is speaking about nothing other than the textual *dalīl* itself.

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[196] I.e., where the terms *peshateh di-qera* or *gufeh di-qera* are used: see below, n. 219. Principle #2 can be said to underlie much of Maimonides' exegesis in the *Book of the Commandments*—and *Mishneh Torah* for that matter. But that subject is beyond the scope of the current study. See below, n. 277.

[197] In three other places in the *Book of the Commandments* he uses the term *gufeh di-qera* to invoke his *peshat* principle: twice in Negative Commandment #45 (below, nn. 247, 249; note parallel to the discussion of the same example in principle #8 [below, n. 246], where he employs the expression *peshateh di-qera*); once in Negative Commandment #165 (below, at n. 233).

[198] See citations above, at nn. 185, 192. Compare the locution פידל הד'א אלנץ במפרדה ("and this text by itself indicates") in Positive Commandment #140 (Kafih ed., 130).

(3) Maimonides uses the locution "*peshat di-qera* speaks about (יתכלם פי) [such and such]":

– Positive Commandment #20 ...פשטיה דקרא פהו יתכלם פי

– Negative Commandment #4 ...פשטיה דקרא יתכלם פי[199]

It would not be reasonable to render *peshateh di-qera* "the straightforward interpretation (or: sense) of the biblical verse" in this locution.[200] It would seem, rather, that when Maimonides uses the term *peshateh di-qera* he means *the biblical verse itself* (*gufeh di-qera*) or *the biblical text* (*naṣṣ*), which "speaks about…" If *peshateh di-qera* were the straightforward *interpretation*, he would say: "*according to* its *peshat* (לפי פשוטו), the verse speaks about such and such," as other authors do.[201] This would suggest that *peshateh di-qera* is the object of interpretation, not its result.[202]

Based on this evidence, we can conclude that for Maimonides, the term *peshateh di-qera* is not the name of a method of interpretation or an approach to understanding Scripture. Rather, *peshateh di-qera* connotes *the biblical verse itself*, just like the term *gufeh di-qera* or

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[199] See below, at nn. 254, 260. Indeed, Maimonides' paraphrase גופיה דקרא במאי קמדבר—for the talmudic כתיב במאי גופיה דקרא—is based on his Arabic term יתכלם פי....

[200] The other Maimonidean locutions that include the term *peshateh di-qera* would theoretically allow for its translation as "the straightforward sense," but the term can also be rendered *the verse itself*, as we see from the remaining examples from the *Book of the Commandments* (all discussed below). In one case: "the gist of the verse itself" (תחציל פשטיה דקרא; Positive Commandment #94). In four cases פשטיה דקרא "is about…" or "is not about":

- Principle #3, פשטיה דקרא ליס הו פי ד'לך — the verse itself is not about this.
- Negative Commandment #179, פשטיה דקרא הו פי אלשרץ פקט — … is about a swarming thing only.
- Negative Commandment #299, פשטיה דקרא הו פי מא ד'כר אול —… is about what was mentioned first.
- Principle #8, לא אן פשטיה דקרא פי הד'א אלגרץ' —… not that the verse itself has this intent.

[201] See, e.g., Nahmanides on Lev 6:23 (ועל דרך הפשט, אין הכתוב מדבר אלא בחטאות הפנימיות שצוה כבר בשריפתן), Rashbam on Exod 28:38 (לפי פשוטו לא דיבר הכתוב בטומאת קדשים), Radak on II Sam 23:20 (וכל אלה דברים רחוקי' מדרך הפשט כי הכתוב מספר גבורות כל אחד מהם). For all of these authors, it is Scripture (הכתוב) that "speaks"—according to "its *peshat*" or "the way of *peshat*."

[202] Compare S. Kamin's remark based on Rashi's talmudic commentary: "What emerges from Rashi's formulation is that *peshateh [di-qera]* is the object of the act of interpretation, not its result. This is implied by the linguistic combinations [of Rashi]: דריש פשטיה (he interpreted its *peshat*), דאתא פשטיה לאשמועינן (the *peshat* comes to teach us)" (*Categorization*, 40-41).

naṣṣ. All three of these terms refer to the divine text that "indicates", i.e., communicates, God's will. While modern readers accustomed to the usage of the term *peshat* by Rashi, Ibn Ezra and their followers might regard this as unusual, it matches precisely the meaning of this term in talmudic literature, as S. Kamin and M. Ahrend have interpreted it.[203] Given Maimonides' talmudic background, it should not be surprising that he would employ the term *peshat* as it used in rabbinic literature.

Of course, the natural question arises: What determines the meaning of "the text itself," i.e., *peshateh di-qera*? In theory, a locution of this sort might imply that the meaning of the text is self-evident (consider Maimonidean expressions *naṣṣ jalī bi-bayān*, *meforash ba-torah*); but in practice, Maimonides relies heavily on the "transmitted interpretation" to make this determination.[204] Evidently, then, Maimonides would define what "the text itself says / indicates" (*dalālat al-naṣṣ* or *dalālat al-peshat*) as: what is known for certain to be the meaning of the text, either because the text is explicit or because it is an interpretation from Sinai transmitted through a tradition about which there never was—nor could be—any debate.[205] This incontrovertible tradition reveals how *peshateh di-qera* was

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[203] See references above, n. 17. Kamin (*Categorization*, 31) summarizes her conclusion in the following words:

> From a detailed examination of [the terms] *peshuto shel miqra* and *peshateh di-qera* in their contexts… [it is evident that] the basic meaning of these Hebrew and Aramaic terms is *Scripture itself* (הכתוב עצמו). Just like the terms מקרא, פסוק, כתוב, so too פשוט and פשט denote the linguistic unit. פשוטו של מקרא and פשטיה דקרא mean the Biblical text (משמעם הכתוב המקראי).

See also above, n. 202. Ahrend, "Concept," 246, writes similarly:

> In the Talmud, this… expression denotes neither the meaning of the words, nor the interpretation of Scripture, and certainly not any sort of defined method according to which it is "proper" to interpret it. *Peshuto shel miqra*—*peshateh di-qera* – is the Scriptural text itself.

Halivni, *Peshat & Derash*, 53-79, offers a slightly different analysis of the talmudic term *peshateh di-qera*; but he, too, assumes that it connotes the biblical text (in its wider context) and not a method of interpretation.

[204] Compare the observation of M. Halbertal ("Architecture," 472n) that Scripture "does not need any interpretation; it is clear, either through regular reading or through the tradition." Halbertal, however, does not correlate this assumption with the meaning of the term *peshat*.

[205] I am grateful to Josef Stern for his suggestions in formulating this definition. On the epistemological certitude Maimonides' associated with the "transmitted interpretation" and its Muslim context, see above, at nn. 149, 150.

originally "interpreted"—i.e., assigned an exclusive, practical meaning—by God Himself.[206]

As for the *peshat* maxim, Maimonides construes it to mean that Scripture does not go beyond *itself*. In other words, whatever was not initially pronounced by God as being signified by *peshateh di-qera* (i.e., it is not *dalālat al-naṣṣ*) does not have biblical authority. As opposed to the "transmitted interpretations," which illuminate *peshateh di-qera*, the further hermeneutical activities of the Rabbis—to which Maimonides refers as "(i) commentary (*sharḥ*) and (ii) inference (*istidlāl*)"—can create laws of rabbinic authority only. To clarify the parameters of the latter two categories, we must turn to the ensuing discussion in Principle #2.[207] Maimonides, for example, criticizes the author of *Halakhot Gedolot* and those who followed in his path, because –

> … they enumerated… visiting the sick, consoling mourners and burying the dead, on account of the *derash*… "And you shall… show them the way wherein they must walk, and the work that they must do" (Exod 18:20)…—"'The way' – this is deeds of loving kindness; 'they must walk' – this is visitation of the sick; 'wherein' – this is burial; 'and the work' – these are the laws; 'which they must do' – this is [to go] beyond the margin [i.e., letter] of the law" (b. *Bava Qama* 99b-100a). And they thought that every single one of those actions is a separate commandment, and they did not know that all of those actions and the like are included in the single commandment… stated

[206] I am grateful to Baruch Schwartz for suggesting this formulation. See citation from the Mishnah commentary above, at n. 122. Maimonides speaks there of the two components being *naṣṣ* (text) and *naql* (tradition). Where the text is clear by itself, presumably the tradition simply confirmed that fact. Even in such cases, then, the interpretation was originally fixed by God Himself.

[207] Philological analysis of these terms themselves is not sufficient here, because they are used in a number of ways by Maimonides. *Sharḥ* is rather vague and can refer to various types of exegesis. While Maimonides here seems to use it in reference to mere *derash* (as we shall document presently; see also below, at n. 255), elsewhere it denotes philological-contextual analysis, e.g., he refers to his own Mishnah commentary as *sharḥ al-mishnah*. He also uses this term to denote a "transmitted interpretation" that he deems authoritative (see, e.g., below, nn. 256, 259). The term *istidlāl*, likewise, is used in a number of ways, both to label what he regards as reasonable inferences using the thirteen *middot* (see, e.g., above, at n. 183) and *derash* that is cited in the Talmud as an artificial support for a rabbinic law, i.e., an *asmakhta* (see below, nn. 232, 236).

> explicitly (*manṣūṣ… bi-bayān*) in the Torah… "Love your neighbor as yourself" (Lev 19:18).[208]

Based on what is stated (*manṣūṣ*) in Lev 19:18, Maimonides enumerates the single commandment of acting kindly toward others.[209] On the other hand, the specific acts of kindness enumerated in the atomistic, acontextual talmudic reading of Exod 18:20 do not have a genuine basis in the biblical text, and he therefore regards them as rabbinic enactments. As specified in *Mishneh Torah*: "Even though all of these *miṣwot* are rabbinic (*mi-divreihem*), they are included in 'Love your neighbor as yourself'" (*Hilkhot Evel* 14:1). For the great codifier, only the general principle is biblical, but its implementation in the specific types of activity mandated in the Talmud is merely rabbinic.[210]

A similar acontextual analysis is cited by Maimonides in the next example that he considers to have been improperly enumerated:

> And in this very way they counted calculation of the seasons (intercalation) as a commandment because of the *derash*… "For this is your wisdom and your understanding in the sight of the nations" (Deut 4:6)…—"What wisdom and understanding is in the sight of the peoples? Say, that it is the science of seasons and planets" (b. *Shabbat* 75a).[211]

When seen in context, as part of Moses' exhortation to the people ("See I have imparted to you laws and rules, as the Lord… has

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[208] Kafih ed., 14. See also *Hilkhot Evel* 14:1. On Maimonides' tendency to seek a cogent biblical source where the Rabbis engaged in *derash*, see below, n. 265.

[209] See *Book of the Commandments*, Positive Commandment #206, Kafih ed., 163. Maimonides does not cite a specific rabbinic source for this straightforward reading, nor can it be traced to any of the (rather remote) legal derivations in rabbinic literature: see, e.g., b. *Ketubot* 37b, *Qiddushin* 41a, *Sanhedrin* 45a, 84b, *Niddah* 17a.

[210] The precise implications of this distinction are difficult to grasp in this case, since, after all, when one performs the rabbinically required activity, one is presumably also fulfilling a biblical obligation. Perhaps Maimonides means to say that the biblical obligation itself leaves room for subjective interpretation, i.e., by granting each individual leeway to decide which type of activities are most important, e.g., helping a disabled person with household chores might be more important than visiting the sick. The Rabbis, however, made the latter a definite obligation. I am indebted to my friend Jordan Mann for this suggestion.

[211] Kafih ed., 14.

commanded... Observe them faithfully, for this is your wisdom and your understanding in the sight of the nations, who on hearing all of these laws will say: 'Surely that nation is a wise and discerning people'" [Deut 4:5-6]), it is quite clear that this verse does not actually refer to intercalation, an idea projected onto the text by way of *derash*. In the *Book of the Commandments* Maimonides does not offer an alternative reading of this verse; but in *Guide* III:31 he interprets it contextually to mean that the rationale for the commandments (their "wisdom") is discernable to all nations.[212] Evidently he regarded this, rather than the rabbinic interpretation, as the correct construal of *peshateh di-qera*, i.e., what the verse itself communicates.

The fanciful rabbinic *derashot* on Exod 18:20 and Deut 4:6, of course, made easy targets for Maimonides' exclusionary principle. However, he goes on to apply the *peshat* maxim to the more serious methods of inference that underlie rabbinic legislation:

> And had he [i.e., the author of *Sefer Halakhot Gedolot*] counted what was more clear than that, which could be considered more worthy to be counted, namely everything known through one of the "thirteen *middot* by which the Torah is interpreted," the number of commandments would reach many thousands.[213]

Unlike mere *derash*, the *middot*—in Maimonides' view—are logical inferences. Moreover, he is quick to emphasize the validity of this hermeneutical activity and the laws derived therefrom:

> And lest you think that we refrain from counting them because they are not certain (*mutayaqqina*), and that the law derived from such a *middah* may be valid (*ṣaḥīḥ*) or may be invalid, that is not the reason. But the reason is that everything [so] derived are applications of the principles (*furūʿ min al-uṣūl*; lit. branches from the roots) that were told to Moses at Sinai explicitly, and they are the 613 commandments.[214]

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[212] See *Guide* III:31, Pines trans., 524. A similar interpretation is given by Ibn Ezra, comm. on Deut 4:6 and in *Yesod Mora*, Cohen and Simon ed., 156. On this parallel, see Twersky, *Code*, 385; idem, "Influence," 28-32.

[213] Kafih ed., 14.

[214] Kafih ed., 15. On the legal implications of this distinction, see Levinger, *Techniques*, 78-87.

For Maimonides, of course, the derivation of new laws—"branches from the roots"—through *qiyās* is essential to the halakhic system. Here he adds, however, that since such derivatives are based on inference rather than what is stated in Scripture itself (*peshateh di-qera*, *dalālat al-naṣṣ*), their authority is rabbinic rather than biblical.

Having clarified precisely which types of "commentary (*sharḥ*) and inference (*istidlāl*)" Maimonides distinguishes from *peshateh di-qera*, we can now correlate the halakhic implications he draws from the *peshat* maxim with the hermeneutical distinction presented in his introduction to the Mishnah between (a) the transmitted interpretation (*tafsīr, ta'wīl*) of Scripture—which reveals the original intent of the biblical text itself, and (b) the further legal inferences *istikhrāj*, *istidlāl*, which go beyond it. We had originally concluded from the second category that Maimonides is not a pure "intentionalist" because he allows for innovative rabbinic legal hermeneutics that actually create meaning, rather than aiming simply to discover the original intent of Scripture. In Principle #2, however, he does reveal a degree of intentionalism by arguing that only category (a)—which is known exclusively through the tradition (*'ulima bi-l-naql*) from Sinaitic revelation—has biblical authority, since it reveals the meaning of *peshateh di-qera*, i.e., Scripture itself. Category (b), on the other hand, is merely rabbinic since it "leaves the realm of *peshuto shel miqra*"; i.e., it is not a legal construal of Scripture itself, but rather represents the "creation of meaning" through human reasoning (*'aql, qiyās*), not revelation.

The hermeneutical distinction that Maimonides makes based on the peshat maxim can be characterized in three ways: historical, epistemological and legal.

(1) Historically speaking, this maxim (as interpreted by Maimonides) separates the *original* interpretations of the Pentateuch given or understood at the time of the Sinaitic revelation from *subsequent* inferences from the text or projections onto it.

(2) From an epistemological perspective, the certainty of the former is absolute—since the meaning of *peshateh di-qera* is either self-evident, or has been transmitted in an unbroken and uncontested chain of tradition that originates in the meaning of the text assigned by God. By contrast, legal inferences from the text, which are based on human reasoning (*naẓr, 'aql*), are subject to debate and their correctness therefore cannot be known for certain.

(3) The legal authority of *peshateh di-qera* is biblical, whereas further laws derived from the text have only rabbinic authority. While

the distinction between laws of biblical and rabbinic authority in itself is talmudic, Maimonides uses the epistemological distinction from *uṣūl al-fiqh* to conceptualize it.

For Maimonides, the *peshat* maxim does not necessarily (i.e., by definition) imply—or depend upon—a methodological criterion (the "plain" or "straightforward" sense), as it typically does for other *pashtanim*. Indeed, in this respect, the great codifier's definition of *peshateh di-qera* is practically unique within the exegetical tradition.[215] Nonetheless, his application of the *peshat* maxim—which he effectively turns into a principle of *peshat* primacy—reveals important points of contact with the Geonic-Andalusian exegetical school, as we shall see currently.

4. Explicit Applications of the Second Principle

Among Maimonides' halakhic positions, his classification of laws derived exclusively through the *middot* as rabbinic rather than biblical is certainly one of his most novel and controversial. Nahmanides, perhaps the most important critic of *The Book of the Commandments*, deems "this book… 'sweetness and entirely delightful' (Song 5:16)," but decries "this principle… [as] evil and bitter," adding that "it should sink [into the ground] and never be uttered."[216] Citing abundant talmudic evidence, Nahmanides demonstrates that the Maimonidean notion that "the truth is the *peshat* of Scripture, not matters derived midrashically" (in Nahmanides' paraphrase; above, n. 7) is difficult to square with the spirit of rabbinic halakhic exegesis.[217] This, of course,

[215] The monograph announced in n. * above includes a comparison of Maimonides' construal of the *peshat* maxim with the ways it was otherwise understood within the Geonic-Andalusian and northern French exegetical schools.

[216] *Hassagot*, critique of Principle #2, Chavel ed., 51.

[217] Maimonides' talmudic defenders, in a tradition dating to the fourteenth century, suggested reinterpreting his words to mean that the laws derived through the *middot* are indeed of biblical force, and that when Maimonides classifies them as "rabbinic" (*de-rabbanan*) he only means to say that they cannot be enumerated among the original 613 commandments given at Sinai. For a detailed survey of this tradition, see Neubauer, *Divrei Soferim*, 30-75. This, of course, is not how Nahmanides understood the matter, and modern scholarship tends to accept his literal understanding the second principle: see Neubauer, *Divrei Soferim*, 24-30, 81-86; Levinger, *Techniques*, 46-50; Halbertal, "Architecture," 464n. Interestingly, the traditional reinterpretation has been revived in a more

points to the boldness of Maimonides' endeavor to impose order on the talmudic halakhic system. Yet to properly gauge this innovation, we must explore precisely how he applied his principle of *peshat* primacy in the *Book of the Commandments*.

Nahmanides' critique assumes that Maimonides sought to classify as rabbinic (*de-rabbanan*) all *halakhot* that are not based on a straightforward reading of Scripture (which corresponds to Nahmanides' own definition of *peshuto shel miqra*). This is echoed by the conventional understanding of Maimonides' Principle #2, as reflected, for example, in the following characterization by Sh. Ettinger:

> Regarding the question, According to what principle and based on what criterion does Maimonides determine if a given law that was derived from Scripture is biblical or rabbinic?, one can answer simply: A derivation that appears to Maimonides, according to **his logic and reasoning**, to emerge from Scripture **according to its *peshat***, or at least is a derivation that fits Scripture—is biblical. Conversely, a derivation that appears far from the *peshat* of Scripture and one cannot regard it as being included in the meaning of Scripture, must be merely an *asmakhta* and its status is rabbinic.[218]

On this view, Maimonides applies an empirical test to rabbinic halakhic exegesis, akin to Ibn Ezra's remark, "One who has a mind (lit. heart) will be able to discern when they speak *peshat* and when they speak *derash*" (above, n. 58).

But this characterization oversimplifies—and thus misrepresents—Maimonides' true position, in part by projecting a foreign definition of the term *peshat* onto his writings. In truth, as we have demonstrated, he does not invoke the *peshat* maxim as Ibn Ezra does, i.e., to filter out the straightforward, philological-contextual readings of Scripture from the corpus of rabbinic exegesis. For Maimonides, *peshateh di-qera* means nothing other than *the text of Scripture itself*, which must be understood according to the single sense assigned to it by God Himself in the Oral Law given at Sinai and transmitted by the Rabbis (the *tafsīr marwī*)—and that is not necessarily equivalent to the

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nuanced form in some recent studies: see Halivni, *Peshat & Derash*, 83; Ben-Menahem, "Roots," 20-25.

[218] Ettinger, "Legal Logic," 20. Translation my own; bold in the original. On the equivocal phraseology "…or at least… fits Scripture," see below, n. 283.

straightforward sense. The simple *peshat-derash* dichotomy of Ibn Ezra and Nahmanides does not suit the Maimonidean model, which is predicated upon a different hermeneutical classification. He invokes the *peshat* maxim to isolate *dalālat al-naṣṣ*—what is known for certain to be God's will—from other laws subsequently projected artificially onto, or even legitimately derived from Scripture by way of "commentary and inference," i.e., *derash* and the *middot*.

There is a kernel of truth in the conventional wisdom, since Maimonides' application of Principle #2 at times reflects the values of the Andalusian model of *peshat* as articulated, for example, by Ibn Ezra. In order to clarify this dimension of his halakhic hermeneutics, we will now analyze the nine additional passages of *The Book of the Commandments* in which he explicitly invokes Principle #2 by using either the term *peshateh di-qera* or *gufeh di-qera*.[219] Before doing so, however, it is important to note some general features of this Maimonidean halakhic work. Every commandment enumerated in *The Book of the Commandments* (with only "three or four exceptions" [below, n. 278]) is based on a biblical prooftext. In some cases, this prooftext is what Maimonides calls a נץ ג'לי בביאן ("clearly explicit text"; above, n. 123), i.e., a verse that speaks for itself. In most cases, however, he reads the prooftext in light of a rabbinic source. But in doing so, Maimonides is selective. It is important to keep in mind that rabbinic halakhic exegesis appears in the Talmud and *midrashim* as a largely undifferentiated mass of readings lacking any identifying methodological labels. Typically, a biblical source will simply be cited therein with an interpretation in some variation of the form "the verse X means Y" or "from X we deduce Y." Maimonides thus manifests a substantial degree of independence when sorting out such readings according to his classifications. It is here that he reveals his exegetical sensibilities, since he decides whether a given reading is to be regarded as a "transmitted interpretation"—and hence a genuine construal of *peshateh di-qera*—as opposed to an inference or mere *derash*.

[219] Since this study is based on a close reading of Maimonides' precise formulations in Principle #2 and these nine additional passages in his *Book of the Commandments*, we have checked all of these texts in Kafih's edition against early manuscripts (listed in the bibliography), as well as the earlier edition of the Arabic text by M. Bloch. The conclusion we have reached based on the manuscript evidence is that Kafih's text is reliable for the sake of this study, since none of the small variations found (see, e.g., nn. 254, 260 below) have any bearing on Maimonides' concept of *peshuto shel miqra*.

(1) Lev 11:43
Maimonides codifies as Negative Commandment #179:

> We are prohibited from eating any swarming thing at all, whether a flying swarming thing, or a swarming thing of the water, or a swarming thing of the land. And this is His dictum, may He be exalted: "Do not make yourselves abominable with anything that swarms; you shall not make yourselves unclean therewith and thus become unclean" (Lev 11:43).[220]

To support this rather straightforward construal of Scripture, Maimonides cites a talmudic discussion in b. *Makkot* 16b that takes Lev 11:43 as a prohibition against eating worms, eels, insects and the like. But he then notes that the same talmudic source records other readings of this verse that imply further prohibitions:

> Now they also said: "One resisting responding to the call of nature (lit. delaying his openings [from excreting]) violates 'do not make [yourselves] abominable,'" and similarly, "He who drinks water out of the surgeon's horn"—which is the vessel for drawing blood—"violates 'do not make yourselves abominable.'" And the same applies by analogy (*qiyās*) to eating dirty and disgusting things and drinking disgusting things from which most people recoil. All of this is prohibited, but one does not incur liability of lashes (*malkot*; punishment for a biblical violation) for it, since the verse itself is about nothing other than a swarming thing alone (פשטיה דקרא אנמא הו פי אלשרץ פקט). But [instead] they beat him with *makkat mardut* ("blows of rebelliousness" for violating a rabbinic injunction) for this.[221]

A simple reading of the Talmud might suggest that these further prohibitions are presented as being included in the meaning (*ma'na*, *gharaḍ*) of the phrase "Do not make yourselves abominable"; and, indeed, some talmudists regarded these as biblical violations.[222] But Maimonides understands the original intent of this phrase exclusively as indicated within the context of the entire verse: "Do not make

[220] Kafih ed., 265.
[221] Kafih ed., 269.
[222] See Ritba, *Makkot* 16b (Ralbag ed., 189), in the name of R. Meir ha-Levi (Ramah); see also Meiri, *Beth ha-Behirah*, ad loc. (Strelitz ed., 93n).

yourselves abominable with (i.e., by eating) anything that swarms…." This prohibition alone can be considered *dalālat al-naṣṣ*, to the exclusion of all others, which were inferred by analogy.[223] To be sure, Maimonides does not deny the legitimacy of these additional laws, which are codified in *Mishneh Torah* under the rubric of this prohibition.[224] Yet in this entry of *The Book of the Commandments* he distinguishes between the prohibition stated in Scripture itself (i.e., *peshateh di-qera*), which is biblical, as opposed to its extension to other matters by analogy, which is merely rabbinic.[225]

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[223] Maimonides uses the term *qiyās* only in reference to the additional "disgusting things" not mentioned in the Talmud; but we can assume that he considered *qiyās* to be the basis for the talmudic expansion of this prohibition itself. This is a good example of the distinction between an *inference* from Scripture (from prohibition A we can *infer* prohibition B), as opposed to an *interpretation* of the language of the biblical text itself (the verse X *means* Y): see above, n. 140.

[224] In *Hilkhot Ma'akhalot Asurot* 17:29-31 he writes: כל דברים אלו בכלל אל תשקצו את נפשותיכם but adds that their violation incurs only מכת מרדות (lit. "blows of rebelliousness," i.e., for violating a rabbinic edict).

[225] In a number of other cases Maimonides deems an extension or application of a biblical commandment to be of rabbinic authority only (without invoking the notion of *peshateh di-qera* explicitly):
(1) The prohibition of destroying fruit-bearing trees, from which it is inferred (presumably by analogy) that all purposeless destruction is likewise prohibited: see Negative Commandment #57 (Kafih ed., 209-210, esp. n. 100) and *Hilkhot Melakhim* 6:10.
(2) An added (i.e., second) prohibition for the High Priest to be defiled by contact with the dead, which the Rabbis extended by a *gezerah shawah* to all priests: see Negative Commandment #168 (Kafih ed., 259-260, esp. n. 32); compare *Hilkhot Avelut* 3:6.
(3) The prohibition against eating the flesh of an animal mortally wounded by another, which was extended to any animal suffering from a mortal disease (listed in the Talmud as the *ṭerefot*): see Negative commandment #181 (Kafih ed., 270-271, esp. n. 19). It would appear, however, that Maimonides changed his mind in *Mishneh Torah*: see *Hilkhot Ma'akhalot Asurot* 4:6-9; *Hilkhot Sheḥitah*, 5:1-3; Henshke, "Basis," 107-111, 119-123, 144-148. See also Nahmanides, *Hassagot*, critique of Principle #2, Chavel ed., 46-47.
(4) The prohibition against adopting customs of idolaters, which was applied by the Rabbis to the type of haircut known as *belorit*: see Mishnah Commentary, *'Avodah Zarah* 1:3 and *Responsa* #244 (Blau ed., 446). Here Maimonides clearly changed his mind and ruled in *Hilkhot 'Avodat Kokhavim* 11:1 that this prohibition is actually biblical.
(5) Perhaps the most famous application of Principle #2 is Maimonides' ruling that betrothal through a ceremonial transfer of money (קידושי כסף) is merely rabbinic, and that biblical betrothal is accomplished in other ways specified in m.

(2) Num 4:20

In Principle #3 of *The Book of the Commandments* Maimonides establishes that the 613 commandments include only laws that are applicable permanently, but not those of limited duration, such as the ones given specifically for the time of the Israelites' sojourn in the desert. He thus criticizes his predecessors for enumerating Num 4:20, "They shall not go in to see when the holy things are covered, lest they die," which was said of the Kohathites regarding the dismantling of the Tabernacle by the priests during the travels in the desert.[226] Maimonides acknowledges, however, that the Rabbis derived another prohibition from this verse relevant in later times, which requires him to explain further:

> Even though it was said (b. *Sanhedrin* 81b): "They shall not go in to see [etc.]" is an allusion (*remez*) to [death at the hands of zealots] for one who steals the קסוה (a holy measuring vessel used in the Temple). Now it is sufficient in their saying *remez* [to conclude] that the verse itself is not about that (פשטיה דקרא ליס הו פי ד'לך).[227]

By pointing to the term *remez* (=hint, allusion) used in the Talmud itself to label this analysis of Num 4:20, Maimonides argues that the Rabbis did not present it as an interpretation of the verse itself (*peshateh di-qera*), but rather some sort of secondary association or, at

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Qiddushin 1:1 (transfer of a marriage document, or intercourse; שטר וביאה). He makes this ruling in *Mishneh Torah*, *Hilkhot Ishut* 1:2, and justifies it in *Responsa* #355 (Blau ed., II:631-632, cited above, n. 6), both cited in the harsh attack by Nahmanides, *Hassagot*, critique of Principle #2 (Chavel ed., 34-37). Maimonides' position on this matter seems to have developed over his career. Originally he maintained that intercourse alone consummated marriage biblically: see Mishnah Commentary, *Qiddushin* 1:1 (Kafih ed., III:280-281, esp. n. 15); *Book of the Commandments*, Positive Commandment #213 (Kafih ed., 167-168, esp. n. 17). But he later changed his mind (based on the talmudic evidence cited in the responsum) and reclassified betrothal through a document biblical. According to his son, Abraham, Maimonides later even retracted his opinion in *Mishneh Torah* and ultimately classified all three forms of betrothal as being of biblical force: see Abraham ben Maimonides, *Birkat Avraham*, responsum #44 (Goldberg ed., 62); see also Levinger, *Techniques*, 45.

[226] See *Haqdamat Halakhot Gedolot*, 42. As Hildesheimer notes (n. 112 ad loc.), other talmudists—including Saadia—likewise enumerated this verse as a negative commandment.

[227] Kafih ed., 16.

most, an inference from the verse.[228] He therefore concludes that it is merely a rabbinic prohibition, and does not merit enumeration as one of the 613 commandments.

(3) Lev 21:12

As the preceding example indicates, Maimonides will use talmudic evidence (where available) to support his determination regarding the nature of a rabbinic reading of Scripture. In Negative Commandment #165 he draws upon a more subtle analysis of the rabbinic evidence:

> The priests are prohibited from exiting the Temple during the time of the service, and this is the dictum [of Scripture],[229] "And from the entrance of the Tent of Meeting you shall not exit" (Lev 10:7). And this prohibition is repeated for the High Priest, as it says: "And from the Sanctuary he shall not exit" (Lev 21:12).[230]

These two verses appear in contexts that discuss the case of a priest who has suffered the death of a close relative. As Maimonides explains, these verses prohibit the priests from abandoning their service due to personal tragedy, but do not absolutely prohibit exiting the holy Sanctuary, i.e., once the service has been completed. After acknowledging *Sifra*, the halakhic Midrash on Leviticus, as the source of this analysis,[231] he notes that the Talmud derives a separate law from the second verse:

> Know that for the High Priest there is an additional matter, that he may not accompany the bier [of his relative] and this is the apparent sense of the text (*ẓāhir al-naṣṣ*)… "and from the Sanctuary he shall not exit," [as] clarified in the second [chapter] of *Sanhedrin* that if a death occurs for him, that he

[228] Maimonides may regard this law as a purely oral tradition, i.e., a "*halakhah* to Moses from Sinai": see his commentary on m. *Sanhedrin* 9:6. The law is codified in *Hilkhot Sanhedrin* 18:6, but Num 4:20 is not cited there.

[229] קולה; lit. its saying. I follow the convention of Pines in his translation of the *Guide* (see, e.g., I:42, Pines trans., 93) to render קולה "the dictum [of Scripture]" and קולה תעאלי "His dictum, may He be exalted" (see above, n. 112).

[230] Kafih ed., 257.

[231] As Maimonides writes: "And the text of *Sifra*: יכול בשעת העבודה ושלא בשעת העבודה, תלמוד לומר: ומן המקדש לא יצא ולא יחלל, הוי אומר בשעת העבודה" (Kafih ed., ibid).

> does not go out following the coffin, and this was inferred (אסתדל עלי ד'לך; lit. a proof [*dalīl*] for this was brought) from the dictum [of Scripture], "And from the Sanctuary he shall not exit."[232]

Maimonides here refers to the mishnaic comment: "If a death occurs for [the High Priest]… Rabbi Judah said: He must not leave the Sanctuary [to participate in the funerary procession], because it is said: 'And from the Sanctuary he shall not exit'" (m. *Sanhedrin* 2:1). On this view, Lev 21:12 enjoins the High Priest from exiting the Sanctuary to join the funeral procession even after completion of his service. Yet Maimonides does not enumerate this commandment:

> Even though… [this prohibition] repeated for the High Priest obligates a new matter as we have explained, this does not increase the number of commandments [according to]… what I have prefaced, for the verse itself (*gufeh di-qera*) [indicates] nothing other than [the prohibition] that he should not [exit]… while serving.[233]

In his view, only the restricted reading in *Sifra* reflects what the verse itself (*gufeh di-qera*) says; the additional law adduced by Rabbi Judah must therefore not be enumerated.[234] It is fair to say that Maimonides' assessment of R. Judah's reading can be traced to the Talmud, which concludes that the prohibition for the High Priest is merely a rabbinic precautionary measure, lest he defile himself by touching the bier. This implies that the verse was cited merely as an *asmakhta*;[235] it is thus not a genuine construal of the biblical text itself, i.e., *peshateh di-qera*.[236]

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[232] Kafih ed., 258.

[233] Kafih ed., 258.

[234] Kafih (n. 23) understands that Maimonides here refers to Principle #9 (that two verses that repeat the same law must not be counted separately; see below, n. 258). But this principle is relevant here only because Principle #2 precludes regarding Rabbi Judah's derivation from Lev 21:12 as a "new matter" (which would merit separate enumeration).

[235] This does even seem to be a case of *qiyās*, because it is not an inference from Scripture, but rather a precautionary rabbinic measure, i.e., a *gezerah*: see Maimonides' introduction to the Mishnah, Shailat ed., 340 [Ar.], 42 [Heb.].

[236] See b. *Sanhedrin* 19a; Nahmanides, *Hassagot*, critique of Principle #2, Chavel ed., 75-76. Our reasoning depends on a corollary of Maimonides' understanding of the *peshat* maxim, namely that a rabbinic law can never be a valid construal of

(4) Deut 23:24

In the preceding examples we have seen that Maimonides invokes the *peshat* maxim to relegate a given law—seemingly derived from Scripture—to rabbinic status. In Positive Commandment #94, however, he invokes this maxim to make a purely exegetical point:

> We were commanded to fulfill everything that we have obligated ourselves to do verbally, whether it be an oath, a vow, sacrificial offering or anything else, and that is His dictum, "That which is gone out of your lips you shall keep and perform; [even a freewill offering, according to what you have vowed to the Lord your God, which you have promised with your mouth]" (Deut 23:24).[237]

When turning to the rabbinic source for this interpretation, he mentions an important reservation:

> Although they separated the language of this verse and ascribed to each of its utterances a meaning, the intention (*gharaḍ*) is [generally speaking]… to fulfill any sort of obligation that a person undertakes verbally.... And [as for] the wording of *Sifre*, "That which is gone out of your lips – this is an affirmative precept […]," you know that no meaning is implied by the expression, "that which is gone out of your lips" alone; but the intention (*gharaḍ*) is only the gist of the verse itself (תחציל

peshateh di-qera. This assumption was not shared by other Geonic-Andalusian authors, who did not adopt Maimonides' sharp distinction between biblical and rabbinic laws (see above, at n. 179). Ibn Ezra here writes: ומן המקדש לא יצא - אמרו המעתיקים: אחר המת; והוא הנכון (comm. on Lev 21:12 [Weiser ed., III:74]), a reading evidently influenced by Saadia's *Tafsīr* on this verse: see Zucker, *Saadya's Translation*, 389. Interestingly, Nahmanides (ibid.) inferred from Maimonides' language that he took Rabbi Judah's reading to be a genuine construal of the biblical text—and therefore a biblical prohibition—since he referred to it as *ẓāhir al-naṣṣ*. But this is a misunderstanding of Maimonides' intent, since *ẓāhir al-naṣṣ* is not equivalent to *peshateh di-qera* in his lexicon, as discussed above. Moreover, Nahmanides (ibid., Chavel ed., 77) himself acknowledges that Maimonides in *Mishneh Torah, Hilkhot Kelei ha-Miqdash* 5:5 does not base this prohibition on Lev 21:12, implying that it is merely rabbinic, and has no biblical source; see also Maimonides, comm. on m. *Sanhedrin* 2:1 (Kafih ed., IV:153).

[237] Kafih ed., 109.

> פשטיה דקרא) that I mentioned to you, which obligates doing all that a person utters with his lips.[238]

Here Maimonides does not invoke the notion of *peshateh di-qera* to draw any legal conclusion, but merely to note that the reading in *Sifre* is not a genuine interpretation of this verse, which, as he says elsewhere, is a "clearly explicit text" (*naṣṣ jaliy bi-bayān*; above, at n. 123).

Maimonides' comment here reflects an important aspect of his exegetical outlook. In typical fashion, *Sifre* interpreted this verse atomistically, attributing a separate reference to each phrase in isolation.[239] Needless to say, this method was discredited in the grammatical Andalusian school, of which an echo may be detected here. But another influence must be also considered, namely the discipline of logic, which included a clear notion of sentence structure. Indeed, in the first chapter of his *Treatise on Logic*, Maimonides comments:

> The noun which the Arab grammarians call a "beginning," the logicians call "a subject" (*mawḍū'*) and that which the grammarian calls "information concerning the beginning," the logicians call "a predicate" (*maḥmūl*). It does not matter whether the information is a noun, a verb, a particle, or a phrase… nor is there any difference as to whether the information affirms or negates…
>
> The entire expression…, i.e., the subject and the predicate together is called "a proposition" (*qaḍīya*)…. The proposition always has two parts: the subject and the predicate, even if it consists of many words. For example, when we say "Zayd of Basra, who resided in the house of Amr killed his son Abu Bekr of Egypt," we say that the subject of this proposition is "Zayd of Basra, who resided in the house of Amr," and its predicate is "killed his son Abu Bekr of Egypt."[240]

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[238] Ibid. Maimonides abbreviated the rabbinic interpretation of this verse. See the following note.

[239] "You shall keep – [this is] a negative precept; And perform – this is an injunction to the court to force you to do; According to what you have vowed – this is a vow" (*Sifre* Deuteronomy §265 [Finkelstein ed., p. 286]); a similar commentary appears in b. *Rosh ha-Shanah* 6a.

[240] *Treatise on Logic*, Efros 1938 ed., 5-6 (Heb./Ar. section); English trans., 34-35.

For Maimonides, the basic unit of meaning is a complete sentence (a "proposition"), which requires a subject and predicate. He therefore would have been compelled to regard the atomistic reading in *Sifre* as mere *derash*, since "no meaning is implied by the expression, 'That which is gone out of your lips.'"

(5) Num 17:5

In the second chapter of the *Treatise on Logic*, Maimonides divides all propositions into two categories:

> Every proposition either affirms something of something, e.g., "Zayd is wise"… or negates something of something, e.g., "Zayd is not wise"…. The proposition which affirms something of something is called "the affirmative proposition" (*al-qaḍīya al- mūjaba*); that which negates something of something we call a "negative proposition" (*al-qaḍīya al-sāliba*).[241]

This illuminates Principle #8 of *The Book of the Commandments*: "It is not proper to enumerate negation (*nafy*) as we do [lit. with] prohibition (*nahy*)." As Maimonides goes on to explain, invoking the authority of the experts "on the art of logic," a prohibition is a prescriptive statement (command; *amr*), whereas a negative proposition, i.e., "negation of a predicate from a subject," is a descriptive statement and thus cannot be the source of a commandment.[242] To illustrate, he comments on Num 17:5, "There will never again be like Korah and his company, as God said by the hand of Moses to him":

> The Rabbis explained that it is a negation (*nafy*) and they clarified its meaning and said: That He, may He be exalted, said that any rebel who revolts against the priesthood and claims it for himself, what happened to Korah and his company—namely being swallowed up and burned—will not happen to him, but his punishment will be "as God said by the hand of Moses to him," namely leprosy, and that is His dictum, may He be exalted, to him [Moses]: "Bring your hand into your

[241] *Treatise on Logic*, Efros 1938 ed., 6 (Heb./Ar. section); English trans., 35.
[242] *Book of the Commandments*, Kafih ed., 26-27.

> bosom" (Exod 4:6), and they brought a proof from what was told about Uziah, King of Judah (II Chr 26:19).[243]

Having established that this verse is a proposition rather than a command,[244] Maimonides must address the implication raised by another rabbinic reading:

> Even though we find… in *Gemara* [b.] *Sanhedrin* (110a)…: "Anyone who sustains a quarrel violates a negative commandment, as it says: 'There will never again be like Korah and his company,'" this is only by way of warning,[245] not that the verse itself is about this matter (lit: intention; לא אן פשטיה דקרא פי הד'א אלגרץ').[246]

Having accepted the first reading as the correct construal of "the *peshat* of Scripture," Maimonides invokes the rules of logic to prove that Num 17:5 cannot be the source of a prohibition. He therefore regards this reading as mere *derash*, as he reiterates later:

> … their dictum, "Anyone who sustains a quarrel violates a negative commandment, as it says: 'There will never again be like Korah and his company'"… [is] by way of *derash*, whereas the verse itself (*gufeh di-qera*) is a threat as the sages have explained, and it is negation rather than prohibition.[247]

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[243] Kafih ed., 29; the primary rabbinic source is *Tanḥuma* ad loc.; other sources are cited by Kafih in his notes.

[244] Maimonides arrived at this conclusion based on a rabbinic reading that could be disputed. (See Nahmanides' critique of this principle, *Hassagot*, Chavel ed., 90-91. Rashi labels this reading *midrasho*, as opposed to an alternative reading that he regards as *peshuto shel miqra*: see Kamin, *Categorization*, 206n.) This occurs elsewhere more dramatically, as Maimonides himself notes in Negative Commandment #46.

[245] Ar. וען'. Ibn Tibbon (Heller ed., 16) renders this אסמכתא. Perhaps he had a different Arabic text (since וען' cannot be construed as אסמכתא; cf. the explanation offered by Bacher, *Bibelexegese*, 30n). But we should note that Nahmanides (*Hassagot*, Chavel ed., 91) seems to have had the text וען', since he translates על דרך תוכחה.

[246] Kafih ed., 29.

[247] *Book of the Commandments*, Negative commandment #45, Kafih ed., 204.

(6) Deut 14:1

Intriguingly, in Principle #8, after noting that "sustaining a quarrel" is not truly enjoined by Num 17:5, Maimonides goes on to remark: "But indeed the prohibition of this matter is included in another negative commandment as I will explain in its place."[248] The only other reference to this matter in *The Book of the Commandments* appears in Negative Commandment #45, where Maimonides offers the following analysis of Deut 14:1, "You shall not gash yourselves (לא תתגודדו), nor shave the front of your head for the dead":

> We were prohibited from wounding ourselves as idol worshippers do, and this is His dictum, may He be exalted, "You shall not gash yourselves." And this prohibition is repeated in different language, and that is the dictum [of Scripture], "You shall not make a gash (שרט) in your flesh for the dead" (Lev 19:28). And it has been made clear in… [b.] *Yevamot* [13b] that the verse itself (*gufeh di-qera*) is needed for its own prohibition (lit. itself; מיבעי ליה לגופיה), [i.e.,] that the Merciful One said: 'Do not *make a wound* for the dead.'" And in *Gemara* [b.] *Makkot* [21a] they said that שריטה and גדידה are one and the same... as it says in the prophetic books, "and they gashed themselves (ויתגודדו) after their custom with knives and lances" (I Kgs 18:28).
>
> Now they [i.e., the Rabbis] have said that the prohibition also includes the prohibition to divide the community…: " לא תתגודדו – Do not split into many groups [אגודות אגודות]" (b. *Yevamot* 13b), but the verse itself (*gufeh di-qera*) is as they have explained…, "Do not make a wound for the dead," whereas this is a sort of *derash*.[249]

As it turns out, then, Maimonides regards the talmudic reading אגודות אגודות to be mere *derash* as well, and there really is no biblical basis for this prohibition.[250]

In making this distinction, Maimonides invokes talmudic authority. However, a closer look at the source to which he refers indicates that he interpreted it in a novel way:

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[248] Kafih ed., 29.

[249] Kafih ed., 204.

[250] It is conceivable that Maimonides changed his mind and did not revise his introduction accordingly (on this phenomenon, see Henshke, "Basis," 114-117, 144-147).

> Resh Lakish said to R. Johanan: …לא תתגודדו – Do not split into many groups! But this [verse] לא תתגודדו is needed for its own prohibition (lit. itself; מיבעי ליה לגופיה)… "You shall not *make a wound* for the dead!" If so, Scripture should have said לא תגודדו. What is תתגודדו? From that we deduce this [second prohibition]. Perhaps the entire [verse] refers to this only? If so, Scripture should have said לא תגודו. What is לא תתגודדו? From that we deduce both.

While it is true that the Talmud refers to the prohibition to make a wound as *gufeh*, this does not preclude the derivation of a second prohibition from Deut 14:1, which is actually supported based on a quasi-grammatical analysis. Maimonides' classification of the second prohibition as mere *derash* (not even a logical inference!) thus reflects an independent exegetical outlook. In light of his Andalusian heritage, it is of course not difficult to see why he would have come to this conclusion. Contextually speaking, the אגודות אגודות reading does not fit the remainder of this verse, which prohibits shaving one's forehead as a sign of mourning. Moreover, as philological analysis based on the assumption of an underlying three-letter root was a hallmark of the Andalusian Hebrew grammatical school, Maimonides would have naturally distinguished between the verb תתגודדו (*g-d-d*, *hitpa'el*, imperfect) and the noun אגודות (*'-g-d*, derived from the *qal* form of the verb).[251] The prooftext from I Kgs 18:28 was therefore decisive in his eyes, unlike the playful association ("poetical conceit") of תתגודדו and אגודות.

(7) Exod 20:21

Maimonides likewise manifests independent exegetical thinking in Positive Commandment #20, the obligation to establish a Holy

[251] Hayyuj established the (minimum) three-letter root as a rule without exceptions (his predecessors believed that some verbs had two-letter roots); but the distinction between the two roots in this example was recognized already by Menahem ben Saruq: see his *Maḥberet*, s.v. גד ,אגד; see also Ibn Janah, *Kitāb al-Uṣūl*, s.v. גדד ,אגד. On Maimonides' knowledge of the Andalusian Hebrew grammatical school, see above, n. 47. Intriguingly, in *Hilkhot 'Avodah Zarah* 12:13-14 he cites the אגודות אגודות reading and does not label it *derash*. While it is not unusual for him to employ *derash* in *Mishneh Torah* (see, e.g., below, n. 266), it is somewhat surprising that he does not make this clear in this instance (e.g., by using the label "the Rabbis said…").

Sanctuary, based on Exod 25:8, "And they shall make for Me a sanctuary," followed by detailed instructions for constructing the Tabernacle (Exod 25-31), which Maimonides (following the Rabbis) took to be a prototype for the Holy Temple ultimately built by King Solomon. The great codifier argues that all of the Tabernacle's components described in those chapters, e.g., the candelabrum, ark, table, etc., are subsumed under the rubric of this single commandment—and Maimonides had established in Principle #7 that the details of any given commandment must not be enumerated separately. The commandment to build an altar, however, might have merited separate enumeration, because it appears in an earlier narrative, unconnected with the Tabernacle. As Maimonides explains:

> With respect to His dictum regarding the altar: "Make Me an altar of earth (מזבח אדמה) [and sacrifice offerings on it]" (Exod 20:21), about which it could be thought that this text is a commandment in its own right that stands apart from the commandment of a Holy Sanctuary, the matter is as I shall describe to you. As for the verse itself (*peshateh di-qera*), it speaks (יתכלם) about the time in which outside altars (*bamot*) were permitted, that it was permissible for us then to make an altar of earth in any place and offer sacrifices.[252]

Maimonides first presents a contextual analysis of the verse itself (*peshateh di-qera*): based on its appearance in the narrative of the revelation at Sinai (which occurs well before the Tabernacle is even mentioned), he assumes that it relates to the pre-Tabernacle period (which corresponds to later periods when there is no central Temple) when "outside altars" were permitted, during which time this verse indicates a preference that these be made of earth, rather than stones.[253] On this reading, the prescription in this verse is a temporary

[252] Kafih ed., 69. Our translation ("that it was permissible *for us* then …") reflects an emendation of Kafih's text (read אלד'י כאן מבאח לנא חיניד', not אלד'י כאן מבאח חיניד') based on virtually all of the manuscripts we consulted (listed in the bibliography below), as well as Bloch's text.

[253] This reading (repeated in *Guide* III:45, Pines trans., 578; see also Abraham ben Maimonides, comm. on Exod 20:21, Wiesenberg ed., 327) has no precedent in rabbinic literature, though it may be based on earlier Andalusian exegesis. Compare Abraham Ibn Ezra (long comm. on Exod 20:21-22), who interprets the verse as a reference to the temporary altar Moses built at the foot of Mount Sinai,

law and therefore must be excluded from enumeration based on Principle #3 (as mentioned above), a matter that Maimonides clarifies in discussing the alternative rabbinic reading of this verse:

> But they [the Rabbis], peace upon them, have said that the meaning (*ma'na*) of this is that it is a command to build an altar attached to the ground and that it should not be mobile as it was in the desert. And this is their dictum in *Mekhilta* of R. Ishmael as commentary (*sharḥ*) on this verse: "When you enter the Land [of Israel], make Me an altar *attached to* the ground (מזבח מחובר באדמה)." And if the matter is thus, then this is a command that applies forever [lit. for all generations; לדורות], and it is one of the parts of the Temple, I mean that an altar must necessarily be built of stones.[254]

On this reading, the command in this verse applies eternally and therefore cannot be excluded based on Principle #3; however, since it is simply a part of the larger commandment to build the Holy Sanctuary, it must excluded from enumeration based on Principle #7.

It is important to compare the two readings that Maimonides juxtaposes here. Since the Rabbis in the *Mekhilta* identified the "altar" in this verse with the one in the Temple, which was indeed built of stones, they reinterpreted "an altar of earth" as "an altar *attached* to the earth," i.e., the ground. Maimonides, however, does not classify this as a genuine construal of *peshateh di-qera*, evidently because it does violence to the language of the verse and takes it out of context entirely. This reading, then, would be regarded by Maimonides as a matter deduced "by way of commentary (*sharḥ*)," rather than being stated explicitly in Scripture itself (*peshateh di-qera* / *gufeh di-qera*)—precisely the distinction he makes in Principle #2.[255] Normally

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and dismisses the rabbinic halakhic reading as an *asmakhta*. Saadia, on the other hand, follows the halakhic reading in his *Tafsīr*: see Zucker, *Translation*, 332.

[254] Kafih ed., 69.

[255] See above, nn. 194, 207. In theory, then, Maimonides could have argued that the *Mekhilta* reading of Exod 20:21 cannot serve as the basis for a separately enumerated commandment based on Principle #2, i.e., because it is not stated in *peshateh di-qera*. It would seem that he chose to invoke Principle #7 because the fact that the altar is one of the components of the Holy Sanctuary is self-evident, whereas the status of the *Mekhilta* reading might be subject to debate. E.g., Saadia seems to have endorsed it (see above, n. 253). Interestingly, Maimonides himself records the *Mekhilta* reading in *Hilkhot Beit ha-Beḥirah* 1:13. It is conceivable that even he changed his mind and regarded this as the "transmitted

he would turn to another rabbinic source to interpret *peshateh di-qera*; but in this case he chose to record what would seem to be his own contextual interpretation of Scripture (see n. 253).

(8) Exod 20:20

Maimonides' more typical tendency to seek the proper construal of *peshateh di-qera* in rabbinic literature is evident in the following analysis in Negative Commandment #4:

> We were prohibited from making a human image from metals, stones, wood and the like, even if they were not made to be worshipped… and that is His dictum, may He be exalted: "You shall not make with Me gods of silver, nor shall you make for yourselves gods of gold" (Exod 20:20). And the very wording of *Mekhilta* about the meaning of this prohibition by way of commentary (*sharḥ*) is: "… so that you should not think 'I am making [these] for decoration [and it is permissible] …'; [this verse] teaches us: You shall not make for yourselves."[256]

Both Saadia and Abraham Ibn Ezra interpreted Exod 20:20 as a prohibition against making images for the purpose of worship, as the context suggests.[257] But Maimonides endorses the interpretation in *Mekhilta*, which construes this verse as a further prohibition against

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interpretation" of Exod 20:21. Even that is not clear-cut, however, since Maimonides elsewhere in *Mishneh Torah* adduces readings of Scripture he almost certainly regarded as mere *derashot*: see, e.g., above, n. 251.

[256] Kafih ed., 182.

[257] Ibn Ezra (long and short comm. ad loc. [Weiser ed., II:141-142, 287]) clarifies the connection with the preceding verse: "You yourselves have seen that from the heavens I spoke with you," i.e., directly, without an intermediary; therefore, you have no need to worship idols as intermediaries between you and God. Saadia renders this verse literally (פלא תצנעו מעי מעבודאת מן פצ'ה ומעבודאת מן אלד'הב לא תצנעו לכם) in his *Tafsīr*: see Zucker, *Translation*, 331-332. But Abraham ben Maimonides (comm. on Exod 20:22 [Weisenberg ed., 326-327]) mentions a tradition that Saadia distinguished between the two halves of this verse: "You shall not make *with Me* gods of silver" prohibits *belief* in other deities; "nor shall you make *for yourselves* gods of gold" prohibits fashioning images. But the latter is prohibited presumably for the sake of worship, and thus does not support Maimonides' interpretation based on the *Mekhilta*. Abraham ben Maimonides observes that Saadia's double interpretation accounts for the redundant language in this verse; but Ibn Ezra remarks: ואל תתמה בעבור שכתוב פעמים לא תעשו, כי כן דרך צחות לשון הקודש (long comm. ad loc. [Weiser ed., II:141]).

fashioning images for other purposes as well.[258] In this case, then, he assumes that the rabbinic commentary (*sharḥ*) is an authoritative "transmitted interpretation."[259] Yet Maimonides continues:

> And it has been made clear in *Sanhedrin* that this prohibition…—I mean… "You shall not make with Me gods of silver"—includes other matters that diverge from the purpose (or: intent; *gharaḍ*) of this commandment. But the verse itself (*peshateh di-qera*) speaks [only] of (יתכלם פי) what we have mentioned.[260]

Having taken the *Mekhilta* reading as the transmitted interpretation, Maimonides invokes the *peshat* maxim to exclude "other matters deduced by way of commentary and inference." Evidently he had in mind the following remark: "The verse, says R. Ashi, speaks of judges appointed through the power of silver or gold" (b. *Sanhedrin* 7b).[261] It is important to observe that the rabbinic sources do not differentiate between the status of these two readings, leaving it to Maimonides to

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[258] Maimonides' choice to embrace the *Mekhilta*'s reading is consistent with Principle #9, namely that -

> … if… the Sages… [make] a distinction between the meanings [of two seemingly repetitive verses]… then it is undoubtedly proper to enumerate [the second], for it is no longer for emphasis, but rather for the addition of a [new] matter, even though the apparent meaning of the text (*ẓāhir al-naṣṣ*) is that it is about one matter. For we resort to saying that this text is repeated for emphasis… only absent the relevant words of the commentators, transmitters of tradition. But if we find a tradition that this command or prohibition includes such and such a matter, and the repeated command or prohibition includes another matter, then that is the most correct and most true, [i.e.,] that the text is repeated for a [new] matter and then it is proper to enumerate [each separately]. (Kafih ed., p. 33.)

In other words, the rabbinic interpretation overrides *ẓāhir al-naṣṣ*, a situation not uncommon in Maimonides' exegesis, as discussed at length in the monograph announced in n. * above. In this case, adopting the *Mekhilta*'s reading allows him to avoid taking Exod 20:20 as a duplication of Negative Commandment #2, based on Exod 20:4, "You shall not make for yourself any engraved image, or any likeness of any thing that is in heaven above, or that is in the earth beneath."

[259] See above, n. 207.

[260] Kafih ed., 182. Our reading "… this commandment" reflects an emendation of Kafih's text (read: הד'ה אלמצוה, not הד'ה אלמצות) based on Bloch's text and MSS JTS 6998, 6999; Berlin 684; Israel Alei Teiman 14.

[261] This reading seems to take אלהים in this verse in the sense of *judges* (see, e.g., *BDB*, s.v.).

determine which is the "transmitted interpretation." Evidently he preferred the *Mekhilta*'s reading because it is more reasonable and closer to the contextually indicated reading,[262] whereas the fanciful notion that the verse speaks of judges appointed improperly would seem to be a "witty poetical conceit."

This exegetical assessment regarding Exod 20:20 does not, however, imply that the prohibition against such judicial appointments is rabbinic, since it would be included in Negative Commandment #284:

> … the prohibition… to appoint a judge who is not expert in the science of the Law because of other qualities that he possesses…. This is the dictum: "You shall not show favoritism in judgment" (Deut 1:17)… and the very wording of *Sifre* is: "…this is [i.e., refers to] the one responsible for appointing judges… that you should not say, 'So and so is handsome, I shall appoint him as a judge,' 'So and so is courageous, I shall appoint him as a judge,' 'So and so is my relative, I shall appoint him as a judge,' 'So and so lent me money, I shall appoint him as a judge.'"[263]

Since Deut 1:17 appears in the context of Moses' instructions to the newly appointed Israelite judges, it would seem to be a more cogent source than Exod 20:20. This example represents a trend in Maimonides' halakhic writings noted by Baruch ha-Levi Epstein:

> One familiar with Maimonides' composition [i.e., *Mishneh Torah*] will find in almost every [!] *halakhah*… that he bases [talmudic] laws… on a biblical verse in that context, even though the Gemara used a different source… because the one he brings is straightforward (פשוט) and reasonable.[264]

This important observation is often cited as evidence for Maimonides' "commitment to *peshat*." But we should add that the "more straightforward and reasonable" alternate biblical source he chooses is

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[262] This is reminiscent of the description of Rashi's selection among midrashic readings based on the one that is "close to *peshuto shel miqra*": see Kamin, *Categorization*, 63-66.

[263] Kafih ed., 313-314.

[264] *Torah Temimah*, Lev 10:6. See also above, n. 160; Halivni, *Peshat & Derash*, 200, n. 71; Zucker, "Fragments," 315, who notes a similar tendency in Saadia.

usually drawn from rabbinic exegesis.[265] Moreover, such readings often diverge from the contextual-philological tradition that he inherited. Indeed, his reading of Deut 1:17 based on *Sifre* diverges from the contextual interpretation reflected in Saadia's *Tafsīr* and Abraham Ibn Ezra's commentary, i.e., that this verse is Moses' admonition to judges he selected to adjudicate fairly in cases that come before them.[266]

(9) Lev 19:14

Maimonides' reliance on rabbinic exegesis is perhaps nowhere more evident than in his presentation of Negative Commandment #299:

> We are prohibited from causing one another to fail (lit. stumble) in matters of opinion, that is, if someone should inquire… in a matter in which he is inexperienced (or: gullible), it is prohibited (lit. a prohibition has come) to misguide him… and that is His dictum, May He be exalted, "And before a blind man you shall not place an obstacle" (Lev 19:14). And the very wording of *Sifre* is: "And before a person who is blind in a particular matter, if he seeks advice from you, do not give him advice that is not fitting for him."[267]

The acontextual, figurative rabbinic reading upon which he relies can hardly be regarded as the straightforward sense of this verse. Saadia, in his *Tafsīr*, for example, renders it literally, as Maimonides would have been well aware.[268] Maimonides evidently considered the

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[265] See, e.g., *Hilkhot Melakhim* 1:10 with commentary of *Radbaz* and other examples cited in Twersky, *Code*, 57. In some instances, however, Maimonides does devise an independent biblical derivation for a talmudic law: compare, e.g., *Hilkhot Melakhim* 10:7 with b. *Sanhedrin* 20b and above, n. 208.

[266] In *Hilkhot Sanhedrin* 3:8 Maimonides acknowledges as much, appending the expression מפי השמועה למדו ("based on the tradition they expounded") to his reading. Interestingly, he goes on there to record the homiletical reading of Exod 20:20, though he prefaces it with the label "the sages said."

[267] Kafih ed., 320-321.

[268] ובין ידי אלעאמי לא תציר מעת'רא (Derenbourg ed. ad loc.). The literal reading is quite strongly indicated by the context: לא תקלל חרש ולפני עור לא תתן מכשול (and Maimonides accepts the literal sense of חרש, i.e., one who is deaf: see Negative Commandment #317).

reading in *Sifre* to be a "transmitted interpretation" and understands this verse accordingly.[269]

Having determined the original meaning of this verse, Maimonides discusses further applications of this prohibition in the Talmud:

> This prohibition, they [i.e., the Rabbis] said, also includes one who assists or causes [another to commit] a sin, because… that person's desire blinded his discernment.... They said about one who lends with interest and one who borrows with interest that both violate, "And before a blind man you shall not place an obstacle"…. And they say about many similar things, "He violates 'before a blind man you shall not place an obstacle.'" But the verse itself (*peshateh di-qera*) is about what was mentioned first.[270]

Even though Maimonides interpreted *peshateh di-qera* in light of an acontextual "transmitted interpretation," he invokes the *peshat* maxim to distinguish between *dalālat al-naṣṣ*, the "root" (*aṣl*) that is prohibited biblically, and its further applications (*furū'*) by the Rabbis, which are merely rabbinic.[271]

5. Conclusions

The preceding study of the terms *peshateh di-qera* and *gufeh di-qera* in Maimonides' *Book of the Commandments* yields a clear picture of how he applied the *peshat* maxim.[272] Although the examples we have

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[269] It is surprising that he does not use one of his typical formulas to indicate that this is a "transmitted interpretation" (which would suggest that it diverges from the plain sense). Nor does he use the label מפי השמועה למדו in this connection in *Hilkhot Roṣeaḥ* 12:14 (ולפני עור לא תתן מכשול - הבא ליטול ממך עצה תן לו עצה ההוגנת לו). It is also noteworthy that Maimonides never codifies the prohibition to actually place a stumbling block in front of a blind man: see *Minḥat Ḥinnukh*, *Miṣwah* 332, sec. ד (II:114); see also Halivni, *Peshat & Derash*, 88.

[270] Kafih ed., 321.

[271] Maimonides' choice to differentiate between the *aṣl* and *furū'* here is surprising since the talmudic discussion implies that all of these violations are biblical. In *Mishneh Torah* he seems to have changed his mind accordingly; see esp. *Hilkhot Kil'ayim* 10:3; compare *Hilkhot Roṣeaḥ* 12:14, *Hilkhot Gezelah wa-Avedah* 5:1.

[272] It bears repeating (see above, at nn. 31, 42) that our survey does not include his use of the term *ẓāhir*, which appears 6 times in *The Book of the Commandments* (see, e.g., above, nn. 236, 258; the term also appears in Negative

analyzed form only a small sub-set of the entire corpus of his halakhic biblical exegesis, his use of this technical term gives us a firm anchor for assessing its underlying principles. Within this sub-set, we have identified ten readings that he explicitly classifies as genuine construals of *peshateh di-qera*, and eleven that he excludes from this category.[273] To be sure, the latter group reflects the values of the Andalusian school, since he evidently made his determination based on the fact that those readings do not adhere (a) to the immediate literary context, (b) the rules of grammar/logic (in particular the requirement that a verse be interpreted as a whole rather than atomistically) or (c) philology.[274] This would seem to support the conventional wisdom—reflected by Ettinger—that Maimonides adhered to the values of what Ibn Ezra referred to as "the way of *peshat*." But the readings Maimonides endorses as genuine construals of *peshateh di-qera* yield a mixed picture. Of course, some of these readings adhere to the same values, whether he relies on a straightforward rabbinic reading of Scripture (as we have seen in five cases: Lev 11:43, 19:28, 21:12, Deut 14:1), or interprets the biblical text independently (as we saw in four instances: Exod 20:21, Lev 19:18, Num 4:20, Deut 23:24), implying that none of the extant

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Commandments #165 [another time], #181, #303 [Kafih ed., 258, 270, 323]). Inclusion of those examples would skew our results and given an inaccurate picture of Maimonides' conception of *peshateh di-qera* (as evident, e.g., in the otherwise insightful analysis of the second principle found in Feintuch, *Piqqudei Yesharim*, 15-22).

[273] Each of the nine passages from *The Book of the Commandments* analyzed in the preceding section includes a reading that is not a valid construal of *peshateh di-qera*, and another that is. (While he does not specify how he interpreted Num 4:20, we can assume that he simply read the verse literally.) Additionally, in Principle #2 he mentions two readings (of Exod 18:20, Deut 4:6) that "the *peshat* of Scripture does not indicate," while referring to Lev 19:18 as a "commandment… stated explicitly in the Torah," i.e., "the *peshat* of Scripture indicates it."

[274] Maimonides elsewhere makes similar exegetical judgments. See, e.g., his remarks about the rabbinic "reading" of Deut 8:8 (above, at n. 169); compare *Guide* III:43, Pines trans., 572-573. He likewise rejects *gimatria* as a genuine exegetical tool: see Mishnah Commentary on *Nazir* 1:3; see also *Book of the Commandments*, Principle #3 (Kafih ed., 16). Compare Abraham Ibn Ezra's negative view of *gimatria*; see Mondschein, "Attitude." The great poet Moses Ibn Ezra, on the other hand, had a more sanguine approach to this method: see Cohen, "Aesthetic Exegesis," 286.

rabbinic readings of the verse in question can be regarded as its Sinaitic "transmitted interpretation."[275]

However, Maimonides at times relies upon more tenuous rabbinic readings to determine what "the *peshat* of the verse" indicates—and these betray a very different exegetical outlook. Most striking, of course, is his figurative, acontextual interpretation of Lev 19:14; but a similar assessment also applies to his readings of Exod 20:20 and Num 17:5, in which he chooses rabbinic readings quite at odds with those of other *pashtanim*.[276] Nor is this a rare occurrence: as documented in modern scholarship, Maimonides elsewhere (i.e., where he does not use the label *peshateh di-qera*) often endorses readings that do not accord with the philological-contextual method.[277] While he usually specifies that these are "transmitted interpretations" (implying an awareness that they diverge from the straightforward sense), we still must wonder why he did not simply regard such readings as mere *derash* or inferences.

To answer this question, we must return to address a certain circularity in Maimonides' hermeneutical model as presented in Principle #2. Evidently cognizant of the talmudic evidence (which Nahmanides would cite) that could potentially undermine his claim regarding the rabbinic status of laws derived through the *middot*, Maimonides included an "escape hatch" in his theory by stipulating that it cannot be applied to laws that the Rabbis specified as being biblical—even though they seem to be derived in the Talmud using the *middot* or other midrashic methods. In such a case, he argues

[275] This reflects the dichotomy mentioned above (at n. 191) between Maimonides' direct analysis of the text (*naṣṣ*) of Scripture, as opposed to his reliance on the "transmitted interpretation." Usually his own analysis conforms to the spirit of the transmitted interpretation (on this or a different verse); the dramatic cases are the ones in which he opens a completely new avenue of interpretation. We have discussed some of these (that feature the term *peshat*), but the phenomenon as a whole merits further research; for now, see Twersky, *Code*, 145-150.

[276] See above, at nn. 243, 244, 258, 268.

[277] As noted above (at n. 266) with respect to his reading of Deut 1:17. On this general trend, see Levinger, *Techniques*, 39-40; Halivni, *Peshat & Derash*, 87-88; Davidson, *Maimonides*, 182-184; see also above, at n. 130. By definition—according to the second principle—every commandment enumerated in *The Book of the Commandments* is based on *peshateh di-qera* (with only "three or four exceptions"; see below, n. 278). The same applies to every law codified as biblical in *Mishneh Torah*. Further analysis of such cases is beyond the scope of the current study but is undertaken in the monograph announced in n. * above.

(above, at n. 185), we must assume that the law, in fact, is based on a transmitted interpretation, which the "derivation" merely confirms. In his responsum (above, at n. 6), Maimonides specifies that this occurs in a mere "three or four" instances; and, indeed, in three entries in *The Book of the Commandments* he acknowledges that he cannot find a specific scriptural source for the given law (which he regards as biblical because of the talmudic evidence), and instead cites only the derivation through one of the *middot*.[278]

While the responsum zeroes in on a rare occurrence, the matter is not presented as such in the second principle, which suggests that Maimonides had a more general phenomenon in mind. And indeed the logic of the "exception" illuminates a more pervasive pattern in *The Book of the Commandments*. Since rabbinic readings of Scripture rarely come with identifying labels, Maimonides actually had a good deal of leeway in applying his classification, and in Principle #2 he acknowledges that halakhic evidence played a decisive role in this respect. When deciding how to classify a given rabbinic legal interpretation of Scripture, he considered not only its philological-contextual plausibility, but also the halakhic status of the associated law. If the talmudic evidence indicates that the Rabbis regarded the law as biblical, i.e., as a "root" (*aṣl*) rather than a "branch" (*far'*), then he will regard that derivation as a transmitted interpretation of what the verse itself says (i.e., it is *dalālat al-naṣṣ*), even if it does not accord with its straightforward reading.[279] For example, since the Talmud treats giving bad advice as biblically prohibited, he deemed the acontextual reading of Lev 19:14 in *Sifre* to be its transmitted interpretation, and hence an accurate construal of *peshateh di-qera*. Alternatively, had he taken *peshateh di-qera* literally (not to place a

[278] See Levinger, *Techniques*, 41, who cites negative commandments #135, #194, #336. On the logical inconsistency these cases create in Maimonides' position, see Nahmanides, *Hassagot*, critique of the Principle #2, Chavel ed., 31-32. For possible explanations of Maimonides' position, see Neubauer, *Divrei Soferim*, 83-87; Henshke, "Basis," 124-129 (who also has a different list of the "three or four" exceptions to the rule).

[279] As Maimonides says: "If they themselves clarified and said that this is a Torah principle (*guf Torah*) or that this is a biblical law (*de-orayta*), then it is proper to enumerate it," i.e., as one of the 613 biblical commandments" (above, at n. 185). As Faur (*Studies*, 26n) observes, he does not require these exact words, but merely an indication from the talmudic discussion that the Rabbis viewed this as a biblical law. Maimonides was well aware of the tension this can create between the apparent sense (*ẓāhir*) of Scripture and what he was compelled to accept as a correct construal of "the *peshat* of Scripture": see above, nn. 244, 258.

stumbling block before a blind person) and regarded the reading in *Sifre* as an extrapolation by way of *qiyās*, he would have rendered that law rabbinic, a legal position he was unwilling to adopt.

More generally, it seems fair to say that Maimonides weighed competing values when making his hermeneutical determination regarding *peshateh di-qera*. While he had a preference for exegetical propriety in the spirit of the Andalusian philological school, he was also swayed by the need to achieve results consistent with the halakhic system, which is a natural consequence of his theory that "the texts of the Torah," i.e., *peshateh di-qera*, are the exclusive source of the "transmitted roots" (*al-uṣūl al-marwiyya*) at Sinai, i.e., the original core of biblical laws (with only "three or four" exceptions). This tension manifests itself in a number of ways.

- As we have seen in connection with Lev 19:14, where Maimonides felt compelled—based on the talmudic evidence—to classify a given law as biblical, he was willing, if necessary, to embrace a completely acontextual reading of *peshateh di-qera*.[280]
- In some cases, however, Maimonides was willing to re-classify as rabbinic laws deemed biblical by other talmudists because their derivation from Scripture is not based on a plausible construal of the biblical text itself (*peshateh di-qera*), e.g., the obligation to perform the acts of kindness "derived" in the Talmud from Exod 18:20.[281]

These two extreme options, however, are exceptional, since Maimonides usually finds more subtle ways to balance his exegetical sense and the Talmudic halakhic system.

- At times, he needed to make only a minor adjustment to the latter by simply finding a more cogent prooftext for a law assumed to be biblical than the one given in the Talmud. Indeed, he often did so by drawing upon a different rabbinic source, e.g., when he derived the prohibition to appoint judges on account of "gold and

[280] Conversely, if the talmudic discussion indicates that a given law is merely rabbinic, then Maimonides must hold that it is not a genuine construal of *peshateh di-qera*, as he argues in connection with Rabbi Judah's reading of Lev 21:12 (above, at n. 236).
[281] See also above, nn. 222, 225, 228, 271.

silver" from Deut 1:17—based on *Sifre*—rather than from the Talmud's figurative reading of Exod 20:20 (above, at n. 264).

- The last example points to what is perhaps the most pervasive pattern in Maimonidean halakhic exegesis, for although *Sifre*'s reading of Deut 1:17 is not quite as problematic as the talmudic reading of Exod 20:20, it still cannot be regarded as a true philological-contextual interpretation. It would thus appear that his preference was to remain within the universe of rabbinic halakhic readings of Scripture, and from among these—wherever feasible—to endorse the most plausible as the "transmitted interpretation." To borrow a locution used to describe Rashi's exegesis, Maimonides aimed to select from among the rabbinic sources the interpretation that *comes closest* to the philological-contextual sense.[282] Maimonides will thus often embrace readings that entail relatively minor infractions of the rules of the philological-contextual method (e.g., an unnecessary assumption that nonetheless does not take the verse completely out of context) and classify the associated laws as biblical.[283] Without this willingness to bend the strict rules of the philological-contextual method, it is hard to imagine any other way for him to have upheld the fundamental structure of talmudic *halakhah*.[284] In other words, his need to find prooftexts for the hundreds of laws assumed to be biblical by the Rabbis (and codified as such in *Mishneh Torah*) forced him to regard their derivations from Scripture as "transmitted interpretations," though he might otherwise have viewed them as inferences or *derash*. Moreover, as Ettinger has noted, Maimonides will at times do so even where the talmudic evidence is not compelling, but simply based on his own legal sense that a given law must be an *aṣl*, i.e., part of the essential core of the 613 original biblical laws given at Sinai.[285]

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[282] See above, n. 262.

[283] Perhaps Ettinger hinted at this in his oblique phraseology "or at least is a derivation that fits Scripture" (above, n. 218). Distinguishing these "minor infractions" from mere *derash* is admittedly sometimes difficult, and is a matter that requires further research. For now, see the preliminary classification in Greenberg, "Interpretation," 32-33.

[284] Compare Maimonides' programmatic statement above, n. 258.

[285] See Ettinger, "Legal Logic," 21-23. An excellent example is Positive Commandment #5 (Kafih ed., 60-61), the obligation of daily prayer, which Maimonides supports by citing the biblical phrase "to serve Him with all your

Coupled with the occasional truly tenuous rabbinic readings Maimonides endorses, this tendency would seem to undermine Ettinger's understanding of Principle #2 (above, at n. 218) as an indication of the great codifier's commitment to the philological-contextual sense of Scripture. Addressing this question, Ettinger writes:

> If so, why does Maimonides regard these laws as biblical laws, since they do not stem from the simple sense (*peshat*) of the scriptures? The answer is indeed found in the words of Maimonides, in the second principle of *The Book of the Commandments*, where Maimonides notes that if the Sages say explicitly that a given law that they deduced midrashically is a biblical law, then we must enumerate it as such despite the fact that the *derash* does not correspond to the *peshat* of Scripture (*peshuto shel miqra*).[286]

In other words, in such cases, Ettinger believes, Maimonides suspended his rule of *peshat* primacy. I would question this assessment, because Maimonides never says that this rule admits exceptions—and by Ettinger's own admission this would be a very widespread phenomenon in the great codifier's exegesis. Ettinger's difficulty, of course, stems from his interpretation of *peshat* as the *straightforward sense*, which Maimonides obviously violates—and even acknowledges doing so.

The analysis in this study provides an alternative based on the fact that in Maimonides' lexicon, *peshateh di-qera* denotes *the text of Scripture itself* in its original sense—which is determined by the interpretation transmitted from Sinai. Accordingly, what the great codifier means in the passage to which Ettinger refers is the following: where the derivation of a law would under normal circumstances appear to be merely an inference or *derash* (i.e., it does not stem from a philological-contextual reading), if Maimonides has a compelling reason to believe that the law is biblical, then he must regard its derivation as a "transmitted interpretation"—and hence a genuine

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heart" (Deut 11:13) with the interpretation of *Sifre*, "this is prayer." Nahmanides (*Hassagot*, Chavel ed., 154-156) regards this reading as an *asmakhta*, and cites talmudic evidence indicating that the obligation of prayer is, in fact, merely rabbinic.

[286] Ettinger, "Legal Logic," 21.

construal of *peshateh di-qera* (unless he can find a better prooftext for it). For Maimonides, then, the rule of *peshateh di-qera* is absolute, though he weighs halakhic as well as exegetical considerations to determine how to interpret it, making his system not nearly as anti-midrashic as Nahmanides had feared.[287]

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In light of Maimonides' strong pronouncement that "the texts of the Torah" are the exclusive source of all 613 biblical commandments, we can regard *The Book of the Commandments* as his "commentary" on the legal sections of the Pentateuch. Admittedly, this work does not follow the order of Scripture, but rather is arranged according to the logic of his legal system.[288] Moreover, the only exegetical sources that Maimonides cites are from rabbinic literature, with no mention of the great philological interpreters prominent in his Andalusian milieu, such as Saadia, Ibn Janah, Ibn Chiquitilla or Ibn Bal'am. The only post-talmudic authors he mentions specifically—for the sake of critique—are the earlier enumerators of the commandments, Simon Qayyara, author of the *Halakhot Gedolot*, and Hefeṣ ben Yaṣliaḥ, author of *Kitāb al-Shara'i'*.[289] Yet Maimonides' *Book of the Commandments* stands out among those works because of its distinctly biblical orientation and the prominent role he grants within it to the rule of *peshat* primacy

The *peshat* maxim itself is talmudic, and one therefore might be tempted to argue that its application by Maimonides simply reflects

[287] The need to regard tenuous rabbinic readings as genuine interpretations of *peshateh di-qera* rather than mere *derash* or inference—as some other *pashtanim* might do—is the exegetical price that Maimonides pays for his strong claim that every commandment of biblical authority has a basis in *peshateh di-qera*. But the great codifier is actually not completely alone in this respect even within the *peshat* tradition: see Japhet, "Tension." In the monograph announced at n. * above, we shed further light on this matter by assessing Maimonides' position on the relationship between *halakhah* and *peshat* among others articulated in the medieval exegetical tradition, e.g., by Saadia, Samuel ben Hofni, Ibn Janah, Rashbam, Ibn Ezra and Nahmanides.

[288] The precise nature of Maimonides' logic in arranging the various classes and details of *halakhah* is worthy of study in itself: see Soloveitchik, "Classification."

[289] See above, n. 176. The latter (of which we admittedly only have fragments: see Zucker, "Ḥefeṣ") represents an attempt to systematize the science of the enumeration of the 613 commandments, but does not introduce the concept of *peshuto shel miqra*.

another dimension of his rabbinic learning (especially since his usage of the term *peshat* resembles that of the Talmud [above, at n. 203]). Yet the evidence gathered in this study demonstrates that the great codifier, in fact, harnessed the powerful winds of the Geonic-Andalusian *peshat* school to chart out a substantially new system of halakhic exegesis that recasts the talmudic *peshat* maxim. Three points in particular distinguish his hermeneutical outlook in this respect.

(1) In the Talmud, the *peshat* maxim is so marginal that it can hardly be considered a genuine rule.[290] Maimonides, on the other hand, makes it the second of his cardinal principles of enumeration and deems it virtually inviolate.

(2) He uses this principle of *peshat* primacy to argue that *halakhot* derived through the thirteen *middot* are merely rabbinic rather than biblical—a radical position that is nowhere hinted at in the Talmud.[291]

(3) While Maimonides does not cite any of the great Geonic or Andalusian philologically-oriented exegetes by name,[292] his selective endorsement of some rabbinic halakhic readings as being consistent with *peshateh di-qera*—and his willingness to relegate others to the status of inference (i.e., applications of the *middot*) or *derash*—at times reflects the very same hermeneutical values of that *peshat* school.

The clarification of Maimonides' *peshat* model does more than simply demonstrate his connection to the celebrated *peshat* school of Jewish interpretation; it reveals how he shatters hermeneutical barriers and charts a bold, unique course within the revolutionary *peshat* movement. Other *pashtanim*, as a rule, avoided drawing halakhic conclusions from their novel exegetical methods. Maimonides, on the other hand, specifically formulates his principle of *peshat* primacy in order to shape a stratified system of *halakhah* anchored in "the texts of

[290] Kamin (*Categorization*, 57-59) makes a similar observation when comparing Rashi's use of the term *peshuto shel miqra* with its use in the Talmud. As Halivni (*Peshat & Derash*, 63) remarks: "The dictum was either not too well known or not honored by all scholars [in the Talmud]."

[291] This was noted by Nahmanides: see above, n. 195; see also Kamin, *Categorization*, 32, 39, 41.

[292] It was a characteristic trait—and perhaps a deliberate strategy—of Maimonides to omit reference to his sources: see Twersky, *Code*, 97-102. Hence, the very fact that he does not mention his exegetical predecessors in the Geonic-Andalusian tradition by name does not indicate that he did not draw upon their work in the *Book of the Commandments*—or in *Mishneh Torah* for that matter.

the Torah." Fusing his exegetical sensibilities, his firm control of the vast sea of talmudic learning and a theoretical framework he constructed by appropriating concepts from Muslim jurisprudence, Maimonides creates an integrated legal hermeneutics that makes him a bright star within the constellation of great Jewish Bible interpreters.

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[293] Since the most detailed analysis of individual Maimonidean passages in this study relate to his use of the terms *peshateh di-qera* and *ẓāhir al-naṣṣ* in his *Book of the Commandments*, I have made an effort to insure the accuracy of these texts. Therefore, in addition to the printed editions by Kafih and Bloch, the following manuscripts were consulted. For manuscripts on microfilm at the Jewish National Library, the Mss. R.R. Film No. is also provided.

MS	JNL Mss. R.R. Film No.	Date, provenance
Jewish Theological Seminary MS 6972		13th or 14th ct.; Yemenite
Jewish Theological Seminary MS 6548		14th ct.
Jewish Theological Seminary MS 6999		1423; Yemenite
Jewish Theological Seminary MS 6998		15th ct.; Yemenite
Berlin Staatsbibliothek Or. Qu. 684	F1799	1491
Jerusalem Rabbi Joseph Kafih 66	F32306	1492
Jerusalem Sassoon 1058	F9804	15th ct.; Yemenite
Israel Alei Teiman 14	F40427, F44766	15th-16th ct.
Paris – Ecole Rabbinique 134	F4085	18th-19th ct.
Paris – Alliance Israelite Universelle H 32 A	F3135	1864; Yemenite

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