Confronting the Infinite: The Importance and Parameters of Personal Intuition and Initiative in Serving God

Introduction: The Question of Mitsvot

Often the difference between a problem and a solution lies only in a nuance of expression. In the case of Judaism, that nuance consists of learning to stress both sides of what has previously been presented as opposites. When it comes to mitsvot, for example, many people have questioned why a religion would so stress obedience to the command of God when we ordinarily assume that personal input and creativity mark highly developed people. In philosophical terms, this is called the question of heteronomy vs. autonomy, being other-commanded as opposed to being self-motivated and determined.

Some have argued (most famously, Immanuel Kant) that Judaism is inferior as a religion, since it wants people to just follow what God commanded them. We could dispute that denigration of the religion either by arguing that Judaism is more autonomous than Kant realized, or that heteronomy has more value than he supposed. In fact, we intend to do both, to show that there are good reasons for a religion to stress the value of obedience to God despite our ordinary preference for self-motivation, and that Judaism leaves a great deal more room for personal input than many people realize.

We hope to prove that Judaism understands mitsvot to neither fully define a proper relationship with God nor to ever be dispensable in building that bond, for Jews and non-Jews. Currently, those who respect the world of mitsvot, halachah, and minhag tend to emphasize their indispensability to Jewish faith and practice, while those who demand a place for personal input and feelings in their Judaism—also correctly, within limits—often forget or reject the necessity of law, mitsvot, halachah, and minhag in guiding that process.

As we see it, one part of the Jewish community is so halachically sensitive that the observance of halachah comes to be seen as the sum total of one’s obligations to God, while another part of the community rejects the discipline of mitsvot as meaningful in arranging a God-aware life.

Contrasting the two might imply that they are equally valid and equally flawed, but that is not my intent. My question and challenge here is whether the idea that personal intuition and input is important to defining one’s relationship with God has anything to contribute to the other side, those who believe in a God who commanded the Torah and its authoritative interpretation at Sinai, as recorded in the Talmud and further interpreted by the great rabbis of each generation.

I do not write to question the giving of that Torah, the events at Sinai, or the accuracy of the tradition preserved since then. Rather, I write to suggest that in asserting the importance of mitsvot and halachah, we have allowed ourselves to lose sight of other essential truths as well.
My starting point is the challenge to Judaism that came from Kant’s stress on autonomy. For him, even the free-will decision to submit oneself to another was still a devaluing of one’s own autonomous will and decision-making ability. His emphasis on personal freedom led him to deride Judaism as a heteronomous and therefore inferior system.

Since the logic of his argument has proven compelling to generations of thinkers since, he presents perhaps an even stronger problem for traditional Judaism than that of those who take on the traditional system head on. Denying the Torah or any part of it, including the Oral Law, questions tradition’s whole view of history, but ultimately comes down to a question of fact. The same goes for those who understand the rules of the halachic system differently than tradition; they are entitled to their opinion, but it is again a question of the facts of the system being handed from one generation to the next.

Kant’s claim is harder because it seems to depend on a logic that stands independent of any axioms Judaism sets for itself, other than its confidence in the importance of commandments. We will not try to prove Kant wrong so much as to show a piece of the equation his view misses, leaving room for commandedness even while stressing personal independence. We will then be left to wonder whether there is perhaps more autonomy in Judaism, more room for free-willed choices in how to serve God, than has been stressed until now.

We are claiming, in other words, that we can meaningfully accept both views, the one that stresses halachah and the one that stresses personal choice, and that doing so will materially advance our understanding of Judaism’s message (for all humanity). That advance will suggest ways that even observant Jews need to recalibrate their observance, their worldview, and their educational systems to achieve the system’s goals.

To show that mitzvot are both necessary and insufficient to a life of service of God involves first offering a logical foundation for that claim and then proving it, all while staying within the system’s ideological, axiological, and theoretical framework. To make a claim that does not adhere to the system’s stated rules is to offer a new system, not our intention here at all. The more easily accomplished task is to outline why a system of law would choose to both legislate extensively and expect personalized engagement among adherents. After speaking of why the system would do so, we can also speak briefly of what such a system would look like.

The second part of the problem is to show that this view is actually what Judaism wanted, which is particularly daunting given the layers of law that characterize Jewish life. The appropriate tendency to consult that law on any question—and to train laypeople to consult with experts in the law before taking action—increases the difficulty of convincing them that they must also provide their own input. Since that discussion will more likely take root once we have some kind of logical claim for why we should expect it to be so, we turn first to analysis, and then to grounding it in traditional sources.
The first step is to remind ourselves that most Jewish thinkers accept the claim that *mitsvot* have reasons, **טעמים**, although the obligation of obedience does not depend on the reason.¹ If so, understanding those reasons—whether philosophical, kabbalistic, moral, or other—will help a person better accomplish each commandment’s goals. Knowing which of the *sefirot* my action affects, to take the least intuitive model of *mitsvot*, will help me direct my thoughts and intentions more towards that *sefirah*, increasing the act’s efficacy.

That only proves the banal claim, made by prophets and Jewish thinkers for thousands of years, that an educated and thoughtful performance of the commandments serves the religion’s goals better than ritualized and rote ones. Where this essay hopes to make their message more explicit is by showing that *mitsvot* are meant to guide observance in broader terms than just the specific act, they are meant to help each person define his or her religiosity and relationship with God.

Before I go on, let me also add the caveat that whenever I speak of adding to the system, I do not mean to add in a way that would violate the prohibitions of *תוסיף בל*, of adding on to God’s word. The Biblical prohibition engenders much discussion among the *ראשונים*, a topic I do not wish to engage here. Suffice it to say that their conclusions leave numerous ways in which one can undertake a religiously valuable practice without violating the prohibition. For one simple way, most such acts will qualify as examples of one of the broad dictates of the Torah, such as the commandment to walk in God’s ways. What we call personal creativity and additions to the system, then, could be restated as fully elucidating and understanding the Torah’s catch-all *mitsvot*.

To understand why the Torah might value a personally shaped religiosity, let us turn our attention for a moment to the other side of our equation, the seeming flaw in any other-imposed system. That view challenges Judaism’s stress on *mitsvot* themselves, but even more its celebration of submission as a mark of greatness. Most famously, Jewish tradition took pride in the Jews of the time of the giving of the Torah having promised, “we will do and we will comprehend,” placing obedience before understanding, chronologically and conceptually.² Reconciling the seemingly competing values of laudable submission and active personal decision-making has occupied the attention of Jewish philosophers from Kant’s time to ours.

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¹ See *bSanhedrin* 21b (regarding Shlomo’s decision to acquire horses and wives), Rambam, *Hilchot Temurah* 4:13 and *Me’ilah* 8:8 for some examples. Despite Rambam’s caution in expressing both sides of the issue, people repeatedly assume that he saw *mitzvot* as meaningless for those who already have come to understand its reason. They insist that Rambam thought such people needed to continue observing the Law at most so as not to damage national discipline. A similar claim is that he could not have believed that sacrifices would return in a future Temple, because the reason he gives for that *mitzvah* so obviously (in their minds) no longer applies. At Guide III:32, Rambam tells us that God ordained sacrifices because the people of the time could not go directly from a sacrificial culture to a non-sacrificial one. In times when sacrifice has long ago ceased to exist, these people say, there would be no reason to re-institute it. All such readings ignore Rambam’s unqualified assertions that reasons are not to be used that way, and his reference to Shlomo making exactly that error in his actions.

² See, for example, *bShabbat* 88a-b, R. Yonah Gerondi, *Sha’arei Teshuvah* II:10.
Three strategies characterized Jewish thinkers’ approach to the issue. Some agree with Kant, but argue that Judaism valued autonomy more than he realized, enough to avoid the onerous label of heteronomy. For them, the commandments become a struggle, an aspect of the system to be explained away; for one example, Mendelssohn’s attempt to explain Judaism rationally leaves the need for the commandments vague at best.\(^3\) Philosophically appealing, the approach founders because Judaism really does value heteronomy; going too far in denying that misreads the religion.

Taking the other extreme also engenders problems. First, Kant has convinced most intelligent people that heteronomy is religiously less valuable than autonomy. Worse for a Jewish discussion, well-known traditional sources speak appreciatively of autonomous human decision making. For the most famous and oft-quoted example, R. Joshua’s rejection of a Heavenly voice, arguing that the Torah is “not in Heaven,” in the Talmud’s presentation, elicited laughing acceptance from God.\(^4\)

With the extremes difficult to cogently defend, we will here expand on a middle option others have previously explored, showing how and why heteronomy and autonomy, submission and personal creativity, coexist as values in traditional Jewish thought. Rabbi Joseph B. Soloveitchik contributed greatly to this point of view in *Halachic Man* and *Halachic Mind*, elaborating on the freedom given the halachic thinker to create and mold the world of halachah.

In carving out room for autonomous creativity, mitigating somewhat Kant’s attack, R. Soloveitchik left two central points to explore further. First, he did not, in my incomplete readings of his writings, fully discuss the need for heteronomy, why God commanded mitzvot rather than just allowing humans to articulate a system of His worship. Readers of the Rav, as Rabbi Soloveitchik is known, understand that Jewish legal scholars, *halachists*, have the ability to create, but not why that ability was confined within the bounds of mitzvot.

Building on that approach, we here suggest that Judaism itself does not envision heteronomy as the central value these sources indicate, that traditional sources show that God’s original plan allowed for a much more minimal heteronomy than currently operates. We will offer sources and descriptions of crucial episodes in the history of humanity’s relationship with God that reveal a Creator who “preferred” human autonomy in generating appropriate modes of serving Him, mandating modes of conduct only when humanity failed to come up with reasonable options of its own.


\(^4\) *Baba Metsia* 59b. Few English writers have mentioned that medieval authorities debated whether we accept R. Yehoshua’s claim; in another famous case, the Talmud seems to advocate ruling according to the Academy of Hillel because a Heavenly voice said to, see Tosafot *ad. loc.*, *bBerachot* 52a, s.v. *ve-Rabbi Yehoshua*, *bEruvin* 6b, s.v. *Kan le-Ahar*, and elsewhere. The issue matters little here, because sufficient alternate sources to support the basic idea, see, for example, R. Walter Wurzburger’s discussion of Rabbi Joseph B. Soloveitchik’s emphasis on creativity, also obvious in R. Soloveitchik’s *Halachic Man*. Rabbi Soloveitchik recognizes and values creativity outside of the halachic realm, as in his typology of Adam I in *Lonely Man of Faith*, but he does not put it in as religious a context as we hope to do here.
God legislates, these sources suggest, where humanity was either unable or unwilling to understand the task ahead of it, did not shoulder its responsibility to build a life of service based on the information at hand. Heteronomous rules, we argue, were God’s way of helping human beings understand what is of true value when the definition of that word depends totally on a Creator so Other that human intuition either could not or did not suffice on its own.

That might lead some to assume that we might at some point return to making our own rules for serving God. If the original plan could have accepted people voluntarily following the basic principles of the Torah without the entire apparatus of law that came with it (as we suggest below), that might erroneously be seen as implying that human beings could go back to such a system today.

That claim loses sight of time’s arrow, which inevitably moves forward in the human experience of the world. In Judaism’s view at least, our job as humans is to further the world we were bequeathed, not to try to create it anew. Born into a world where God has legislated, we can note the lost autonomy such legislation demonstrates, but we have no ability to turn the clock back to a time when that legislation had not yet been promulgated. The Word, once given, lasts for the rest of eternity.

To return to our central thesis, we have been claiming that a proper reading of classical sources shows that tradition portrays the Divine plan as having included almost as much autonomy as Kant envisioned, raising two further questions. First, why should it have only been “almost” as much autonomy as Kant envisioned and, second, why would the response to human failure to act on that autonomy lead to reducing human autonomy, turning them, to some extent, into the lower level beings Kant denigrated?

The key component to understanding the answers to those questions is fully registering a fact that also shows a central flaw in Kant’s reasoning. Like many before him, including Aristotle, Kant’s points were and are reasonable within a fully human context—wherever human intuition, intellect, and understanding can fully grasp a situation, autonomous behavior carries greater moral value than heteronomous. What Kant missed is that Judaism plays in the garden of the Infinite, where full self-sufficiency is impossible, and where a failure to act properly stimulates God to help us by making the path to Him a step clearer.

The frequent popular use of the metaphor of infinity for God helps here, since the mathematical encounter with the transfinite offers a good parallel to our basic argument. For much of human history, mathematicians shied away from the infinite itself; Aristotle famously denied the possibility of an actual infinity existing in the world, and his view held sway for thousands of years. Only in the nineteenth century did mathematicians such as J.R. Dedekind, Karl Weierstrauss, and, most famously, Georg Cantor achieve some reasonable understanding of aspects of the infinite.

Mathematicians only succeeded at doing so when they separated the discipline of math from the “real world” around it. It was when the subject had been completely abstracted from the world that they could free themselves of their intuition, which fails when facing the transfinite. Having done so, they came to such
counterintuitive conclusions as noting that adding to a transfinite set—even another transfinite set—does not change that set’s size. Thus, even adding all the odd numbers to the even numbers to produce the integers does not change the size of the set, since all three are infinite.

Cantor also showed that there was at least one set larger than the integers, the real numbers. He did so by proving that it was impossible to pair the integers with the real numbers—which would have established a one-to-one correspondence between the two sets, the best evidence of equality when it comes to transfinite sets—since he could always construct a decimal number that would never appear on that list.\(^5\)

Cantor’s work, so counterintuitive that it was highly controversial when it first appeared, provides a productive parallel to our discussion of the human attempt to confront the Infinite.\(^6\) As in math, we will find that not only could ordinary human intuition never independently define correct ways to serve God, it has often failed to do so even when given a head start.

Jewish tradition sometimes assumes that humans could have figured out what God wanted from them at that point (what God “hoped” would happen), but we repeatedly find that they succeed only when God reveals Himself and basic aspects of His nature, upon which humans then build and develop. The need for mitsvot as a head start shows us where Jewish tradition parted company from Kant, who assumes the sufficiency of human intuition and judgment for defining right and wrong.

Our investigation intends to find the proper places for heteronomy and autonomy each as values of the system, whether for Jews or non-Jews. In any interaction with an Infinite Being (including many “ordinary” moral situations), our intuition must be trained in how to act sincerely yet authentically, just as the transcendental and transfinite numbers must be handled differently than ordinary human math and geometry. Similar to how the human mind boggles when confronted with a mathematical infinite until it develops workable rules, however strange, confronting the Infinite needs rules, ones that will likely not necessarily match untrained human intuition. Some of those were given by God to begin with, some came later, but all were intended to ready us for autonomous activity in a realm we are not naturally equipped to conquer on our own.

A felicitous concept from current science, that of the complex adaptive system (CAS), captures the picture of human beings we see the religion as portraying. As Kevin Dooley defines it,

A CAS behaves/evolves according to three key principles: order is emergent as opposed to predetermined, the system’s history is irreversible, and the system’s future is often

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\(^5\) Cantor’s proof goes as follows: Irrational decimals have an infinite number of digits; by constructing a decimal that differs from each corresponding integer on the list at that place on the decimal (making sure the fifth place of our decimal differs from the fifth place of the decimal currently opposite it, the millionth place of the decimal opposite the integer one million, and so on), we can insure that no matter how far down our list we would go, our decimal will differ from the \(n\)th one on the list at the \(n\)th spot.

\(^6\) David Foster Wallace, *Everything and More*, notes that Cantor saw his mathematical studies in just such religious terms.
unpredictable. The basic building blocks of the CAS are agents. Agents are semi-autonomous units that seek to maximize some measure of goodness, or fitness, by evolving over time. Agents scan their environment and develop schema representing interpretive and action rules... 

Substituting Torah and mitsvot for “environment” and “people” for agents leads to a fairly good description of the kind of world we understand the sources to have been setting up. The goal of Torah and mitsvot, we will be suggesting, is to establish an “environment” in which people can then learn how to operate.

By immersing themselves in their “environment,” people elicit feedback as to what are more and less productive ways to act, with that feedback then shaping their future actions in a never-ending search for goodness, drawing them ever closer to God. Our absolute dependence on that feedback in improving our fitness to serve God is the piece of the puzzle that Kant failed to see, but that Jews have known from at least the time of Mattan Torah, the revelation at Sinai.

All well and good, but a theory is only as valuable as its accuracy in portraying its subject as the subject intended to portray itself. For most of this essay I assume these ideas are fairly novel, and therefore spend the bulk of it proving those contentions, but two well-known comments of Ramban’s, the thirteenth century Spanish scholar, might lead some to assume that this idea is so obvious and well-known that the entire discussion is superfluous.

Commenting on the Torah’s commands, “You shall be holy” and “You shall do the right and the good,” Ramban clearly calls for action that goes beyond the letter of the law. Were we to assume that “going beyond” means creatively legislating for oneself, our claim would be right there in the text, and we could have written a much shorter piece, citing these texts and fleshing out their ramifications.

A closer look reveals that Ramban’s position is not so clear. In the first, he notes that the laws of the Torah do not suffice to insure a life of sanctity, that a person could observe all the laws of the Torah and yet remain trapped by such baser instincts as eating or sexual relations, engaging in these activities out of all proportion to propriety. To counterbalance that, he says, the Torah issues a general command to “be holy,” to make clear that one cannot be satisfied with adherence to the letter of the law.

The insufficiency of law to fully determine good conduct arises again in the second comment we referenced, where he reads the Torah as reminding us to observe the commandments by acting as God would want, adding

היוו את המגנה שלך, מלא אחריך שומעיך ממה וברכה, נמא לא חלךRachel יי טו, לא تقوم ושם תחות (שם פסוקי), ולא

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8 Vayikra 19:2 and Devarim 6:18, with Ramban’s comments there.
And this is a great matter, because it is impossible to mention in the Torah all of the ways in which a person conducts himself with his neighbors and friends, and all of his business dealings, and the way to set up society and states in the best way; instead, after mentioning many of them, such as “you shall not go talebearing,” “do not take vengeance or hold a grudge,” “do not stand idly over the blood of your friend,” “do not curse the deaf,” “stand before the aged,” and similar ones, it went back to say generally that one should act well and good in all matters, to the point that the person will, because of this principle, compromise and act supererogatorily, as the Talmud mentioned in the rules of bar metsra\(^9\) and even that which they said “his reputation is good and his speech is pleasant with all,” until he is called in all matters pure and good.

Ramban could be making our point, that the Torah gives enough examples to guide us in developing our understanding of what is good, but expects us to extrapolate from there in building a life lived in relation to God. If that were the obvious and commonly accepted reading, we could have either refrained from writing this piece at all, or could at least have included these comments in the chapter devoted to showing where this idea crops up in the writings of medieval authorities.

Complicating the picture, these comments lend themselves to another reading. One could reasonably understand Ramban to be assuming some kind of innate intuition as to what constitutes goodness or even sanctity, and seeing these verses as appealing to that sense. Ramban could then have been saying only that the Torah could not list all of what we all know to be right and good anyway; instead of wasting space trying, it threw in a couple of catchall phrases to insure that we not become too literal-minded.

While even that reading would agree with our rejection of strict construction or legal narrowness, it would not appreciate Ramban’s implicit message that the nature of sanctity and goodness are not intuitive,\(^10\) and that the Torah system as a whole defines those in enough detail for people to extrapolate the rest. That the system hopes that people will use its directives to cultivate sanctity and goodness in ways not explicitly delineated (and somewhat misleadingly termed הלכתי משוררת הדין, which can be taken to mean “beyond the requirements of the

\(^9\) A Talmudic principle that a person must give his neighbor the right to buy his property before selling it to others.

\(^{10}\) Note that Ramban’s examples are hardly intuitive. Human insight does not naturally reject gossip, does not see saving another’s life as an absolute obligation, and does not even fully accept the wrong in holding a grudge. We cannot know whether Ramban chose these examples to make that point or these were just the ones that came to mind as he wrote.
Law”) is not as clear in Ramban as it will be in the sources we will adduce in five independent but linked discussions.

Taken together, those discussions offer a broad group of traditional Jewish sources that view the human relationship with God as balancing heteronomy and autonomy, having them work together to train our intuition so that human beings, always guided by the eternally applicable heteronomous commandments, can make unpredictable positive contributions to God’s world and the religion God legislated.

We begin at the beginning, with Judaism’s picture of what God expected of humanity at the time of Creation. The common academic portrayal recognizes that the Talmud considered mandatory a small set of laws, the Noahides, for all humans from at least after the Flood. In the currently regnant view of those laws, they codify little other than what well-thinking human beings would have legislated on their own. Seen that way, these laws can be seen as an example of a Jewish view of natural law or, possibly, as setting up a minimal political society.

A Talmudic discussion of God’s anger with non-Jews, which assumes that God punished them for their noncompliance by removing their right to legislate for themselves, makes clear that this is not a complete picture. Implied in that formulation is there having been a point in history where humans could have largely made their own decisions about what constituted right conduct; after failing to do so satisfactorily, they lost the right.

Looking at the actual rules included in the Noahide laws, which the Talmud saw as the minimal standards of right conduct for non-Jews, both Talmudic and medieval sources list rules that are neither minimal nor intuitive. In addition, the literature records an expectation that non-Jews will take undefined positive action, meaning that people were expected to construct a positive side of their relationship with God on their own.

The first chapter thus argues that God originally wanted human intuition to play a bigger role than it ended up doing, but that even in the aftermath of humanity’s losing that right, the positive aspects of a non-Jewish person’s relationship with God continued to depend on individual input, now informed by a small group of commandments.

The second chapter moves away from people generally to focus on Avraham, credited with rediscovering monotheism and establishing a family that would testify to that truth throughout history. While Avraham is well known for that role, this chapter will show that the Torah also portrays him as having been the first human being to whom God taught the lesson of petitionary prayer, of a right to forcefully and directly request that God change His apparent plan for the world or some segment thereof.

This episode, too, balances autonomy and heteronomy, in that Avraham only prayed after God both informed him of his right to do so and taught him the best way to phrase a successful request. The philosophically difficult idea that human beings can change God’s mind with their words, as it were, itself makes some kind of heteronomy necessary, some way of knowing that it is God’s plan-- rather than human arrogance--
that the world should work this way. Once God granted that right, we will show, the methodology of prayer demands human creativity, since it involves the petitioner providing reasons why God ought to grant a different view of the future than the one currently planned.

After Avraham, we turn to the commandments given at Sinai, which fuel the impression that Judaism only cares about obedient response to command. First, we show that the emphasis on commandedness has been overplayed—even in the context of God and mitsvot-- by reanalyzing central traditional sources that have been cited as expressing its overriding importance. We then also discuss texts that portray the Patriarchs as observing halachah, since such sources also seem to see halachah as the sole and necessary arbiter of a well-lived life.

Moving to the commandments themselves, we will find that basic positive obligations of the system—we take only a few examples; we could have taken many more—define adherence remarkably flexibly. Once the Torah set basic parameters for such essential requirements as loving God, imitating Him, keeping Shabbat, studying Torah, and other such fundamental components of a Jewish life, exactly how to maximize these observances was almost completely undefined, a blank for each person to fill.

Women, the topic of the next chapter, provide an even better example of this kind of autonomy, since halachah exempted them only from those mitsvot that determined how to worship God most specifically. Contemporary women have often been vexed by these exemptions, experiencing them as evidence of the religion’s lack of interest in their spiritual development. In line with the argument of the rest of the essay, we note that those exemptions freed women only from specific practices meant to inculcate basic religious ideas, not the ideas themselves. Women were allowed to follow the same path as men in achieving those religious ideals, but were also left free to find other ways, ones that worked better for them. All Jews shared the underlying belief and experience obligations those mitsvot intended to achieve, they just did not necessarily share the method of arriving at those ends.

Moving from the Talmudic and Midrashic period to the medieval, the next section turns to two of the great medieval Jewish thinkers who, despite bearing notably different perspectives of the world and the religion, agree with the line of reasoning presented here. First, we will discuss Rambam’s vision of Torah study, which already assumes a great deal of humanly creative input, then move to his view of human perfection as expressed at the end of his Guide for the Perplexed. Although this section of the Guide has been analyzed repeatedly, reading it in the context of our discussion clarifies a point that has seemed murky in his writing.

We read Rambam as holding that commandments lay the groundwork for real worship, both by helping a person understand how God runs the world (an endeavor that might be pursued in other ways as well) and then by showing how to partner with God in fostering its smooth functioning and continual improvement, in ways God would endorse.
The fourteenth century R. Nissim of Gerona, author of a famous set of *Derashot* or Sermons, also views Jewish life as promoting the use of human intuition within general parameters set by God. His agreement with that idea is even more important to our discussion, since Ran is not the rationalistic philosopher Rambam is seen as having been. We are not so surprised that a rationalist, who sees this world as fully accessible to human intellect, would emphasize people’s achieving understanding of the world as a central religious goal. That Ran, who assumes that the world regularly partakes of the metaphysical, that the line between natural and supernatural is not easily drawn, would also value human creativity as an end of its own more fully confirms our view.

The value of adjusting our sights as to the role of *mitsvot* goes beyond solving questions of *ta’amei mitsvot* or dealing with the challenge of philosophical positions such as Kant’s. Seeing that *mitsvot* were not meant to be an end of their own should affect our personal and communal attitude towards many aspects of Judaism as well, some of which I hope to address in the conclusion.

First, seeing that the Talmud assigned significant religious responsibilities to non-Jews should affect Jews’ views of their own goals in their interactions with them, and define differently the nature of a successful friendship with a non-Jew. While the lengthy exile among often unfriendly nations understandably led Jews to emphasize sources that spoke of non-Jews’ incorrigibility, it may be time to consider their ideal role in the world, and begin to push for them to live up to it.

Second, adjusting our understanding of the balance between *mitsvot* and acts we come up with on our own may mean that we ought to consider whether our emphasis on technical law gives an erroneous impression to those not able to reach the highest levels of the religion. While each point of law is valuable and important, we should take a moment to wonder what picture of the system we currently give to those who are not able to get the whole picture on their own. If our current method of presentation emphasizes some aspects of the system over others, we should be aware of the costs of that flaw. (Of course, many assign too little importance to that law as well, but there are few within the Orthodox world who make a principled claim to that position).

Our renewed picture of the system’s priorities also suggests that we might need to adjust our educational ones. What we value and emphasize in our talks and in our writings tells a lot more about our preferences for the community’s commitments than any occasional comments we might make. Renewing our vision of our values, I hope, will also allow us to alter our public and private expressions of what it means to walk humbly before God. But more on that in the conclusion; for now, study is the first step to true freedom.
Chapter 1: Autonomy Lost But Available: The Case of the Noahides

We might tend or wish to dismiss Talmudic denigrations of non-Jews as homiletics, hyperbole, or a defensive lashing out at oppressors, but we must pay close attention to at least those statements that are given halachic force, legal weight. In particular, the Talmud’s reading of a verse in Habakuk reveals Talmudic assumptions about when, where, and why non-Jews were commanded to observe what we call the Noahide code of law.

The verse in Habakkuk reads: “He stood and measured the earth; he looked and shook the nations; then the eternal mountains were scattered, the everlasting hills sank low; his ways were as of old.”

Medieval commentators seeking the plain sense of the text took the statement to refer to the punishments administered to the generation of the Flood or of the Tower of Babel. The Talmud, however, cites that same verse as the source for God’s having decided, at some unidentified juncture, to punish their failure to observe the Noahide laws.

The Talmud reads the verse as having several ramifications, situations where non-Jews lost the protection of law in certain areas of their lives, some with actual financial consequences. For one example, the Talmud assumed that a Jew would not have to compensate an idolatrous non-Jew whose ox had been gored by the Jew’s. We mention this part of the discussion because it shows that the Talmud was engaged in authoritative teaching, not homiletical point-making. The last reading of this verse in Habakuk, however, is that one that interests us for our purposes. There, the Talmud asserts that God “loosed the bonds” of the Noahide commandments.

Unable to accept that God would reward non-Jews’ refusal/failure to observe their commandments by making those acts permissible, the Talmud argues instead that the verse’s reference to “loosening the bonds” meant that non-Jews would no longer be rewarded for fulfilling these commandments. That reading cannot be accepted, either, since it contradicts the Talmud’s accepted view that non-Jews who observe God’s laws receive great reward. The Talmud instead concludes that the verse informs us that non-Jews only receive reward for observing their commandments as if they had performed them voluntarily, but do not garner the greater reward set aside for those who act in response to an obligation.

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12 bBaba Kamma 38a and Avodah Zara 2b.
13 The Talmud cannot accept that God would give in to their disobedience, would, in effect, reward evildoers for their rebellion.
14 The assumption that God gives a greater reward to a person commanded to perform a certain act than someone who does that same act without having been commanded seems both counterintuitive and contradictory to our general thesis. We will discuss it below, in our analysis of Judaism’s assumptions about the value of commandedness.
The give and take of the discussion can be distracting, but in sum the Talmud reads the verse in Habbakuk as saying that non-Jews’ failure to observe the Noahide laws lost them the right to be seen as responding to God’s command. They can therefore only get the lower reward given those who voluntarily undertake a positive practice.\footnote{Even then, the Talmud and later authorities assume that a non-Jew who specifically and formally recognizes that God commanded those observances returns to the state of being rewarded as if commanded, presumably also the case for R. Meir’s claim that the non-Jew who is involved with Torah receives reward like a High Priest.}

For our purposes, the Talmud strikingly fails to give us the timing of this reconstructed set of events. When were the non-Jews commanded in these laws, and then when did God take away the higher level of reward as a possibility? The answer to those questions should also affect our understanding of the punishment the Talmud saw as fitting for this crime. Ordinarily, after all, failure to observe one or many commandment(s) results in some kind of disciplinary measures; here, there only seems to be a theoretical loss of a certain level of reward (which would not have concerned the non-Jews, since they had already demonstrated their indifference to them).

In answering these questions, we will also come back to the issue of autonomy and heteronomy around which our whole discussion revolves. The first piece of evidence to track is where and how the Noahides became obligated in these laws; after all, unless they were obligated, it would seem odd for God to be angered by their lack of adherence. Yet the Talmud presents a mixed message about these laws, sometimes referring to them as having been commanded,\footnote{Tosefta Sotah 6:9, Avodah Zarah 7:4, and bSanhedrin 74b refers only to their having been commanded, as does.} but other times speaking of them as laws the non-Jews accepted\footnote{See, for example, bAvodah Zarah 2b and 64b, where the Sages require a ger toshav, a resident alien, to formally accept the seven commandments that the Noahides accepted. This example is particularly interesting, since it is in the context of requiring the non-Jew to repeat an earlier commitment, yet refers to that original commitment as having been self-initiated.},\footnote{bBaba Kamma 38a and bSanhedrin 56a-b.} a locution that indicates voluntary adherence. Someone who intuits a rule of conduct and then fails to live up to his own ideal would not ordinarily expect to be punished by an hitherto unengaged force.

Perhaps most interestingly, the Talmud interchanges the terms on occasion,\footnote{bBaba Kamma 38a and bSanhedrin 56a-b.} as if there were no significant difference between whether the non-Jews had figured these commandments out themselves or had heard them from God as obligatory. Perhaps the text signals that these laws were in fact originally intuited, but once having been arrived at, became obligatory as if they had been commanded.

Several sources reinforce that suggestion. First, the derivation the Talmud provides for the Noahide obligations is so obscure as to make it difficult to accept as the true source.\footnote{bSanhedrin 56b.} The Talmud parses the
verse, “And the Lord God commanded the man saying, "From all the trees of the Garden you may freely eat,"20 so that each word indicates a different one of the laws: idolatry, blasphemy, establishing a court system, prohibiting murder, incest, theft, and the eating of limbs from live animals.

The interpretation relies on well-established Talmudic hermeneutics, in which texts elsewhere in Scripture can show that a particular word has more meanings than just its simple one. For just one example, the Talmud argues that the word “commanded” in the verse can indicate the requirement to establish a court system, because another verse in Genesis uses the same verb when referring to Avraham’s commanding his children and descendants to act justly. Since courts are also venues of justice, the term “commanded” can thus be seen to sometimes indicate issues of justice.

The technique is commonplace in the Talmud but startling here, since it seems to assume that Adam would have understood God’s words according to the meanings they have elsewhere in Scripture (which had not yet been written). Rambam may have shared some of this discomfort with the Talmud’s prooftext, as he opens his discussion of the Noahide laws with the following convoluted statement:

Adam was commanded about six matters, idolatry, blasphemy, murder, incestuous relationships, stealing, and courts; even though all of these are a tradition in our hands from Moshe our teacher and the intellect inclines towards them, from the general tenor of the words of the Torah it appears that he was commanded about these.21

Rambam does not explain why he does not just state the matter simply, that God commanded Adam about six rules, but the obscurity of the Talmudic derivation seems a likely candidate. He recognizes the authoritative tradition that these were commanded, sees them as rational, and grudgingly concedes that the “general tenor” of the Torah’s words—perhaps a reference to their carrying that meaning elsewhere—could mean that Adam was expected to observe these laws. Note that he also does not cite the verse, as if he could not bring himself to offer it as the source of these ideas.

Rambam’s assertion of the rationality of the Noahide laws would also allow for God not having formally stated those obligations. The view that non-Jews are obligated to fulfill all intuitive laws, expressed by at least two earlier scholars, also supports the suggestion that the Code was not originally stated explicitly, but non-Jews were expected to set it up on their own. R. Nissim of Kairouan, a 10th century North African scholar, takes for granted that non-Jews must honor their parents, explaining that they must fulfill any intuitive

20 Genesis 2:16.

21 Hilchot Melachim 9:1. Rambam leaves out the prohibition against eating parts of animals that have been removed while the animal was still alive because he accepts another Talmudic tradition that eating meat was prohibited until after the Flood.
responsibilities. R. Nissim further assumed that a Talmudic reference to non-Jews’ having accepted thirty commandments upon themselves meant commandments they intuited before the giving of the Torah at Sinai.

Rashbam, a late eleventh and early twelfth century Biblical and Talmudic commentator, incorporated a similar assumption into his reading of a verse that speaks of Avraham as having observed God’s Torah and commandments. Since neither had as of yet been given to human beings, commentators struggled to explain what the Bible meant. Rashbam assumes the text means that Avraham observed all intuitive commandments, which he thought were fully in force even before the giving of the Torah. Some of his examples are in the list of Noahide laws, but others are not, such as welcoming guests.

The evidence shows that the Talmud’s presentation makes most sense if we assume that, at least until the time of Noah, people were both privileged and required to define their obligations to God on their own. We cannot say the same of the Noahide laws as the Talmud defines them, since, as we show below, those were decidedly not intuitive. Rather, we are arguing that the set of laws that eventually became the Noahide laws were not hard-wired into God’s plan for Creation. Had human beings shouldered their responsibility correctly, a similar but not identical set of laws might have evolved instead, equally satisfying to God.

We can now better understand the Talmud’s reading of the verse in Habakuk, although we will need one more idea to round out the picture. When humans were created and God told Adam that he could eat of the trees of the Garden, implicit in that statement was Adam’s obligation to articulate a set of moral laws to govern his behavior. The words of that command could, in one reading, indicate what the Talmud would later find in it, but they could also have encompassed other visions of law.

When humanity failed to observe any reasonable set of moral standards—and here the commentators’ reading of the verse in Habakuk as referring to the generation of the Flood or the Tower of Babel resonates well; those were the generations that absolutely proved that humanity had lost track of its obligation to live a life in which morality and striving to get closer to the Creator played a meaningful role—that failure incurred punishment. Note that the punishment was not for the failure in their actual conduct, since God had not commanded any specific acts or prohibitions, but for the failure to articulate and adhere to a reasonable standard of behavior.

This reconstruction of the situation explains the punishment as well. The great surprise of our analysis is that a non-Jew who behaved morally prior to the occurrences referenced in the verse in Habakuk would have been rewarded as if he had observed a commanded action. Despite there having been no specific

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22 Introduction to the Talmud, printed in the Rom version of the Talmud.

23 See his introduction to the Talmud, printed at the beginning of bBerachot. The number 30 seems to relate to bHullin 92a, which speaks of 30 commandments that Noahides accepted upon themselves. The Talmud does not list the 30, but others have tried to reconstruct it, notably Samuel b. Hofni Gaon of the tenth century and R. Menahem Azariah da Fano of the sixteenth; that issue, and their suggested lists, is beyond our current scope.

24 Rashbam, Genesis, 26;5, s.v. Hukkotai.
communication instituting honor of one’s parent, the non-Jew who did so (at least according to R. Nissim of Kairouan) would have been rewarded by God with all the benefits accorded those who respond properly to a Divine dictate.

Non-Jews’ failure to live up to that task lost them that special privilege. Henceforth, as codified by Rambam and assumed by Ramban (a thirteenth century Catalanian Talmudist and Biblical commentator), non-Jews can only get full reward for their observances if they commit to them as an expression of their submission to the will of God, articulated in the Torah and Talmud. Rambam famously writes that any non-Jew who accepts the obligation to keep the Noahide laws is considered of the “righteous of the nations” and has a share in the World to Come only if he accepts those obligations because God commanded them in the Torah.

Similarly, Ramban explicitly differentiates an ordinary moral non-Jew from a ger toshav, a resident alien. Though their actions may be exactly the same, the former is rewarded only as a volunteer while the latter, who has formally agreed to observe the Noahide laws as Jews see them, is rewarded as one commanded in a certain observance. The difference between them, of course, is that the ger toshav adopts these practices as a response to God’s command, the issue that led God to take away that higher level of reward in the first place.

We see the Talmud’s use of the verse in Habakuk, therefore, as indicating a significant shift in God’s relationship to non-Jews, somewhere around the time of Noah or the Tower of Babel. Originally, God wanted humanity to articulate or create its own morality, truly an expression of the Divine Image residing in humans; the only limit was that that morality fit with the one explicit command, to obey God’s order not to eat from the Tree of Knowledge of Good and Evil.

When humans failed at that task, God took away the right to self-legislate, requiring that they instead accept and adhere to pre-determined laws. The descent into heteronomy started with the failure to properly handle the responsibility of autonomy. Even so, these commandments were not a renunciation of the possibility of creative human input into the world. Rather, these commandments would train humans as to how and when they could contribute in their own ways, as we will now see.

*The Worldview of the Noahide Laws*

The Talmud aids our investigation of the heteronomy of the Noahide laws not only by showing that God originally favored a more autonomous world, but also by laying out its view of the laws that God commanded in response. Rather than being some kind of minimal, rational, or intuitive set of basic laws, we

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25 Novellae to bMakkot 9a.

26 It is not fully clear when that legislation took place. Rambam, *Laws of Kings* 9:1 seems to see the legislation as a continuum from Adam (when, as we suggested, the Laws were left to intuition) to Moshe (when the Jewish people were commanded 613 detailed rules), confirming the idea of a gradual and repeated descent into greater heteronomy. Note, too, that God’s “blessing” when Noah left the Ark makes several of the Noahide laws more explicit, see Genesis 9:1-7, as if God was trying to offer human beings another chance to learn proper conduct even without a detailed set of heteronymous laws.
will see that Talmudic assumptions about these laws only make sense if they intended to teach fundamental principles of the world. Proper understanding of the laws teaches a worldview that can form the basis for extrapolating to situations other than those specified in the laws.27

First, though, we need to review the laws themselves. Many have followed Hugo Grotius, one of the earliest non-Jewish writers to speak of Noahide law, in thinking of these laws as a Jewish version of ius gentium, laws the Romans promulgated to govern their relationships with non-Romans.28 This perspective is certainly correct in one sense, in that a Jewish state run according to halachah would require adherence to those laws by any non-Jews who wished to reside among them.29

However, the Talmud extended these obligations to all non-Jews regardless of where they lived. In addition, Grotius assumed that the Noahide laws could be intuited without any external or divine guidance,30 a position also apparently accepted by some Talmudic sources,31 and more explicitly by such writers as Moshe

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27 Since Noahide laws apply to all people, some have read Rambam’s language in Laws of Kings 8:10, as showing that he required Jews to coerce observance of these laws. He rules out coercing non-Jews to convert to Judaism, but does say: “...and so, too, Moshe our Master commanded...to coerce all who come into the world to accept the commandments that were commanded to the sons of Noah, and whoever would not accept them would be killed...” As suggestive as the quote is, significant countervailing evidence—such as Rambam’ neglecting to mention an obligation for Jews to wage war to produce such observance, see Laws of Kings 5:1—makes us realize that 8:10 should instead be read as referring to non-Jews who come under Jewish control. As long as they will live with Jews, they must adhere to the Noahide laws.

28 Alasdair MacIntyre, Whose Justice? Which Rationality? (U. of Notre Dame: Notre Dame, 1988), p. 149, first cites Wolfgang Kunkel, An Introduction to Roman Legal and Constitutional History, trans. JM Kelly (Oxford, 1973), p. 77 to point out that the norms of ius gentium were in fact no more than an extension of Roman law, a description that will be useful in our consideration of Noahide law. On p. 199, MacIntyre notes that it was primarily about relationships between peoples, unlike Noahide law.


30 The term “rational” confuses the issue, since it can mean intuitive, that any right-thinking person would see its importance, or “explicable,” that it could be explained logically once legislated. Arguments on either side of a political issue are often rational in the second sense rather than the first. For the sake of clarity, we here term “intuitive” those laws that could and would have been produced by human logic alone, and “explicable” those laws that make sense once legislated, but could not have been independently inferred. Jewish tradition thought the Noahide laws explicable, but most scholars have assumed they were intuitive as well.

Convincing readers that Noahide law is not intuitive would raise the further question of how the Talmud expected them to discover these obligations, to which we return to at the close of this chapter. Here we can already note that Rambam, Laws of Kings 10:1 assumes that non-Jews are culpable for ignorance of the laws that apply to them. J. David Bleich, Contemporary Halachic Problems II (New York: KTAV, 1983) and Michael Broyde, “The Obligation of Jews to Seek Observance of Noahide Laws by Gentiles: A Theoretical Review” Tikkan Olam: Social Responsibility in Jewish Thought and Law eds. David Shatz, Chaim I. Waxman, and Nathan J. Diament (Northvale, NJ: Jason Aronson, 1997), 103-144 have argued that Jews are not required to teach these laws to non-Jews, although they do cite sources that obligate Jews to answer non-Jews with any relevant information for which they are asked.

31 Natural law proponents cite two Talmudic sources in particular: 1) bEruvin 100b states that even without revelation, human beings would have learned modesty from the cat, thrift from the ant, incest from the dove, and sexual etiquette from the rooster. Even were we to grant the doubtful claim that this meant people would have inferred a religious obligation to be modest, etc., Noahide laws expect more than that.
Mendelssohn, Martin Buber, and Hermann Cohen, and contemporary thinkers such as David Novak and Nahum Rakover.

Most prominent among those who took a different view, Marvin Fox denied that Judaism had a concept of natural law, in general and specifically regarding Noahide law. He took the position that the Talmudic sources that seemed to label certain laws intuitive really only meant that they were explicable, could be explained to outsiders after God had commanded them. A central support for Fox’s view was Rambam’s ruling that non-Jews can only earn a share in the World to Come if their observance of these laws is predicated on it having been commanded by God. Someone who independently derives and adheres to Noahide law, Rambam says, may qualify as wise, but not as one of the Righteous of the Nations, the term for those non-Jews who can expect a share in the World to Come. Insisting on an awareness of divine command, Fox cogently argued, must mean that the system placed no value on their having been intuitive.

A Third Way: Noahide Law That Assumes Natural Morality

Without reviewing the entire literature on this question, we can note that the valid points on each side suggest that the middle position adopted by Rabbi Aharon Lichtenstein best captures Judaism’s view. Explicitly refusing to express an opinion on the issue of natural law, Rabbi Lichtenstein commented that there

The second source, *BYoma* 67b, defines *mishpatim*, one of the words the Bible uses for laws, as rules worthy of being promulgated even had the Torah not done so. The simplest interpretation of that statement is that these laws are so intuitive as to be part of every society’s legal system, especially as *mishpatim* are being contrasted to *hukim*, laws that outsiders attack as senseless. Five of the examples given are also in the Noahide list, suggesting they are intuitive. The omission of the other two, the obligation to set up a legal system and the prohibition against eating a limb cut off of a living animal, especially given the details we will see below, make clear that they were not intuitive.

32 For discussion of each one’s views, see the relevant chapters in David Novak, *The Image of the Non-Jew in Judaism: An Historical and Constructive Study of the Noahide Laws* (New York: Edwin Mellen, 1983). Novak, *Natural Law in Judaism* (Cambridge: Cambridge U. Press, 1998), 147-49, suggests that natural law should be redefined as laws that humans must define when they relate to those outside their communities; it is a law of the limits on behavior that must be accepted by those who would interact across community lines. That definition avoids the problem of identifying universally intuitive ideas that we detail in the text, but loses the fundamental attraction of the idea of natural law, its being both universally binding and recognizable as such. Once natural law becomes an extension of a particular community, it necessarily incorporates particularistic views of that community, which may or may not be universally appreciated.


35 *Laws of Kings* 8;11.

36 There is a long-running debate about the text of a crucial word in that comment, leaving unclear whether Rambam referred to such people as wise or specifically denied that they were wise, see Jacob I. Dienstag, “Natural Law in Maimonidean Thought and Scholarship” *Jewish Law Annual* 6 (1987), 64-77.

37 Not to be confused with Aaron Lichtenstein, author of *Seven Laws of Noah* (New York: RJJ, 1986), whom we will also cite later in this essay.
was certainly a Jewish assumption of a natural *morality*, intuitive and universally binding on all human beings.\(^{38}\) Such a morality, however, is not coterminous with Noahide law, as Norman Lamm and Aaron Kirschenbaum also pointed out.\(^{39}\)

The specific rules of the seven basic laws and the expectations that go beyond those seven offer clinching evidence that Noahide law is a system of its own, not just an expression of intuitive human values. By analyzing salient details of those laws, we will be able to infer the worldview the system meant to inculcate, and the balance between heteronomy and autonomy contained therein.

To anticipate, we will find that the Noahide laws obligated non-Jews to make their dwelling places a society (rather than groups of individuals who use law only to avoid or manage conflict); to submit oneself, in heart and mind, to the One God; to strictly respect life and property rights; to express sexuality away from the family of origin and only in relationships that could theoretically produce offspring; and to recognize that animals only become food after they have died.

*Dinin—The Social System*

Medieval Jewish interpretations of the scope of the commandment to establish courts suggest that they were intended to mold groups of people into a working and cohesive society. Instead of limiting themselves to regulating strife, these laws are supposed to articulate a shared vision of social structure and ideals.\(^{40}\)

Rambam, for example, claims that Simeon and Levi’s killing the people of Shechem had its roots in this law.\(^{41}\) He viewed the residents of Shechem as capitally obligated to judge and punish their prince for kidnapping, a kind of theft.\(^{42}\) More than just solving the theological problem of how two progenitors of Tribes of

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\(^{39}\) A. Kirschenbaum and N. Lamm, “Freedom and Constraint in the Jewish Judicial Process” *Cardozo Law Review* 1 (Spring, 1979), p. 120ff. See also Bleich, “Judaism and Natural Law”, above note 29, pp. 13-25. Kirschenbaum elsewhere showed that Scripture and Talmudic sources conceived of the Noahide laws as a covenant between God and non-Jews, an odd term if we think of these obligations as intuitive.


\(^{41}\) Genesis 34.

\(^{42}\) At the same time, Rambam does not require that Noahides sacrifice their lives to fulfill this precept, see *Laws of Kings* 10;2 and J. David Bleich, above note 29, p. 13, n. 22. Putting the two texts together seems to mean that he assumed that Shechem did not have the power to impose his will on the people; the question of when Rambam would obligate protesting a corrupt system and when he would concede that circumstances exempt them from that responsibility remains open.
Israel, deeply admired by tradition, could commit mass murder, Rambam expresses a forceful view of individual accountability for the legal health of society. *Dinin* meant that each member of non-Jewish society bore a duty to protest a wrong in their midst.

His assumption of extensive observer-responsibility is certainly not intuitive, as shown by current Western morality, which sees such bystander involvement as an especially meritorious act, as well as by Ramban’s having rejected it. Ramban instead thinks that *dinim* mandates establishing a system of civil law. He did not set exact parameters for what this system had to cover, but gave numerous examples, including “theft, overcharging, withholding wages, bailments, rape and seduction, torts, lending, business, and so on.” In this reading, the non-Jewish obligation was primarily to set up a functioning legal system, including courts. Incidentally, he saw all this as a positive requirement rather than a capital crime.

Ramban does not mention how he expects non-Jews to arrive at their laws, which would seem to leave the process up to them. Taken at face value, he is assuming an obligation on the members of the society to band together at least enough to agree on a set of rules that would govern their conduct, a process that necessarily involves making decisions about that society’s character and ideals.

R. Moshe Isserles, a sixteenth-century codifier of Jewish law, reads Ramban as having gone a step further, to require non-Jewish courts to adopt *Jewish law* in these areas. Jewish civil law is not only not intuitive, it conveys very pointed moral and spiritual lessons about how to handle one’s business dealings. For Isserles, Noahides need to adopt that value system in its civil law.

Whichever of the interpretations we adopt, *dinin* pushes for a society with a sense of its formative role in the life of its citizens. Isserles seems to have expected all human society to teach the Jewish mode of handling civil matters. Even if Ramban did not accept that, he at least required non-Jews to make decisions about how they would handle ordinary social interactions, an activity that inherently involves deciding what kind of society to inhabit. Rambam does not require legislation, but the responsibility each citizen bears for policing the others’ actions would also promote a view of society as a cooperative, cohesive venture.

### God—Idolatry and Blasphemy

If the first lesson of Noahide law was that people need to build a society instead of just living in close proximity to others, the commandments to forego idolatry and refrain from blasphemy teach central aspects of monotheistic belief. All humans are prohibited from accepting any power other than God as ruler of their universe and must treat God with a minimum level of respect. Expressed that way, it is difficult to imagine that

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43 Commentary on Genesis 34:13.

44 Responsa Rema 10. *Responsa Hatam Sofer* 6:14 and *Responsa Tsits Eliezer* 16:55 analyze Rema’s view at length; R. Sofer at least seems to accept it. R. Naftali Zevi Yehudah Berlin (Netsiv), *Huamek She’alah*, 3:2 disagreed, citing Psalms 147:20—“He has not done so to any nation, nor has he informed them of laws [mishpatim]”—as proof that Jewish civil law was given only to Jews.
even Jews saw these commandments as intuitive, since paganism was alive and well in the time of the Talmud—Christianity did not conquer the Roman world until the fourth century, and paganism survived in Persia well beyond then.

Too, traditional Jewish law counted at least some versions of major modern religions as idol-worshipping. When the Talmud refers to idol worship as a prohibition that all understood, then, it can only have meant that non-Jews would understand monotheists’ prohibiting idolatry, not that they would instantly accept that point of view.

When the system calls for the death penalty for anyone who bows down, offers incense, sacrifices, or libates to an idol not ordinarily worshiped that way, it adds another element to this law, the centrality of the Jewish Temple. Other acts of admiration and love—kissing, hugging, washing, polishing—do not incur the death penalty. The Talmud explains that the included forms of worship make the list because they were avodot penim, acts of worship that occurred within the sanctuary of the Temple itself.

The rule means that non-Jews who wanted to fully understand their obligation to avoid idolatry would need to learn about Judaism and its Temple. To highlight the issue, we might imagine two non-Jews who wish to actively express their affection for some idol without being put to death (they cannot simply say it, since verbal acceptance of an idol’s power itself incurs the death penalty). This idol’s normal worship involves throwing money at its feet, which neither of our people have. One hugs, kisses, and polishes the idol to a fine sheen; the other lights some incense in front of it. The Talmud would see the second one as capacitively liable, but not the first.

A non-Jew could avoid all of this by simply refraining from expressing any positive feelings for powers other than the single Creator of the World, but that, too, means he has accepted Jewish monotheism.

The blasphemy laws also inculcate a particular view of what constitutes unacceptable rebellion against God. Simply saying, for example, “I hate God, I hope He x,” while not lauded, would not qualify as

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45 Rambam thought he could logically prove the existence of a single God, yet recognized the difficulty in intuiting that fact on one’s own. In his view, Laws of Idol Worship 1;3, Avraham spent thirty-seven years struggling with the issue before deciding that there was only one God.

46 An extensive literature discusses Jewish definitions of idolatry, too vast to analyze here. Multiplicity of gods certainly suggests idolatry, but beyond that the situation becomes murky. For some examples, Catholic views of the Trinity were widely considered idolatrous, while many Protestant versions were not. Hinduism worships many gods, but some see it as similar to the kabbalistic doctrine of the sefirot, so that what Hindus term “gods” should be seen as avenues to, or expressions of, the one central god. Bowing down to a statue of the Buddha seems idolatrous, but again some adherents claim they are only enunciating respect for the life he lived and the ideals he taught. In each case, the Jewish view is at the very least not intuitive to millions of people, even after thousands of years of monotheistic rhetoric, supporting our claim that they were meant to be educative, not a ratification of well-accepted truths.

47 bSanhedrin 60b.

48 Laws of Kings, 9;2, based on bSanhedrin 56b, which ties a Noahide’s liability into a Jew’s being killed by a court for his worship.
capital blasphemy. Instead, the Talmud limits the death penalty to where the blasphemer uses a name of God as part of the curse. In the Talmudic idiom, only saying “Yose should hit (or kill) Yose,” with Yose being a euphemism for names of God, is a capital crime. We could interpret that rule in several ways, but it at least sends the message that only a blasphemy that invokes God’s Name impels a court’s intervention. Cursing God is meaningless unless the power invoked in that curse is the only power that could conceivably affect that Being.

The laws of blasphemy also introduce Noahides to the esoteric matter of the Names of God. The Talmud assumes that the special name of God (YHWH; Rambam thinks Adonay\footnote{bSanhedrin 56a and Rambam, Laws of Idol Worship, 2;7.} also qualifies) and any kinui, loosely a nickname, would be a problem. Rambam thinks the term kinui includes: 1) names such as Elohim or Tsevaot, 2) the words for qualities that Scripture attached to God, such as compassionate and merciful, and 3) terms used for God in non-Hebrew languages, such as Allah, God, or Dieu.\footnote{Laws of Oaths 2;2.} Others\footnote{See, e.g., Rashi to bSanhedrin 56a, s.v. ve-aliba de-Rabi Meir , who lists only actual names of God when he refers to kinuim.} limited capital liability to Scriptural names of God, such as Elohim or Tsevaot, but either version assumes non-Jewish awareness of what Jews see as a name of God. Like idol worship, blasphemy only becomes a capital issue when it rebels against God in the way that Jews understood that topic.

The first three Noahide laws, then, show that human beings were being taught the importance of society and its running, were supposed to have some understanding of the intricacies of monotheism, and would have been best served by learning about Temple worship and the ways in which Jews refer to God.

**Murder**

Murder in its starkest form is perhaps the most intuitive crime around, but the Noahide code prohibits and punishes forms of killing that are today the subject of much debate. The Talmud sees killing a person who will soon die anyway, a fetus, or even oneself as capital murder for non-Jews,\footnote{Although not our issue here, I believe that Rambam sees Jews as exempt from capital punishment for some of these out of a belief that God will take care of those forms of the crime, as Rambam makes clear in Laws of Murder 2;2-4 and 3;10. That non-Jews have to kill such murderers and cannot rely on Divine intervention seems to reflect a belief that Providence affects Jews more directly than others.} as well as indirectly causing another’s death.\footnote{For example, chaining a person where heat or exposure will kill him or her, and does, Laws of Kings 9;4.}

The vigorous debate about each of these issues in modern societies—abortion, assisted and ordinary suicide, and the level of liability for indirect killing—sufficiently proves that the Talmud’s definition is not intuitive. More than that, these rules make a significant programmatic claim, declaring all human life,
however underdeveloped or certain to expire, off limits to active intervention to end it.\textsuperscript{54} Again, a rule that might seem minimal teaches a specific perspective of an issue important to any society.

\textit{Incest}

Incest laws seem intuitive,\textsuperscript{55} except that the Talmudic definition does not follow any sort of intuitive model. To take one reading of the text, Rambam understands the Talmud to prohibit relations with mothers, father’s wives, married women, maternal half-sisters, men, and animals.\textsuperscript{56}

In deriving that list, the Talmud reveals its view of the prohibition as a whole. Parsing the verse that first discusses human marriage—“Therefore shall a man leave his mother and father and cleave to his wife and they shall be one flesh”—\textsuperscript{57} the Talmud infers that human sexuality must involve leaving one’s parents (the father’s wife stands in for the father himself) to create a physical interlocking (of the sort only men and women can create, not men and men)\textsuperscript{58} with one’s wife (and not a woman married to someone else), that will, in the ordinary course of events, lead them to become as one flesh (in the form of a baby), which rules out bestiality.

Sexuality, in this presentation, is an extension of marriage and childbearing; only those relationships that \textit{could} be marital, of the form where the physical union could produce children, are allowed.\textsuperscript{59} Even without limiting such relations to marriage, Noahide law was requiring that it take the form of an act that could be marital, and that it not interfere in any preexisting marriage.\textsuperscript{60}

The first five Noahide laws thus teach a raft of lessons. Society, God, the value of life, and now, sex, have come under their purview, in ways that humans on their own would not, did not, and, often do not

\textsuperscript{54} The emphasis on the prohibition of killing has led some to question whether Noahides were allowed to wage war, see J. David Bleich, above, note 26, 159-66.

\textsuperscript{55} Although, interestingly, neither Rambam nor Ramban assume it to be so, see Rambam, \textit{Laws of Kings} 9;5-8, and Ramban, \textit{Vayikra} 18;6.

\textsuperscript{56} Note that Rambam devotes significantly more space to incest and \textit{ever min hahay}, eating a limb cut off of a living animal, than to the others, perhaps because these were least intuitive. Other medieval authorities defined the incest prohibitions differently, such as R. Meir Abulafia, \textit{Yad Ramah} to \textit{bSanhedrin} 57b-58b, but the overall principles seem to be the same.

\textsuperscript{57} Genesis 2:24.

\textsuperscript{58} The prohibition of homosexuality is also not intuitive, either in Talmudic times or our own; its inclusion in the Noahide laws is a corollary of the assumption that sexuality should relate to producing children.

\textsuperscript{59} This requirement is formal rather than practical. It is not that this man and this woman need to be able to have children—people beyond childbearing years are also allowed to marry—but that the physical act they engage in be one that could produce children. Note also that non-Jews have no obligation to marry every time they wish to engage in sexual intercourse, see Rambam, \textit{Laws of Marriage} 1;4. The Biblical story of Sarah suggests, \textit{inter alia}, that our knowledge that a woman can no longer give birth is not as absolute as we tend to assume. If so, relations between a man and a woman are always able to produce children, at least in theory.

\textsuperscript{60} That a maternal half-sister is prohibited, but not a paternal one, \textit{Laws of Kings} 9;5, shows that genetics is not our concern. The Talmud does not explain the distinction, but it may stem from their having come from the same womb; the maternal half-sister might then count as part of the family of origin the man needs to leave in expressing his sexuality. That the system allows intercourse with one’s daughter, a fact that needs detailed discussion in another venue, also highlights its indifference to genetic consequences.
approach them. Whether or not the lessons are being learned, we hope to make clear that they were presenting lessons meant to be.

**Theft**

Like murder, theft is intuitive, but the reaction to it in the Noahide code goes beyond the expected. As we have mentioned, theft of even the most minimal amounts of money, even if the victim is not the rightful owner, incur the death penalty. In the most extreme example, if one non-Jew steals a minimal amount of money and another steals it from him, both would be put to death.\(^{61}\)

The Talmud does not delineate these punishments to practically know what to do with thieves—by the time the Talmud recorded these discussions, it had already been hundreds of years since Jewish courts had had the power to punish thieves with death—but to make a moral point. The theft laws show that the system was not concerned with the practical question of how to protect property, since many lesser measures would work just as well, but were articulating clearly the system’s sense of the absolute inviolability of others’ property. As we might say to a child, if it’s not yours, don’t take it. Capital punishment here does not express a desire to kill thieves but to eradicate the phenomenon of theft.\(^{62}\)

**Ever Min haHay—The Limbs of a Living Animal**

Many who study Noahide law interpret this prohibition as a safeguard against cruelty.\(^{63}\) That already gives the commandment an educative component, but does not take adequate account of its prohibiting only eating such a limb, not cutting it off. Further, the law does not care how the limb was removed; it is prohibited regardless of whether any cruelty was involved. Non-Jews could amputate animals’ limbs under anesthetic, for the animal’s own sake (such as an animal born with an extra leg), and it would still be prohibited to eat.

This suggests that the rule means to limit the permissibility of eating meat. In the Talmudic view, God only first permitted meat after the Flood;\(^{64}\) our rule shows that it only applied to dead animals, a point God made by erecting an absolute prohibition on eating any parts of a live animal. *Ever min hahay* was stressing that animals only become acceptable food at death.

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\(^{61}\) See *Laws of Kings* 9:9, based on *bAvodah Zarah* 72a.

\(^{62}\) The horror we feel towards putting someone to death for stealing a few dollars proves how inured we have become to theft’s ubiquity. Were we to be more sensitive to how theft damages a society’s sense of unity and common purpose, we might understand better how it could reasonably arouse the kind of moral revulsion reserved for murder or rape-- which, incidentally, is seen as a kind of theft by at least one rabinic author.


\(^{64}\) *bSanhedrin* 59b. A similar stress on reminding humans of the seriousness of eating animals might underlie the *kashrut* rules given to Jews.
**Cross-Breeding—A Simple Prohibition**

Were we to end our discussion here, we would already have successfully shown that Noahide laws teach an approach to the world. Fundamental Jewish ideas about how to relate to God, to sex, to others’ lives and property, and to food are all incorporated here; non-Jews need not become Jews, but they are expected to accept core beliefs about the proper conduct of the world and human society.

Moving away from capital crimes, we find other lessons codified in prohibitions that did not carry the threat of death. For one example, Rambam understood the Talmudic sources to prohibit cross-breeding, whether by grafting fruit from one type of tree to another or by mating animals of different species. Jewish thinkers have explained that prohibition as teaching the importance of accepting the sufficiency of God’s Creation.65

**What Was Lost When Autonomy Yielded to Heteronomy**

Even if the Noahide code consisted only of these laws, it would already teach us a great deal about how Jews understood what happened once God took away non-Jews’ right to autonomously define their relationship with Him. Perhaps, although we will never know, God originally left people room to define murder and other crimes; perhaps in that world, late second trimester abortions would be allowed; perhaps incest would have taken a different shape. Once the verse with which we opened our discussion came into play, when God took away the human right to fully self-define its morality and relationship with God, the picture that emerged and the worldview underlying it were not the ones that God insisted on from the time of Creation, they were the ideas He decided were necessary once humanity failed to meet expectations.

This is not to suggest—a point that underlies our entire endeavor here—that we can go back to a pre-heteronomy era, that people could today decide to live up to the obligations of back then, circumventing the legislated rules. Once heteronomous laws have been promulgated, our only choice is to obey them, to capitalize on the areas of autonomy left by those laws, and to function fruitfully within those leftover realms. While non-Jews can never change the laws we just analyzed, their relatively minimal system leaves many areas where they can apply their own intuition and autonomy to meeting God’s hopes and expectations, as we show in the next section of this chapter.

**Loosely Defined Obligations**

Jewish tradition assumed that non-Jews bore responsibilities to the world, to others, and to God; we will here take one example of each. First, the Mishnah assumes a general human obligation, extending to non-

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65 *Laws of Kings* 10; 6. For the reason underlying the prohibition, see *Sefer haHinuch, Mitsvah* 244. That the rule is limited to trees and animals—Jews, in contrast, could not crossbreed plants either—suggests that it was the visibility of the crossbreeding that was the problem here. Seeds are dropped in the ground, so that the process occurs out of sight, almost as an extension of nature; crossbreeding trees and animals, however, openly expresses humans’ interest in bettering Creation.
Jews and to slaves, to participate in insuring that the world is inhabited. The assertion arose in the course of discussing how to deal with a slave, freed by one of his original two owners. Rabbis of the House of Hillel addressed only the monetary issue, ruling that he should work for his remaining master on alternate days. Members of the House of Shammai objected that this would leave the man in marital limbo, unable to have relations with any woman. Citing Isaiah 45:18, “not for chaos did He create it, to be inhabited He formed it,” Beit Shammai proved—to Beit Hillel’s satisfaction—that Jewish law prohibited leaving such a situation in place.

The explicit statements in the text only address an obligation to be involved in sexual relationships, but the tenor of the discussion and the verse cited indicate a broader set of concerns. Introducing the verse, Beit Shammai are quoted as saying that the “world was only created for procreation,” a locution that convinced numerous Jewish scholars that non-Jews were indeed expected to bear children—not just have sexual relations—to insure the world’s continued habitation.

Insuring habitation of the world implies a great deal more than just bearing children. Bringing non-Jews into the circle of those obligated to help fulfill God’s desire to maintain the world’s habitation extends to them also the responsibility to pass on a healthy and well-managed world to the next generation. This at least implies raising children to be productive adults, acting with an eye towards ecological responsibility (wherever on the range of definitions for that term one falls), and quite possibly urges some level of political involvement as well. Since those aspects of the commandment are not defined any further, intuition—shaped by the commandments we have just reviewed—would have to guide each person striving to fulfill this Divine mandate.

Charity

Non-Jews must also give charity. The Talmud notes that a verse speaks of Avraham commanding all his descendants, male and female, to perform righteousness and justice in the land. Since the Talmud could not envision women being commanded to set up courts, it sees men as setting up the courts and women performing acts of charity. Men’s obligation to perform such acts, as well as the exact definition of

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66 See the Mishnah, bGittin 41a. A half-slave’s free half could not consort with a slave while his slave half could not engage in intercourse with a free woman.

67 See, for some examples, Sheiltot R. Ahai Gaon, Sheilta 165, Tosafot Hagigah 2b, s.v. Lo. Two important commentators on R. Joseph Caro’s Shulhan Aruch (Code of Jewish Law), Beit Shemuel and Magen Avraham, similarly assumed a general human obligation to marry (or cohabit) and bear children, see their comments to Even haEzer 1 and Orah Hayyim 146 respectively.

68 This also reflects God’s original desire, in Genesis, to put humans into the Garden “to work it and preserve it,” as R. Aharon Lichtenstein has noted in his public lectures.

69 bSanhedrin 57b, citing Genesis 18;19. The exact derivation is not straightforward, but also not our issue. Note that the Talmud infers ideals of non-Jewish behavior from Avraham, meaning that it sees him as an exemplary non-Jew, aside from his role as founder of the Jewish people.
charity, is not given in the text. At the very least, however, the Talmud has made clear its expectation that concerned non-Jews would shape their spending and giving with charity in mind.70

Prayer

The last obligation we will mention here was extrapolated by R. Moshe Feinstein, the leading rabbinic decisor of the late 20th century.71 He assumed that when faced with times of need—financial, medical, or other—non-Jews are obligated to pray to God for assistance. Although he recognized that the Talmud nowhere mentions such a duty, he assumed that belief in God, implicit in Rambam’s requirement that they fulfill these laws in recognition that they came from God,72 includes turning to Him in times of distress.

Rabbi Feinstein’s assumption shows another way in which the Noahide system actually hides a great deal more intuition than we might otherwise realize. For him, belief in God involves not just the bare fact of such belief, but the modes of conduct that such belief implies. While he mentioned only prayer, that might easily extend to partnering with God in maintaining the world.

The material we have gathered so far offers a first theory of the relationship between heteronomy and autonomy. Originally thrust into a world with remarkably few rules—eat the fruit of the Garden except for that of the Tree of Knowledge of Good and Evil—people failed to recognize that they were supposed to develop a sense of the proper way to live a God-related life. In response, God set down rules that conveyed important foundational ideas of how to approach the world.

Humans from then on were required to know that God existed, that they could not worship any other God, and that they could not openly rebel against that God. They had to set up relatively cohesive societies with well-enforced laws, they had to express their sexuality away from their family of origin, and they had to refrain from using animals as food until after the animals had died. Finally, they could not openly make act in a way that suggested they thought they were bettering Creation.

All of those prohibitions, however, just set the stage for a more important aspect of human life, shouldering the responsibility to stave off chaos and foster the productive habitation of God’s world. Through the basic requirement of procreation, Isaiah communicated God’s desire that humanity guard and maintain His world, just as was true when He placed people in the Garden of Eden. The prohibitions set parameters to help human beings find their way to the best fulfillment possible of the positive goals God still holds out for human beings.

How Would They Know About This?

70 In pondering a non-Jewish obligation of charity, the question arises as to how much Judaism saw its own model as universal. Jewish tradition, based on Jacob’s vow to give a tenth of whatever he had to God, obligated giving a tenth of one’s income to charity. Whether non-Jews should also be giving that amount depends on whether Jacob was adopting the ordinary standard (like Avraham), or a supererogatory one.

71 Responsa Iggerot Mosheh, Orah Hayyim, 2;28.

72 Laws of Kings 8;11.
Perhaps the most perplexing aspect of the Noahide laws is that Judaism makes no provision for communicating them to non-Jews. While the Talmud may have thought that God had decided to abandon non-Jews, so that their ignorance would lead them ever closer to perdition, it seems unlikely. Unless we envision God as taking joy in the continuing failure of others, there would have to be at least some way non-Jews could be expected to come to understand their obligations towards God and the world.

The Talmud’s view of the respect that non-Jews should show Jews suggests just such an avenue. Cynics will see this Talmudic emphasis as an attempt to burnish Jews’ self-image, to see themselves as superior to those around them. We argue instead that the respect the Talmud spoke of was meant to lead non-Jews to ask Jews about their view of their responsibilities in life, the knowledge they need to set up a fulfilled relationship with God. Of course, human history shows that non-Jews have thus far refused to acknowledge Jews as the source of this vital information, but understanding the Talmudic view will at least let us see how the system expected or hoped non-Jews would learn how to live a proper life.

Acknowledging Jews’ Otherness

Several rules highlight Judaism’s insistence that non-Jews remember, recognize, and respect Jews’ significant differences from them. First, the Sifre, an authoritative extra-Talmudic collection of legal inferences from Scripture, requires even gerei toshav, non-Jews who adhere to the Noahide laws, to live in separate cities within a Jewish commonwealth. Since halachah entitles such non-Jews to the same social welfare benefits that Jews would receive, this call for separation cannot be an expression of disapproval. It seems instead calculated to articulate clearly who owns the Land; gerei toshav are welcome outsiders, but not full members or citizens.

The Talmudic rhetoric about a non-Jew who hits a Jew, observes the Sabbath, or studies Torah, goes even further in emphasizing their need to accept their fundamental differences from Jews. In the first example, the Talmud compares a non-Jew hitting a Jew to doing so to God. The permissibility of taking a day a week to cease all productive activity, the Sabbath, is seen as a special gift to the Jewish people; humans in general

73 In any discussion like this, we must repeatedly stress that these differences are religious and not racial. Any non-Jew who becomes so enamored of Jewish life that they cannot tolerate the exclusiveness detailed in the text is free to convert and enjoy the rights and responsibilities of Jewish life, such as they may be.

74 Sifre Deuteronomy 259. Rabad, ibid, assumes that Rambam would maintain that rule even today, while he himself only draws that distinction when the Jewish commonwealth is fully functional.

75 Jews are required to support the poor of Noahide-observers (called ger toshav, resident stranger) equally with their own poor, see Rambam, Laws of Gifts to the Poor 7;1 and Rabad’s gloss to Laws of Prohibited Relations 14;8.

76 While others might argue that the rule is aimed at limiting social interactions, such rules are: a) generally Rabbinic and b) aimed at the interactions themselves (such as eating or drinking together), not choices of where to live.

77 bSanhedrin 58b with Rambam, Laws of Kings, 10;6.
had to devote every day to being productive, to contributing to the settlement of the world.78 Similarly, the Talmud sees study of Torah as the vehicle of a unique bond between God and the Jewish people, so that a non-Jew who studies Torah is breaking into this bond and deserving of death.79

When the Torah or Talmud articulate a penalty that can only be enacted by God, they intend to express a value rather than predict a result. Here, the several examples of how the Talmud hoped or expected non-Jews to behave towards them speak of a desire to have them understand the Jews’ special role in the world and respond accordingly. Furthermore, as is always important to stress when delineating our differences, non-Jews could convert should they insist that they wanted to be able to partake of these forbidden pleasures.

The World of Mitzvot

Non-Jews’ exclusion from these observances highlights Judaism’s general openness to their performing other commandments even without converting.80 Most surprisingly, Rambam allows a Jew to circumcise a non-Jew, as long as the non-Jew intended his circumcision to fulfill the Biblical commandment.81 I note that in particular because the Bible and Talmud stress the covenantal significance of circumcision; Genesis 17 relates the story of Avraham’s circumcision using the word berit, covenant, thirteen times, a fact the Talmud sees as pointing to its covenantal significance.82 Allowing non-Jews to perform the act without joining the covenant is an extreme example of the religion’s openness to partial observance.83

78 Ibid, which derives the prohibition from Genesis 8:22’s reference to the world’s functioning productively, “day or night.” The rule sounds more onerous than it is, as Hatam Sofer (R. Moshe Sofer, 1762-1839) points out in his novellae on the tractate. Vacations to restore one’s energies count as being productive, according to Hatam Sofer, as presumably would spending time with one’s children, attending meetings for charitable causes, and demonstrating at political rallies. None of those are actual jobs, but clearly contribute to the world’s running. Medieval commentators such as Rashi, R. Meir haLevi Abulafia, and Rambam have slightly different versions of what exactly the non-Jew may not do.

79 bSanhedrin 59a. This prohibition, too, is not as absolute as it seems; non-Jews could study those parts of Torah that applied to them, which could be quite extensive. If we recall Isserles’ view that dinin included all of Jewish civil law, he would have to allow non-Jews to study all the topics and tractates that elucidate those laws, a huge chunk of the Talmudic corpus. Rather than caring about non-Jews gaining certain kinds of knowledge, the Talmud seems focused on prohibiting the act, which Jews see as inherently religiously valuable.

80 Not all scholars gave blanket permission. Radvaz (R. David ibn Avi Zimra, 1479-1573, Spain, Israel, and Egypt), glossing Laws of Kings 10:10, assumed that non-Jews may not perform commandments that require holiness and purity, such as wearing phylacteries; R. Moshe Feinstein (1895-1986), Iggerot Moshe 2:7 assumed that non-Jews could only keep commandments relating to donations to the Temple, giving charity, and so on, but nothing particular to Jews. On the other hand, R. Avraham Gumbiner (1637-83), Magen Avraham 304;12 and R. Israel Meir Kagan (1839-1933) Beur Halachah ad loc assumed that a non-Jew could make certain commandments permanently obligatory by accepting them while becoming a resident alien.

81 Laws of Circumcision 3:7 and Responsa 148.

82 Genesis 17 and bShabbat 132a and bNedarim 31b.

83 Rambam’ comment, Guide III:49, that circumcision serves to reduce sexual desire, and his claim that the foreskin is disgusting, Laws of Circumcision 3:8, offer one explanation for his allowing non-Jews to circumcise without converting. Since circumcision contributed to the ideal of reining in sexual desire, he understood the sources to leave the option open to non-Jews as well. His views on circumcision also suggest that God’s choice of
This permissiveness makes those practices from which they are excluded stand out. Taken together with the requirement to live in separate cities and the harshness of the reaction towards a non-Jew assaulting a Jew, we read these rules as expressing the Talmud’s hope that non-Jews would recognize that Jews were meant to serve a particular function in the system God set up.

Along with giving non-Jews a minimal set of rules that set broad parameters of proper behavior, God designated a particular people to serve as a resource on how to use those rules as the guideposts of the proper exercise of personal autonomy. That non-Jews have never seen Jews this way, is a tragedy of history according to the Talmud, but it does not diminish the underlying assumption of how God still hopes the world will work.

Conclusion

The model of the world expressed here differs markedly from that of other religions and from most contemporary writers’ views of Judaism. We hope we have shown that Judaism did not see itself as the sole or best way to act; it assumed that people were originally empowered to define their relationship with God almost completely on their own. Only in response to their crashing failure to do so did He set up some rules to guide them in the search for a well-lived life. While strict, those rules left the basic structure of life—what kind of a job to have, where to focus one’s energies in improving the world, how to raise a family, how to use leisure time—to the individual.

The further part of that puzzle is how it shifts what Jews represent. Jewish thought’s comfort with non-Jews staying that way as long as they respect Jews for their special role as God’s messengers suggests that traditional Judaism took the Scriptural characterization of Jews as “a kingdom of priests” more seriously than has perhaps been hitherto realized. Jewish priests lived markedly different lives from ordinary Jews; they had a different relationship to the Land, significantly more restrictions on whom they could marry or touch, and needed to hold themselves always ready to serve in the Temple if called.

This was not a more ideal life, it was a different one. The Noahide laws and the sources we have adduced here point towards Jews as fulfilling a similar role. They, too, lived an unusual life, more focused on God than necessary for ordinary human beings, in a place that had special characteristics in terms of relating to God, and were meant to be living representatives of the God Who hoped to bring all humanity to recognize Him.

Even the rules for Jews, while vastly more extensive than the ones applied to non-Jews, leave room for autonomous input than has been hitherto stressed, as we show in the coming chapters. The first step on that road is analyzing a crucial episode in the life of the man who straddled the gap between being non-Jewish and Jewish, Avraham.

that act as the sign of the covenant with Avraham mean that sexual restraint is central to Jewish identity, a topic that deserves fuller treatment as well.

84 Exodus 19:6.
Chapter Two: Guided Prayer: Avraham’s Contribution To Autonomy

Three preconceptions about prayer hinder a proper appreciation of the significance of Avraham’s entreaties on behalf of the people of Sodom. First, many people and even some traditional sources assume that prayer is natural or intuitive, that human beings knew of their right to pray from Creation or soon thereafter. Second, the Biblical text can allow the impression that Avraham thought of praying for Sodom himself, without outside impetus. Third, Avraham’s words seem to focus on the injustice of collective punishment as the reason he objected to God’s intention to destroy Sodom.

A second look at the conversation between Avraham and God supports arguing against each of these assertions, yielding the conclusion that God was teaching Avraham about the possibility and the most effective formulations of petitionary prayer. Making it worth our while here, the kind of petitionary prayer we detect in that episode builds on a heteronomous base to allow for significant human autonomy.

To begin with a little bit of theory, some might see prayer as a natural response to distress, as a child naturally calls out for a parent when in trouble. From a theological perspective, however, giving human words the ability to sometimes alter the intended course of the world is problematic. If God “chose” what is happening right now, there is no reason our cries or entreaties should alter the Divine logic; if God did not directly impact those events, it is not clear why our supplications should bring about greater Divine involvement.

Avraham Learned About Prayer At Sodom

Rather than review theories of providence and Divine foreknowledge, we will start with the Biblical text, showing that the Torah itself gives strong reason to believe that Avraham’s prayer at Sodom differed qualitatively from earlier ones. Knowing of its novelty, we can then look more carefully at what happened there, yielding an improved understanding of what the Torah sees Avraham as having learned at Sodom.

The early chapters of Genesis contain few direct and clearly stated petitionary prayers, if any. While some texts can be read as including a petition—Ramban saw Cain as asking God for a lighter punishment in his statement “my sin is too great to bear,” the Midrash thought Noah prayed for deliverance from the Ark, Rashi thought Avraham asked for a sign to prove that God would fulfill one of His promises, and Ramban thought Avraham meant to ask for Ishmael’s life— in none of those cases does the Torah portray any human being as arguing with God over whether the future should proceed as currently planned.

Some humans wish or hint that they would like the future to turn out differently than they currently expect it to, but not more than that. Even the sacrifices early men brought were either to thank God or

85 Cain says in Gen 4:13 “My sin is too great to bear,” which Ramban saw as a prayer for protection from those who would kill him. Aside from the indirect phrasing of the request, this reading has Cain looking to uphold God’s decree, not change it. So, too, Rashi reads Avraham’s request (Gen 15:8) “With what shall I know that I will inherit it?” as asking for proof of the promise, again not seeking to change the future. Finally, Ramban reads Avraham’s words “Would that Ishmael live before You,” (Gen 17:18), as a prayer that the boy not be killed. While here Avraham may have assumed that he was trying to change the planned future, the request is phrased highly indirectly, almost as if expressing a wish in God’s hearing was the most he was allowed to do.
to announce His rule of the world (to be קרא בשם, “to call out in the Name of God”, in the Biblical phrase), not to petition Him to change the course of history.86

The famine stories that sandwich the incident at Sodom offer further support for our claim that Avraham learned the power of petitionary prayer in between. In the first episode, Avraham goes to Egypt and asks Sarah to pose as his sister, to forestall the Egyptians’ killing him to get to her. Confirming his fears, Pharaoh’s officers praise her to the king, and she is taken to his palace, apparently to become his wife or concubine. God afflicts the Egyptians, which Pharaoh (drawing the connection on his own) relates to Sarah’s arrival. Properly chastened, he returns Sarah to Avraham with many gifts, and they leave the area.

In chapter 20, not coincidentally the first story the Bible tells after it finishes with Sodom and its aftermath, Avraham goes to Gerar in response to a famine. Events proceed similarly to the first time, except that when Avimelech, the king of Gerar, takes Sarah, God appears to him in a dream to warn him of his impending doom. Avimelech protests his innocence, correctly noting that he did not know that Sarah was Avraham’s wife. God agrees, yet still orders him to ask Avraham to pray for him— the first appearance of the verb root פלל (“to pray”) in the Bible.

The Bible does not explain why God paradoxically accepts Avimelech’s claims of innocence yet still requires him to ask Avraham to pray, but if Sodom was when Avraham learned about prayer, the change becomes fully understandable. In Egypt, prayer could not be a factor in the recovery of Sarah, since Avraham did not yet know of his right to pray. That story tells us of Avraham’s having to wander the world due to famine, God’s protecting him from harm, and his becoming wealthy and famous.

When Avraham moved to Gerar, though, he had new knowledge he was supposed to share with others. To insure that Avimelech would learn that lesson, God insisted that he ask Avraham to pray.87 Rather than simply repeating a previous story, the second famine story shows Avraham’s growth, and the broader set of ideas about God he was now able to teach the world.

The Talmudic reading of Avraham’s actions the morning after his prayers for Sodom becomes more fully understandable when we see the event as a watershed. The Torah reports that the next morning Avraham rose early (וישכם “to the place where he had stood there before God,” 88 which the Talmud interprets as a veiled reference to prayer, fueling its belief that Avraham instituted שחרית, the Morning Prayer.89

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86 See, for example, Gen 10:8.
87 R. Achituv, Megadim (No. 31, Tevet 5760, Winter 2000), “במקרא תפילה שומע, The One Who Hears Prayers in Scripture” notes that prayer in Scripture is generally offered by prophets or functionaries of the Temple. On 109, he refers to the incident with Avimelech as proof of his contention—Avimelech’s prayers are unacceptable, but Avraham’s will be accepted. He does not explain why Avimelech had to pray at all, since he had done no wrong, leading us to prefer the reading in the text.
88 Gen 19: 27.
89 bBer. 26b.
The Talmud does not connect Avraham’s decision to institute the prayer to the incident at Sodom, but the verse is nonetheless suggestive. Just after a discussion with God where prayer was a central issue, the Torah uses a verb that to the Talmud means he instituted regular morning prayer.

So, too, the Talmud’s claim that Avraham also rose to the same place as where he had prayed for Sodom, which fuels the assertion that people should establish such fixed places for themselves, becomes clearer in this reading. If Avraham had already spent a life in prayer, there is no reason this place and time of day should become fixed choices. In our view, though, we can well understand why Avraham would be so moved by the experience that he would use it to anchor all his future prayer experiences.

God’s Invitation

In addition to circumstantial evidence pointing to Sodom as Avraham’s introduction to prayer, the Torah’s record of God’s words prior to His discussion with Avraham indicate an educative intent. Explaining His decision to tell Avraham about Sodom ahead of time, the Torah quotes God as saying:

Shall I hide from Avraham that which I intend to do…For I have known him in order that (Heb.: למען) he command his sons and household after him that they shall guard the path of God, to perform justice and righteousness…

The first key to understanding this passage is remembering that when Scripture reports God’s thoughts, it is using a literary device to inform us of underlying aspects of the action we would not otherwise understand. These verses, properly read, set up a framework for the conversation we would not have known from the rest of the text.

As we move towards understanding how those and other of God’s words really mean that He was inviting Avraham to prayer, we can start by noting that the verses we just cited do not offer a coherent message. God seems to say that He cannot hide from Avraham what He wants to do, because He has known Avraham so that he will teach his descendants about justice and righteousness. We are not told, however, how telling Avraham about Sodom relates to His having known him, nor how that knowledge would facilitate Avraham’s teaching his descendants about God.

The question has been answered numerous times, but we here will build on an option first offered by Ramban. He reads “למען ידעתיו כי” (“for I have known him so that”) as meaning that God is

90 bBer. 6b.
91 Gen 18; 19.
92 Rashi reads the verses as God saying that His previous relationship with Avraham obligates Him to apprise Avraham of events. Since Avraham will command his descendants follow God’s path, to do His bidding, God “has” to tell Avraham about Sodom’s impending doom. That reading interprets the two appearances of the word למען differently in the same sentence—once as “because” and once as “in order that.” Also, Rashi’s reading does not explain why each of Avraham’s arguments on Sodom’s behalf was worth recording.
recognizing that He has cultivated His relationship with Avraham to prepare the Patriarch to properly teach his descendants how to serve Him. In this view, God’s “knowing” of Avraham is necessary to his being able to raise a family dedicated to the service of God. Since God draws a parallel between that “knowing” and telling him about Sodom, this should be for the same purpose, easing Avraham’s ability to prepare his descendants for a life of service to God.

Reading that interpretation back into God’s words produces the following translation: “Will I hide from Avraham what I am going to do to Sodom [thus missing an opportunity to educate him about how to serve Me], when Avraham is going to be a great and mighty nation, in whom all the nations of the world will be blessed? For [after all] I have known Avraham [gotten him to the point that he would be the progenitor of this great nation] so that he can command his descendants after him, etc.”

The Lesson of Prayer

God’s words tell us that He sees the coming conversation as part of the education of a Patriarch, but we have to turn to the conversation itself to discover the content of that lesson. God tells Avraham that He intends to descend to the city of Sodom, to check whether the reports about it are true, in which case He will destroy the city. Since Avraham knew as well as we do that God does not need to investigate a situation in order to ascertain the facts, the wording seems to implicitly call for response, opening the floor to discussion and debate. While there was already a plan for the future—the cities would be wiped out, righteous with the wicked—the right arguments could perhaps affect it. We are not directly told how and why that plan would be open to adjustment.

Others, such as the late fifteenth century Don Isaac Abarbanel and the early sixteenth century Italian Jewish commentator Sforno, saw God as telling Avraham about Sodom to reassure him of the justice of their destruction. The details of Avraham’s protests, in this view, show us that he fully explored God’s justice by exhausting all possible other options. He could then walk away renewed in his dedication to raise children who would follow the paths of the Lord.

However, their reading questionably assumes that without the prior conversation, Avraham would have considered God unjust. This stands at odds with Avraham’s general acceptance of God’s decrees, as shown by his later willingness to kill Yitschak at God’s command. He might puzzle over God’s decision, but we would expect the discoverer of monotheism to seek guidance rather than lose faith. Their reasoning, then, does not convincingly justify God’s need to tell Avraham about events ahead of time.

93 The nineteenth century R. Naftali Zvi Yehuda Berlin (Netsiv) saw this incident as educating Avraham about how God deals with evildoers, which at least agrees that the conversation sought to educate Avraham. Rambam includes the verse (לlehem אספרא) twice in the tenth chapter of his Laws of Gifts to the Poor, in paragraphs one and fifteen, in the specific context of prayer; although he does not explain, his citation suggests a similar sense of the text.

94 Gen 18: 21. For comparison, note that in Exodus 3: 9 and I Samuel 9: 16, God also mentions that cries have reached Him. In each of those cases, God is taking action in response, not “going down” to check the accuracy of those cries.

95 Commentators have stressed the way God opens a conversation with humans in other instances as well. Rashi pointed to God’s words to Moshe at the Golden Calf (Exod 32:10) as inviting defense of the people; see also His opening to Adam (Gen 3:9) and Balaam (Num 22:9).
Although we will need to examine the details of the discussion, we can already learn from the Torah’s having recorded each detail of Avraham’s prayer despite its failure to succeed at its mission, to save Sodom. It would seem that it was the act of Avraham making the argument that we are supposed to learn from, not the outcome. God was showing Avraham his right to pray, tolerantly replying to each of his prayers, to encourage the endeavor itself. By doing so here, God was encouraging prayer even when seemingly hopeless; since people cannot know when a decree is final and when conditional, they can and should always try praying for a different outcome.

*Arguing For Sodom—A Manual of Prayer*

God’s words informed Avraham that the only room to save Sodom was finding a different way to contextualize and/or react to their crimes. The Lord was going to see whether “as their cries, they had done,” which cannot be a question of whether the facts were true. Rather, the question still open was whether the cries God heard fully captured the situation in Sodom; facts are facts, but the context of those facts and the reaction they necessitate is a matter of interpretation, open to multiple possibilities.

Avraham’s opening claim is often, I think mistakenly, read as decrying the apparent injustice of God’s plan to kill the righteous with the wicked. His complaints—“Will you destroy the righteous with the wicked…it is profane for you to kill the righteous with the wicked…Shall the Judge of the entire earth not execute justice?”—seem to protest God’s punishing the few with and for the many.

Common as it is, that reading presents philosophical and textual problems. First, it assumes one of two weak premises for the conversation. If we read the Torah as saying that God had immorally intended to punish the few with the many and Avraham successfully showed Him that that was wrong, we are problematically assuming that the human Avraham showed God the moral failings in His plans, a portrayal that does not accord with the Torah’s general view of God.

Alternatively, God did not intend to kill the righteous people in Sodom, and Avraham misread God’s intentions. That would mean that God allowed Avraham to argue at length against a course of action that had never been contemplated, when God could just as easily have told him that he was wrong.

Another problem with those readings of the text becomes clear if we add one more piece of the text we referenced above. Avraham also says, “Will You destroy and not bear the place for the sake of the fifty righteous in its midst?’ Reading that question, we realize that he was not arguing for Sodom’s righteous, he was claiming that their presence should forestall the destruction of the others as well.

Instead of protesting God’s treating a city as a unity, Avraham was trying to use that perspective to save the cities. We may not immediately realize that because corporate responsibility contradicts modern

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96 My thanks to Rabbi Barry Kornblau for questioning why God would encourage Avraham to pray in a futile situation.

97 Gen 18:23-25.
morality, but if we allow for the possibility that both Avraham and God knew that Sodom would live or die as a unit, the discussion becomes more comprehensible. Rather than objecting to God’s plan of killing the righteous with the wicked per se, Avraham was reacting to God’s neglecting the possibility that any such righteous people could still have a positive impact on the entity as a whole.

Treating a group as a unit means judging them as a whole, but it should also extend to assessing the likelihood they will change and improve. God’s decision to destroy Sodom focused on the sinners, whose overwhelming presence in that society more than justified the annihilation of the city, including the innocent righteous. Avraham raised the possibility that even just fifty righteous people could form a sufficient nucleus to battle evil in the five cities.

If successful, the Fifty would bring their fellow citizens to a better relationship with God and promote a more just society. Given a little time, the Fifty could change the city so that it would no longer deserve annihilation, an outcome that better reflects the balance between justice and mercy portrayed elsewhere in Scripture. Avraham’s plea was for God to make room for a significantly less likely option, but one whose upsides were incalculably better than the currently envisioned future.

“Will You destroy the righteous with the wicked” is more properly read as focusing less on the righteous—God could always extract them if He wanted, as with Lot—than on how their presence in the city could be ignored, could not mean that they would have more time to positively influence the wicked. It is better read, then, as “will You destroy righteous and wicked together? Perhaps there are fifty righteous people [who can affect the character of the city] will you erase and not give the place [more time] for the sake of the fifty?” So, too, the justice of “shall the Judge of the Earth not do justice,” refers to the justice of giving sinners every possible opportunity, however slim, to find a way to step back from their evil and repent their sins.98

God opens up His conversation with Avraham by letting him know that the five cities of the region deserve what they are about to get, despite whatever righteous people it contained. Avraham countered that a sufficient number of righteous residents should prevent sealing their fate. “Convinced,” God accedes to his prayers.

Taking this as the paradigm of successful petitionary prayer suggests that such prayers involve both submitting to God’s view of the world while still exercising the right to suggest other ways of achieving God’s goals. The petitioner stands at the edge of a worrisome future, which can sometimes be changed by

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98 This reading also explains Avraham’s dogged pursuit of ever lower numbers. The more righteous people there are, the greater the chance of their success. So, too, if we imagine the righteous to have been spread among the five cities, a possibility suggested by Rashi, we can again understand why the lower numbers would raise new issues for Avraham to discuss. If five cities each contains a coterie of righteous people (a Morality Institute, perhaps with panel discussions and public lectures), they would wield greater influence than if any of them stood as lone voices in a sea of wickedness, enhancing the likelihood of success. Each reduction in the number of cities containing such people would raise new doubts about the odds of their meaningfully affecting their own city, meaning also whether their presence should affect God’s decision.
articulating a hoped-for alternative that will lead to a better fulfillment of God’s wishes for the world. We see this ability to argue in favor of a less likely path, to commit to working to bring that path into reality, as the gift of petitionary prayer God gave to Avraham.

Later Biblical prayers offer important confirmation of this reading of prayer. A first example is Moshe, who, like Avraham, is taught about prayer at a crucial juncture in his career.

**God Teaches Moshe How to Pray**

Moshe’s early prayers suggest that he mastered the skill of prayer at a later stage of his life than we might think. Paroh consistently uses the verb הָעַזְרָה ("to entreat") when he wants Moshe to pray for him.99 Moshe is צוּק ("shouts out"),100 כִּפְרוּ פָּרָשֶׁה ("spreads his hands"),101 and מְעַטֵּר, all verbs of notable effort.102 The master of prophets, at this stage, seems unsure of how to speak effectively to the living God.

Moshe’s early difficulties contrast remarkably with his handling of two later incidents. When God afflicts his sister with leprosy, Moshe successfully elicits relief in just five words.103 A chapter later, when God mentions destroying the Jewish people, Moshe composes a lengthy, eloquent prayer that elicits the desired response: מָלַכְתִּי לָפַת, "I have forgiven as per your request."104 Elsewhere, the text uses the simple verb וְיִתְפַלֵּל, and he prayed.105

The Biblical report of the conversation after the sin of the Golden Calf shows us that it was there that God trained Moshe how to pray, feeding him the arguments that would allow him to avert the people’s destruction. The Torah records the Jews’ sin in Chapter 32 of Exodus, followed (in verses 7-14) by God and Moshe’s dialogue about how to react. The relevant text reads:

God spoke to Moshe: “Go, descend—for your people that you brought up from the land of Egypt has become corrupt. 8They have strayed quickly from the way that I have commanded them. They have made themselves a molten calf, prostrated themselves to it and sacrificed to it, and they said: ‘This is your god, O Israel, which brought you up from the land of Egypt.’” 9God said to Moshe, “I have seen this people, and behold! it is a stiff-necked people; 10And now, desist from Me. Let My anger flare up against them, and I shall annihilate them; and I shall make you a great nation.” 11Moshe supplicated

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99 Exod 8: 4 and 24, and 9: 28.
100 Ibid. 8: 8.
101 Ibid. 8: 29. Note that we are construing Moshe’ extending of his hands in prayer as an intensification of the experience.
102 Ibid. 9: 29.
103 Admittedly, for this prayer he was צוּק, meaning that he cried out. The difficulty there, however, stems from the prayer’s brevity, lack of argumentation, and perhaps its hurried composition, rather than from Moshe’ discomfort with formulating effective prayer.
104 Num 14:18.
105 Num 11:2, 21:7, and Deut 9:20, where Moshe terms his prayers for Aaron after the Golden Calf תפּוֹלָה.
before God, his Lord, and said: “Why, God, should Your anger flare up against Your people, whom You have taken out of the land of Egypt, with great power and with a strong hand? Why should Egypt say the following: ‘With evil intent did He take them out, to kill them in the mountains and to annihilate them from the face of the earth? Relent from Your flaring anger and reconsider regarding the evil against Your people. Remember for the sake of Avraham, Isaac, and Israel, Your servants, to whom You swore by Yourself, and You told them, ‘I shall increase your offspring like the stars of heaven, and this entire land of which I spoke, I shall give to your offspring and it will be their heritage forever.

A thousand years ago, Rashi already understood that God’s telling Moshe to “desist from Me” actually informed him of his right to carry the conversation further. In fact, every one of God’s utterances framed Moshe’s reply. God tells Moshe that his (Moshe’s) people, the ones he (Moshe) took out of Egypt, have sinned, quickly leaving the path of righteousness, making other gods, and declaring them their own; now, God says, leave Me alone and I will allow My anger to destroy them.

God’s words deny all connection with the people—these are Moshe’s, not His. This severing allows God to react with the full harshness appropriate to their act; partners to a long-term bond bear an obligation to view any act, no matter how egregiously wrong, through the prism of the entire relationship, which might reduce the impact of this one incident; a slap in the face administered by a stranger is different from the same physical act coming from a close friend or relative. Denying the connection is a first step to justifying the Jews’ destruction, which their current sorry spiritual state merits.

Moshe takes up each claim in turn. First, they are not his people but God’s, whom He took out of Egypt. Further, not only are they His people, He had deliberately made their leaving Egypt a public event, to convey His power not just to the Jews, but the world at large. Should He now destroy the people, He would completely negate the lesson He was trying to teach—a lesson that the Jews themselves have learned insufficiently, as their sin shows. Finally, while God asks Moshe for permission, as it were, to destroy the Jews, Moshe notes that he, Moshe, cannot grant it, since God must fulfill his promises to Avraham, Yitschak, and Yaacov.

As with Avraham, God’s omniscience should mean that He knew Moshe’s arguments even before they were said; He can only have intended the points of His complaint as a guide. The themes Moshe strikes in his plea remain those in use until this day: raising factors that make it inappropriate or ineffective (in God’s terms) for Him to continue acting as we fear the Divine Plan dictates.

The Jews who left Egypt were the fulfillment of God’s promise to the Patriarchs and the living embodiment of His singular power, of His ability to reduce even the strongest nation in the world to abject

106 Verse 10, commenting on the words גז כה היגז, desist from Me.
submission. Moshe seems to be “reminding” God of His relationship with the Patriarchs, who taught the world of His existence, and the Jews whom He took out of Egypt, who served as His representatives to the world.

Moshe’s experience confirms the lessons of Avraham’s prayer at Sodom, that petitionary prayer ideally combines learning of God’s plans and goals for the world—a heteronomous experience—with the autonomous human ability to formulate plausible alternate ways of reaching those goals.

Hannah’s prayer for a son puts the autonomous aspect of prayer in stark relief. Hannah, who had many personal reasons for her desire, vows to dedicate the child to God, to make him a Nazirite all his days. Scripture’s characterizing that promise as a prayer only makes sense if she was showing that her personal desires would actually further His goals for the world. While God’s plan did not include a child for Hannah (for reasons of His inscrutable Will), her promise to dedicate the child completely to the Lord presented a less obvious plan (since most people are unwilling to give up their children as Hannah did) that furthered God’s goals even better, giving God a prophet who served to spread His words and service among the people.

Avraham was in many senses a transitional figure from a world made up of undifferentiated human beings to one in which there was a special people, the Jews, with a special role to serve in that world. Among his contributions, prayer has particularly interested us, since it partakes of the balance between heteronomy and autonomy that we are tracing in this discussion.

While prayer expresses human autonomy in the right to reimagine the future, it only became available by God’s having shown it to us on several different crucial occasions. Further, it extends only as far as finding alternative ways of achieving God’s goals, so that the successful supplicant must submit fully to that worldview before he or she could possibly understand a suggested future to include in prayer. Consistent with our general theme, we find an autonomy preceded by a dose of heteronomy.

Voluntary Modes of Worship: The Lost World of Avraham

That the heteronomy we have been speaking of leaves room for a remarkable level of autonomy is shown by Avraham’s career as a whole, but particularly by prayer. Avraham is sometimes seen as the paradigmatic Noahide, such as when the Talmud assumes that Biblical statements about Avraham inform us as to the extent of Noahide obligations, but often as different and other than the rest of the world.

That bifurcation applies to Avraham’s career as well. While he obviously observed all of the Noahide laws, much of what he became most famous for—welcoming guests, building altars where he would call out in the Name of God, trying to convince others of the truth of monotheism—was not specifically commanded by God, but was Avraham’s understanding of how a God-focused individual would act.

107 I Sam 1: 11.

108 See I Sam 1: 10-12. The text says that Hannah prayed, and then records her vow. Even if we assume that she prayed in addition to the vow, the text still characterizes the vow as part of her prayer.

109 Sanhedrin 56b.
Returning to prayer, we can now appreciate that it is but one example of a broader aspect of Avraham’s life. We have argued that God taught Avraham of his right to pray, but it was Avraham’s decision to institute regular morning prayer. Tradition sees the next two Patriarchs as each instituting one further prayer, suggesting that they had learned from their father the importance of innovating in one’s worship of God.

Indeed, as Rambam sees it, Avraham articulated an entire tradition of how to live a God-centered life. In his view, it was only the move to Egypt and the influence of their idol worship that destroyed the Patriarchs’ legacy, making clear that a voluntary system would not work. Moshe’s contribution, for Rambam, was to convey God’s decision to legislate, with reward and punishment ensuring that the system—probably similar to the one Avraham enunciated—would take hold and last.

How Important Are Mitsvot?

Rambam’s idea of a voluntary religion formulated by human beings, even Avraham, runs counter to the stress on mittsot many assume is so central to Judaism. While we will deal with the function of the commandments in the coming chapters, Rambam’s picture encourages us to question whether commandments were always necessary, always part of the Divine plan. In his view, it seems, had Avraham’s descendants and students maintained their commitment to the principles and practices he started, the events at Sinai might have been unnecessary, or at least radically different.

That view rejects the literal meaning of the Talmudic claim that the Patriarch kept the entire Torah, and calls into question the ordinary reading of several other Talmudic statements as well. Focusing on them for a moment will prepare us for the next chapter, where we show that mittsot themselves were not meant as the sum total (or even the central focus) of how one worshiped God.

BBerachot 8b says that from the day the Temple was destroyed, all God “has” in this world are the four cubits of halachah. On its face, the statement suggests that God’s concerns narrowed with the Destruction, that all He currently “cares” about is halachah and its observance. That interpretation does not explain, however, why God’s interest in halachah was intensified by the loss of the Temple. It seems that the Talmud is arguing that the world of halachah became the substitute for the overall function of the Temple, much as prayer came to substitute for the sacrifices.

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110 See his presentation at the beginning of Laws of Idol Worship. Rambam’s view fits with bYoma 28b’s claim that Avraham kept the entire Torah. While the Talmud may have meant the claim literally, Rambam probably understood it to mean that Avraham observed all the underlying principles and purposes of the system commanded at Sinai.

111 In addition to ibid., see his presentation of the evolution of commandments in Laws of Kings, 9:1. Note that Rambam sees Avraham, Yitshak, and Yaacov as undertaking various acts on their own, but Amram, in Egypt, as commanded. See also Guide II;13, where the belief that God created the world is repeatedly credited to both Avraham and Moshe. I first heard this reconstruction of Rambam’s ideas from Aviezer Ravitsky at Harvard University in Spring 1993; it is now, I believe, commonplace.
The Temple’s role as a location where people could experience God fairly directly\(^{112}\) is what was lost in the Destruction and can be regained by immersing oneself in the study of *halachah*. In the terms we have been discussing here, analyzing the heteronomous *halachah* allows the person to experience God in a way that can then infuse and inform that person’s autonomous contributions to God’s world.

The Talmud’s rule that *gadol hametsuveh ve-oseh mi-she-eino metsuveh ve-oseh*, one who is commanded to perform an act is greater than one who performs the same act without being commanded,\(^{113}\) is also often taken as demonstrating a general preference in *halachah* for heteronomy over autonomy. Here too, a moment’s reflection reminds us that the statement compares performances of a *particular* act; it does not mean that an obligated person who recites Grace After Meals, for example, is necessarily “greater” than one who voluntarily sits in a *sukkah* or studies Torah. The Talmud only means that *once* God obligated certain people to act, they bear the greatest responsibility for those commandments and will receive the greatest reward for observing them.\(^{114}\)

This clarification of the Talmudic statement will be especially important later in our discussion, when we compare the role of the commandments in the lives of Jewish men and women. Here, it is crucial to leaving in place the view that the Talmud does not promote commandedness as an inherent good.

Although the Giving of the Law at Sinai is the central event of the Jewish religion, our thrust so far has been to show that there is room within Jewish sources to recognize that it did not have to contain the legislative content it eventually did. Had Noahides recognized their responsibility to serve God in all the ways a reasonably intuitive person would, or had Avraham’s students and descendants done a better job of handling his legacy, the Revelation at Sinai might have been of a different sort altogether, and we might today adhere to a system largely defined by humans. They would work off of Divine guidance, of course, but the rules and details they laid out would have been of their own making.

That realization has absolutely no practical ramifications, since we cannot turn back time; we must work within the world we were given, where God’s Commandments for Jews and for non-Jews form the bedrock of human life. Seeing what might have been serves a positive function, however, in preparing us to look with new eyes at the system of commandments that developed, to realize that they are less concerned with the

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\(^{112}\) Rabbi Soloveitchik is reported to have noted that Scripture describes the experience of the Temple as being ב’ elohim, before God.

\(^{113}\) *bKiddushin* 31a.

\(^{114}\) Incidentally, the whole expectation that voluntary performance must be rewarded is not as obvious as we take it. It is at least possible that acts obligatory upon one set of people are not particularly desirable for another set. The Talmud might have meant, then, that the *metsuveh ve-oseh* is greater because only he can be sure his act is wholly positive. Along these lines, see R. Nissim b. Reuben Gerondi (RAN), *Derashot haRan*, Sermon 13, who argues that God’s commandments are so specifically tailored that only those commanded to perform an act can fully accomplish its goals.
punctilious observance of specific rituals (although those are vital as well), and that there is still much room for autonomy in the human relationship with God.
Chapter 3: Mitsvot—For Jews, Only the Basis and the Only Basis

Of all the areas of human activity, mitsvot would seem to be least amenable to autonomous behavior, with the possible exception of interpreting the Biblical and Talmudic texts that define those mitsvot. While humans study the mitsvot, working to understand and define each one’s legal, spiritual, and conceptual ramifications, their attempt is to understand the original intent of the mitzvah, not to contribute anything of their own. Originality and creativity is limited to achieving truer insight into what the Torah wanted. Whatever autonomy exists here is meant to be subsumed into the experience of searching for an externally-determined truth.115

That accurately describes how a Jew is supposed to experience the study of Torah and analysis of halachah, but fails to realize the truly independent actions that are also expected by the system of mitsvot. We show here that numerous central requirements of the religion define obligations so loosely as to necessitate significant personal decisions about how to achieve the Torah’s desideratum. Filling in these blanks is left up to each individual, although Hazal often provide some guidance on these matters. The basic fabric of a Jew’s life, we aim to prove, is or ought to be set by that Jew.

This is true of men, as we will show, but even more so for women, since they were left with even greater autonomy in defining how to perform many of these mitsvot. Rather than seeing them as excluded from commandedness—a phrasing that assumes the superiority of being told exactly what to do—we will show that women are exempted precisely from those mitsvot that specify a particular way of achieving the Torah’s goals. They are not differentiated by desired outcome, only by the extent to which they must take a predefined path to get there.

Proving this contention for all or even a representative sampling of mitsvot requires a book of its own, so we have chosen seven central commandments as examples. Re-examining each of these will show how it forces consistent personal decisions about how best to serve God, even from within the perspective of that mitzvah. The importance of the commandments I have chosen—to love God, follow His ways, study Torah, rest on Shabbat, rest on the various holidays, give charity, and to honor one’s parents—should suffice to allow us to assume that proving our point about them seven offers a reasonable contention about the system as a whole.

In each of these obligations, we intend to highlight what has been perhaps neglected, that each of these show a desire or need for people to make significant religious choices of their own. Try as we might to hide in the world of well-defined obligation, these mitsvot (at least) show that a true religious life involves decisions that are not, and cannot be, subordinated to the commands of tradition.

Not coincidentally, we have chosen seven positive commandments, those that call for some

115 It seems to me that Rabbi Soloveitchik’s philosophical writings stressed exactly this kind of autonomy. For him, Torah scholars revolutionarily impacted the world of Torah and mitsvot by their innovative understandings of the tradition. I am arguing here that the system also sought a much broader autonomy from all people, one that moved beyond (without in any way discarding) the mitsvot.
action on the part of the devotee, because we believe that it is such positive commandments that most directly involve the Jew in constructing his or her relationship with God. Prohibitions are vital to the religion, but in our view serve a preparatory function, helping Jews avoid physically, socially, and spiritually destructive behavior, while also preparing them for how to construct positive religious lives.

Prohibitions do teach vital religious lessons as well, such as the need to submit willingly to God’s Will. Only such submission can let the Jew (or non-Jew for that matter, as we discussed above) come to understand his or her role in the world, come to know what, aside from specifically delineated mitsvot, constitutes a proper or lauded way of acting, and thus move on to make his or her mark on the world.116

In addition to submission, the prohibitions also inculcate kedushah, commonly translated as holiness or sanctity, but defined by tradition as perishut, abstemiousness, perhaps as part of recognizing that life should involve more than just partaking of the pleasures of the physical world. That attitude is certainly necessary for a proper approach to God, but does not constitute the entirety of it.

The positive commandments lay out the field for going further than that. Rather than simply setting a goal without any guidance on how to get there, these mitsvot define the minimum that can be required universally, intending each Jew to then apply the underlying attitudes to the circumstances of his or her life. The blank spaces of mitsvot are the locus of the autonomy we have been discussing.

**Love of God**

The centrality of the mitzvah to love God, if not inherently obvious, expresses itself in the Torah’s separately commanding men to twice daily recite Shema, so that at least male Jews will be repeatedly reminded of “ve-ahavta et Hashem Elokecha you shall love the Lord your God.”117 Defining that obligation presents significant challenges.

The Torah seems to be commanding an emotion towards God, difficult in terms of a Supreme Being. Love ordinarily involves a sense of deep identification, a connection that can be based on blood relationship, living together, or shared interests. God’s Otherness would seem to preclude that form of love, leaving unclear what the Torah seeks in this commandment.

Rashi and Ramban offer one way around the problem. They assume that ve-ahavta refers to performing the mitsvot me-ahavah, out of love, which they define as without any ulterior motive. This view relates ahavah, love, to lishmah, performing these acts simply because God commanded them, without any

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116 Note that I am not implying that Jews were supposed to come up with new laws of their own; that clearly violates a prohibition of the Torah. It is in applying mitsvot that are minimally defined where Jews have maximum room to meld the religion’s stated concerns with his or her own interests and talents to forge a positive relationship with the Holy One.

117 Deuteronomy, 6:5.
interest in rewards that accrue from such performance.\textsuperscript{118} The love of \textit{ve-ahavta}, for these commentators, is at least partially expressed in the underlying motivation in submitting to God’s rule.\textsuperscript{119}

Rambam, in brief in the \textit{Sefer haMitsvot} and at greater length in the \textit{Mishneh Torah}, takes the requirement of love more literally. Early in the Mishneh Torah he notes that contemplating the wonders of the created universe engenders a sense of love for the One who put all this into place.\textsuperscript{120} The love that comes from this experience, it seems, parallels the human love that can arise in gratitude for a longstanding relationship of giving. While that might only be a starting point, Rambam implies that a Jew should start building love for the Creator in the same way, contemplating His kindnesses and the wondrous world He created.

Later in the \textit{Laws of the Foundations of the Torah}, Rambam records the Talmudic claim that foregoing certain kinds of medical treatment constitutes a fulfillment of the obligation to love God even at the cost of one’s life.\textsuperscript{121} At the end of the section, he writes of constant, almost obsessive, focus on God as either itself constituting love or helping to build it.\textsuperscript{122} Although commonly thought of as an arch-rationalist, Rambam interestingly gives the example of a lovesick man, who thinks about his beloved constantly, as the parallel to the kind of relationship he is describing.

Rambam does not mean that the person simply states his or her love of God, just as human love cannot consist solely of what one says. Rather, he means that the person constantly contemplates God, just as a person in love cannot get his or her mind off of the focus of their love. The basic principle seems to be that \textit{acting} as if one is in love, using the human tools of constancy of concern and thought, will lead towards love itself.

Rambam has thus offered three examples of how to act towards God in a way that is meaningfully referred to as love, even while recognizing that people cannot truly develop that emotion for a Creator they cannot know. Particularly since it is explicitly related to human love, the personal aspect of this \textit{mitzvah} should be clear. We all appreciate different aspects of Creation, we all would contemplate God (constantly or not) from different perspectives and with varying emphases. As such, the commandment shifts with each Jew, meaning, at least in Rambam’s presentation, that each Jew must construct a personal and loving relationship with God, one that goes beyond the programmed, as in his or her other relationships.

\textit{To Mold One’s Character to Become “Similar” to Him}

\textsuperscript{118} Judaism’s defining love as fulfilling \textit{mitzvot} out of pure obedience seems to run counter to the whole endeavor of this monograph as well as to that of \textit{ta’amei hamitsvot}, finding reasons and rationales for the commandments. The contradiction falls away when we recognize that the \textit{reason}, the rock-bottom motivation that insures observance, can differ from the \textit{experience}; the former must be that God told us to do so, but the latter can and should, to the extent possible, be informed and enriched by understanding the contribution this particular observance makes to the entire framework of Torah.

\textsuperscript{119} I see no reason that this view could not also accept Rambam’s.

\textsuperscript{120} \textit{Laws of the Foundations of the Torah} 2:2. The experience also fuels \textit{yir’ah}, awe.

\textsuperscript{121} Ibid, 5; 7.

\textsuperscript{122} \textit{Laws of Repentance} 10; 3 and 6.
The Torah repeatedly refers to the Jews’ needing to follow His ways, *la-lechet bi-drachav*,\(^{123}\) which we might have taken as referring to those ways God identified, *mitsvot*. Rambam, based on several rabbinic statements, understands this *mitzvah* to extend to developing one’s character in a Godly fashion.

For him, that meant the Aristotelian middle path, a view that inherently obligates people to refine their own characters as best they can. Judging one’s own character traits and how best to bring them more to the perfect middle is inherently an individualized activity; the person can seek advice from a sage or other counselor, but the actual efforts will need to be defined and executed by that person alone.

Rambam expands our understanding of his idea by his differing presentations in his various works. In *Sefer haMitsvot*, Rambam cites the Midrash\(^{124}\) rather than the Talmud. Commenting on the key words, *la-lechet be-chol derachav*, to walk in all His ways,\(^{125}\) the Midrash says, “Just as He is called *hanun* (compassionate), so you be *hanun*; just as He is called, etc.” The Midrash does not claim that God *is* compassionate, merciful, or any of the other listed traits, just that he is *called* such.

Given Rambam’s concerns about ascribing emotions and actions to God, the Midrash’s saying only that God “*is called*” those characteristics serves the vital function of maintaining a distinction between God and humans; Scripture uses certain words for God not because they describe Him but because they instruct people as to how to best improve their character.

Two other of his sources complicate the picture. First, the verse, “*Aharei Hashem Elokeichem telechu*, You shall follow after the Lord Your God,”\(^{126}\) leads the Talmud to assert that God’s clothing the naked (as with Adam and Eve), visiting the sick (Avraham after his circumcision), and comforting the bereaved (after Sarah died), obligates humans to do so as well.\(^{127}\) In contrast to the Midrash, the Talmud stressed God’s having acted in those ways, suggesting that the obligation to follow His ways is more literal than Rambam saw it in *Sefer haMitsvot*.

Possibly, the Talmud does not go that much farther than the Midrash, since it only calls on us to imitate God’s actions in this world, which does not involve claiming that we could become like God, just that we could impact this world similarly to how God does. Alternatively, we could say that here, too, the Talmud really only meant that God is *described* as acting a certain way, but that it, too, is a metaphor for saying we should just learn a lesson from the Torah’s description.

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\(^{123}\) For some examples, see Devarim 8:6, 10;12, 11;22, 19:9. Note that in each, the Torah juxtaposes “following His ways” to some other experience, fear, love, or cleaving to Him, as if the “following” leads to or is the result of the others.

\(^{124}\) *Yalkut Shimoni Parshat Ekev*, Paragraph 873.

\(^{125}\) Deuteronomy 10:12 and 11:22

\(^{126}\) *Devarim* 14; 5.

\(^{127}\) Sotah 14a.
One more text the Rambam cites complicates the picture somewhat by citing Abba Shaul in the Guide as saying, based on “zeh eli ve-anvehu, this is my God and I will glorify Him,”⁵¹²⁸ that just as God is hanun, so, too, Jews have to be hanun, and so on, leaving out the crucial words “is called.”⁵¹²⁹ Here, the verse speaks only of identifying and glorifying God, but Abba Shaul reads that as requiring us to become like God, apparently assuming that those terms accurately describe God.

Rambam’s explanation of this last source helps us understand his view of the mitzvah. He says that God’s impact on this world—not how He does it, but the results of His influence—would, if a human were to have such impact, betray certain traits of character, particularly those listed in the 13 Attributes so central to the liturgy of Yom Kippur.¹³⁰ Those character traits are binding, and it is in that sense that we can meaningfully say that God is compassionate (He has created a world which, if a human had created it, would betray its Creator’s compassion), or any other character trait.

Rambam’s reading of “walking in His ways” thus shows both a heteronomous and autonomous element. Based on human beings’ best powers of discernment, one aspect of character formation is to adopt the Golden Mean. Beyond that, the descriptions of God in Scripture are at least partially intended to provide an example of the kinds of acts and emotions to cultivate. Finally, the world also provides evidence of God's "character," meaning we should extrapolate from the world to figure out how to mold our characters.

Obviously, each person will find a different result. In a world as multifaceted as ours, the attempt to extract a picture of an ideal character from how God runs the world is one that can be infinitely productive, with perhaps an infinite number of ways in which it could be so. Depending on personal proclivities and with little halachic guidance, Jews seeking to imitate God will necessarily differ in which aspects of the world around them they emphasize in shaping their own character. Some might focus on how God sustains all living creatures and enter or volunteer for wildlife conservation, others might think of how God feeds the hungry and seek to alleviate the plight of the poor.

Trying to help the poor itself could fuel numerous ways of attempting to imitate God; some might choose to study agriculture or plant biology to help find ways to make food more readily available in certain parts of the world, others might study economics to identify inequities in the system and how they can be best remedied, others might enter politics to try to implement those ideas, others might actively collect excess food and distribute it to those in need. As with loving God, the definition of the mitzvah leaves much to individual choice, a venue for autonomy.

\textit{Talmud Torah}

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⁵¹²⁸ Exodus 15:2.

⁵¹²⁹ Guide I:54. Rambam says he found the statement in the Midrash on Parshat Kedoshim; it also appears in Shabbat 133b.

¹³⁰ 34:6.
Common current misconceptions about the mitzvah of Torah study obscure the extent to which it too is meant to be personally defined. While the mitzvah includes an obligation to strive to master the entire corpus, its baseline obligation and the way most people will experience it demands personal choices of each individual.

Rambam in Sefer haMitsvot reminds us that the mitzvah is expressed in terms of teaching our children, not personal study; the source-verse, ve-shinantam le-vanecha, you shall teach it to your children, already captures this idea. He also records Sifre's ruling that the verse obligates men to teach any students who wish to learn, in addition to their sons, since Scripture elsewhere refers to students as sons. Third, he mentions Sifre's offering an alternate reading of ve-shinantam that required knowing the literature of Torah well enough to answer questions immediately. That last comment, which reads the Biblical verse nonliterally to make a pedagogical point, values knowledge as a way to insure that others will have access to it, not as an end of its own.

Further examples only confirm that the mitzvah seeks something more than the act of study per se. Rambam follows the Talmud in singling out grandfathers’ obligation to teach grandchildren, a duty that ranks below the father’s but above the general requirement to teach those who want to learn. This grandparental duty, almost unique in Jewish literature, suggests that the mitzvah is concerned with guaranteeing transmission of knowledge of Torah throughout the generations. Fathers are the first line of defense in that goal, but grandfathers are not far behind.

The verse the Talmud cites in putting grandfathers into the picture enhances that impression. Deuteronomy 4:9-10 warns Jews to take great care not to forget that which their eyes have seen, making it known to children and grandchildren. It then tells us what it was referring to, “the day on which you stood before the Lord your God at Horev...” Reading the verse simply, we might think that we only need to insure that children and grandchildren need to remember the event of the Giving of the Law at Sinai, not the content of Torah. That the Talmud and Rambam assume the verse can also be read in terms of Torah study relates the two, as if teaching Torah to our descendants transmits memory of the event in addition to the specific content being taught.

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The Talmud’s defining the minimum fulfillment of this mitzvah as teaching one’s son the text of

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131 Deuteronomy 6: 7.
132 34:7.
133 Based on the verse, הוררתם לבניך ולבניך ו onCreateViewHolder you shall make them known to your sons and grandsons Deuteronomy 4:9; see Hilchot Talmud Torah 1:2, from bKiddushin 30a.
134 Shmot 10;2 refers to telling our children and grandchildren of how God toyed with the Egyptians, but that is not in the context of a mitzvah, nor is it codified by halachah.
135 This would also seem to be the explanation for the otherwise inexplicable Avot 3:8, which uses this same verse as the source for claiming that capital liability is incurred by forgetting Torah that one has learned. Since the verse speaks of the event of Sinai, not the content, only recognizing the conflation of the two makes the Mishnah comprehensible.
Torah, which means either the Five Books or the entirety of Scripture,\textsuperscript{136} cuts in the same direction. As long as the son can read and explain any selection from the text of Torah, the father has fulfilled his obligation, which again makes most sense if we recognize the mitsvah’s interest in guaranteeing a basic cultural knowledge among Jews.

The Talmud certainly does not wish Jews to stop at the text of Torah, and it intentionally includes stories of people who came to know the entire expanse of Jewish literature, but that does not affect the basic obligation. All the rest of the Torah literature that people study-- Talmud, commentaries, codes, etc.—serves to help Jews with their understanding of the original document, and how to apply it in practice to this world.

At almost each step of this mitzvah, we find room for personal input and decisions. Each father will have to choose how to best help each of his sons absorb the lessons he needs. While one child might be ready for a full day of study at a young age, others will need a more patient approach. The how of fulfilling this obligation is thus left up to each father (intentionally, I believe).\textsuperscript{137}

Beyond that, each person will achieve different levels of Torah knowledge and/or focus on differing disciplines. While some will be intellectually and emotionally suited to a deep knowledge of all of Torah, others will focus on specific areas.\textsuperscript{138} Some learn using one style, others another, and all (or most) are acceptable to the system. As before, a basic universal minimum, with much room for personal decisions and creativity.

\textit{The Positive Commandments of Shabbat}

The positive aspects of Shabbat are less well-developed in Jewish literature than the prohibitions, perhaps precisely because they are meant to be so personal and autonomously chosen, but a little investigation will show to how great an extent Shabbat was meant to be a day of soul-refreshing freedom from creativity, with prohibitions as a way of fostering the day rather than defining it. As before, our analysis will build on the

\begin{footnotesize}
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\item See Rashi, \textit{bKiddushin} 30a, s.v.\textit{Torah}, and Rambam, \textit{Laws of Study of Torah}, 1;7 and 1;12.
\item This also explains the Talmudic principle that the courts need not interfere with minors who transgress the Torah. Since the child’s education was left up to the father, the courts cannot judge a particular minor’s circumstances well enough to be allowed to mix in.
\item A story, perhaps apocryphal, makes the point perfectly. In the nineteenth century, a man produced a forgery of the Jerusalem Talmud on the section of the Talmud dealing with sacrifices and Temple worship. He gathered rabbinic approbations for the work, fooling many Torah scholars into thinking it authentic. Supposedly, the Rogotchover spotted the forgery by virtue of his recognizing the individual aspect of Torah study.

The Rogotchover claimed that the work had to be forged because it did not mention any scholars unique to that tractate. In his mastery of Talmudic literature, he had noticed that aside from the giants whose names appear frequently, there were always scholars who appeared only in a particular tractate. Apparently, their Torah skills had best prepared them to contribute lastingly to that area of study, but not others. It is exactly this kind of individual interest and expertise that the mitzvah welcomes, another example of expecting Jews to autonomously choose how to build on the Torah’s minimal obligations.
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commonly accepted views of Shabbat, but it is in exploring hitherto neglected aspects of that presentation that we will find the expectation of autonomous choices.

First, we must admit that many see the positive content of Shabbat as a side note to the more central prohibitions. The Torah couches the requirement to desist from melachah, creative labor, as both a prohibition and an obligation. We might take the addition of a positive obligation of rest as technical, a way for the system to invest these rules with greater seriousness than just an “ordinary” prohibition. The author of Sefer haHinuch seems to read the issue this way, since he sees absolutely no new content in the positive form of the mitzvah, telling readers to consult his discussion of the prohibition.

On the more significant other hand, Rambam and Ramban saw the positive obligation as a religiously distinct requirement, and understood that positive content as the goal of the day. Rambam opens the 21st chapter of the Laws of Shabbat by mentioning that the Torah’s use of the word tishbot, you shall rest, requires cessation even of activities that do not fall under any melachah prohibition. He then spends the next several chapters listing shvutin, Rabbinically prohibited actions, many legislated by the Rabbis only because they are similar to Biblically proscribed ones. In Rambam’s reading, tishbot taught the Rabbis that the Torah wanted Jews to avoid activities that smack of creative labor, not just the ones that technically qualify as such or carry the danger of leading to a transgression.

For Rambam, the Talmudic presentation of such laws means that the list of 39 prohibited labors established categories from which to desist on Shabbat; while only those particular labors incur capital liability, the intent was that Jews would refrain from such and similar activities. The Rabbis defined the Torah’s wishes more explicitly.

Ramban ordinarily disagrees with Rambam about how to understand the Talmud’s declaration that a certain mitzvah encompasses both an `aseh and a lo ta`aseh, an obligation and a prohibition. While Rambam will codify two mitsvot in such circumstances, Ramban will not. In our reading of what positive

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139 The Talmud certainly spends more time analyzing the prohibitions than the obligations; content analysis thus suggests that they care about it more. We assume instead that the Talmud discusses it less because it is less amenable to exact definition.

140 See Mitsvot 85 and 32.

141 Exodus 23:12.

142 This is different than prohibiting an action because it might lead to a Biblically prohibited one. The latter category is protective; the former assumes that the Torah wanted Jews to use the Shabbat laws as a framework, not as a final definition of the day. For an example, see Rambam, Laws of Shabbat 22:23, who follows the Talmud in codifying a Rabbinic prohibition against coloring one’s face because it was similar to painting or dyeing. The Rabbis did not worry that putting color on one’s face might lead a person to paint or dye an animal hide. Rather, the prohibition told the Rabbis that that kind of activity did not belong on the Shabbat day, so they named other activities that are inappropriate by extension.

143 See his gloss to the sixth of Rambam’s introductory principles to the Sefer haMitsvot.
obligations add to prohibitions, Ramban would be saying that the Torah does not always mean to add religious content when it enacts a separate positive requirement.

Here, however, he agrees. He notes that the Torah's prohibition did not prevent a Jew spending Shabbat (or a holiday, for that matter) in heavy labor, such as moving furniture inside one’s house. To avoid that, the Torah also commanded Jews to make the day a *shabbaton*, a word he defines (for both Shabbat and holidays) as obligating rest--simply put--in addition to avoiding creative labor.\(^{144}\)

We can also show that the positive observances that Ramban and Rambam saw as part of Shabbat rest are central to the experience of the day. When the Torah speaks of the Jews “observing” Shabbat, a term often taken to indicate their refraining from prohibited actions, the verse reads “וְשָׁמַרְתָּ בְּנֵי יִשְׂרָאֵל תַּשְׁמִרְתָּ אֶת הַשָּׁבָּת לְעָדַיִם, the Children of Israel shall observe the Shabbat, to make the Shabbat in all their generations, an eternal covenant.”\(^{145}\) The phrase “to make the Shabbat” troubled commentators, since observing Shabbat’s prohibitions does not have any constitutive element to it. Were the Torah signaling that the observance of the prohibitions lays the groundwork for the true essence of the day, we could understand how we would go about “making” Shabbat.

That also explains the Talmudic assumption that women are obligated in the positive aspects of the day, for example reciting *Kiddush*, by virtue of their having been obligated in the prohibitions. In the Talmudic phrase, “anyone included in *shamor* (the word used in the second Decalogue, which the Talmud assumes indicates prohibitions) is included in *zachor* (the term in the first Decalogue, taken to refer to *Kiddush* and the positive obligations of the day more broadly).”\(^{146}\)

Unless there is a deep connection between the prohibitions and obligations, we would have to see this *hekesh*, this informative juxtaposition, as completely technical. Seeing the prohibitions as preparatory to proper observance of the active obligation of rest gives the *hekesh* more actual content. Since the prohibitions are there to guide us in achieving the desired positive state of rest, one who is required to adhere to those prohibitions must obviously be included in the obligations.

Rashi’s explanation of a strange Talmudic requirement for a person who loses track of the days of the week provides one last proof of the centrality of the positive experience of Shabbat to the day as a whole. In the course of the discussion,\(^{147}\) the Talmud assumes that the person can only do as much Shabbat-prohibited labor each day as is necessary to maintain life, since it *might* be Shabbat. Nonetheless, the Talmud requires the person

\(^{144}\) See his interpretation of the word in Leviticus 23:24 and his *Sermon for Rosh haShanah*, printed in *Kitvei Ramban*, ed. C. Chavel (Mossad haRav Kook: Jerusalem, 1968). Note that the Talmudic prohibition of feeding wild animals on Shabbat because of the effort involved, *bShabbat* 155b, also points towards an expectation that Jews would not exert themselves on Shabbat except as necessary.

\(^{145}\) Shemot 31:16.

\(^{146}\) *bBerachot* 20b.

\(^{147}\) *bShabbat* 69a.
to treat one day a week as actually Shabbat, meaning by reciting **Kiddush** and **havdallah**, verbalizations of the Jew’s recognition of the advent and departure of Shabbat.

Rashi explains that the recitations are symbolic, to insure that he not completely forget the observance of Shabbat. Considering that this person is daily refraining from anything other than the minimum of labor necessary, that claim seems difficult; would a person who daily must restrict his activities because of his doubt as to whether it is Shabbat possibly forget the concept? Rashi’s comment shows that he understood the Talmud to see **Kiddush** and **havdallah** as essential to the Shabbat experience.

The stress on the positive in these sources does not enlighten us on how that positive should look. **Kiddush** and **havdallah** may define the chronological boundaries of the day, but they cannot be the whole picture. Two further seemingly technical pieces of information about the prohibited labors of Shabbat suggest an answer that also shows Shabbat observance to be highly personally defined.

Although the Torah defines the cessation of labor as imitating God’s “resting” on the seventh day of Creation, tradition assumes that the specific categories of prohibited labor come from the construction of the Mishkan, the Tabernacle built in the desert as a proto-Temple. Although the relationship between these two creations is never fully explained, the Talmud is clearly assuming that the building of the Mishkan is the height of human imitation of God’s creation; the activities that make the list, then, are those that bring a person closest to the Divine standard of making the world.

The second technicality, the rule of **hilluk melachot**, shows that each of these acts independently destroys the Shabbat experience. The rule states that violating any of these types of labor incurs separate liability; in contrast to a holiday, a person who-- without full knowledge of what he was doing-- both plowed and cooked on Shabbat would be liable for two sacrifices. Unwitting violations within a category, cooking, baking, and frying, obligates only one sacrifice. It is not each act of Shabbat violation that is punishable, but each type of act.

That rule makes sense only if each of the categories of prohibited Shabbat activities is independently important. Were Shabbat just a composite created by observing various prohibitions, violating one should be no different than violating another, and the rule should either be that all acts can be covered by one sacrifice or that each act, regardless of type, requires a separate one.

The centrality of category distinguishes what the Torah means by “rest” on Shabbat from the ordinary meaning of the word. In addition to ordinary rest, which we have already seen Rambam and Ramban

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148 See, for example, Shabbat 49b. There are significant debates among the medieval authorities as to whether it was only those actions necessary for the construction of the Mishkan or even its continued functioning that qualified as part of the list, as well as the question of whether the purpose of these acts is defined by the purpose for which they were used in the Mishkan. Each of these, of course, would slightly affect the presentation in the text, but need not be fully elaborated here.

149 See Shabbat 70a, with Rashi, s.v. Hilluk Melachot.
declare obligatory, *hilluk melachot* shows us that Shabbat was a conscious retreat from certain kinds of effort. It is not only that we do not act in these ways, we are meant to be conscious of each type of way in which we are not acting.\(^{150}\) Rest involves cessation of activity, retreat from certain kinds of effort. On Shabbat, the prescribed rest fulfills its purpose only if attentive, aware of each of the categories from which the person is resting, not just a lack of transgression.

Seeing the categories of *melachah* as indicating the kind of positive rest we seek on Shabbat also explains how we are imitating God in desisting from these labors. As the Torah expresses it, Jews stop working on Shabbat to imitate God, who created the world in six days and ceased on Shabbat, *va-yinafash*. The word *va-yinafash*, which Rashi and Ibn Ezra translate as “and He revived Himself,” is philosophically problematic, as Ibn Ezra notes.\(^{151}\)

Perhaps because of those problems, the kabbalistic reading of the text was to connect *va-yinafash* to *nefesh*, the soul, and to see this as a reference to the *neshama yeterah*, the extra soul, that inhabits a Jew over the course of Shabbat.\(^{152}\) Ramban records another kabbalistic view that Shabbat maintains the soul, although he does not explore the mechanism by which that happens.\(^{153}\)

The attentive breaking off of creative activity would provide just such rejuvenation. Creativity, in all forms, cannot be continuous; bursts of activity depend on periods of contraction and criticism, where the creator (and/or others) analyze the work that has been performed, fully absorbing what has been achieved.\(^{154}\) Used as a time to consciously, actively, and thoughtfully step away from the week’s various modes of creativity, Shabbat lays the groundwork for even more productive creativity in the week to come. The rejuvenation feeds the creativity; it is not separate from it.

Applying verses to God always involves difficult anthropomorphisms, but seeing *va-yinafash* as referring to an active rest that sets up the next period of creativity offers a palatable reading of the verse. It does not mean that God rejuvenated Himself, an abhorrent idea, but that God stepped back from His most active involvement in Creation for a period of review and consideration. Shabbat for people seeks the same kind of active review, in which the person considers how he or she created in the week gone by, learning the lessons of the past before embarking on the future.

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\(^{150}\) Prescribing sacrificial atonement for transgressions that lacked full knowledge implies some fault in the person’s ignorance. For Shabbat, that would mean we are obligated to be aware of each of these categories throughout the day; that forgetting is no excuse shows that part of Shabbat is the active awareness of desisting from each of the categories.

\(^{151}\) Exodus 31; 17.

\(^{152}\) See, for example, Ramban’ comment on Exodus, 31;13.

\(^{153}\) Commentary to Genesis 2;7.

As soon as we see Shabbat as internally productive, however, it necessarily must adapt to and be adapted by each person. A farmer will experience his stoppage of creative labor differently than a construction foreman or a scribe. In each case, the general parameters of the day are the same, but the resulting experience is and should be individualized.

The Obligations to Desist from Creative Activity on Six Holy Days

When we turn to the holidays, the most obvious change from Shabbat is that several kinds of labor, known as אחת מצרי, activity that produces food, are permitted. Holidays are thus already given a prominent celebratory component, since eating, particularly eating before God at the Temple, is the way the Torah signals celebrations for Jews.

The celebratory component distinguishes the various holidays from each other, since they are each reacting to different events; Pesah celebrates the Exodus, Shavuot the offering of the הלחם שני, the two loaves of bread that are the first sacrifices given from that year’s grain harvest, Sukkot both the completion of the harvest and the memory of God’s protection in the desert.

That difference of character carries over to the obligation to desist from labor as well. It is tempting to see the cessation of labor on one holiday as being the exact same as another, since their laws are in fact the same. Rambam’s counting each holiday’s rest as a separate commandment already suggests that they are meant to be slightly different from each other, since he could have included them all in one obligation to observe certain special days. He does not, for example, include a separate obligation to refrain from labor on the seventh day of Passover, since it is part of the same holiday.

Some but not all of the differences are revealed by themitsvot hayom, the special commandments of each day. The requirement to sit in booths on Sukkot, for example, tells us something about the day, but does not cover all of one’s actions over the course of the day; it would be mistaken, therefore, to see the sitting in the Sukkah or the telling of the Exodus story as the entirety of the import of the day, but it perhaps provides information as to what the day itself is supposed to look like.

The traditional liturgy offers a complementary avenue to fleshing out the content of the rest God wanted on each of these special days. In naming the holidays, both in the standing prayer and in Grace After Meals, tradition described them. Pesah, for example, is called זֶה מָצָא הַרְפָּעָה, the time of our freedom, Shavuot is זֶה מָצָא הַתָּן, the time of the giving of the Torah, and Sukkot is זֶה שְׁמַחְתָּנוּ זְמֵן, the time of our happiness. If those descriptions are accurate, presumably the cessation from creative work should reflect them.

The holidays’ differences from each other explain why the Torah instituted so many of them. As days of rest, it is unclear why we need them in addition to Shabbat. Recognizing that they each contribute differently to shaping Jews’ lives into more Godly ones, we understand the whole framework of the holidays, and realize that the basic rules of ceasing creative labor are a starting point, not an ending one. Once again, the laws
provide only a basic and universally applicable guideline for the kinds of experience being sought; the task itself is left up to the autonomous choices of each person.

To Give Charity

Several facts about the *mitzvah* of giving charity show that the obligation involves a great deal more than willingly donating some of one’s funds to various positive causes. First, Rambam has a famous list of the eight levels of charity, collated from various Talmudic discussions. The highest of those levels, the best fulfillment of the obligation, is to support another Jew or righteous non-Jew *before* that person’s financial situation deteriorates so much as to need actual alms.

The possible ways to accomplish this support include giving a gift, making a loan, forging a partnership with the needy person, or finding him some other source of livelihood. Each of these strategies, though, involves complex calculations of how to best steady a person teetering on the edge of slipping into the underclass.

Rambam assumes as well that the *mitzvah* applies both to the poor and the near-poor, adding to the complexity of the issue. The person intent on giving charity in the best way possible, we now find, must make significant decisions about how to dispense whatever funds he or she has set aside for that purpose. First, he or she must identify the targets of giving, whether to give to the already-poor or the near-poor (and within each category, whom and at what level). Beyond that, once the recipients and the amounts have been decided, the person giving charity must further decide whether to give it by outright gift, loan, partnership, or finding the person employment. None of these choices is simple, but figure notably in evaluating the quality of the charity.

Honoring and Fearing Parents

While these two commandments are obviously related, the Torah separates them, placing כבוד, honor, in the המברחות עשרת, the Ten Utterances at Sinai known as the Ten Commandments, and leaving יראת, fear, for the beginning of Leviticus 18. In seeking the balance between what is well-defined and what is left to the individual conscience in this *mitzvah*, we will be trying to explain both why the Torah would present them so separately while books that enumerate the commandments and of Jewish law, such as the *Sefer haMitsvot* and *Shulhan Aruch*, put them right next to each other.

Although כבוד is always translated as “honor,” the Talmud defines it by delineating specific services the child must perform, מוכת מוכת, מלבש ומכסה, מלבש ומכסה, giving food and drink, covering and clothing, taking in and out. The list implies that “honor” refers to taking care of a parent's physical needs.

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155 Laws of Gifts to the Poor, 10:7-14.
156 Sefer haMitsvot, Positive Commands 210 and 211, and Yoreh Deah 240.
157 Some of the defined aspects of *mora*, fear or awe, will in fact seem more like what we might have assumed for *kibbud*.
Turning to the obligation of ירא, awe or fear, will help us further understand both of a Jew’s responsibilities to his or her parents. The Talmud defines “fear” as not sitting or standing in the parent's place, not speaking before either of them, not contradicting either of them, not calling either by his/her first name (or even, if an unusual one, calling someone else by that name), and not entering into a discussion in which a parent is partaking, even to support the parent's point of view. All of these suggest that a child is supposed to view the parent with a certain amount of fear; indeed, Rambam says that the mitsvah is to act towards the parent as one would towards someone with the power to administer meaningful punishment. It should be obvious that the fear is not in and of itself the Torah's goal, so that here, too, we are prodded to look deeper into the mitsvah.

A couple of Rabbinic statements will clarify how they understood the Torah's goals. The Talmud notes that Scripture uses the same terms for these mitsvot as for the attitude one should have towards God. Thus, the verse warns kabed parents, and elsewhere says kabed God; so, too, it warns תיראו ואביו אמא, every one of you must fear his mother and father, and חתא את אלהיך, fear the Lord your God. The commonality of terms, the Rabbis imply, indicate that one’s attitude towards parents should parallel the attitude towards God. As two of the three partners in a person’s creation, parents have standing akin to that of the third partner, the Creator.

Recognizing that these commandments stem from parents’ role as creators also fits the Sefer haHinuch’s assertion that this mitsvah inculcates gratitude, which he explicitly assumes will increase the person’s gratitude for God as well. The honoring of parents thus only partially cares about securing them their due; they also serve as a convenient vehicle to teach a better attitude towards the Creator.

Rambam's phrasing of two more rules supports this idea. Halachah prohibits restraining one’s parent (verbally or physically), even if the parent’s ill-advised actions will cost the child money. In the extreme example, a child may not stop a parent from throwing a bag full of the child's money into the ocean. Rambam highlights the relationship to God, by ruling that the child seeing such a parent throw the money away must “sit silently and accept the decree of Scripture.” Similarly, he writes that the child may not answer back if the parent embarrasses him publicly, but must maintain his fear of the King of Kings.

Note that his justification in both cases relies on the child’s obligations towards God, not towards the parent. In both situations, then, the goal is to see this physical person as in some way parallel to God, to use that as a stepping-stone to inculcating a more full honor and fear of God.

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158 bKiddushin 30b.
159 The image appears in the Talmud, ibid.
160 Rambam, Laws of Rebellious Ones, 6:7. Others, noting that the obligation of honor does not extend to the child’s using his own money, disagree.
Seeing the commandments of honor and awe in this new light also shows us the ways in which each person must shape their observance, completely unguided by specific laws. The commandment is not to perform certain acts towards one’s parent, nor to desist from others; the ones delineated in the Talmud are only those that apply to all cases. Alongside those codified laws, though, the Talmud gives numerous examples of how people demonstrated proper respect and/or fear of their parents. Perhaps most famously, Dama b. Netina is commended for refusing to waken his father, who was sleeping on the key to a cabinet that held merchandise that he could have sold right then for an extraordinary profit.\textsuperscript{161} Since Dama was not even Jewish, the Talmud could not have meant his example as \textit{halachically} instructive; rather, it meant it as evincing an ideal that each Jew must strive to actualize in his or her own life as well.

As we bring this section of our discussion to a close, eight \textit{mitsvot} have shown us how poorly an over-reliance on \textit{halachah} would serve one trying to fulfill these dictates. While \textit{mitsvot} define a set of goals, they only give some guidelines for how to achieve them. In each of these cases (and we could have added many more), full success required the individual Jew to build off of those guidelines in defining how he or she fulfilled the obligation in question.

\textsuperscript{161} \textit{bKiddushin} 31a.
Chapter Four: Learning to Embrace Autonomy: Women’s Exemption from Mitzvot

Assimilating the positive achievements of the feminist revolution without at the same time absorbing its many excesses is perhaps the most difficult task for traditional Jews today. As women have re-examined the religion to see where they might find better avenues for their desire to serve God, one area of sensitivity has been the unequal levels of obligation between men and women, the fact of women’s having been exempted from many mitsvot. Those exemptions in turn prevent women from serving in some roles, such as blowing shofar for the congregation, since helping others fulfill a mitsvah requires that the agent be equally obligated in that mitzvah.

Even leaving aside the question of communal participation, which is complicated by other factors, many women feel excluded by their having been exempted from mitsvot that are central to men’s religious persona (and therefore seem to be central to Jewish religiosity, period), such as the study of Torah, wearing tefillin, hearing shofar on Rosh haShanah, or sitting in a Sukkah on Sukkot. Since those activities dominate what it means to be Jewish for many men, women can easily come to feel that Judaism either cares less about women’s relationship with God, or does not imagine that women are capable of building such a relationship as well as men.

Probably more women are bothered by their exclusion from participation in public communal rituals, such as leading prayers and/or reading from the Torah, than they are by their exemption from certain mitsvot, but it is this aspect of the problem that fits into our current discussion. In the light of our views of autonomy and heteronomy, we can look at women’s exemption from many גראים שהזמןעשה מצוות, the positive time-bound commandments, with new eyes. Exploring this topic will, I hope, continue our project of understanding the role of mitsvot in the religion while also refuting the belief of many Jews (Orthodox and not) that women’s religious development is in any way less significant or important than men’s.

The urge to adjust the traditional system often stems from the feeling that we would be helping it overcome an unwitting failing; as we show that there was a reasonable perspective underlying the choices the system made, we hope to show how women can find true religious fulfillment even without altering the principles under which Judaism has always operated.

The first step in re-thinking these exemptions comes from noticing that our discussion of autonomy and heteronomy so far has opened up the possibility that heteronomy is not always an inherent value. Not being included in an obligation certainly excludes women in one way—they cannot be agents of fulfillment of that mitzvah, as we mentioned—but might leave them with an equally valuable result, a greater autonomy to shape their service of God as they see fit. Extending our view of heteronomy as God’s response to the human failure to develop the proper type of autonomy, women’s reduced heteronomy suggests that they are still trusted to achieve the desired religious state without as much input from the system.

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162 I have registered some thoughts on that issue in “Women’s Aliyot: What’s the Halachic Story?” forthcoming in Tradition.
This suggestion differs, I hope, from the well-known, roundly rejected argument that women did not need mitzvot related to time because their involvement in laws of Niddah (Family Purity) already trained them sufficiently for that. As I have argued elsewhere, there is no obvious reason that a woman’s obligation to be aware of and react to her monthly cycle should teach her about seasonal mitzvot such as sukkah or shofar.

My argument instead is that the category of positive time-related mitzvot, מוצות עשה תקופתיות, only establishes specific acts of worship of God, and halachah thought those acts were unnecessary for women. Since, as we will show, those acts only support men’s adhering to broader goals—goals in which women are equally obligated—women’s exemption does not actually leave them out of anything of significance to the religion.

We should also pause to stress the difference between exemption and exclusion, and where it matters. Women often feel that they are “left out” of these mitzvot because halachah does not require them to do so. That impression is accurate in the realm of helping others fulfill their obligation and in the level of reward we assume each person receives for that mitzvah. Were these practices woven into the essence of the religion, or were there no other way to secure the kind of reward that comes for these mitzvot, exemption would in fact equal exclusion. If not, the difference remains crucial; women are free to use these acts as the avenue to a relationship with God, but are not required to.

Many—if not most—Jewish men do experience these rituals as definitive of their religiosity, seemingly justifying women’s feeling that the exemption discriminates. For men, acts such as saying Shema twice a day, wearing tsitsit and tefillin, shaking a lulav on Sukkot, and counting the Omer between Pesah and Shavuot are the markers of their religiosity, how they define themselves as observant. Truly serving God, men’s experience seems to say, necessarily involves these acts. If that were accurate, women’s exemption would obviously relegate them to second class citizenship.

We need to take three steps to show the errors in this view. First, we will show that that characterization of these mitzvot is incorrect even for men. These mitzvot should be seen as examples of broader religious ideals, acts by which the Torah inculcates less exactly delineated ideas, although those ideas were also independently legislated. Rather than ends of their own, the Torah set up broad goals, but then defined specific acts by which men could learn how to achieve those wider goals. Women were exempted only from the specific acts, not the general ideals.

Demonstrating that will alleviate the problem somewhat, but still raises the question of why the system required these acts of men but not women. Many of the answers offered to that question postulate reasons

163 "Men's and Women's Differing Religious Experiences, as Taught by the Category of Mitzvot 'Aseh She-haZman Grama" (Winter 2002) in Women in Judaism, (www.women-in-judaism.com).

164 Recall our discussion of גודל המצוות ו下面是小 ממצאות ממצאות ו🤍, that the greatness of being obligated in a certain act is only in terms of the reward for that act. Even so, if the list of acts from women are exempted encompasses truly central parts of the religion, the result is second class citizenship however we dress it up.
for women’s exemption that are neither satisfying nor well based in traditional sources. Just as we have until now repeatedly argued that the system must be absorbed, understood, and only then extrapolated, we can only properly conceptualize women’s exemption by building our views from the sources adduced to establish it. The second part of our discussion will therefore look into how the Talmud itself conceived of women’s exemption from these mitsvot.

Surprisingly, we will find that the Talmud makes no broad claims about women, their nature, or their lack of appropriateness for these mitsvot. Rather, the Talmud cites verses, as it does whenever it seeks a source for a principle of the Divine system of law, leaving to us the task of teasing out the implicit messages of those verses. The third part of our efforts, therefore, will be to articulate a valid and reasonable understanding of the assumed distinction between men and women that underlay this separation. Deciphering that distinction and its underpinnings will provide the deep comprehension of the exemption that we seek.

How Important Are the Commandments From Which Women Are Exempt?

The first question we raised was whether women are being freed from obligation in vital and crucial religious experiences, or only from legislated examples of broader systemic concerns. When the Talmud mentions the category of positive time-related mitsvot, it provides a list of these mitsvot that we can use as the basis for our discussion. The Talmud says:165

כל מצותעשהשהזמןגרמא. תל”ר: ארוחי מצותעשהשהזמןגרמא? דכתובה, הולכת, שפר.
שמחת, חוק, דמצותעשהשהזמונגרמא, ונסים חיותו! ו, הרי הלמוד תורה, פורח, ו祊ני, ופדוי ומדת.
שהזהו בוקנן, דsessionId שעשהשהזמונגרמא! אあまり יומן! אי להדני ממקלה ואפיל בנכון, מעומר בר חוכ.
...

All positive commandments that time causes, etc. Our Rabbis learned: What are positive commandments caused by time? Sukkah, lulav, shofar, tsitsit, and tefillin; And what are positive mitsvot without any element of time? Mezuzah, ma’akeh [building a fence around any elevated platform], avedah [returning lost objects], and shiluah ha-kan [sending away the mother before removing babies from a nest]. Is it a general rule? Look at matsah, simhah [celebrating on holidays], and hachel [the national gathering on Sukkot after the shemittah year], which are positive commandments caused by time, and women are obligated! In addition, look at Torah study, procreation, and redeeming a first-born son, which are not positive commandments caused by time, yet women are exempt! Said R. Yohanan: We do not rely [completely] on general rules, even where the rule was stated with some exceptions...

165 *bKiddushin* 33b-34a.
We have quoted this text mostly for the list of mitzvot it offers, but some of its oddities helpfully guide our analysis of that list. First, the Talmudic term for these mitzvot, most literally translated as “positive commandments that time causes,” is problematic, since the time component of some these mitzvot is extraordinarily difficult to identify. While time’s relationship to sukkah or shofar is clear—they come around once a year—its impact on tsitsit and tefillin is less so.\textsuperscript{166}

Indeed, the Talmud recognizes a view that tefillin do not belong in the list, since those rabbis rule that tefillin can be worn on Shabbat.\textsuperscript{167} When our citation included tefillin in the category, it was assuming that a mitzvah that applies at all times except for one day a week would suffice to be considered “caused by time.” So, too, tsitsit make the list because the mitzvah applies during the day but not at night (although it does apply every day). The Talmud does not explain how that justifies the term גורמאשהבעזמן, that time caused.” Deciphering that term would seem crucial to understanding what the Talmud meant by this category.

That the Talmud names this a category at all should itself raise questions, since the Talmud notes many exceptions, of mitzvot are obligated in despite their being part of the category, and of ones from which they are exempt despite their not being time-related.\textsuperscript{168} Technically, we continue to think of the category as useful because it does guide our assumptions about those practices not specifically mentioned in the text. Faced with a new mitzvah that has a time component, we would assume that women are exempt. That continuing relevance of the category, however, should mean that it captures some truth about the Torah’s expectations of women.

To get at that truth, we need to understand the category as fully as possible. The named mitzvot share few obvious characteristics. Three are related to holidays, two are not. While they supposedly relate to time, the latter two do so in a way that time plays a different role than the name of the category might lead us to believe.

Almost the only clear connection among them is their all being explicitly phrased by the Torah as a subsidiary of a broader religious idea. Sitting in a sukkah and taking a lulav on the holiday of Sukkot, for example, are properly seen as contributing acts that help create and fortify the holiday, not as independently important.

The sharply limited time frame for fulfilling these two mitzvot already suggests that they are subsidiary rather than essential. A few seconds suffice to shake the lulav, and its use as part of the morning services is complete by their end. Even the ideal requirement to live in a sukkah takes less time than we might think, since the mitzvah addresses itself only to those hours when one is ordinarily home—eating meals, sleeping,

\textsuperscript{166} Those two, in fact, rule the definition of membership in the category; see, e.g., Tosafot Kiddushin 29a, s.v. א؜תוה, where Tosafot assumes that being applicable only by day suffices to render a mitzvah גורמאשהבעזמן. In the question, Tosafot entertained the possibility that only starting at the eighth day of life would suffice as well.

\textsuperscript{167} bKiddushin 35a, with the sources mentioned by Rashi.

\textsuperscript{168} That the whole distinction is assumed to apply only to positive commandments is itself suggestive, but beyond our current scope.
relaxing. People can feasibly spend all day away from the sukkah, returning there only for those activities normally pursued at home.

Modern practice can lead us to experience the three parts of the holiday—sukkah, lulav, and the obligation to observe the holiday by desisting from creative labor—as separate from each other, which would then lead to rejecting our claim that the first two are meant to support the third. For many of us, the holiday as a whole consists of two discrete practices surrounded by a lot of blank time in which, as long as we do not violate certain prohibitions, we can act pretty much as we please.

In the previous chapter, we argued that שביתה, rest, means more than just avoiding certain acts; that should prepare us to realize that the commanded practices, of Sukkah are there to provide substance to the day. The Torah makes this explicit at least for the requirement to live in sukkot. Then, so that your generations should know that I caused the Jews to reside in tents when I took them out of Egypt. The verse does not mean that the Torah wants us to remember the Exodus only when actually inside that temporary residence; it wants the day as a whole to inculcate and fortify that awareness and commands these practices as obligatory avenues to that goal. Even for men, the Torah could have set up the holiday without such practices and still expected us to remember these aspects of the Exodus.

The apparent centrality of Shofar to Rosh haShanah also recedes when we consider it more carefully. The Torah refers to the holiday as a day of blowing (as it refers to Sukkot as a holiday of booths), but the restricted nature of the requirement make it hard to understand how it characterizes the day. First, we only need to hear that blowing, not perform it ourselves. Second, Torah law only required nine shofar blasts at some point during the day, which greatly restricts its experiential presence.

As with Sukkot, it would seem odd to say that nine blasts completely or essentially fulfilled the goals of the day of Rosh haShanah, with the rest of the day blank. Rather, blowing the shofar reminds us of the nature of the day, and is expected to affect our experience of the rest of the day as well. While women did not need to participate in the blowing, they are equally obligated to experience the תרועה יום, the Holiday of Blowing.

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169 Vayikra 23:43. The plainest sense of the text seems to apply that reason to the taking of the Arba Minim as well, although many explanations of the meaning of that practice refer to harvest issues instead. Either way, lulav is almost always seen as reflecting some deeper idea, not as being an end of its own.

170 A המרור תרועה or a יומ תרועה, see Vayikra 23:24 and Bamidbar 29:1. In Vayikra, Ramban assumes that the “memory” is that which is caused by our shofar-blowing.

171 Two factors lead to our hearing many more blasts than that, a confusion about how to blow a teruah that arose in Bavel, see bRosh haShanah 33b, and an attachment to the number one hundred, seemingly because the sixteenth-century R. Isaiah Horowitz (Shelah) asserted the value of doing so. Connecting shofar blowing to the Musaf service, a practice almost universally assumed to be Rabbinic, places the blowing more centrally than the Torah itself required. We focus on what the Torah demanded because only that is relevant to understanding what the Torah meant by its rules for women.
The Torah tells us that tsitsit and tefillin contribute to a larger goal even more clearly than with the other mitsvot in our list.\textsuperscript{172} We are explicitly told that wearing tsitsit is supposed to remind the person of God’s commandments,\textsuperscript{173} while tefillin are a mandated expression of the requirement to place God’s words on one’s heart.\textsuperscript{174}

Moving on to other mitsvot on the list, we find that Shema is a twice-daily reminder of truths which we are separately required to believe, recitation or not; a Jew who did not have the mitzvah of Shema would still be required to actively believe all the truths contained therein. So, too, the counting of the Omer from Pesah to Shavuot is a specific act, but one meant to foster an awareness of the connections between the two holidays; the counting helps insure that we are fully aware of what is occurring during that time.

Labeling some mitsvot subsidiary to others might seem a quixotic task, since all mitsvot contribute to achieving the goals of the system. Granting that, we can still differentiate commandments where the act itself wholly and completely achieves the goal in question—is an example of the goal-- and those where the act is only to be valued within the larger framework. Putting a fence around one’s roof, giving charity to the poor, offering a sacrifice to atone for a sin all indeed contribute to a larger framework of service of God, but are themselves complete pieces of a life lived in His service. The person who fences his or her roof has by that very act protected others from harm; the one who gives charity has by that very act helped a poor person monetarily.

The positive time-related mitsvot are more necessarily joined to other-- more central-- acts of worship of God. Holiday commandments are part of establishing the character and atmosphere of that day, as is counting the Omer. Reciting Shema and wearing tefillin and tsitsit are all avenues to remembering and internalizing one’s belief in God, awareness of mitsvot, and behaving in a manner appropriate to those commitments.

As a piece of our claim that women were offered a different, not lesser, framework for developing their relationship with God, this realization helps significantly. If the category of positive time-related commandments involved central, essential, or fundamental religious truths which could not be achieved without being commanded, the difference between men and women would pose a significant challenge. Seeing that the acts from which women are exempt are examples of ideas and beliefs incorporated in other commandments already gives some room to re-articulate their exemption as freeing them to find their own path towards those larger goals. In line with the preference for human input into service of God we have been discussing, we are working our way towards suggesting that women were left with greater autonomy in that regard than men.

\textsuperscript{172} Since, as we will see, tefillin are paradigmatic for the category, this mitzvah’s place within the halachic system is especially important, as it, too, might reveal a characteristic of the category itself.

\textsuperscript{173} Bamidbar 15:39.

\textsuperscript{174} Devarim 6:8 and 11:18.
We cannot stop here, however, for at least two reasons. First, many mitsvot in which women are obligated are similarly subsidiary, such as mezuzah, which also serves as a reminder of our obligation to engage God, Torah, and mitsvot. Once we know that women were commanded in some specific acts, we need to explain the Torah’s differentiating those that were time-related and those that were not. Further, and more significantly, we need to consider why the Torah would choose to allow women that greater freedom (as opposed to men), and why it would choose this way of expressing it. Finding the answer to that second issue will also, we believe, give us insight into how these mitsvot were chosen for exemption.

The solution to both questions lies in the Talmudic discussion that sought the textual source of the exemption. Unfortunately, that discussion is denser than useful for our purposes, but we can extract several simple true statements: 1) Those who see tefillin as time-related (as we do in practice),\(^\text{175}\) see it as paradigmatic for the category. 2) Tefillin’s having been twice juxtaposed to the obligation to transmit Torah from one generation to the next (Talmud Torah) teaches us that the two mitsvot are similar, in that women are exempt from each. 3) The mitzvah to teach Torah to our children, and redeeming the firstborn, are the outstanding exceptions of the other category, positive commandments without a time component; while ordinarily women are obligated in such mitsvot, specific Scriptural derivations make clear that they are not to be required to fulfill those two.

Embedded in those three statements is a derivational oddity that has not been much noticed. Tefillin is seen as the paradigm of its category, but its own exemption is derived from having been placed next to a mitzvah from the other category, and an exception at that. It is almost as if if the Talmud is signaling to us that the category of the זמנים做的事מצות and the obligation to study Torah share a significant characteristic, despite the latter’s not having any significant time component. Looking at the derivation of women’s exemption from Torah study a little more carefully should therefore shed light on our category as well.

Here, too, the derivation is complex, strengthening the temptation to pass over it quickly. By resisting, we will find further confirmation of an aspect of Torah study we spoke about in the previous chapter, but in a context that will also suggest how it is relevant to positive time-related mitsvot.

The focal point of the Talmud’s discussion is the Scriptural phrase that establishes a father’s obligation to transmit knowledge of at least the Written Torah to his sons, והבתים את אלהים ואת בניך, you shall teach them to your children. Since the obligation is parental, the Talmud first seeks the source of women’s exemption from passing on such knowledge to their sons, and points to the first word of the phrase. While we read that word as ve-limadtem, and you shall teach, those letters without vowels (as it is written in the Torah) could also signify the word u-limadtem, and you shall learn; because of this ambiguity, the Talmud sees the Torah as signaling that only a parent personally obligated to study bears the obligation to teach.

\(^{175}\) The Talmud knows of those who think tefillin can be worn at night and on Shabbat; for them, tefillin is not time-related.
That only raises another question, the source of the mother’s exemption from study. Here, the Talmud reverses the readings above, and notes that while the word could be read as u-lemadtem, it is actually read as ve-limadtem, teaching that only people whose parent(s) had to teach them needed to study themselves. The personal obligation of study depends upon having had a parent who had an obligation to teach. To close the circle, the Talmud then says that we know that a father is not required to teach his daughters (which, as we have just seen, implies that the daughter need not study on her own, nor insure that her sons study) because the verse says “your sons,” which the Talmud here assumes means to the exclusion of daughters.176

Similar to our discovery that grandfathers are included in the obligation of transmitting Torah from generation to generation, the derivation here emphasizes that the act of Torah study is inherently and inextricably linked with the experience of being taught and of teaching others. A child whose parent bore an obligation to teach must study on his own—either to replace or supplement the parent’s teaching-- and must pass that study on to the next generation. Others are free to study as much or as little Torah as they want, but are not included in this chain of transmission.

Putting this fact together with the minimum requirement of Torah study, that of the Written Torah, reminds us that the mitzvah of Talmud Torah, at its base, seeks to insure that a segment of the Jewish people will bear the responsibility to insure that they and the next generation share knowledge of the basic texts of the religion. We emphasize this both because it differs so sharply from the way the mitzvah is generally presented and also because it is crucial to understanding why God might have chosen not to impose that same obligation and responsibility upon another segment of the population, women.

Before pursuing that line of thought further, we need to review the remarkable similarity between this derivation and the one the Talmud offers for women’s exemption from redeeming first-born sons, since that, too, emphasizes linking generations. In the latter case, the key word is tifdeh, you shall redeem, from the verse כל תפדה בנים, you shall redeem all first-borns of your sons.177 Since the word could be read as tipadeh, you shall be redeemed, the Talmud sees it as linking the two, so that only a parent who would have to have redeemed him or herself has to redeem a first-born child. Similar to what we saw before, the Talmud then flips the derivation, saying that our actually reading the word as tifdeh even though it could be read as tipadeh means that only one whose parent bore an obligation to redeem him (or, at this point in the discussion, her) would need to do so for him or herself. For the final step, that parents only need to redeem sons, the Talmud similarly reads בנים as your sons, here, too, assumed to mean sons only.178

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176 bKiddushin 29b. The Torah’s references to sons do not always mean males exclusively; one clear example would be Shmot 13:8, לאמר ההוא ביום לレーション בנים, and you shall tell your son on that day saying, a mitzvah that Rambam and Sefer haHinuch assume includes women.

177 Shmot 34:20.

178 bKiddushin 29a.
In both cases, the Talmud limits the parental obligation to the father because only he would have had to perform those acts for himself. That latter statement is true because the Torah only obligated his father to do it for him, not for any sisters he may have had. The derivation does not explain why women are exempt, it asserts it based on textual fiat. What it does do is show that these acts are essentially chain-like, that the obligation to partake of them is a way of insuring their continuity through the generations.

That the caretaker element of these mitzvot sits at the center of the obligation is perhaps most clearly implied by the derivations of women’s exemption from redeeming the first-born, where the chain is largely theoretical. A third-born son whose wife’s first child is a boy must redeem that son even though this father’s father did not have to redeem him. The derivation does not mean that parents who in fact had to be redeemed must return the favor for their children, but that parents who would have needed redemption had they been first-born.

Understanding that the Torah meant to set up a chain of caretakers for this practice explains why that does not matter. It is not the experience of this area of Judaism that creates an obligation to pass it on—as we might have thought from the example of Talmud Torah—it is the Torah choosing to place the responsibility for safeguarding the continuity of an aspect of the religion with those who might, at some point, be required to partake of it.

As we move to discussing how Talmud Torah’s being a chain explains women’s exemptions from this mitzvah and positive time-related ones in general, let us be sure that we have absorbed the evidence we have gathered so far. We have found that positive time-related mitzvot, for all their apparent centrality to Jewish life, are actually only specific acts geared towards achieving larger goals. While certainly important, the exclusion from those actions leaves women with no less of an obligation to achieve a relationship with God; they are only not required to do so in the same way as men.

By a circuitous route, the Talmud told us that women’s being exempted from the realm of transmission of Torah stemmed from that obligation involving a chain of transmission, and that chain applied to men rather than women. That point was emphasized by the similar derivation regarding redeeming the first-born where even men who had no part in being redeemed were still part of the assumed chain of transmission.

To see how that might apply to the positive mitzvot, we need to focus on an aspect of the chain of knowledge of Torah incorporated in the mitzvah of Talmud Torah. In the previous chapter, we mentioned that the Talmud sets the minimum for this obligation at the Written Torah, which Rashi saw as the Five Books of the Torah, while Rambam understood it to mean all of Tanach. Compared to a goal of knowing all of Torah, implied in the Talmud’s excitement about Zevulun b. Dan and stated explicitly by R. Moshe Feinstein as the true intent of the mitzvah, the minimum might seem rather light.

In the real world, however, insuring that each male Jew achieves meaningful knowledge of even just the Pentateuch, is a daunting task. Certainly the vast majority of male Jews today have not
achieved such knowledge. The Talmud itself was aware of the challenges involved in insuring that children learn that which is required. In discussing seemingly contradictory traditions as to how intensively to educate one’s son, the Talmud concludes that the process begins at the age of six, when the father begins “stuffing it into him like an ox,” which apparently means teaching the child as much as he can bear to learn. Once the child reaches the age of twelve, however, the father is enjoined לחייו עמו לרדת, to struggle with him in a way that even carries the threat of real suffering if the son refuses to study.

That element of struggle seems foreign to us because it is so rare for fathers to engage in it. In some segments of the Jewish community, the need to be involved seriously in Torah study is taken so much for granted that fathers need not work all that hard to insure that their sons strive to know the Written Torah. In other segments, fathers either do not know of the extent of their obligation, or are so leery of turning the child off to the religion in general that they would never exert any significant pressure towards Torah study.

There may be sociological reasons to adjust our vision of how to bring about the required result—starving children to coerce their cooperation would be frowned upon by the authorities, let alone by Jewish society—but there is no reason to suspect that the mitzvah has changed in any way. The obligation of Talmud Torah is not to regularly perform the act of Torah study, it is for each adult male Jew to imbibe as much Torah as he can so that he can then pass that on to his sons, insuring by whatever action necessary, that each of his sons know at least the Written Torah.

It is the rigidly defined nature of success in this mitzvah, I believe, that led to women’s exemption and that connects to positive time-related mitzvot. The mitzvah of Talmud Torah makes more significant and more rigid demands upon a person than the ordinary positive commandments. Regardless of a person’s proclivities, knowledge of the Written Torah is absolutely required; for many Jews, that is no mean feat.

The positive time-related mitzvot make similarly specific and well-defined demands upon a Jew. Shema must be recited at certain times of day, a shofar blown on a certain day of the year, and so on. Tefillin and tsitis, while not as obviously time-related, are nonetheless also extremely specific delineations of how to develop the relationship with God.

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179 Or, if they have, have subsequently lost it through neglect and failing to observe the Rabbinic requirement to read the Torah reading each week twice in the text and once in an authoritative translation. Rejuvenating our involvement with the text of Torah would have many positive effects, not least being that it would ease the endeavor of securing silence during public Torah readings.

180 bKetubbot 50a. The phrase is obscure, and used in only one other halachic context in the Talmud, bKiddushin 28a, where one person calls another a rasha, an evildoer. There, the target is similarly allowed to “go down with him to his life,” but the phrases are interpreted differently in the two contexts. Here, Rashi understands the Talmud to be permitting the father to hit the son with a strap and to withhold his food until he studies. In Kiddushin, Rashi only allows hating the other, but seems to also allow working to minimize his business and even to deprive him of a livelihood. In Baba Metsia 71a, Rashi rejects the second half of that interpretation, specifically because there is no such possibility in the case of a father and son.
Other positive commandments do not make the same kinds of rigid demands on the Jew. We have seen that the positive sides of Shabbat, holidays, and even charity, are fairly open to personal input as to how best to achieve them. Positive *mitsvot* that are more specific, such as *mezuah* or מְזוּזוֹת, fencing off one’s roof, are situational; anyone who finds the burden onerous could simply choose not to enter into that situation.

The Talmud does not speak specifically about rigidity as the underlying issue, so we are speculating somewhat in advancing this interpretation. We feel comfortable doing so because it explains several crucial textual questions in terms of women’s exemption from this category of *mitsvot*. For example, the centrality of *tefillin* as an example of שְׂרֵי צְדָקָה שֶׁיָּכוֹס שָׁדוֹתָם מִדְרַגָּה is difficult if time is really the issue, since *tefillin* have a debatable and at best minimal connection to time. In terms of specificity of demands, however, *tefillin* ranks high, since the Talmud explicitly assumed that non-Jews who encountered Jewish men would meet them in their *tefillin*.181

The specificity of *tefillin* not only explains its centrality to this category, it also links it more clearly to *Talmud Torah*. We could leave that link as technical, a declaration of Scripture with no underlying justification, but seeing it as expressing the goal of *tefillin*, reminding their wearer of God’s Torah, helps us see why the connection between the two would be noted in this context.

Accepting that reasoning for the exemption from these obligations is attractive because it allows us to explain the differences between men and women in a way that respects both. Rather than expressing any distaste for women’s participation in the central observances of the religion, our presentation argues that the Torah decided to leave women with a freer-flowing approach to the religion, opening room for them to determine their path to God more personally than to men. Especially given the previous chapters’ evidence of the value that God places on appropriate human input into defining religiosity, there is no reason to see that freedom as essentially negative.182

But still, readers may ask, why were women left so free and men given the *mitsvot* that became so central to their experience of the religion? For men, after all, studying Torah, wearing *tefillin*, sitting in a *sukkah*, and so on, constitute the backbone of religiosity. Explaining those practices as not unnecessary for a valid and productive relationship with God will strike many as apologetics unless we can meaningfully explain why a God Who had decided that Torah and *mitsvot* were necessary for a religious core of the human population would also decide to leave half of that nation with only parts of the system to observe.

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181 *bBerachot* 6a.

182 Incidentally, viewing these exemptions as fostering a more personal religiosity offers another reason for the general halachic equation of women and partially converted slaves. That parallel has sometimes been stated in a way we would currently find offensive, but our suggestion here allows for the possibility that slaves were also left with such freedom because their connection to the religion was more tenuous than ordinary Jews. Not having fully joined the religion, indeed only having joined it so as to enter a life of servitude, we can imagine the Torah easing their path as well by leaving them more flexibility.
There may be many answers, but I will focus here on the easiest one to articulate, the effect of such a system on child-raising. The mitzvot of Talmud Torah and the positive time-related commandments necessarily (and properly) shape a view of the religion and of God as a commanding and demanding presence. From a relatively young age, a Jewish male should be made aware of continuing and challenging goals he is expected to reach—knowledge of Torah, observance of specific mitzvot in specific ways. His path to God is, in many senses, explicitly laid out, with the implication that following those guidelines exactly and faithfully will take him far towards reaching the goal.

We have spent the entirety of this essay demonstrating that that perspective, despite its truth, does not capture the entirety of the religion’s views or goals. Men, we have argued, often do not recognize the individuality that even their mitzvot demand of them. Leaving women with greater choice in how to shape their relationship with God offers the possibility that Jewish society as a whole will recognize the value and necessity of both sides of the equation—the response to specific commands in some situations and the personal journey towards God on the other.

The answer to the next question, why men were chosen for specificity and women for freedom, can be answered either technically or by appealing to essential differences between the two. Technically, women have always been the ones more involved in the rearing of small children, a time when freedom and openness to personal differences is especially crucial. While we certainly do not want to crush the individuality of adults, it is even more damaging to do so with small children. Helping those whom biology had set up as the caregivers for small children in their task would easily suffice as a reason to give them a freer form of the religion.

For those who do not mind claims about possible general differences between men and women, we would also suggest that women’s personalities tend to prefer a looser set of rules, with more allowance for individual differences.\footnote{Many discussions of differences between men and women support this claim, without any connection to Judaism. Most recently, Simon Baron-Cohen, The Essential Difference, has argued that, on average, men tend towards systems-building, understanding a set of rules for how something works and then applying those elsewhere, while women’s minds tend towards empathy. If true, that would certainly justify establishing a more rigid system for men (for them to then understand and build on, as we mentioned in the introduction), leaving women more room to choose how to build their relationships (especially with God).}  

As we bring to a close our focus on the Talmudic evidence of a preference for personal insight and input into one’s relationship with God, many of our claims might seem uncomfortably innovative. That non-Jews have a positive role to play in the world, depending on their readiness to accept the truth of Judaism’s portrayal of the world, that prayer is an opportunity for arguing with God about the best possible future, that mitzvot frequently inherently require personal elaboration and delineation, and that women’s exemption from a whole category is therefore an example of a more general preference for individuation of one’s relationship with God, all adopt positions that are not commonly discussed in Jewish circles.
That does not mean they are wrong, since the possibility of novel insight by later thinkers, even significantly less talented or knowledgeable ones, is woven into the fiber of the process of Torah study. In this case, however, we need not go that far, since the basic thrust of our views is found in numerous earlier writings. In the next chapter, we will take up only two, Rambam and Ran, since they approach Judaism from sharply different premises. Seeing that they agree about the importance of using one’s intellectual consideration of the religion to affect one’s own observance and religiosity will provide powerful support for the ideas we have offered. From there, we can move to our conclusion, a consideration of how allowing these ideas to impact on our experience of Judaism might alter it, personally and communally.
Chapter 5: The Rishonim Knew It, Too

To advance a view of mitzvot and halachah that is not prevalent requires more support than just the textual readings offered in the previous chapters (as confident as I am of their accuracy); it requires evidence that I am uncovering ideas intrinsic to the system rather than imposing my own upon the system. While any number of sources could serve quite satisfactorily in that capacity, I have chosen to focus on Rambam and Ran, for several reasons.

Technically, they are figures of relatively equivalent stature in Jewish law and thought, so that either one of them could serve as the sole support for claiming a certain perspective was legitimate within the religion. Since they operate with different fundamental perspectives of the role of the metaphysical in our experience of life, though, their agreeing about our basic contention here offers strong support that it is basic to the religion, and needs to be incorporated into any perspective of mitzvot.

The agreement of the rationalist Rambam, who strives to articulate a naturalistic view of the world, surprises us only minimally. It will be more surprising to see Ran, R. Nissim of Gerona, evince a similar attitude. He assumes a more frequent intrusion of the metaphysical into our lives and everyday experience, which might have led him to deny any human ability to contribute creatively. When we find him agreeing with Rambam that people are meant to do so, he offers important evidence that the religion sought to mold people who would use mitzvot as an indispensable base upon which to build in constructing their own paths of service of God.

Although Rambam’s work is rife with comments that make his agreement clear, two texts in particular usefully make our point, prominently emphasizing the religion’s desire for each person’s creative conceptualization of what it means to worship God. The first is not actually about service of God, but study of Torah. Rambam is translating a Talmudic statement that says people should divide their Torah study time equally between Mikra, Mishnah, and Talmud (although Rambam’s version apparently read gemara). He interprets the first two terms as the Written and Oral Torah, defining the first as all of Scripture and the second as its interpretations, including the Talmudic and Geonic corpuses of law (all of which, in an extremely extended way, interpret the original Divine word).

Most germane to our purposes is Rambam’s description of how to spend the last third of that time. Instead of naming a text to study (as we might expect from the first two entries on the list), Rambam writes:

...and a third he should understand and conceptualize the end of a matter from its beginning, and deduce one matter from another and draw similarities among matters and understand the rules by which the Torah

184 Laws of Torah Study 1;11-12.
is expounded until he knows the essence of those rules and how to extract the prohibited and permitted and the like from among the matters that were learned traditionally, and this area is called gemara.

Note that Rambam recommends spending a full third of one’s Torah study time on understanding the system’s implications, rules, and ways of deriving rules and ideas not previously mentioned. In the following paragraph, he expands that for more advanced students, advocating they spend almost all of their time on such efforts. Knowing what to do, necessary as it is, is technical knowledge of how to practice; Torah study aims much higher, at mastery of the system, the role of texts in that system, the role of traditional assertions about proper practice, and how to coordinate the two. The highest level of understanding, as far as Rambam expresses it, is to know how to creatively derive traditional facts of the halachic system from Scripture.¹⁸⁵

Rambam does not go so far as to suggest that sufficient expertise would allow a person to derive new Torah law, since that canon closed at Sinai. But his entire version of the goal of the study of Torah is similar to our expression of the goals of the system.

A fairly casual comment in the next halachah forces us to broaden the scope of creativity Rambam expected. In explaining what is meant by gemara, Rambam mentions that the topics known as pardes are included. Looking earlier in the work,¹⁸⁶ we find that he defined pardes as the topics discussed in the first four chapters of the work, which he labeled משלות хозяמה and משלות רוזשות, physics (the workings of the natural world) and metaphysics (the supernatural, quite literally for Rambam, who sees the natural as what occurs “under the sun” or moon, with the supernatural what occurs above it).

Rambam had restricted intensive study of those matters to those who had already “filled their bellies” with “regular” Torah, the give and take of the ordinary Talmudic discussion and the halachic conclusions that resulted from them. His mentioning that it qualifies as gemara conveys at least three startling pieces of information.

First, since gemara is more than just an understanding of facts, pardes must be as well. Gemara would lead a student to fully understand Scripture, how, when, and where texts were meant to lead to practical conclusions, and the nature of those conclusions. Applying that to pardes would mean that Rambam understands it to mean not only learning the facts of physics and metaphysics as known at a particular juncture in history, but also developing further understanding of how the universe works.¹⁸⁷

¹⁸⁵ I have often wondered whether this explains Rambam’s noted tendency to offer source-verses other than those found in the Talmud. He is not disagreeing with the Talmud’s derivation, he is giving vent to his own proficiency at deriving ideas from Scripture.


¹⁸⁷ Professor Twersky a”h used to wonder aloud as to Rambam’s message in placing these chapters at the beginning of his halachic work; characteristically, he left the question hanging. Rambam’s comment here, and his explicitly mentioning five mitzvot that are fulfilled by pardes, see Laws of the Foundations of the Torah 4:13,
Rambam’s including *pardes* in the *mitzvah* of Torah study adds yet another central *mitzvah* for which it serves as a fulfillment. For Rambam, studying the universe with an eye towards understanding the God Who created it serves not only as fulfillment of the five *mitsvot* that have to do with loving and fearing Him, but as a performance of a central activity of Jewish worship, Torah study.

Finally, and most surprisingly, Rambam’s comment means that he did not limit the *mitzvah* of Torah study to studying the texts of the traditional canon. Torah study was not so much about study of Torah, it was about creative mastery of a certain type of information; while Torah contained that information, other “texts” did so as well, and the person who studied those other texts—although s/he would necessarily need a great deal of Torah background to properly approach the issue—could, with the right frame of mind, achieve a similar result.

Aside from what it reveals about this *mitzvah*, the comments necessarily problematize seeing *mitsvot* as ends of their own. Indeed, in promoting achieving reasonable mastery of *halachah* before moving on to *pardes*, Rambam reminds us of his view that “ordinary” *mitsvot* “settle one’s mind to begin with and also that they are the great good God supplied for the habitation of this world in order to inherit the World to Come, and they are knowable by all, small and great, man and woman, one of a broad heart and one of a narrow one.”

Of less ultimate importance than knowledge of the universe and the God Who is its cause, Torah and *mitsvot* serve to train a person to the maturity needed to engage in that knowledge. Since Rambam sees that maturity as including the ability to conceptualize, whether Torah or the universe itself (both of which qualify as *gemara*), we are left to assume that other areas of *halachah* involve that as well.

Right at the beginning of Mishneh Torah, then, Rambam stresses the importance of systematizing. He does not understand God to have sought simple obedience, but the training of people to understand the facts of what is wanted, as well as the underlying rules and principles. The measure of true success in that training is the ability to independently arrive at correct new ideas about whichever system is under consideration, similar to what we have been discussing here.

*The End of the Guide, in Both Meanings of the Word*

We believe that a similar motivation animated Rambam’s cryptic final comments to the Guide of the Perplexed, his philosophical articulation of Scripture and the religion. Leading up to the addendum we want to discuss, the last two chapters of the Guide offered Rambam’s own definitions of four terms and of four indicate to me that he was trying to point out that study of physics and metaphysics is not just another avenue to valuable truth, it was assumed by the Torah to essential for the person of faith.


189 Rambam also offers examples of Hazal doing just that with *mitsvot*, as in Chapter 21 of Hilchot Shabbat, where he assumes they legislated prohibitions that were “similar to” those of Shabbat. These are not protective of Torah law—that is another category—they are actions which Hazal understood *should* be prohibited, despite the Torah’s having left them as permitted; using their right of legislation (which thus insures that they are not wrongly adding on to Torah), they instituted those prohibitions as well.
perfections. Three of the terms, חסד, צדקה, and משפט, loosely loving-kindness, justice, and righteousness, are explicitly explained in chapter 53, as they could apply both to human beings and to God.

Chapter 54 opens with a discussion of the various meanings of the word חכמה, wisdom. Torah wisdom consists first of absorbing tradition, then finding demonstrations and proofs for the Law, and finally of drawing inferences as to how to live, presumably in situations not covered by preceding cases.

Having finished his definitions without explaining to us why he chose to offer them, Rambam indicates that he is now moving on to his main concern by writing “After we have made all these preliminary remarks, hear what we shall say.” This introduces more definitions, now of the four human perfections, monetary, physical, moral, and, the intellectual. Not surprisingly, Rambam sees that last perfection as higher than the others, terming it the “true human perfection.”

The relative standing of these perfections is also recognized by the prophets, Rambam tells us, citing Jeremiah 9:22-23 as making exactly that point.¹⁹⁰ Rather than relishing any of the lesser perfections, the prophet warns us only to glory in knowledge of God, the height of intellectual perfection.

Had he stopped here, Rambam would have conformed fully to the expectations of those who stress his philosophical side, his belief that intellectual accomplishment, how we mold our minds, fully captures how successful a life we have led. Instead, he continues, pretending he is doing so for the sake of completeness; since he has mentioned the verse and its wondrous truths, he will “complete the exposition of what it includes.”

He needs to be complete because the verse (quoted in full in footnote 190) does not stop at the words “achieve insight and know Me” when it speaks of what is properly thought of as worthy of glory, it speaks of specific aspects of God, those of His “actions” in the world. For Rambam, that tells us that God’s purpose is that human beings, too, should act in the same ways, loving-kindness, righteousness, and judgement. The person who reaches the highest perfection, in other words, will have understood as much about God and His actions in the world as possible, and will then act in like manner.

Rambam’s concern with action has puzzled many of his students, medieval and modern, since he elsewhere focuses so strongly on the intellect. Having argued that politics and morality are lower forms of perfection than the intellectual, why would he then require such actions of the person who has achieved all the perfections?

¹⁹⁰ The verses read

כ אָמָרָה: אֲלֵי יְהוָה הַכֹּהֵן גְּדוֹל, אֲלֵי יְהוָה פְּרָד מְבֹרָךְ, אֲלֵי יְהוָה שִׁירֵי בְּשָׁרוֹ: כִּי אֶבוּא יְהוָה מְצַהֵרוּ, בַּהֲמוֹת רֹדֵעַ אֲוֹתָן אִמָּר לָהֶם מַגִּישׁ פְּדֵקֶן בַּאֲרָם כִּי בַּגְּדוֹל הַפּוֹשֵׁט אֲמָה, נַעֲבַר.

Thus says the Lord: Let not the wise man glory in his wisdom, let not the mighty man glory in his might, let not the wealthy man glory in his wealth; But let him that glory glory in this that he achieves insight and knows me [note: I have reinterpreted the verb haskel as I believe it means more, at least to Rambam, than just to understand], for I am the Lord Who exercises loving-kindness, justice, and righteousness in the Earth, for in these I delight, says the Lord.
The question has been discussed numerous times and a full survey of the answers is beyond our scope here. We read Rambam as espousing the kind of process we have been arguing constitutes the essential goal of the religion. The perfect person will come to understand God’s attributes of Action, either by studying the universe or the mitzvot (which perfect the body, the soul, and the polity), and will then act upon them. Mitzvot are not an end, they are a means to developing our understanding and acting upon it in the creative ways we elucidate based on our analyses.191

Derashot haRan

We could add many other examples of such expectations in Rambam and other rationalists, but there is no need to pile on. I choose to stop here with our discussion of Rambam because his agreement is so unsurprising. It is more informative to find similar ideas emanating from the pen of R. Nissim Gerondi, the Ran, since his worldview was not so philosophical as Rambam’s. This is not the place for a full presentation of Ran’s theology,192 but his agreeing that human creativity and input were central to the properly lived religious life provides vital support for our contention that that aspect of the religion is independent of the overall structure one sees as underlying Judaism.

Two of Ran’s derashot, or sermons,193 speak of human input into the world in exactly the kind of creative way we have been discussing here. We will show that Ran thought that both the king and the Sages are empowered and required to use their own ingenuity and reasoning to legislate in ways that insure that the Torah’s overall goals are successfully achieved. That process inherently involves understanding the system and its goals fully and thoroughly, but then going beyond the clearly declared rules of the system to articulate further ways of achieving those goals.

Making Ran’s position even more surprising, he believed that the observances of the Torah function metaphysically to increase and enhance God’s presence in the world. If so, his acceptance of the importance of human intellect in that process captures the sense of human partnership with God of which we have been speaking. The highest form of that partnership resides with Hazal, the Sages of tradition, but the king’s role in Ran’s system already points to human input as necessary and valuable as well. In the eleventh Derasha, Ran takes for granted that the system of justice set up by the Torah cannot produce a working society. In his example,

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191 Rambam may have meant that such actions then teach us even more about God—as we try to exercise a similar providence over the world, try to run it as God would, our failures and successes help us improve our model, our schema, thus feeding back to improve our intellectual perfection.

192 I hope to do so in Bringing Heaven Into Earth: The Theology of Derashot haRan.

193 In the eleventh and the thirteenth sermons, as published in L. Feldman’s 2003 Mossad haRav Kook edition of the Derashot. In his earlier edition (Jerusalem, 1977), Professor Feldman placed the “thirteenth” sermon after the fifth, titling it the “other” sermon, as had been the practice in earlier editions. We will give page numbers for both editions in our footnotes.
the burdensome evidentiary rules which the Talmud understands the Torah to insist upon certainly serve to insure
that justice never miscarries, but if put into practice would lead to anarchy, as no one could be convicted of a
crime.

The king steps into that void. His job is to serve like the kings of other nations, to insure that the
society runs well and smoothly; in doing so, he does not need to adhere completely to the Torah’s regulations.
The king can decide, for example, that one witness, or circumstantial evidence, suffices to convict a criminal,
despite that failure to constitute proof in Torah law.

Expressing Ran’s claim that way leaves open the possibility that the king’s rights are meant to
address a practical flaw in the system, but are not ideologically based. Since governments cannot run only by
Torah law, we might think Ran is saying, the Torah threw in a fix-it, a meta-systemic figure who could insure its
continued healthy functioning.

Two of Ran’s comments show that that does not properly express his view. First, in recognizing
that the rules by which Hazal operate are those of pure justice, Ran claims that all of the Torah’s laws are
intended to increase God’s presence in society, since unworkable laws can have no other value. In making that
claim, Ran has made Torah law largely irrelevant to its contribution to actual society (in contrast to the views of
Rambam we saw a moment ago). While Torah law may sometimes be applicable in practice, that is not its
purpose; when it fails to sufficiently oversee establishing a working society, that is not a failure of the system
since it was never its goal.

In his view, when rabbinic courts find insufficient evidence to convict a man of a crime,
acquitting him achieves the same value as finding him guilty, since both will have brought a greater infusion of
God’s presence into society. True, the king will then need to deal with the criminal, but the positive
accomplishment of the rabbis’ actions is independent of the effectiveness of the result.

That already suggests that the king is more than a stopgap, he is a separate and necessary part of a
system where responsibilities are divided; Hazal bring God into the world, the king keeps that world in working
order. The Torah leaving him almost completely unfettered already invests his human capacities with
significance.

Ran’s understanding of the king’s obligation to carry a Torah scroll adds a dimension that brings
his activity further into the mainstream of what the Torah actively wanted out of a Jewish society. The Torah
commands the king to write a Torah, to carry it with him, and to read from it all the days of his life. The most
obvious reading of that requirement is that it insures that the king will not get so caught up in his power that he
ignores or disobeys Torah law. Ran does not have this option since he specifically granted the king the right and
responsibility to violate the Torah when necessary for society to work.

By distinguishing between two kinds of systemic violations, Ran finds a more striking meaning
for the king’s obligation to engage with Torah. Breaking a rule can be part of freeing oneself of the system as a
whole, or can be a “breaking in order to repair,” a way to help the system continue to function when circumstances get in the way. Ran sees the obligation to carry and read from the Torah as a way to remind the king that he needs to operate in the second way, doing his best to see to it that the rules he promulgates foster an increased fear of God in himself and in the populace, supporting the Torah system and observance rather than getting away from it.

Already Ran has argued that the Torah invested at least one individual with the task of independently articulating rules that could translate the Torah’s ideal system into one that would work within the messy realities of human society. Ran does not consider the question, but a modern society would almost definitely need to expand the group of people who developed a deep enough understanding of Torah to know how to apply its values even when it became necessary to abrogate halachah itself.

While possibly Ran read the kings of old as so remarkable that they could handle all the affairs of state on their own, our experience of modern governments makes it clear that when the Jewish monarchy is restored, any king will need legions of advisers to help him consider the range of issues involved in making a working society out of the State of Israel. Considering Ran’s view of the king’s job, each of those advisers (and all of their analysts) will need to be similarly immersed in Torah and its values. Ran also assumes that in the absence of a king, the Sages might be allowed to operate in this way.

Looking again at Ran’s prescriptions for Hazal shows that he gave human ingenuity an even greater role than that. Hazal were operating within the Torah’s rules, but Ran makes clear that their determinations of how to understand and apply those rules involved their own human intellect. Most famously, Ran understands the Talmud to say that we are required to follow the majority opinion even where it contradicts God’s.\

In an arbitrary system, where laws’ only meaning is the obedience it instills, that would be unremarkable; but Ran believes that each commandment plays a specific role in shaping our lives. To reconcile how the system could tolerate the Sages’ errors even if the correct performance of the mitzvah had metaphysical value, he claims that the Torah’s interest that people determine the law was of such importance that the positive effect of doing so overrides the loss of missing the original view of the law.

We might still read these statements as practical, as evincing necessary operating mechanisms for a system that has to grapple with the likelihood of human error. In another place, however, Ran asserts that the role of the Rabbis in shaping the system is weightier than that of the original Torah itself. Discussing the importance of following Rabbinic rules, Ran notes Talmudic assertions that the words of the Rabbis are more valuable than those of the prophets, and also accepts the view of R. Yohanan, Gittin 60b, that the majority of the Torah is Oral and the minority Written.

194 198 (434). For other options as to how to understand this question, see A. Sagi.
Lest we think that the term Oral here refers only to that which was specifically handed down at Sinai (והلاء להשה מסיני), Ran lists for us what he includes in that term: that which came down orally at Sinai, the decrees the Sages promulgate to protect Torah law (arguably technical rather than creative), and that which they clarify in the intent of the Torah, for which they find no support in the Torah.  

That last category again brings us where we have been going throughout this essay, to the expectation that the system of halachah would not remain static, or even only be added to in the technical form of protective measures. A part of Hazal’s expected function was that they would develop a mastery of the system so extensive that they would be able to spot situations that called for legislating, despite the Torah itself not having covered it. This applied to both the positive and negative; Ran might easily see the holidays of Purim and Hanukkah as examples of this phenomenon as well.

What an all-too-brief discussion of Ran shows is that Rambam’s perspective was not held solely by the philosophically minded. In both the realms of Torah (for Hazal and their students) and outside of it (for the king and his advisers), the function of a human being was to understand God’s system, expressed both by the Torah and the world, find places where the system was not yet functioning as fully as possible, and then conceive, legislate, and actualize rules that increase the system’s ability to foster its goals.

Ran’s view of mitzvot as teaching the king and Hazal where and how to make their contributions captures the balance between over-reliance and under-reliance on mitzvot that has too often eluded others who discuss the issue. Mitzvot are neither the endpoint of one’s service, nor are they ever dispensable. They are not the endpoint, as they are meant to show human beings the framework within which they must place their own creativity. On the other hand, they are never dispensable, as they are the framework outside of which we should always know that our actions are inappropriate.

The texts analyzed here suffice, to my mind, to demonstrate the essay’s central thesis; the next step is to explore the ramifications of that thesis and the adjusted perspective of halachah and mitzvot that it offers. The next chapter takes up each of the areas we have raised and analyzes how our discussions can and should affect our practice of Judaism.

195 90 (526).
Conclusion: Turning Theory Into Practice

As nice as *divrei Torah* are, they remain less than fully utilized unless brought into the practical realm, given earthly flesh in ways that will matter to more than just those elite few who have the interest and patience to consider theoretical claims about the nature of this or any religion. In this conclusion, I will discuss three areas where the ideas presented here seem to be relevant to the practice and experience of Orthodox Jews.

*Our Relationship With, and Attitude Towards, Non-Jews*

In the first chapter, we pointed out that the currently common articulation of the Noahide laws sees them as expressions of a basic human morality. Accepting that thesis sees Judaism as having little positive to say about or towards non-Jews. As Jews, we could largely ignore non-Jews, certainly dealing with them cordially and honestly enough to avoid engendering their ill will, but not more than that. Admittedly, some reputable Jewish sources allow for exactly that kind of attitude.

Coming to understand Noahide law as an early form of Torah law, containing within it many central premises of the Torah (non-intuitive ones at that), should shift our perspective. While we may not bear a specific obligation to teach non-Jews the Jewish understanding of their role in the world, we should not avoid the opportunity when it arises either. In general, given our belief in a future Judgment, we should be striving to help as many people, Jews or non-Jews, arrive at that day in as positive a way as possible.

Of course, our fellow Jews have a prior claim to our concern, as family members’ needs take priority over others’. But occasions arise not infrequently for Jews to candidly, calmly, and nonthreateningly discuss their view of how the world works. This is not meant in the nature of interfaith dialogue so much as a readiness to make clear our beliefs. When a topic arises at the office water-cooler, I suspect that many Jews advance their own ideas apologetically, if at all. Seeing Noahides as facing the same judgment as we will, although based on a different standard, should mean that a compassionate person would share with that non-Jew such information as could be introduced without creating tension in the relationship.

Imagine, for example, if Orthodox Jews consistently weighed in on topics that arise in our society from an explicitly religious point of view, keeping in mind that the rest of the country is not Jewish. This would not be an attempt to impose the values that apply to Jews, but those that the Torah and tradition tell us are universally relevant. In the United States today, sharing one’s opinion of abortion or welfare based on one’s religious perspective raises questions of separation of Church and State, but it is still true that we have the right—and, I think, the religious responsibility— to say “Well, when it comes to issue x, my ideas are based on my tradition’s belief that God told the whole world... (if God did, of course; such a statement would be foolish if someone started advocating kashrut for all people).”

As so often, the specific example matters less than the general mind-set. When we see a non-Jew walking down the street, do we encounter that person as a fellow human being, whom we care about enough to
hope that s/he will come to see the truth of God’s Law (at least the Noahide portion of it), or do we just see them as a blip on our radar screen, useful mostly for keeping the lights running and the gas pumping?

That shift in attitude need not be extreme, although it will likely sound that way to Americans who have been trained to flinch at the slightest hint of religious coercion, and whose only current example is religious programming that is significantly more forceful in its attempts at persuasion than I mean to be here. Hoping for the best for others, and defining that hope by my religious beliefs, is no more offensive than a non-believing person hoping that I find the kind of satisfaction and happiness in life that s/he sees as productive and beneficial.

How I act on that hope is no simple matter, but I am not advocating any particular strategies. Rather, my discussion here is meant to restore a concern that may have gotten lost in the difficulties of Exile and the many hard times Jews have experienced at the hands of non-Jews. As God still holds out hope for as many non-Jews as possible to find their way back to the truth, we should be hoping for that as well. As God created 99.9% of the world as non-Jews, part of understanding Creation involves giving them a proper place in that creation as well.196

Is It Possible to Over-Focus on Halachah?

Our realization that building a proper relationship with God requires working off of halachah and the ideals it lays out to develop a personally relevant and meaningful life of service should affect our religious agenda, particularly our definition of an observant Jew. An observant Jew, we all should be repeatedly noting, honors his or her parents, gives charity to the extent possible, follows the laws of Shabbat, observes each halachah to the best of his or her abilities and uses his or her experience and understanding of mitsvot to define other ways of serving God, even ones not previously delineated.

In choosing where to live, how many children to have, what profession to enter, how to deal with other people, how much and to what causes to donate charity, how to best use one’s talents to improve the world—all areas where halachah advises us, but does not reach exact conclusions—each person needs to consult with experts in what Torah broadly defined has to say, and then decide which answers will maximize his or her contribution to perfecting the world in the recognition of God’s kingdom.

That aspect of our religious life calls into question several aspects of current presentations of halachah. Mistakes of emphasis usually bother us because they can lead to wrong specific choices. People who overemphasize kaddish, for a common example, might choose to faithfully attend communal prayers during their year of mourning but continue neglecting other, more systemically codified practices such as studying Torah.

196 I am certain that others have noted this, but the many chapters of Tanach that are addressed explicitly to non-Jews ratify this concern. It is easy to read those chapters as being for our sake, helping us feel confident that our tormentors will get their deserved punishment in the future, but the נביאים, the prophets, give the strong impression that they mean to speak to those nations, to try to warn them away from continuing on their current destructive path.
The choice is perhaps unfortunate, and leads to a loss of a potentially greater religious achievement, but produces a good deed nonetheless.

In our case, though, emphasizing halachah to the exclusion of the need for personally imprinting one’s religiosity with one’s own understanding—based on sources and serious study—will distort the system as a whole. Focusing on codified halachah as the completely defining barometer of religious success trains people that their job is to follow orders, breeding the kind of reliance on heteronomy that Kant (and others) so protested.

When Yeshayahu protests that people’s service has become a מلزمת, a rote or learned practice, he also meant, I am arguing, acting only when and how one is told. His central concern, based on the people to whom he prophesied, was their focus on sacrifices and neglect of the more “social” mitsvot, but the principle applies equally whenever our concern with ritual pushes aside other actions, and especially when it causes us to lose sight of the need to be identifying ways of serving God not specifically mentioned in traditional texts.

Working with a Limited Budget: The Economics of Spiritual Energy and Autonomy

All that we have said so far in this chapter might be translated into yet another agenda item for the modern Jew. That is, readers working their way through this essay could read it as arguing that “in addition to” following all of Shulhan Aruch, people also need to think along the lines suggested here. Certainly, were I to have argued that we need to focus on refraining from lashon hara more, as the Hafetz Hayyim did over a hundred years ago, we would tend to see that as an additional agenda item, not an exclusive one.

Yet I hope to be doing more than that, for a reason I have not yet seen clearly stated. The common practice of allowing new good ideas to be “in addition to” rather than “instead of” or “in tension with” takes inadequate account of a limitation true of most people. Certain special people—gedolim—have limitless energy to grow and strive in their observance of mitsvot and service of God. Tell such a person that an important rabbi’s view should be added to the list of goals we should have as Jews, and s/he will add that practice to his or her repertoire of service of God without it in any way taking away from the zest with which s/he lives out the rest of his or her religious life. Prayer will be just as mindful, kindnesses to others will continue unabated, and the same or more mental energy will still be applied to understanding the religion, learning its lessons, and acting upon them in building a life lived in constant engagement with God.

Most people, I think we need to realize, do not work that way. Most people have limited time and energy to give to Judaism, and will not always even accept advice about where to place their limited spiritual resources. Such people reach a point, highly individual, where they have “done” the religion thing, and will not take on any more until and unless some major change of attitude and motivation expands their interest.

The science of economics reminds us that in dealing with limited resources, budgeting is the only reasonable way to insure that those resources will be used as productively as possible. When rabbis and educators try to communicate a spiritual system, they too need to budget their time and presentation to gain the maximum
benefit given the resources allotted. I raise this here because if the preceding argument is correct, the need for personal input into one’s religiosity is not just another agenda item, it is a vitally essential one that often does not get even short shrift.

I will come back to that, but a few examples will make the point clearer. Years ago, I was at a faculty meeting discussing the next year’s Humash curriculum. Unsure of what people were accomplishing with their classes, I asked how many פְּרָקִים, chapters, the other teachers had taught that year. Hearing that the average was 10-15, I suggested that instead of discussing what Book to study, we should perhaps focus our conversation on which 15 פרקים would be the best.

One of the other teachers there, a wonderful teacher and true חכמים, תלמיד, took umbrage at my implication that some chapters of the Torah were better than others; he refused to entertain the question, as they were all the best. I argued, then and now, that the question is not which parts of Torah are better than others, but which are the ones we should be most certain to teach our students. Granted that they would see at most 60 chapters within the context of this school’s Humash classes, the responsible question to ask ourselves is which 60 should those be.

Nehama Leibowitz, zt”l, once pointed out that most Yeshiva graduates cannot correctly answer the question of why it is prohibited to lie, although it is an explicit verse in the Torah, תָּרָחק שָׁקֵר מַרְבָּע, Distance yourself from untruth. Those same graduates can often provide detailed information about how a Jewish man can become a slave, the rules for him while in that slavery, and how he becomes free of it.

Why, she asked, does this student have such better knowledge and retention of an area of Jewish life that has not been practiced for thousands of years, but such poor knowledge of a verse of direct relevance every day? Answering her own question, she said that it is because the former is complicated and the latter simple; when the teacher reaches the former, s/he will spend time conveying the meaning of the verses to the students, assign homework, give a quiz, just to be sure some basic comprehension occurs. The latter verse, simple but vital, is explained once, the message seems clear, and the class moves on.

What is true in a classroom is true in real life as well. Presented with a halachic system that is too complex and challenging for most of us to fulfill completely, we necessarily make choices (conscious or not) about where to spend our spiritual energy. All Orthodox Jews “know” that some practices are more central to their religiosity than others. That truth should carry over into our presentation of the religion, should guide what we emphasize when trying to encourage greater fidelity to God’s Will.

Our analysis here now takes on more significance as well. Realizing that mitzvot were meant as a beginning, a framework within which to operate personally, heightens the importance of insuring that Orthodox Jews know of their need to give personal input, based on tradition and those who are expert in that tradition, to their religious lives.
The challenge of religious scarcity is not “only” that people will emphasize *kaddish* over Torah study, *selihot* over *teshuvah*, eating *matsah* over telling the Exodus story fully and well, but worse, that these choices will lead to their not even realizing the central point of the system. That people are not repeatedly reminded that *mitsvot* and *halachah* are but a first step, that the system actually expected them to construct a life where they acted in the world and in their religion in ways not specifically told them, fails them more essentially than just emphasizing the wrong points. Misleading them as to which acts are more important would lead to a poorly balanced religious life; neglecting to show them the thrust of the system means they will not even be able to understand the nature of service of God.197

*Practical Steps: Re-thinking Halachah, Re-thinking Jewish Education*

The challenge of putting creative religious engagement onto the plates of Orthodox Jews entails at least two components. First, the question of limited religious energy highlights the costs of imposing religious obligations beyond those that are strictly necessary. Every stringency leads to a leniency, as some of my teachers used to say; a stringency about the codified practices can and does lead to leniency in the less-well-codified forms of service.

This raises the possibility that we ought to question the common current mode of how to answer *halachic* questions, not in terms of how the *halachic* process works, but in terms of the extent to which we allow our focus on definable *halachah* to get out of balance with our focus on the less-well-defined. When R. Shlomo Zalman Auerbach or R. Moshe Feinstein, zt”l, strove to follow every detail of each ritual, whatever its origin or level of obligation (so that *mitsvot de-oraita, de-rabanan*, and *minhag* all received equal attention), they were presenting a model we should admire and emulate, each at our own level.

Until we have reached that level, however, we need to also track our observance to make sure that it is not out of balance. Someone who is not following the *de-oraita* aspects of Shabbat, for example, would be ill-advised if he focused instead on reciting *kaddish*. People who make such choices are often unwilling to hear that message, but religious leaders should be alert to opportunities to do so. This is all the more true regarding ideals that cannot be codified in any kinds of explicit terms because they are so inherently personal and subjective.

Which brings us, in the end, to the same quandary that has faced rabbis, thinkers, and educators throughout Jewish history. How do we take a religion that provides specific examples of service of God for the explicit goal of having people use those examples to shape a religious life, and insure that the examples do not become the religion? I do not know of anyone who has provided the error-proof answer to that question, but raising it, sensitizing ourselves to it repeatedly, seems a necessary step.

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197 See Rambam’s parable of the palace in Guide III:51, where he denigrates both the masses and many educated Jews who, in his view, do not even yet know to what they should be striving.
The quandary has been expressed many times in terms of balancing within the system, making sure that a focus on sacrifice not push aside a focus on social justice, that observance of *mitzvot de-oraita* not lead to dismissal of *mitzvot de-rabanan*, that some rituals not outweigh others, that rituals not come at the expense of interpersonal conduct, and so on.

My attempt here has been to show that as long as those discussions stay within the realm of defined *halachah*, they still miss an essential point, that adhering to the defined was not and is not the essence of what the religion seeks. Even a perfectly balanced observance of all those *mitzvot* and *halachot* would not yet achieve what God wanted from us, partners in tending His garden. That partnership can only occur once we have gone through the rigorous training process of *mitzvot*, adhering to them carefully and consistently, but also using them to train ourselves to be sensitive to the goals Hashem Himself, *ke-va-yachol*, had for the world, and to take our place in joining Him to help advance the day when those goals are fully realized, when Hashem will be One, and His Name will be One, on earth as in Heaven.