THE TORAH U-MADDA JOURNAL

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THIS ISSUE IS DEDICATED

IN MEMORY OF

RABBI DR. NORMAN LAMM

AND MRS. MINDELLA LAMM

הרב נחום בן מאיר שמואל ופעריל

מינדל בת שלום וטויבע העסא

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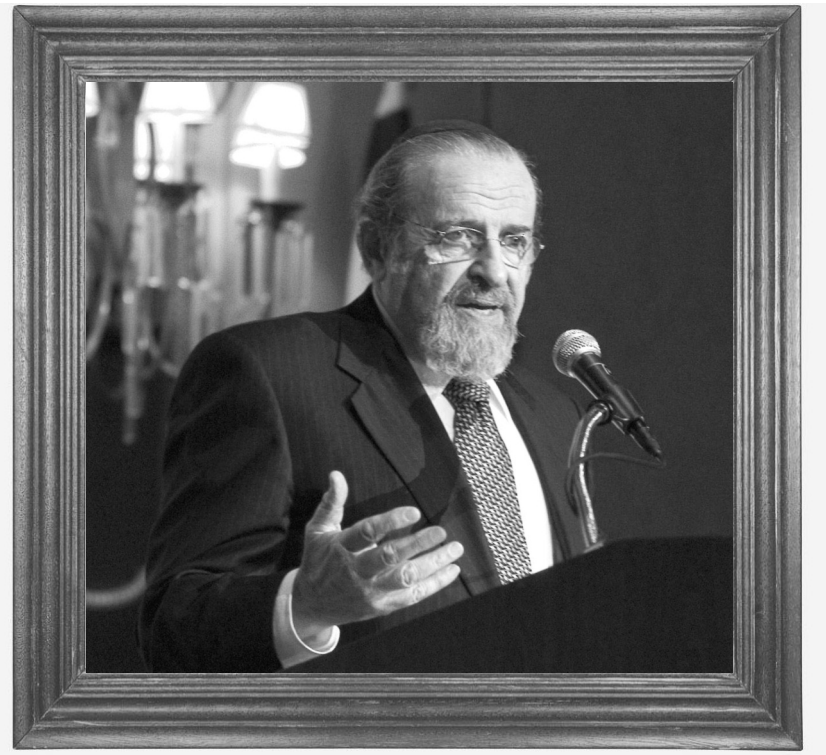

Rabbi Dr. Norman Lamm *zẓ"l*

The passing of Rabbi Dr. Norman Lamm *zẓ"l*, the third president of Yeshiva University, at age 92, elicited countless tributes and expressions of sorrow from across the Jewish world. After a stellar career as a pulpit rabbi, Rabbi Lamm led the flagship institution of Modern Orthodoxy for 27 years. He brought Modern Orthodox ideology and the ideal of *Torah u-Madda*— the animating principle of this journal, which is part of the Torah u-Madda Project he founded—to an unprecedented level of articulation and advocacy. Rabbi Lamm convened the think tank known as the Orthodox Forum, addressed nearly every policy issue, and enabled our community to define itself in both thought and action.

All the while, as Rosh ha-Yeshiva of the Rabbi Elchanan Theological Seminary, Rabbi Lamm strengthened Torah study at the YU campuses dramatically. He inspired rabbanim, delivered shiurim, founded kollelim, and established Talmud classes at Stern College for Women and programs for women's Torah study. His sermons and his publications in Torah and Jewish thought are breathtaking in their scope and will edify and inspire far into the future. They create a rich and enduring legacy.

In remembering how Rabbi Lamm lived his life and conducted his career, this verse comes to mind:

מה אהבתי תורתך כל היום היא שיחתי

"O, how I love your Torah! I speak of it all day long"
(Psalms 119:97)

יהי זכרו ברוך

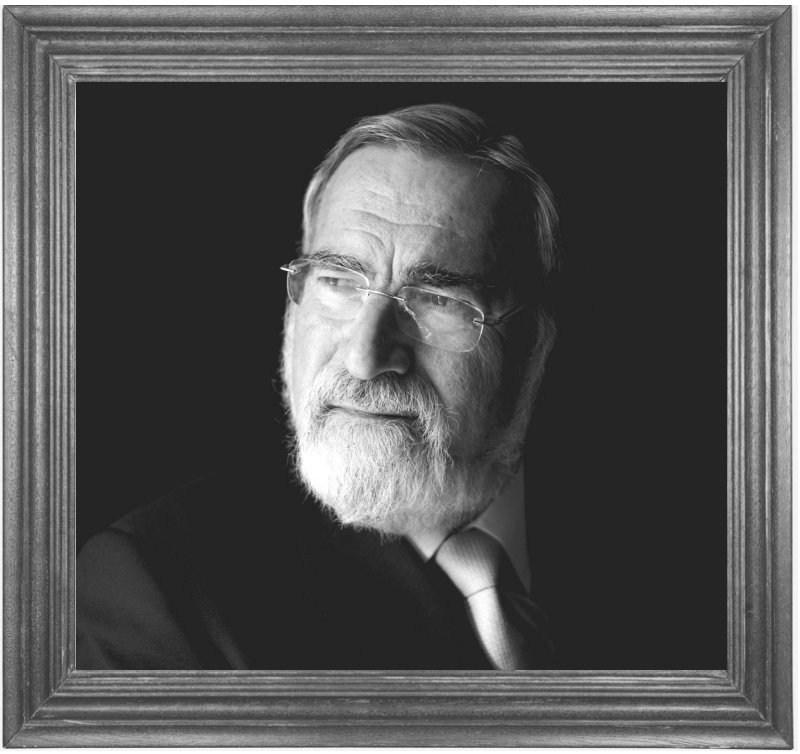

Photo credit: The Office of Rabbi Sacks

Rabbi Lord Jonathan Sacks *zẓ"l*

In a 1997 commencement address at Yeshiva University, Rabbi Lord Jonathan Sacks *zẓ"l*, then Chief Rabbi of the United Hebrew Congregations of the Commonwealth, made a pointed argument on behalf of the ideal he called *Torah ve-Ḥokhmah*. "Chochma reminds us that we are humans, we are citizens of the universal enterprise of mankind, and Torah reminds us that we are Jews, heirs of the greatest heritage ever conferred on a people."

Rabbi Sacks embodied this melding of the universal and the particular vividly. On the one hand, his contributions to Jewish thought were massive: works of philosophy, *parshanut*, history, and homiletics, along with commentaries on the Siddur, *Maḥzor*, and Haggadah and innumerable addresses and lectures. He addressed robustly issues of paramount concern for Jews. Yet he also published numerous books on religion, politics, economics, and morality for a global audience. In that role he earned acclaim from the spheres of politics, royalty, religion, and academia. Rabbi Sacks showed that the values of Judaism can speak to modern societies and ideologies, and can improve the world.

Yeshiva University was proud to have Lord Sacks on its faculty in 2013-2015 as the Kressel and Ephrat Family University Professor of Jewish Thought. He was among the most compelling and inspiring authors, orators, and leaders to have graced the Jewish world in modern times.

יהי זכרו ברוך

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RAMI SCHWARTZ

The Political Theology of Rabbi Nachum Eliezer Rabinovitch

In May 2020 we received the painful news that Rabbi Nachum Eliezer Rabinovitch zz"l passed away at age 92. I was first exposed to R. Rabinovitch's religious philosophy while studying at his yeshivah in Ma'ale Adumim. Though I cannot claim to have been among his closest students, his ideas and approach to Torah left an indelible impact upon me. In an opening note to this article, which was composed before his passing but has been modified to reflect it, I had written that I intended for the essay to serve as a testament to my gratitude. I now intend that it will serve, in addition, as a small tribute to his legacy.

Beyond pushing and inspiring his students to develop their commitment to the principles of Torah u-Madda, R. Rabinovitch also stressed the need for independent thought and intellectual honesty. This article attempts to impartially explain and assess R. Rabinovitch's own religious philosophy, and it is my hope that in doing so it will emulate the integrity that he and his teachings instilled in us. May his memory and legacy be a blessing.

Rabbi Dr. Nachum Eliezer Rabinovitch was among the prominent rabbinic figures in the Religious Zionist movement in Israel and abroad. He was a renowned halakhic authority and a prolific writer. In addition to his many works dedicated to Talmud and Jewish law, a significant portion of his

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writings focus on the realm of Jewish philosophy. Despite his expansive body of work and influence in the Religious Zionist world, however, R. Rabinovitch has received limited attention from scholars.[1] This essay aims to help fill this gap by analyzing one of the central aspects of R. Rabinovitch's thought: political theology.

Background

In our context, political theology will be taken to mean a view of the ideal state—its role, structure, and proper functioning according to religious precepts. I will begin this study with an overview of R. Rabinovitch's approach to the purpose and nature of the *miẓvot*. While at first glance this may seem unrelated to his political thought, it is actually the base upon which R. Rabinovitch builds his approach to the aim and function of the state. Next, I will present the central aspects of R. Rabinovitch's political thought: a clear distinction between civil and religious authority, the concept of "partnership," and strict limitations on government power. These points lead R. Rabinovitch to criticize several aspects of the current system of government in the State of Israel.

As may be expected from a halakhic scholar and avowed Maimonidean, R. Rabinovitch grounds his views primarily in the Talmud and classic works of Jewish law, in particular those of Maimonides. However, there are also clear parallels between R. Rabinovitch's political theology and the central tenets of political liberalism. Indeed, at times R. Rabinovitch's reading of Jewish sources is directly influenced by this philosophical tradition, especially the writings of John Locke.

R. Rabinovitch was born in Montreal in 1928 and studied there under the tutelage of R. Pinchas Hirschprung and later under R. Yaakov Yitzchok Ruderman at Yeshivas Ner Yisroel in Baltimore.[2] After receiving

1. Brief discussions of various aspects of R. Rabinovitch's thought can be found in Allan Nadler, "Maimonides in Ma'ale Adumim," *The Jewish Review of Books* (Summer 2018), retrieved from https://jewishreviewofbooks.com/articles/3235/maimonides-in-maale-adumim; Gamliel Shmalo, "Orthodox Approaches to Biblical Slavery," *The Torah u-Madda Journal* 16 (2012-2013): 14-18; Yair Sheleg, *Following the Multitude: Rabbinic Attitudes Towards Democracy in Israel* (Hebrew), Policy Paper 67 (Jerusalem: Israel Democracy Institute, 2006), 68–71; Aviezer Ravitzky, "Is a Halakhic State Possible? The Paradox of Jewish Theocracy," in *Israeli Democracy at the Crossroads*, ed. Raphael Cohen-Almagor (New York: Routledge, 2005), 155.

2. For short biographical sketches, see Nadler, "Maimonides"; Zvi Heber and Carmiel Cohen (eds.), *Mi-Birkat Moshe: Maimonidean Studies in Honor of Rabbi Nachum Eliezer Rabinovitch* (Hebrew) (Maaleh Adumim: Maaliyot, 2011), vol. 2, 995; Sheleg,

his rabbinic ordination, R. Rabinovitch served as the rabbi of various communities throughout North America. Alongside his religious endeavors, he also earned a Ph.D in mathematics from the University of Toronto and published several articles in the field of statistics and probability. In 1971, R. Rabinovitch became the dean of Jews' College, the rabbinic seminary of the English Chief Rabbinate. Among his students during this period was R. Jonathan Sacks.[3] In 1983, R. Rabinovitch left England for Israel in order to assume the position of Rosh Yeshivah at Yeshivat Birkat Moshe, a *hesder* yeshivah in Ma'ale Adumim.[4] He held this position until his retirement in 2015. In addition, R. Rabinovitch served as a member of the rabbinic boards of the *Encyclopedia Talmudit* and Eretz Hemdah, a prominent Religious Zionist *beit din*.

R. Rabinovitch's magnum opus is a massive commentary on Maimonides' *Mishneh Torah*, entitled *Yad Peshutah*. In addition, he penned works of talmudic commentary, halakhic responsa, and close to two hundred articles in various religious and academic publications.[5] In 1998, R. Rabinovitch published *Darkah shel Torah* (*The Way of Torah*), a collection of essays on Jewish thought and contemporary issues. An expanded version of this book was published in 2015 under the title *Mesillot bi-Levavam* (*Pathways in their Hearts*; cf. Ps. 84:6) and includes both revisions of earlier pieces and several new essays.[6] It is in these two books that the majority of R. Rabinovitch's discussions of political theology can be found. In addition, R. Rabinovitch wrote one other substantial article dealing with matters of political theory, entitled "*Am*

Following the Multitude, 68; Ido Pachter, "The Last *Rambamist*" (Hebrew), *Makor Rishon*, April 6, 2012, retrieved from http://musaf-shabbat.com/2012/04/05/עידו-פכטר-הרמבמיסט-האחרון. In addition, some autobiographical information can be found in the preface to Nachum Eliezer Rabinovitch, *Hadar Itamar* (Hebrew) (Jerusalem: Mossad HaRav Kook, 1972).

3. R. Sacks reflects on his relationship with R. Rabinovitch in Jonathan Sacks, "R. Nachum Rabinovitch: A Tribute," in *Mi-Birkat Moshe*, vol. 2, i–x.

4. English spellings of the city's name vary. When referring to the yeshivah in the text I follow the spelling "Ma'ale Adumim" found on the Birkat Moshe website. In the notes, I follow the spelling used in the various article titles or in the bibliographic information of the various books I cite, e.g. "Maaleh Adumim."

5. For a full bibliography of his works through 2011, see *Mi-Birkat Moshe*, vol. 2, 995–1007.

6. Nachum Eliezer Rabinovitch, *Mesillot bi-Levavam: Individual, Society, and State in the View of the Torah* (Hebrew) (Maaleh Adumim: Maaliyot, 2015). All translations from the Hebrew are my own unless otherwise noted. A portion of the material that I will analyze was originally published in articles and essays written in English. In such cases, I will quote from the English version of the text.

Zu Yaẓarti Li" ("The People I Formed for Myself"; cf. Is. 43:21), which was published by the Israel Democracy Institute in a collection of essays by various Israeli academics and intellectuals.[7]

R. Rabinovitch was a leading rabbi of the settler movement and strongly identified with Israel's political right. He was an ardent opponent of the Oslo Accords in the early 1990s and was accused by some of making inciting comments in the period leading up to the assassination of Prime Minister Yitzhak Rabin. Such accusations were never proven, and R. Rabinovitch denied them forcefully. In the decades since, R. Rabinovitch was more guarded in his political activism. However, he was consistent in his support of the expansion of Jewish settlements over the Green Line and the rights of Jews living there. For example, he was extremely vocal in his objection to the removal of Israeli settlements in the Gaza Strip through the Disengagement Plan. When the plan was eventually carried out by the Israeli government in 2005, he joined several other Religious Zionist leaders in calling upon IDF soldiers to refuse orders. R. Rabinovitch's reasoning for this, however, differed significantly from that of many of his peers, as we will see.

Indeed, despite his standing as an eminent *rosh yeshivah* and *posek* in the Religious Zionist world, R. Rabinovitch presented a unique voice and often advocated views exceptional for a figure of his stature. Beyond the example just mentioned, R. Rabinovitch encouraged observant Jews to ascend the Temple Mount and was the leading figure behind *Giyyur ka-Halakhah*, an alternative system of religious courts that challenges the Israeli Chief Rabbinate's monopoly on conversion.[8] In addition, he expressed support for women serving as communal leaders, halakhic authorities, and even rabbinic judges.[9] Likewise, he endorsed women-only prayer groups as a solution for those who wish to take a more

7. Nachum Eliezer Rabinovitch, "*Am Zu Yaẓarti Li*" (Hebrew), in *The Jewishness of Israel*, ed. Aviezer Ravitzky and Yedidia Stern (Jerusalem: Israel Democracy Institute, 2007), 671–721. A version of this essay was reprinted in *Mesillot bi-Levavam*, but with a slightly different orientation. In this article, I will refer to the original version.

8. Regarding the Temple Mount, see Rabinovitch, *Mesillot bi-Levavam* 348-49. For one of several reports about *Giyyur ka-Halakhah* in the Israeli news media, see Amanda Borschel-Dan, "Gathering Pace, Rogue Israeli Conversion Court Racks Up New Jews," *Times of Israel*, November 18, 2015, retrieved at https://www.timesofisrael.com/gathering-pace-rogue-israeli-conversion-court-racks-up-new-jews/.

9. For example, see Rabinovitch, *Mesillot bi-Levavam*, 434-36; Sheleg, *Following the Multitude*, 71; Pachter, "The Last *Rambamist*."

active role in prayer services.[10] Importantly, R. Rabinovitch's iconoclastic positions are often deeply rooted in his political theology.

The Purpose and Nature of the *Mizvot*

In the opening remarks to *Darkah shel Torah*, R. Rabinovitch makes the following statement in presenting his general methodology:

> Despite the variety of subjects, the common denominator [in these essays] is an attempt to explain a particular aspect of Maimonides' thought and its consequences for problems that appear, at first glance, unique to our generation.[11]

Moreover, he states that "the axis upon which each discussion pivots is distinctly halakhic." In this R. Rabinovitch sees himself as continuing the Maimonidean approach. According to him, "a fundamental pillar of Maimonides' philosophical system is that it is anchored in Halakhah."[12]

The importance of halakhic models and Maimonidean conceptions in R. Rabinovitch's writing is made clear when we analyze his understanding of the function and nature of the *mizvot*. Furthermore, not only does R. Rabinovitch's philosophy of the *mizvot* demonstrate the methods he uses to build and develop his ideas, but it is also an important preface to his political theology.

In *Guide of the Perplexed* (III:27) Maimonides first states that the Torah as a whole has two goals: "the welfare of the body and the welfare of the soul" (*Guide* III:27:510).[13] The "welfare of the body" refers to "the improvement of [the multitude's] ways of living one with another." This is achieved through "the abolition of their wronging each other" and the acquisition of "moral qualities that are useful for life in society." In contrast, the "welfare of the soul" refers to the "acquiring [of] correct opinions" by the masses. A properly functioning society is a prerequisite

10. Ariel Horowitz, "The Existential Concern of the Elder Statesman of *Hesder* Yeshivot" (Hebrew), *Makor Rishon*, September 13, 2017, retrieved from https://www.makorrishon.co.il/nrg/online/11/ART2/897/649.html.

11. Nachum Eliezer Rabinovitch, *Darkah shel Torah: Halakhic Perspectives on Current Issues* (Hebrew) (Jerusalem: Maaliyot, 1998), iii.

12. R. Rabinovitch makes a similar argument regarding the halakhic base of Maimonides' philosophy elsewhere as well; see his *Studies in Maimonides* (Hebrew), 2nd ed. (Jerusalem: Maaliyot, 2010), 193.

13. English translations of the *Guide* are taken from Moses Maimonides, *Guide of the Perplexed*, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963). Citations will indicate part, chapter, and then page number(s).

for allowing them to achieve these "correct opinions." Thus, the goal of "welfare of the body" is "prior in nature and time" to the goal of "welfare of the soul." However, since society is merely a means to these intellectual ends, the "welfare of the soul" is the primary goal.

Maimonides further distinguishes the society-oriented notions "welfare of the body" and "welfare of the soul" from the individual-oriented concepts he calls "perfection of the body" (being physically healthy and in "the very best bodily state") and "perfection of the soul" (having "an intellect in actu" and acquiring "opinions toward which speculation has led and that investigation has rendered compulsory") (*Guide* III:27:511). With regard to perfection, just as with regard to welfare, Maimonides again stresses the means-ends relationship: "perfection of the body" is a prerequisite for "perfection of the soul," and the latter is the "ultimate perfection." According to Maimonides, the attainment of the combination of these goals is what makes the Torah unique and is the mark of a divine law. (See also *Guide* II:40:383-84.)

R. Rabinovitch builds upon this conceptualization and argues that the Torah employs a "two-fold" system.[14] On the one hand, it establishes an *ideal* by "convey[ing] concepts, instill[ing] eternal values, and direct[ing] people to the service of God on the highest levels." On the other hand, it relates to the *real* by employing "legislation and commands to combat the forces of evil and destruction that erupt within the individual's soul and the nation's spirit." This legislation of the real must also account for "each generation's situation and the social, economic, and cultural circumstances." Moreover, such flexibility in practice allows for the lofty goals and values of the Torah to remain a part of the Jewish People, even though they may not yet be ready to live up to them in the fullest sense.

Accordingly, R. Rabinovitch states that "given the dictates of circumstance, the Torah did not require that [these principles] be applied in full at the outset."[15] Rather, "it taught society to advance step by step until the goal could be fully achieved." This, he notes, is what Maimonides meant when he observed that "out of concern over what the soul by its nature could not accept . . . God diverted them from the straight path that was the primary goal" (*Guide* III:32).[16] As R. Rabinovitch himself

14. Nachum Eliezer Rabinovitch, "The Way of Torah," trans. Joel Linsider, *The Edah Journal* 3:1 (2003): 6–7, retrieved at http://www.edah.org/backend/JournalArticle/Rabinovitch3_1.pdf.

15. Ibid., 9.

16. This statement is cited as the translator of R. Rabinovitch's article presents it, rather than as Pines translates it. It is worth noting that while R. Rabinovitch speaks here of

suggests, this division between the real and the ideal is based in Maimonides' own division between the "welfare of the body" and the "welfare of the soul." This is because in both divisions the Torah utilizes certain *miẓvot* as tools to create a society that supports the achievement of far greater spiritual goals.

Among the examples that R. Rabinovitch uses to demonstrate this point is the institution of slavery.[17] In truth, he posits, slavery stands in direct contradiction to the moral code of the Torah. Judaism views each person as created in the "image of God" (*Ẓelem Elokim*) and equal before Him. The Torah, however, was prevented from outlawing slavery, as ancient society could not adhere to such a law for reasons both practical and ideological. Instead, Jewish law saw to it that a master's control over his slave was limited and that certain basic rights of the slave were protected. According to R. Rabinovitch, these laws "set a floor that prevented [the Jewish People's] descent to the vile conduct of the nations," until, over time, social, technological, and economic changes made it possible for slavery to be abolished and for the "exalted ideal taught by the Torah" to be realized.[18] R. Rabinovitch further maintains that not only did the Torah's laws prevent the moral degradation of the Jewish People, but the eventual spread of Jewish values was a decisive factor in the Western world's push to end slavery.

In a similar fashion, R. Rabinovitch builds on central themes in Maimonides' thought in developing what can be termed an empirical approach to *miẓvot*. Throughout his writings, Maimonides attributes special importance to the natural sciences, seeing in them the so-called "account of the beginning" (*Ma'aseh Bereshit*).[19] Going beyond this, R. Rabinovitch gathers a myriad of sources to demonstrate Maimonides' "emphasis on the importance of observations in which to ground theories, theories that can be formulated so as to make predictions which can then be verified or falsified by further observations."[20] In tandem, R.

moral development, Maimonides defines the "primary goal" as chiefly an intellectual one: "the apprehension of Him, may He be exalted, and the rejection of idolatry" (*Guide* III:32:527).

17. Rabinovitch, "The Way of Torah," 8–12. For a detailed treatment of R. Rabinovitch's approach to slavery, see Shmalo, "Orthodox Approaches to Biblical Slavery," 14–18.

18. Rabinovitch, "The Way of Torah," 9, 12.

19. See *Guide*, "Introduction to the First Part" (Pines, 6); *Commentary on the Mishnah*, *Ḥagigah* 2:1; and *Mishneh Torah*, *Hilkhot Yesodei ha-Torah* 4:10.

20. Nachum Eliezer Rabinovitch, "Rambam, Science, and *Ta'amei ha-Mitzvot*," in *Ḥazon Naḥum: Studies in Jewish Law, Thought, and History Presented to Dr. Norman Lamm on the Occasion of his Seventieth Birthday*, ed. Yaakov Elman and Jeffrey S.

Rabinovitch posits that Maimonides applies these ideas to his attempt to understand the rationale for the various *miẓvot* (*ta'amei ha-miẓvot*). Simply put, the best way to understand the meaning of a particular *miẓvah* is through empirical observation.

In order to support this claim, R. Rabinovitch notes the many times that Maimonides emphasizes that each *miẓvah* has a "useful end" or a "manifest utility" (*Guide* III:26:507). Similarly, Maimonides often endeavors to demonstrate the real-world benefits of individual laws. R. Rabinovitch concludes from all this that if the true "utility" of any *miẓvah* must be practical and discernible, then in order to understand the reason behind any given law one must attempt to discern the positive effects—be they sociological, psychological, or otherwise—of keeping them. Although he does not say so explicitly, it seems that in emphasizing this, R. Rabinovitch—like Maimonides before him—also wishes to repudiate mystical approaches that maintain that the *miẓvot* have supernatural effects and indeed the power to influence the Divine.[21]

With this empirical view in hand, R. Rabinovitch returns to Maimonides' twin goals of the *miẓvot* mentioned previously: "welfare of the body" and "welfare of the soul." He argues that if the Jewish People can be said to have ethical traits that set them apart, or if they have managed to avoid societal ills that have plagued other groups, it "cannot be seen as a hereditary trait, but rather [it is the result of] the influence of the Torah."[22] Like Maimonides before him, R. Rabinovitch rejects the view, popular in mystic thought, that Jews are ontologically superior to non-Jews.[23]

Gurock (New York: Yeshiva University Press, 1997), 188. It is worth noting that in this piece, written for both a religious and academic audience, R. Rabinovitch discusses various academic approaches to Maimonides in general and his view of the natural sciences and the empirical method in particular. This discussion is absent, however, in the expanded Hebrew version of the article included in *Darkah shel Torah* and *Mesillot bi-Levavam*.

21. For an in-depth discussion of the differences between Maimonides' view of Jewish law and that of Jewish mysticism, see Menachem Kellner, *Maimonides' Confrontation with Mysticism* (Oxford: Littman Library of Jewish Civilization, 2006), 33-84. In reference to Maimonides' conception of "welfare of the body" and "welfare of the soul," Kellner summarizes: "All the commandments are tools, designed by God to teach truth, institute justice, or inculcate morality. There is no room here for effecting change in the world around us, still less in the world above" (ibid., 61). Unlike Maimonides, the mystics see the *miẓvot* as "a recipe for effecting ontological change in the universe."

22. Rabinovitch, *Mesillot bi-Levavam*, 177. See, also ibid., 464–65.

23. Regarding Maimonides' view as opposed to that of Jewish mysticism, see Kellner, *Maimonides' Confrontation*, 216-64. Kellner notes that mystical thinkers almost invariably believe that "Jews by birth are innately superior to non-Jews," and he posits

Any differences are not immanent, but are rather evidence that the *miẓvot* have indeed led the Jewish People towards "welfare of the body."

In addition, R. Rabinovitch argues that other *miẓvot* can be observed as advancing the faithful towards "correct opinions through which ultimate perfection [i.e., perfection of the soul] is achieved" (*Guide* III:27:511). For example, the *miẓvah* of repentance (*teshuvah*) reinforces the "correct opinion" that humanity is endowed with free will.[24] The requirement that one accept responsibility for their actions and endeavor to change future conduct both necessitates and fortifies belief in free will.

The final aspect of R. Rabinovitch's approach to the nature and function of the *miẓvot* centers around this very point—that God grants humanity absolute freedom of will. Based on Maimonides' rulings in *Hilkhot Teshuvah*, R. Rabinovitch emphasizes:

> The image of God is man's unique quality that elevates him above all other creatures. It is the capacity of free will . . . and only in the exercise of that free choice does man actualize his essence.[25]

Indeed, there can be no doubt that the subject of free will plays a central role in Maimonides' theology.[26] Moreover, Maimonides himself

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that this view has "become a basic axiom of most varieties of Jewish Orthodoxy today" (ibid., 220). Maimonides, however, saw no inherent differences between Jew and Gentile. Rather, he maintained that "Jews have an advantage over non-Jews because the Torah guides them more effectively than any other system of laws, first to moral perfection (a prerequisite for intellectual perfection) and then to intellectual perfection" (ibid., 229).

24. Rabinovitch, *Mesillot bi-Levavam*, 171–76.

25. Rabinovitch, "The Way of Torah," 3. I have slightly adjusted the translation here in order to better reflect the intent of the original. In this passage, R. Rabinovitch makes use of the Hebrew terms *beḥirah ḥofshit* and *raẓon ḥofshi*. In his writings R. Rabinovitch uses the term *beḥirah ḥofshit* when referring to the philosophical concept, and thus the term will be rendered in English as "free will." In contrast, *raẓon ḥofshi* is typically used in the normative sense of personal autonomy and will therefore be rendered as "free choice."

26. For example, see *Mishneh Torah, Hilkhot Teshuvah*, ch. 5; *Commentary on the Mishnah*, Introduction to *Mishnah Avot*, ch. 8; and *Guide* III:17. In the *Mishneh Torah*, Maimonides refers to free will as a "great principle" and "pillar of the Torah" (*Hilkhot Teshuvah* 5:3). However, his view of the subject in the *Guide* is less clear and has led to much debate among scholars. For a brief overview of the various views, see Shalom Sadik, "Maimonides' Mechanic of Choice" (Hebrew), *AJS Review* 38:1 (2014): 1-4. For his part, R. Rabinovitch reads Maimonides' approach in the *Guide* as complementary to that of the *Mishneh Torah*. See his *Mishneh Torah with Commentary Yad Peshutah: Sefer ha-Mada* (Hebrew) (Jerusalem: Maaliyot, 2007), 939-46. Indeed, this is consistently R. Rabinovitch's approach to the oft-debated nature of the relationship between the two works.

draws a connection between free will and the nature of the *miẓvot*. In the *Guide*, he writes: "If it were His will to change the nature of every man to that which He, may He be exalted, seeks from the individual, the mission of all the prophets and all that is commanded would be useless."[27] The straightforward meaning of this statement appears to be that there is no logical reason for God to command, nor for the prophets to preach, if humanity's actions are preordained and beyond their control. However, R. Rabinovitch presents this quote and expands upon it in light of his aforementioned statement regarding free choice:

> Obedience to the commandments has value only if it flows from man's free choice. Otherwise it is nothing other than a purely mechanical act.

In other words, in order for the fulfilling of a *miẓvah* to have true religious value, it must be done free of coercion or outside force.

In keeping with his description of the *miẓvot* as leading individuals and society toward the ideals established by the Torah, R. Rabinovitch sees Jewish history as witness to a gradual process by which the People of Israel advance, stage after stage, toward the service of God through absolute freedom of choice. As he puts it:

> The Torah that was given to them guides and molds Israel's image and makes Israel fit to attain the desired goal—making use of *Ẓelem Elokim* in order to resemble Him in all His ways.[28]

As an example of such a development, R. Rabinovitch quotes the Talmud Yerushalmi, which records that R. Shimon bar Yoḥai praised the fact that the rabbis lost the authority to adjudicate both civil law and capital crimes (*Yerushalmi Sanhedrin* 1:1). Most commentators, R. Rabinovitch notes, understand R. Shimon's seemingly strange statement as an expression of joy over the fact that the rabbis were now enjoined to push litigants to reach a compromise, as they could no longer force them to accept the judgment of the *beit din*. This should be seen, continues R. Rabinovitch, not as negation of Torah law, but rather as the ascension of the law to a higher level—one free from coercion and based on willing acceptance.[29] Likewise, he posits, despite the fact that contemporaneous

27. Rabinovitch, "The Way of Torah," 4. The quotation from the *Guide* (III:32) is cited as the translator of R. Rabinovitch's article renders it. In the Pines translation the corresponding passage is on p. 529.
28. Ibid.
29. Rabinovitch, *Mesillot bi-Levavam*, 358–59. R. Rabinovitch goes so far as to quote R. Yosef Eliyahu Henkin, who posits that the loss of rabbinic authority to enforce and punish may be seen as a harbinger of the Messiah. R. Rabinovitch reflects upon his

rabbinic authorities may have certain powers of coercion, they should endeavor not to use them.[30]

These three aspects of R. Rabinovitch's understanding of the *miẓvot*—the Torah's call to the ideal and legislation of the real, the empirical view of Jewish law, and the central role of free choice—give a clear sense of his general religious ideology. They also demonstrate nicely how he builds upon and develops ideas within the legal and philosophical teaching of Maimonides. Moreover, his philosophy of the *miẓvot* will be shown to maintain a close connection to his political theology.

Political Theology: The Civil and the Spiritual

R. Rabinovitch begins his discussion of the proper role of the state and the extent of its powers by invoking Maimonides' distinction between the Torah's two goals: "welfare of the body" and "welfare of the soul." R. Rabinovitch assigns responsibly for the "welfare of body" to the civil leadership. This is in keeping with Maimonides, who states that this goal pertains to the "governance of the city and the wellbeing of the states of all its people" (*Guide* III:27:510) and that it can only be achieved "through a ruler who gauges the actions of the individual . . . and who prescribes actions and moral habits" (*Guide* II:40:382). In R. Rabinovitch's words:

> [The] legal system of Torah consists of two parts. One, the proper jurisdiction of the government, deals with affairs of society. The other, the commandments between man and God, belongs to every Jew.[31]

In other words, as he phrases it elsewhere, the role of the state is to ensure the "welfare of the body."[32] However, the state may not involve itself in the "welfare of the soul." Indeed, R. Rabinovitch goes on to create a very clear boundary between the role of political leaders and the religious aspirations of the individual:

> The rulers are charged with implementing the laws between man and his fellow man, and are granted wide legislative and administrative powers

relationship with R. Henkin in Pachter, "The Last *Rambamist*," and cites his halakhic views in *Responsa Siaḥ Naḥum* (Hebrew) (Jerusalem: Maaliyot, 2008), #48, #111.

30. Rabinovitch, *Mesillot bi-Levavam*, 335.

31. Nachum Eliezer Rabinovitch, "The Civil and the Spiritual," *The Jerusalem Report*, February 6, 1992. In this brief piece, a homily on the weekly Torah reading, he does not mention Maimonides' view in the *Guide*. However, in the parallel in *Mesillot bi-Levavam* (299-301), he opens by quoting *Guide* III:27.

32. Rabinovitch, *Mesillot bi-Levavam*, 340–41.

> in this realm. . . . However, no Jewish government or king has any status at all with respect to [the religious and the ritual]. The ultimate goals of spiritual welfare are to be achieved by means other than government.[33]

According to R. Rabinovitch, this distinction between the "civil and the spiritual" has been part and parcel of Jewish self-governance throughout its history. Further, he maintains that Jewish law traditionally established "two parallel authorities for legislation and adjudication."[34] One is that of the king and those appointed by him, while the other is that of the Sanhedrin and the *batei din* subordinate to it. Even after the end of the monarchy in Israel, R. Rabinovitch posits, this separation of powers continued. The role of the king was subsequently filled by the Exilarch, in a later period by the local council known as the *Tovei ha-Ir* (Good Men of the City), and in the modern State of Israel by its elected government.[35] Despite their obvious differences, these later institutions maintain the same basic function as the king: ensuring the proper running of civil society, i.e., the "welfare of the body." However, they may not involve themselves in religious matters.[36] The "welfare of the soul" remains beyond the scope of their authority and belongs instead to religious authorities.

R. Rabinovitch does grant that some kings, in particular David and those from his line, are described by the Talmud as deciding matters of Jewish law.[37] However, he maintains that they were able to do so due to their personal piety, not because of their standing as monarchs.

While the identification of the *Tovei ha-Ir* as the inheritors of the power and authority of the king of Israel has precedent in halakhic literature, this is not a simple matter. Classic halakhic texts tend to view this institution instead as assuming the powers and authority granted to the rabbinic courts.[38] Indeed, R. Rabinovitch's choice to identify the

33. Rabinovitch, "The Civil and the Spiritual."
34. Rabinovitch, *Mesillot bi-Levavam,* 301.
35. Ibid., 302–303, 349–50.
36. Ibid., 341–43.
37. Ibid., 309-11. To the best of my knowledge, R. Rabinovitch does not directly address biblical examples, in particular the reforms enacted by Hezekiah (2 Kings 18; 2 Chron. 31) and Josiah (2 Kings 22–23; 2 Chron. 34–35). It seems he would likewise argue that these are exceptional cases and the result of personal piety or extenuating historical circumstances.
38. See Menachem Elon, *Jewish Law: History, Sources, Principles* (Hebrew) (Jerusalem: Magnes Press, 1988), 580 n. 105. Elon notes that while from a historic perspective the *Tovei ha-Ir* can be seen as inheriting the authority granted to the king and later forms of Jewish self-governance, most halakhic authorities view the *Tovei ha-Ir* as assuming the

Tovei ha-Ir with the king and not a *beit din* is important, as it allows him to maintain a clear distinction between the religious and civil authorities within the Jewish political tradition.

Likewise, some of the practical limits R. Rabinovitch would place on the power of the modern Israeli government are contingent on it being a continuation of the king. For example, R. Rabinovitch quotes Maimonides' ruling that a king may not appropriate private property.[39] Since the Israeli government is seen as an extension of the *Tovei ha-Ir*, and this institution itself is taken to be an extension of the monarchy, R. Rabinovitch argues that this limitation applies to it as well. This would not be the case, however, if the *Tovei ha-Ir* were seen as inheriting the powers of a *beit din*, since religious courts are given a larger measure of authority to confiscate private assets (*hefker beit din hefker*).[40]

In parallel to the clear division of responsibilities between the king and the Sanhedrin, R. Rabinovitch also draws a clear division between their respective sources of authority. The Sanhedrin, not surprisingly, draws its authority from the Torah. Of course, no other religious body can lay claim to the overarching authority to mold religious law and adjudicate matters on a national level that is granted to the Sanhedrin. However, contemporary religious leaders nevertheless remain the sole authority in questions of Torah law.[41] This does not contradict the fact that spiritual matters remain the realm of the individual. Indeed, states R. Rabinovitch, these rabbis must maintain widespread public support

powers granted to a *beit din*. See also "*Tovei ha-Ir*," *Encyclopedia Talmudit* (Jerusalem: Yad HaRav Herzog, 2000), vol. 17, 72-99, in particular the section "*Takanoteihem le-Tovat ha-Ir*" (78-83). For a brief historical introduction to this institution and an overview of pertinent source texts, see Michael Walzer et al. (eds.), *The Jewish Political Tradition, Vol. 1: Authority* (New Haven: Yale University Press, 2000), 379–429.

39. *Hilkhot Melakhim* 3:8. See Rabinovitch, *Mesillot bi-Levavam*, 307.

40. R. Rabinovitch also highlights this distinction between the king and the *beit din* in his *Yad Peshutah* commentary on *Hilkhot Melakhim* 3:8. Based on Maimonides' ruling that the king "may not cause the forfeiture of assets" (*lo yafkir mamon)*, R. Rabinovitch writes:

> The authority of the king differs in this regard from the authority of a *beit din* when making temporary enactments (*hora'at sha'ah*) and ensuring the welfare of society (*tikkun olam*). In *Hilkhot Sanhedrin* 24:6, he [Maimonides] rules: "A rabbinic judge may always *cause the forfeiture of assets* (*le-hafkir mamon*) that have owners and abrogate their rights as he sees fit…" (Rabinovitch, *Mishneh Torah with Commentary Yad Peshutah: Sefer Shofetim* [Hebrew], [Jerusalem: Maaliyot, 2011], 445; emphasis in the original).

41. Rabinovitch, *Mesillot bi-Levavam*, 367–68.

in order for their decisions to have legitimacy. But nevertheless, their authority over the spiritual is vested in them, ultimately, by the Torah.

In contrast, the civil leadership is granted its authority by the consent of the governed.[42] Drawing upon a plethora of biblical and talmudic sources, R. Rabinovitch argues that the authority of the king of Israel was based "in the consent of the people and his selection by God's prophet." As long as the king retained this support and did not overstep his boundaries, the Torah recognized him as the legitimate head of state and granted him the power to promulgate and enforce civil law. If the king were to lose the consent of the governed or abuse his power, he would lose that authority. To be sure, the biblical record often portrays kings as enjoying almost unchecked power and ignoring the will of the people. Nevertheless, for R. Rabinovitch, the need for popular consent remains the Torah's ideal, especially when viewed through the lens of rabbinic literature. He approvingly quotes R. Nissim of Gerona (himself quoting R. Yonah): "To the extent that the masses wish to glorify a king, he will rule; yet should they wish to strip him of his glory, the king will forfeit his sovereignty entirely."[43]

Moreover, these basic rules apply to the later forms of government that subsequently replace the monarchy. This is seen clearly, states R. Rabinovitch, in the case of the *Tovei ha-Ir*, who were appointed by "majority vote among the citizens" and answered directly to them.[44] From a historical standpoint, this probably overstates the case.[45] However, a

42. Ibid., 306. R. Rabinovitch makes a similar point in the midst of a talmudic discourse on a section from *Ta'anit*; see *Hadar Itamar*, 72.

43. Rabinovitch, *Mesillot bi-Levavam*, 312. This quote is found in *Derashot ha-Ran, Derashah* 11. The English translation is taken from Aviezer Ravitzky, *Religion and State in Jewish Philosophy: Models of Unity, Division, Collision and Subordination*, trans. Rachel Yarden (Jerusalem: Israel Democracy Institute, 1998), 79. Regarding this and other liberal democratic themes found in the works of R. Nissim, see Warren Zev Harvey, "Liberal Democratic Themes in Nissim of Girona," in *Studies in Medieval Jewish History and Literature III*, ed. Jay M. Harris (Cambridge: Harvard University Press, 2000), 197-211. While Harvey focuses on other themes, he notes in passing R. Nissim's "insistence that government is for the sake of the people," citing *Derashah* 11 (209). Indeed, based on Harvey's analysis, there appear to be several parallels between R. Nissim's political thought and that of R. Rabinovitch. Nevertheless, there is at least one crucial difference: Harvey notes that the liberal democratic theme of separation of religion and state is not to be found in Ran's thought (211, n. 17), whereas this is central to R. Rabinovitch's political theology, as we will discuss.

44. Rabinovitch, *Mesillot bi-Levavam*, 315.

45. Regarding the appointment of communal leaders in medieval Ashkenaz, for example, see Jacob Katz, *Tradition and Crisis: Jewish Society at the End of the Middle Ages*, trans. Bernard Cooperman (New York: Syracuse University Press, 2000), 88-94.

number of halakhic authorities do indeed maintain that the members of this council were to be selected, at least in theory, in this manner.[46]

R. Rabinovitch anchors the ability of citizens to appoint a leader for themselves, be it a king or a local council, in the concept of "partnership" (*shuttafut*).[47] The Mishnah (*Bava Batra* 1:1-6) discusses the mutual responsibilities of "partners" (*shuttafin*) in developing common property. Included in this are certain responsibilities towards the city that are shared by its residents (1:5). According to R. Rabinovitch, the Talmud goes on to develop this principle in such a way that:

> The city, as a legal entity, is understood as a partnership between its residents in which they divide amongst themselves the obligations for ensuring its proper administration, just as they do the rights and benefits that the city grants.[48]

This being the case, the members of the city may choose to grant the authority that they hold as "partners" to a particular leader or group of leaders.[49] For R. Rabinovitch, what is true of a city is true of a nation as well. The state is seen as a "partnership" of its citizens, who may transfer the authority they have to a government.

Additionally, citing the Talmud Yerushalmi (*Gittin* 5:9), R. Rabinovitch notes that this conception means that non-Jewish citizens should also be an equal part of the civil leadership, as they too are "partners" in the city.[50] It could be objected that Maimonides' laws regarding the appointing of the king and the various civilian leadership

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Katz summarizes (92):

> Nowhere did the electorate at large vote directly for candidates of its choice. Rather, appointments were decided upon by a limited group of from five to seven *mevorerim* (selectors), who decided upon the suitable candidate by majority vote. These *mevorerim* were selected in turn, either by a yet larger group of selectors or by the drawing of names at random from among all those with the right to stand for election.

Nevertheless, Katz does conclude that "the system performed the necessary social function of giving the members of the community the feeling that it was they who determined who would lead them" (ibid., 93).

46. See "*Tovei ha-Ir*," 86-87, as well as the similar sources cited by R. Rabinovitch himself, *Mesillot bi-Levavam*, 315 n. 57.

47. Katz similarly notes that Jewish law "derived its rules governing communal life from the laws of partnership, as if the community were nothing but a group of individuals associated for some specified and limited purpose." See *Tradition and Crisis*, 80, and the sources cited there in notes 15-17.

48. Rabinovitch, *Mesillot bi-Levavam*, 325.

49. Ibid., 323.

50. Ibid., 338.

positions prohibit the election of non-Jews, converts, women, and others.[51] However, in his *Yad Peshutah* commentary, R. Rabinovitch finds ample room within Maimonides' ruling to allow for it, at least after the fact, as long as they have public support.[52] While R. Rabinovitch does not mention the concept of "partnership" explicitly in this context, it is clear that he reads Maimonides as endorsing it on some level.

Anchoring the legitimacy of the government in a "partnership" of the citizens places certain limits on its power. First and foremost, since its authority is derived from that of its citizens, the state may not create laws in matters that are beyond their authority to begin with.[53] For example, R. Rabinovitch reiterates that no sovereign—despite enjoying the support of the majority—may involve themselves in legislation of religious matters, as this is beyond the power of the individual citizen in the first place. Similarly, any law that violates Halakhah is null and void, as is any law or government action that singles out and undermines the rights of a particular group of citizens. Finally, although it has the power to use force, its "partnership" base means that the government should avoid doing so whenever feasible.

R. Rabinovitch's conception of government authority and the halakhic requirements of "partnership" has direct ramifications for the proper system of government as well. He asserts that in the modern era, "only a democratic republic can suit our tradition as it has developed in communal life throughout the generations."[54] However, he maintains that Jewish tradition does not dictate any one particular structure for this democracy. For example, the citizens may choose to appoint one head of state or a larger council, a unicameral or bicameral legislator, a coalition or two-party system, and the like. According to R. Rabinovitch, the concept of "partnership" encourages the advancement of a decentralized system in which local governments and community-based councils are to be given more power over the issues pertaining to their locality or subsection of society.[55] Likewise, R. Rabinovitch states that a direct

51. See *Hilkhot Melakhim* 1:4-5.
52. Rabinovitch, *Yad Peshutah: Shofetim*, 374–76. As mentioned, R. Rabinovitch also supports the appointment of women to rabbinic positions, such as service on a *beit din*. However, he admits that Maimonides' codification does not allow for this and that the "halakhic solutions" would have to come from other sources. See Pachter, "The Last *Rambamist*."
53. Rabinovitch, *Mesillot bi-Levavam*, 314, 344.
54. Rabinovitch, "*Am Zu Yaẓarti Li,*" 716. See also Sheleg, *Following the Multitude*, 69.
55. Rabinovitch, *Mesillot bi-Levavam*, 336–37. Likewise, in his halakhic rulings, R. Rabinovitch places a strong emphasis on the autonomy of local communities. For

relationship between the electorate and its representatives is a halakhic necessity. Only in this way can the standard presented by some medieval and early modern authorities that the *Tovei ha-Ir* be "appointed by the public" (*she-himḥum rabbim aleihem*) be met.[56] In further support of this idea, R. Rabinovitch cites a midrashic tradition that when appointing judges to serve under him, Moses required the people to select individuals known to them personally.[57] Indeed, R. Rabinovitch posits that "for many generations, the majority of Jewish communities conducted direct and personal elections" for their leaders.[58]

Critique of the Israeli System of Government

While in his writings R. Rabinovitch unquestioningly endorses modern Israel's democracy, his political theology does carry with it some pointed criticisms of the current system. Chief among these is that too often the State of Israel fails to maintain a proper separation between the civil and the spiritual. The government often goes beyond its limited mandate to oversee "societal matters, the interaction between citizens, security, and foreign relations alone."[59] Instead, it involves itself in religious affairs and thus goes beyond the matters for which its citizens may grant it authority. One example noted by R. Rabinovitch is the legislation and enforcement of *kashrut* laws by government bodies. Even when the civil authorities adhere to halakhic standards, their decisions are illegitimate.[60] Only the accepted religious authorities, on a communal or national basis, have the right to rule in such matters. For this reason, R. Rabinovitch objected to laws such as Israel's so-called Chametz Law, which forbids the public sale of leavened foods during Passover.[61]

example, see *Siaḥ Naḥum*, #30, #86, #87, #105, #106, #107, #109, and his article encouraging the use of local rabbinic courts in conversions, as opposed to one central body: "In Each and Every City" (Hebrew), *Makor Rishon*, April 25, 2014, retrieved at https://musaf-shabbat.com/2014/04/25/בכל-עיר-ועיר-נחום-אליעזר-רבינוביץ.

56. Rabinovitch, *Mesillot bi-Levavam*, 315. The various rabbinic sources for this concept are cited in n. 57.

57. Ibid., 336, citing the Sifrei on Deut. 1:13.

58. Ibid., 335. Again, compare Katz's divergent description of the election of communal leaders in *Tradition and Crisis*, 92.

59. Rabinovitch, *Mesillot bi-Levavam*, 350.

60. Ibid., 342–46.

61. Sheleg, *Following the Multitude*, 69-70. R. Rabinovitch's objection is to the fact that this law is nationwide in its scope. In keeping with his emphasis on the concept of "partnership" and the importance of communal autonomy, he would allow for such an enactment in a religious area if it is agreed upon by local residents.

With regard to the nature of Shabbat in the public sphere, however, his view is somewhat more nuanced. He did support laws outlawing commerce on Shabbat, but emphasized that this is for social reasons and not halakhic ones.[62] In addition, he maintained that such laws must take into account the needs of those who are not Shabbat-observant. He insisted that while "it is important for there to be legislation that allows *Am Yisrael* to keep [lit. guard] Shabbat . . . the rights of non-religious and non-Jewish citizens must be protected [lit. guarded] as well."[63]

The most far-reaching criticism to be found in R. Rabinovitch's works of the manner in which religion and state are currently intertwined in Israel is in regard to personal status law. In his view, marriage is by definition a religious institution and therefore beyond the purview of the civil authority.[64] This runs counter to the situation in the State of Israel, where the government is directly involved, by way of the Chief Rabbinate, in such matters. The fact that Israeli marriage and divorce laws are based in Halakhah does not make this any more legitimate. These matters must be left in the hands of rabbinic authorities alone, free of government involvement. With this, however, R. Rabinovitch's belief in the separation between religion and state leads him to argue that the State of Israel may choose to recognize "civil unions" and grant equal rights even to couples who are not recognized by Halakhah. Such arrangements, unlike marriage, are not religious in nature and are therefore within the legislature's limited authority.

Just as he objected to the State's involvement in marriage law, R. Rabinovitch also objected to the role it has granted the Chief Rabbinate in another matter of personal status—conversion.[65] Again, the very fact that the Israeli government is involved in a religious matter is itself illegitimate. Moreover, by placing one centralized authority in charge of conversion, Israeli law runs counter to the halakhic tradition. In R. Rabinovitch's view, Jewish law has always granted individual rabbis the authority to oversee conversions in their communities. Not only is the very idea of a singular and all-powerful Chief Rabbinate foreign to Judaism, but even the Sanhedrin itself was not involved in conversions. Instead, it left the issue—as the current Rabbinate should—to the discretion of local religious courts. These objections led R. Rabinovitch

62. Ibid.
63. Horowitz, "The Existential Concern."
64. Sheleg, *Following the Multitude*, 70 –71.
65. Rabinovitch, *Mesillot bi-Levavam*, 279-84, and "In Each and Every City."

to take a leading role in founding *Giyyur ka-Halakhah*, a network of independent *batei din* which challenges the Rabbinate's monopoly.[66]

Beyond the ideological concerns just mentioned, R. Rabinovitch contended that such an alternative is necessary because the Rabbinate has not properly facilitated widespread conversion among immigrants from the former Soviet Union and their children in particular.[67] Failure to do so, he believed, will create a serious threat to the Jewish identity of the State in the coming decades through intermarriage and acute demographic shifts. R. Rabinovitch argued that enabling their conversion, along with the creation of proper educational and social frameworks, is a "religious, social, and national challenge" of the utmost importance.[68] Doing so is the only way to ensure that this fully integrated and growing segment of Israeli society becomes part of the Jewish People and likewise maintains a strong connection to Judaism.

The extent to which R. Rabinovitch broke with other leaders of his stature in regard to religion and state is clearest regarding the matters just discussed. Ensuring that the Chief Rabbinate was given sole control of personal status law was considered a major achievement by both Religious Zionist and Ḥaredi leadership in the early years of the State.[69] In fact, several important Religious Zionist rabbis—including R. Isaac HaLevi Herzog, R. Moshe-Zvi Neria, and R. Shaul Yisraeli, among others—argued for even more sweeping religious legislation in order to make religious observance the norm, at least in the public sphere.[70] Such public calls for religious legislation have declined in recent years, in general due to practical concerns; forcing religious law upon citizens is seen as largely ineffective and risks anti-religious backlash.[71]

66. R. Rabinovitch's involvement in this project is also noted by Nadler, "Maimonides." Other well-known rabbis taking part in *Giyyur ka-Halakhah* include R. Shlomo Riskin, R. David Stav, R. Re'em Hakohen, and R. Moshe Ẓuriel.

67. Horowitz, "The Existential Concern." Regarding the halakhic aspects of converting minors, see Rabinovitch, *Siaḥ Naḥum*, #68, #69.

68. Rabinovitch, *Mesillot bi-Levavam*, 282.

69. Regarding the social and political factors that allowed for this legislation to be passed, including a partnership between the Ḥaredi and Religious Zionist parties (known as the United Religious Front) in the first Knesset, see Moshe Samet, *Chapters in the History of Orthodoxy* (Hebrew) (Jerusalem: Carmel, 2005), 343-53, 385-95.

70. Regarding the overall attempts of Religious Zionism to influence the character of the State and the support for religious legislation, see Kalman Neuman, "Religious Zionism and the State" (Hebrew), in Yedidia Z. Stern, et al., *When Judaism Meets the State* (Tel Aviv: Yediot Ahronot, 2015), 290-342.

71. Ibid., 332-33. Neuman also notes R. Rabinovitch's general objection to religious legislation; see ibid., 330-31.

Nevertheless, support for the Rabbinate's monopoly over marriage and conversion has remained the dominant view among Religious Zionist leaders. In fact, *Giyyur ka-Halakhah* has received some of its harshest criticisms from within the Religious Zionist camp. A number of leading rabbis—in particular those identified with the movement's right-wing, such as R. Haim Drukman, R. Dov Lior, and R. Zvi Tau—have publicly rejected *Giyyur ka-Halakhah* and reiterated their belief that only the Chief Rabbinate has authority in matters of personal status.[72]

It is true that in recent years the usefulness of the Rabbinate has been increasingly called into question. However, as with the diminished call for religious legislation, this too is often for practical reasons—the control of the Rabbinate by Ḥaredi interests, its general unpopularity, and the growing number of Israelis who choose to bypass the institution altogether. Unlike others who are wary of the Chief Rabbinate, R. Rabinovitch argued for a separation of religion and state on principle. In this regard, the views expressed in his writings are closer to those of figures connected to academic and liberal Orthodox groups, such as *Ne'emanei Torah va-Avodah* and the short-lived *Ha-Tenu'ah le-Yahadut shel Torah*,[73] than they are to other *roshei yeshivah* of his stature.

In a similar sense, R. Rabinovitch differed from the majority of his rabbinic peers in his consistent refusal to endorse political parties identified with the Religious Zionist movement. Unlike them, he did not call upon the religious public to vote for parties such as the National Religious Party (*Mafdal*) or its current iteration, the Jewish Home Party (*Ha-Bayit Ha-Yehudi*). In fact, he opposed the very establishment of these sectoral parties.[74] This is no doubt connected, at least in part, to his disapproval of the mixture of religion and state for which they tend to advocate.

At the same time, it is important to note that R. Rabinovitch's political theology does not argue for a separation of religion and state in the traditional sense, whereby the state may not endorse religions nor fund religious services.[75] Rather, it calls for a clear separation between their respective areas of authority. While the state may not legislate or adjudicate religious matters, it should help provide for the social and

72. Aryeh Yoeli, "Religious Zionist Rabbis: Private Conversions Contradict the Torah," *Serugim*, August 11, 2015, retrieved at https://tinyurl.com/y54vbux4.
73. For more on these groups, which are still largely on the periphery of Religious Zionism, see Neuman, "Religious Zionism," 295-97, 393-94.
74. Pachter, "The Last *Rambamist*."
75. Also noted by Neuman, "Religious Zionism," 331 n. 137.

cultural needs of its citizens—including those who are religious. Going back to the concept of "partnership" as understood by R. Rabinovitch, the state may support religious institutions and fund religious services (for Jews and non-Jews alike) if there is widespread agreement for this among citizens.[76] However, if such a consensus were lacking, it would then be beyond the authority of the state.

Just as R. Rabinovitch's political theology informs his objection to religious legislation and religious political parties, it is directly connected to his attitude towards "land for peace" and the removal of established settlements by the Israeli government. As noted above, R. Rabinovitch rejected the 2005 Disengagement Plan and called upon IDF soldiers to refuse to take part. Likewise, he spoke out strongly against the Oslo negotiations ten years previous. Yet, unlike many Religious Zionist leaders, especially those who see themselves as continuing the legacy of R. Abraham Isaac Kook and his son R. Zvi Yehuda, R. Rabinovitch's objections to the Oslo Accords and the Disengagement were not due to a devotion to the Greater Land of Israel, nor messianic beliefs.[77] In fact, R. Rabinovitch's brand of Religious Zionism is decidedly non-messianic.[78] The modern State of Israel is an unprecedented opportunity to:

> realize the Torah's great aims: the Ingathering of the Exiles, building the Land of Israel and causing it to bloom, and creating a just society that sanctifies the name of heaven in the eyes of all the nations.[79]

In his works, R. Rabinovitch is wary of the notion that the State of Israel represents the "*Atḥalta de-Geulah*" (beginning of the redemption). This idea, heavily influenced by the teachings of R. Kook, is almost a given among Religious Zionists in Israel.[80] In stark contrast, R. Rabinovitch stresses that only a prophet could make such a declaration and rejects the idea that "we are in the midst of some guaranteed redemption that cannot fail" as an "illusion" indicative of dangerous hubris.[81]

76. Rabinovitch, *Mesillot bi-Levavam*, 343.
77. This is not meant to imply that in R. Rabinovitch's view settling the Land of Israel is not a *miẓvah*. Indeed, it is; see his *Responsa Melummedei Milḥamah* (Maaleh Adumim: Maaliyot, 2004), #2, 9-22. However, as will be explained, his objections to the Oslo Accords and the Disengagement were not based on this assumption.
78. This is also noted by Nadler, "Maimonides".
79. Rabinovitch, *Mesillot bi-Levavam*, 268.
80. Regarding this dominant belief that State of Israel is a crucial part of the messianic process, see Neuman, "Religious Zionism," 308-12, 362-71.
81. Rabinovitch, *Mesillot bi-Levavam*, 258. See also Avinadav Vitkon, "Politics at Sage-Level: An Interview with R. Nachum Eliezer Rabinovitch" (Hebrew), *Arutz Sheva*,

Consequently, and unlike many of his rabbinic peers, R. Rabinovitch did not reject the very idea of an agreement with the Palestinians or land-swaps. Rather, he protested the Oslo Accords on the grounds of *pikuaḥ nefesh*.[82] Jewish law does not allow, he argued, the jeopardizing of lives in the present in order to protect other lives in the future. Due to the repeated terror attacks that came in the wake of Oslo, R. Rabinovitch deemed the peace process and the Israeli concessions that it garnered a clear and present danger to Israeli citizens. Thus, even if the Oslo Accords could eventually bring peace—something R. Rabinovitch believed to be a fantasy in any event—they were beyond the pale.

In a similar sense, R. Rabinovitch's objection to the Disengagement set him apart from the other rabbinic leaders whom he joined in protest. Similar to his argument that the state has no authority in religious matters because the "partners" who make up the state have no right to grant it such authority, R. Rabinovitch maintained that a government does not have the authority to remove law-abiding citizens from their homes. This is because no "partner" has such authority in the first place. In fact, R. Rabinovitch saw the concept of "eminent domain" as foreign to Jewish law.[83] He therefore rejected the Disengagement as a violation of the property rights of those living in Gush Katif.[84]

As noted above, this particular limit on government power is possible only because in R. Rabinovitch's view the government of Israel is seen, like the *Tovei ha-Ir* before it, as inheriting the powers of a king and not a *beit din*. At the same time, this reasoning also explains why, unlike other prominent rabbis who called upon soldiers to disobey orders, he viewed the relinquishing of land as permissible in principle.[85] Protecting the State of Israel and its residents would indeed justify the government's "theft" of private land. However, since in R. Rabinovitch's opinion this case could not be strongly made regarding the Disengagement, the violation of citizens' rights remained unlawful.

Feb. 25, 2015, retrieved at https://www.inn.co.il/News/News.aspx/293632.

82. See Nachum Eliezer Rabinovitch, "A Clarification of the Halakhic Decision Outlawing the Removal of IDF Bases in Judea, Samaria, and Gaza" (Hebrew), in Eliezer Melamed, *Peninei Halakhah*: *The Nation and the Land* (Har Bracha: Machon Har Bracha, 2005), 302–8, available online at http://ph.yhb.org.il/06-11-14. The importance of *pikuaḥ nefesh* in R. Rabinovitch's halakhic rulings is also noted by Nadler, "Maimonides."

83. Rabinovitch, *Mesillot bi-Levavam*, 326 n. 96.

84. Pachter, "The Last *Rambamist*."

85. Ibid. and Rabinovitch, *Mesillot bi-Levavam*, 351.

Lastly, throughout his political writings R. Rabinovitch contends that the demand of Jewish tradition for a direct connection between the voters and their representatives is not met in the Israeli parliamentary system. In Israel, each party compiles a list of candidates and receives a number of seats in Knesset relative to the percentage of the votes it receives. The largest party, in turn, is given a mandate to form a coalition government. Thus, the members of parliament are not chosen directly by the voters. According to R. Rabinovitch, in order to rectify this situation the current system must be restructured so that "at least a portion of the members of parliament are elected personally; that is to say, in each district the residents should directly elect the people who will represent them."[86] In his view, ignoring centuries of Jewish political tradition has led to a system in which politicians ignore the needs of large segments of the population.[87] Instead, it grants undue power to cronies and rewards those who pander to the particular interests of those within their party's electoral body.

Despite these failings, however, R. Rabinovitch's political theology wholly endorses the Knesset as the legitimate civil authority in Israel. Indeed, he notes, even kings who seized power illegitimately were still granted begrudging legitimacy in rabbinic texts.[88] Certainly Israel's democracy, with all its drawbacks, is far better.

Political Theology in its Halakhic Context

As we discussed, R. Rabinovitch's approach to Jewish law centers upon three themes: a division between the ideal and the real, an empirical view of the *miẓvot*, and the importance of free choice. His political theology can be viewed, to a large extent, as an outgrowth of this same ideology. Because R. Rabinovitch views the civil authority as fulfilling a major objective of Jewish law, the "welfare of the body," the underlying themes of Halakhah should apply to it as well. Indeed, reading his political theology in light of his view of Jewish law bears this out. All three of the aforementioned themes regarding the *miẓvot* find expression in R. Rabinovitch's view of the ideal Jewish State.

First, R. Rabinovitch sees the Torah as presenting a two-tiered system that establishes exalted moral and spiritual goals, even though

86. Ibid., 350.
87. Rabinovitch, "*Am Zu Yaẓarti Li*," 74.
88. Rabinovitch, *Mesillot bi-Levavam*, 321–22, 349–50.

they may be beyond the reach of any given generation. Practical Halakhah then serves as a tool to educate and lead the Jewish People to these goals. Accordingly, Jewish law is seen as establishing important guiding principles, but often leaving a large measure of practical leeway in conjunction with historical and social circumstance. As R. Rabinovitch would have it, this flexibility in praxis is what ensures that the overarching values of Judaism survive throughout the tumults of Jewish history.

This concept is reflected in his political theology as well. All Jewish governments are beholden to certain basic principles, such as the limiting of their authority to the civil realm, the concept of "partnership," and direct representation. However, any form of government that upholds these principles is acceptable in the eyes of the Halakhah. In other words, Jewish law establishes these values as ideals, thus entrenching them in Jewish culture and tradition, while allowing the leadership to take the form most fitting for the realities of any given period. In R. Rabinovitch's view, the biblical kingdom was akin to a constitutional monarchy and the medieval *Tovei ha-Ir* represented a democratically elected executive council.[89] Indeed, R. Rabinovitch posits that this flexibility is what allowed fundamental democratic values to remain embedded in the Jewish nation despite its prolonged exile. He believes that the fact that democracy has flourished in the modern State of Israel while it has floundered in many other countries founded in the wake of the Second World War is a direct result of this.[90]

Second, a strong connection can be seen between R. Rabinovitch's empirical view of the *miẓvot* and his position on the manner in which the state must legislate. As explained earlier, R. Rabinovitch gives prominence to Maimonides' observation that all *miẓvot* must have a "useful end" that is clear and discernible. R. Rabinovitch sees the Halakhah as demanding that all civil legislation meet this same standard. This is not merely a matter of good public policy. Again, since the government is entrusted with the task of ensuring the "welfare of the body," itself a category of *miẓvot*, its laws must meet the standards established for the *miẓvot*. Therefore, according to R. Rabinovitch, a necessary condition for the legitimacy of any civil legislation is that it must have "a clear and just purpose" that is "obvious to all."[91] R. Rabinovitch supports this statement by quoting Maimonides' ruling:

89. Rabinovitch, "*Am Zu Yaẓarti Li,*" 684 n. 30.
90. Ibid., 717.
91. Rabinovitch, *Mesillot bi-Levavam*, 312.

> This is the general rule: Any law that the king enacts for all and not just for a particular individual is not robbery (*gezel*). However, anything he should take from one individual alone, not in accordance to the laws known to all but by violence (*ḥamas*), is indeed theft.[92]

According to R. Rabinovitch, this means that any and all laws the government passes must apply to all citizens equally, and the justice of these laws must be self-evident.[93]

Third, R. Rabinovitch's understanding of Jewish law places a heavy emphasis on free choice, which is taken to be a crucial prerequisite for the proper fulfillment of any *miẓvah*. Here again, as civil leadership falls under halakhic categories, the same applies to its legislation. Just as Jewish law has developed into a system that minimizes the use of coercion, R. Rabinovitch argues that civil authorities must do the same. While it is necessary that the state have the power of force in order to maintain law and order, he repeatedly emphasizes that the government must do all it can to refrain from taking advantage of this right.[94] As noted, one of the advantages that R. Rabinovitch sees in a system based on so-called "partnerships" is that it encourages a close relationship between the citizens and their representatives. This guarantees that the laws they pass have broad public support and thereby reduces the need for coercion. Moreover, a government that loses the support of the people loses its legitimacy and must be replaced.

The Influence of Liberalism

While R. Rabinovitch states that he sees himself developing and building upon the approach taken by Maimonides, it is clear that he is also heavily influenced by the liberal tradition.

Despite the differences among the various thinkers who subscribe to this worldview, its most basic tenets generally remain the same. Liberalism is primarily concerned with the autonomy of individuals and the need to safeguard their basic rights. These rights are universal and include freedom of thought, freedom of expression, and freedom of religion. In the context of practical politics, liberalism sees the protection of these freedoms as the paramount task of any government. Not only must these rights be protected from violation by other citizens,

92. *Mishneh Torah, Hilkhot Gezelah ve-Avedah* 5:14.
93. Rabinovitch, *Mesillot bi-Levavam*, 307.
94. Ibid., 319, 350, 351.

but they must be protected from violation by the government as well. As a result, a wide-ranging system of checks-and-balances is required, and no government is legitimate if its power is not derived from the consent of the governed.

Even this terse overview makes clear the strong parallels between liberalism and R. Rabinovitch's thought.[95] Foremost among these is the heavy importance placed on individual rights. As discussed, R. Rabinovitch sees Jewish law and tradition as very much concerned with individual autonomy. Likewise, he attributes great religious importance to personal freedoms.[96] This is evident in his argument that observance of the *miẓvot* has true meaning only when done without coercion and as an expression of free choice. It would also seem, for example, that his belief in personal and communal autonomy informs his support for Jewish rights on the Temple Mount and opinion that religious communities may appoint female leaders if they so choose.

Further, the limited role that R. Rabinovitch grants the state is akin to that which it is granted in liberalism: protecting the life and liberty of its citizens. As a result, he considers government involvement in matters of personal conscience and religious practice illegitimate. This is clearest is his objection to the Rabbinate's role in personal status law. Of course, Halakhah itself does place limits on personal freedoms, commanding certain actions and proscribing others. However, in keeping with the tenets of liberalism, R. Rabinovitch believes a Jewish government is forbidden from doing so. This is the reason for his overall objection to both civil laws that would force religious norms upon citizens and the use of coercion by rabbinic authorities within religious communities.

Finally, an obvious parallel can been seen in R. Rabinovitch's view that Jewish law identifies the source of government authority as the consent of the governed. This too is a crucial aspect of liberal political thought.

Indeed, R. Rabinovitch is well aware of such parallels. In "*Am Zu Yaẓarti Li*," he posits that many of the fundamental values of democracy —such as liberty, equality, and the aforementioned individual autonomy—are inspired by the Hebrew Bible and Jewish tradition.[97] In addition, he writes:

95. Some of these parallels are also mentioned by Nadler, "Maimonides," and Sheleg, *Following the Multitude*, 68.
96. This is also noted by Ravitzky, "Halakhic State?," 155.
97. Rabinovitch, "*Am Zu Yaẓarti Li*," 681–86.

> John Locke, who laid the foundations of modern democratic thought, drew ideas from the Bible and quotes it frequently. I do not know if he was familiar with Maimonides' "Laws of Kings,"[98] but it is interesting to note that he writes in almost the same manner and determines that the purpose for which a government is formed is twofold: establishing a just social order and defending against external enemies who endeavor to expel us from our home.[99] He also concludes [as Maimonides does] that a government that makes war against its own people or a sovereign who repudiates the laws of the divine and natural morality loses all legitimacy.[100]

The influence of biblical and rabbinic models on liberalism is a matter of scholarly debate and need not be rejected out of hand even if one is unconvinced of the weight R. Rabinovitch assigns to it.[101] However, in the case of R. Rabinovitch, this influence is not one-way. Indeed, it is not happenstance that he cites John Locke. The influence of the liberal political tradition on R. Rabinovitch's political theology is clearest upon comparing it to the writing of the English philosopher.

John Locke

John Locke (1632-1704) is considered by many to be the founding father of liberalism, and his writings continue to influence democratic theory to this day. His most important works in this context are *Two Treatises of Government* and *A Letter Concerning Toleration*.[102] In the first, he lays out his understanding of social contract theory, the nature of individual

98. R. Rabinovitch notes here that a Latin translation of the relevant sections of the *Mishneh Torah* was published nearly forty years before Locke's *Two Treatises* (ibid., n. 31).

99. R. Rabinovitch presents a similar description of the role of the king in *Yad Peshutah: Shofetim*, 345–46.

100. Rabinovitch, "*Am Zu Yaẓarti Li*," 684. Elsewhere, R. Rabinovitch also quotes directly from Locke; see Rabinovitch, *Mesillot bi-Levavam*, 378.

101. For example, see Eric Nelson, *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought* (Cambridge: Harvard University Press, 2011). Nelson argues that biblical texts and rabbinic commentaries on them had a pervasive influence upon the development of modern political theory in the mid-seventeenth century. He credits these texts with giving rise to the belief that a republic is the only legitimate form of government. Regarding the use of a Maimonidean text in particular, see ibid., 108-109. Regarding the influence of biblical texts on Locke's views on tolerance, see ibid., 135-37.

102. Citations and quotations from these works are taken from John Locke, *Two Treatises of Government and A Letter Concerning Toleration*, ed. Ian Shapiro (New Haven: Yale University Press, 2003).

rights, and the role of government. In the second, he addresses the relationship between religion and the civil government and their respective spheres of influence.

After forcefully rejecting in the *First Treatise of Government* the notion that kings are granted their authority by divine right, Locke goes on to discuss in the *Second Treatise of Government* the origin and ends of civil government. He opens by presenting his view on the "state of Nature," which precedes communal life and out of which communities and nations are formed. In the "state of Nature," each individual is equally free, bound only by the "law of Nature," which protects the safety of their person and property and prohibits them from harming others.[103] Likewise, each individual has the right to enforce the "law of Nature" in order to defend himself. However, this will no doubt lead to "confusion and disorder," violence and chaos.[104] Thus, the people may enter into a contract with one another to appoint a civil government to oversee and enforce the "law of Nature." In doing so—and only by doing so—they form "one community and make one body politic."[105]

As a result of this, the power that can be granted to the community, and in turn the government, is limited to that which the individuals originally had in the "state of Nature." As Locke puts it, "nobody can give more power than he has himself."[106] On the other hand, Locke maintains that by consenting to be part of "one body politic and under one government," the individual consents to abide by that which has received the approval of the majority.[107] Nevertheless, the legislator remains only a "fiduciary power to act for certain ends" and the "supreme power" remains ultimately with the people.[108] Were the legislator to act against these proper ends, "the trust" placed in it "must necessarily be forfeited, and the power devolve into the hands of those that gave it." Moreover, the laws of the legislator must apply to all citizens equally, and there must be a clear division between legislative and executive powers in order to ensure that these powers are not abused.[109]

In *A Letter Concerning Toleration*, Locke makes the case for religious tolerance. To do so, he first sets out to "distinguish exactly the business

103. Locke, *Second Treatise* 2:6 (102).
104. Ibid., 2:13 (105).
105. Ibid., 2:14 (106).
106. Ibid., 4:23 (110).
107. Ibid., 8:97 (142).
108. Ibid., 13:149 (166).
109. See ibid., 12:143, 12:144, 13:150, 14:159.

of civil government from that of religion" and "settle the just bounds that lie between the one and the other."[110] The task of religion is not:

> . . . erecting an external pomp, nor to the obtaining of ecclesiastical dominion, nor to the exercising of compulsive force; but to the regulating of men's lives, according to the rules of virtue and piety.

In contrast, the task of the state is the preservation and advancement of the so-called "civil interests," which Locke defines as "life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like." As religion and state play two wholly different roles, argues Locke, one does not have the right to interfere with the other. Additionally, the state may not involve itself with religion because, continuing his point from the *Second Treatise*, the "care of souls" is not committed to any one person.[111] Therefore, such power may not "be vested in the magistrate by the consent of the people."

Moreover, Locke maintains "the care of souls cannot belong to the civil magistrate, because his power consists only in outward force," whereas God demands the "inward persuasion of the mind." Indeed, the use of external force belongs to the state alone, and the church may not resort to it. This is because the church is by definition a "voluntary society of men" joining together for the "public worshipping of God" and the "salvation of their souls."[112] While it may choose to expel those who violate its teachings, it has no power to dispossess them of the rights ensured by the civil authority. In short, the state may not force a particular religion and its practices upon citizens, and religion may not make use of force to bring citizens into the fold. Although in the context of seventeenth century England religious tolerance meant "the mutual toleration of Christians in their different professions of religion,"[113] Locke's arguments have long since been used in support of tolerance for all.

The connection between R. Rabinovitch's political theology and the political philosophy of John Locke is almost self-evident. R. Rabinovitch's understanding of the source and nature of government authority is identical to that of Locke in the *Second Treatise*. Both view it as ultimately stemming from the people and thus limited to those powers that the people have the ability to grant. As a result, R. Rabinovitch's

110. Locke, *Toleration*, 218.
111. Ibid., 218-19.
112. Ibid., 220.
113. Ibid., 215.

conception of the halakhic "partnership" is akin to Locke's conception of the "body politic." In fact, R. Rabinovitch's statement that a right that no individual citizen has "can therefore not be granted by them to their representatives" can be found almost verbatim in the *Second Treatise* and *Toleration*.[114] Similarly, R. Rabinovitch's aversion to the use of force by religious authorities matches Locke's understanding that religious matters are solely subject to "inward persuasion," unlike civil matters, which may require external coercion. Finally, both posit that a government that violates the limits of its power loses its legitimacy. The revolutionary tension present in Locke's political theory, which helped inspire the American and French revolutions, is present in R. Rabinovitch's political theology as well. Indeed, it helps explain his willingness to forcefully criticize the Israeli government and openly question the legitimacy of some of its actions.

While it could be argued that such parallels do not necessarily belie direct influence, this is harder to maintain when comparing the separation of authority between religion and state as understood by Locke and R. Rabinovitch.

As discussed, R. Rabinovitch draws a parallel between Maimonides' concepts of "welfare of the body" and "welfare of the soul" and his own distinction between the "civil" and the "spiritual." The state is entrusted with laws governing the "welfare of the body," i.e., the civil. Religion is entrusted with the laws governing the "welfare of the soul," i.e., the spiritual. As mentioned above, Maimonides defines the "welfare of the body" as "the improvement of [the common multitude's] ways of living one with another" (*Guide* III:27:510). This is achieved, he says, through ensuring "the abolition of their wronging each other" and the "acquisition by every human individual of moral qualities that are useful for life in society so that the affairs of the city may be ordered." This definition largely matches the limited role that R. Rabinovitch lays out for the state. In fact, Maimonides himself states that the "welfare of the body" is to be achieved "through a ruler who gauges the actions of the individual" (*Guide* II:40:382).

Nevertheless, the parallel between the "welfare of the body" and the "civil" is not perfect. Numerous *miẓvot* that clearly fall under the category of the "spiritual," and thus beyond the purview of the state according

114. Rabinovitch, *Mesillot bi-Levavam*, 344. Compare: Locke, *Second Treatise* 4:23 (110) and *Toleration*, 218-19.

to R. Rabinovitch, are nevertheless classified by Maimonides as *miẓvot* that pertain to the "welfare of the body." One example should suffice to demonstrate this. It was noted above that R. Rabinovitch points to the laws of *kashrut* as a religious matter in which, as such, the government cannot legitimately involve itself. Yet, in regard to these same laws, Maimonides writes that "the purpose of all this is… to put an end to the lusts and licentiousness manifested in seeking what is most pleasurable and to taking the desire for food and drink as an end" (*Guide* III:35:537). Since it is meant to reinforce certain "moral qualities," this definition places *kashrut* firmly within the category of *miẓvot* that are concerned with the "welfare of the body" according to Maimonides' classification. Were a complete identification of the civil authority's role with the "welfare of the body" accurate, *kashrut* would actually fall under the jurisdiction of the state. As R. Rabinovitch rejects this notion, it is clear that his distinction between the civil and the spiritual cannot be seen as a precise parallel to Maimonides' "welfare of the body" and "welfare of the soul." The tension between Maimonides' concepts and R. Rabinovitch's use of the terms is especially important, as the division between the civil and the spiritual is the lynchpin of R. Rabinovitch's political theology.

While R. Rabinovitch's view of the civil and the spiritual does not completely match Maimonides' division, it does match Locke's distinction between the state's role in preserving the "civil interests" and religion's task in assuring the "care of the soul." R. Rabinovitch sees the state's sole concern as being the life, liberty, and property rights of the citizens, just as Locke did. On the other hand, the state must stay out of the "the religious and the ritual," in R. Rabinovitch's phrasing. Here too he embraces Locke, who places "virtue and piety" and the "public worshipping of God" outside of the government's jurisdiction. Not only does R. Rabinovitch wholeheartedly accept Locke's definitions of the civil and religious, but he likewise endorses Locke's separation of the two.

Although R. Rabinovitch utilizes the language of Maimonides—"welfare of the body" and "welfare of the soul"—a close reading reveals that his approach to these matters is ultimately indebted to Locke. There still is, however, a crucial difference between them. While Locke separates the civil and religious largely in order to protect the modern state from the intrusion of religion, R. Rabinovitch does so in order to protect the integrity of religion and defend it from the incursion of the state.

Conclusion

This essay presented and analyzed the political theology of Rabbi Dr. Nachum Eliezer Rabinovitch. R. Rabinovitch saw the state as fulfilling a halakhic role in ensuring the "welfare of the body," and his views on the proper structure and function of the state are therefore closely related to his understanding of nature of the *mizvot*. In addition, R. Rabinovitch's political theory carries with it some criticisms, both principled and practical, of the contemporary Israeli system. A close reading of R. Rabinovitch's arguments shows that he was deeply influenced not only by Jewish tradition, but by the core ideas of liberalism as well. His emphasis on individual rights and views on the source and limits of government authority speak volumes in this regard. Moreover, by identifying the "welfare of the body" with the state's role and "welfare of the soul" with religion, R. Rabinovitch's approach gives Lockean meaning to the Maimonidean concepts.

While the most important aspects of R. Rabinovitch's political thought have been addressed, there still remain areas for further study. For example, much can be gained by comparing his writing to that of other Orthodox thinkers who likewise maintain a strong connection to liberal thought, such as Moses Mendelssohn, R. Shimon Federbush, and Yeshayahu Leibowitz. In addition, although R. Rabinovitch's empirical view of the *mizvot* is ostensibly based on Maimonides, a close reading alongside Locke's *An Essay Concerning Human Understanding* would no doubt be fruitful. Finally, our analysis touched upon R. Rabinovitch's halakhic works when relevant to his political thought; a dedicated study of his halakhic philosophy and methodology still awaits.

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SHLOMO M. BRODY

Philosophy of Law and Halakhic Discourse: Possession Crimes and the Owning of Ḥamez

In recent decades, many Jewish legal scholars have employed tools from legal philosophy to ask broad questions about the nature of Jewish law ("philosophy of Halakhah"). Does Halakhah represent a positivistic or formalistic system of law? Does rabbinic authority rest on a realist conception of legal adjudication? What is the role of natural law?[1] Can the writings of the philosophers H.L.A. Hart and Ronald Dworkin help explain the halakhic process?

1. Broadly speaking, "natural law theory" refers to the idea that there is a necessary relation between law and morality and that the former must be rooted in the latter. Positivism maintains that law is "posited"—created, ultimately, by social convention—and is not of necessity connected to morality. Formalism believes that legal rulings derive clearly and syllogistically from the legal rules that bind judges, while realism asserts that there are many other variables that impact the outcome of judicial rulings. However, there are competing ways of making these definitions more specific, which further complicates how they may be applied in the halakhic context. For a review of some of this literature as it has been applied to halakhic discourse, see Adiel Schremer, "Toward Critical Halakhic Studies," *Tikvah Center Working Paper #4* (2010), available online at http://www.law.nyu.edu/sites/default/files/TikvahWorkingPapers Archive/WP4Schremer.pdf (accessed July 20, 2020).

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Dedicated to the memory of my father, Prof. Baruch Brody z"l,
ברוך אלתר בן הרב אליעזר זאב ז"ל

At other times, scholars who study *Mishpat Ivri* (Jewish legal studies) use other legal systems for comparative purposes. How do Jewish legal statements regarding bailees or returning a lost object relate to legal codes in America and England? Does Jewish law accept self-incriminating statements? Does it support the death penalty? Many of these cases represent natural points of comparison. To take a simple example, *hilkhot nezikin*, with all of its talmudic jargon and nuances, constitutes, at the end of the day, a particular form of tort law.

In this study, we will show how philosophical questions raised in general legal theory may be particularly illuminating when it comes to a seemingly unrelated concept within Jewish law. We will explore how a major question in contemporary criminal legal discourse can clarify significant aspects of the laws of Pesaḥ. By utilizing concepts and terms from criminal law, we will see how significant Talmudic rules and debates may be easily explained and articulated in a manner that provides great clarity to a complex area of Jewish law. In this regard, this paper suggests that general legal philosophy can help illuminate Jewish legal studies in unexpected places.[2]

Where Can *Ḥameẓ* Not Be Seen or Found? Owning *Ḥameẓ a*s a Possession Crime

According to widespread rabbinic interpretation accepted in contemporary Jewish law, the Torah includes two commandments for the Jewish people not to own *ḥameẓ* (leavened bread) on Pesaḥ:

> **No leaven shall be found (*lo yimmaẓe*) in your houses for seven days.** For whoever eats what is leavened, that person shall be cut off from the community of Israel, whether he is a stranger or a citizen of the country (Ex. 12:19).[3]

2. In a previous, shorter Hebrew version of this article, I discussed how Israel's "*Ḥok Ḥameẓ*" which prohibits sale of *ḥameẓ* products on Pesaḥ, is problematic because it is an inherently flawed attempt to prevent a possession-crime. That is to say, from a jurisprudential perspective, this is an untenable method of achieving a goal of limiting the possession of *ḥameẓ*. Accordingly, it serves little purpose from a purely religious perspective, which seeks to reduce the number of sins transgressed over the holiday. The only defense of the law, in turn, would be that it has symbolic or cultural significance in a Jewish state, a defense regarding which there is a reasonable amount of debate. See my "*Ḥok Ḥameẓ Lo Yakhol le-Hassig Mattarot Datiyyot*," *Bifrat u-Biklal* 3 (December 2017): 37-53.

3. Translations of verses are taken from the current JPS translation.

> Throughout the seven days unleavened bread shall be eaten; **no leaven bread shall be found (*lo yera'eh*) with you**, and no leaven shall be found **in all your territory** (ibid. 13:7).[4]

These verses were understood as a double-prohibition against owning *ḥameẓ*.[5] These commandments, known colloquially as "*bal yera'eh bal yimmaẓe*" ("you shall not see or find") were further understood as being related to the prohibition of eating *ḥameẓ*, as well as the commandment of destroying *ḥameẓ* (*tashbitu*).[6]

While widely accepted and fully normative, this legal understanding differs from an alternative reading of the Torah's text that would demand that all *ḥameẓ* be entirely eradicated during this period, including its removal from the vicinity of all homes and property. In a certain sense, it appears that the Torah addresses *ḥameẓ* on Pesaḥ much as it commands that articles related to *avodah zarah* be destroyed from the world:

> You shall consign the images of their gods to the fire. . . . You must not bring an abhorrent thing (*to'evah*) into your house, or you will be proscribed like it; you must reject it as abominable and abhorrent (Deut. 7:25-27).

R. Menaḥem Kasher has documented many parallels between the talmudic laws regarding *avodah zarah* and *ḥameẓ*, including the prohibition of owning even a miniscule amount, receiving any benefit from it, its method of disposal, and the unique method of "nullification" (*bittul*) through speech.[7] *Ḥameẓ* is also prohibited from other altar

4. Note that JPS translates *yera'eh* as "found," apparently under the influence of rabbinic interpretations, even as the more obvious translation would be "seen."

5. For a thorough discussion of these commandments in talmudic law, see the entry on *bal yera'eh bal yimmaẓe* in *Encyclopedia Talmudit*, vol. 3, 310-18. See also the discussion in *Minḥat Ḥinukh*, *miẓvah* 11 and *miẓvah* 20. For our purposes, we will assume that the two prohibitions fully overlap (more or less), even as rabbinic literature discusses whether or not this is always the case, as noted in both of these works.

6. Ex. 12:15, which also includes the prohibition of eating *ḥameẓ*.

7. See R. Menaḥem M. Kasher, *Torah Shelemah*: *Mishpatim*, vol. 19, Excursus 20 (New York, 5720), 300-302. (In the newer editions of *Torah Shelemah*, which combines various volumes into larger books, this excursus is found in vol. 5.) The essay is also reprinted in R. Kasher's *Haggadah Shelemah*, Excursus 7 (Jerusalem, 5727), 221-25. One expression of this perspective is the opinion of the sage R. Yehudah (*Pesaḥim* 21a), who believed that one fulfills the commandment of *tashbitu* only through burning one's *ḥameẓ*, just as one destroys *avodah zarah* through burning. The Sages also compare the prohibition of *ḥameẓ* to the prohibition of *notar* (leftovers from sacrifices), another food that must be consumed by a certain hour. See *Pesaḥim* 27b; *Mekhilta de-Rebbi Yishmael, Bo, Pisḥa* 8; and the discussion in Yehuda Brandes, *Madda Toratekha: Pesaḥim*, *shiur* 3, available online at http://www.bmj.org.il/files/1231373580411.pdf.

offerings besides the Pesaḥ sacrifice,[8] and in one passage in the *Talmud Yerushalmi*, leavened bread is directly connected to the temptation of *avodah zarah*.[9] The connection between *avodah zarah* and *ḥameẓ* is further noted in both the *Zohar* and in Maimonides' *The Guide for the Perplexed*,[10] and in the modern era rabbinic and academic scholars alike have associated leavened bread with idolatrous practices.[11]

Yet a perusal of halakhic literature shows that normative Jewish law, based on talmudic writings, does not demand the complete eradication of *ḥameẓ*. While it remains forbidden for Jews to "own" *ḥameẓ*, the exact parameters of the prohibited ownership remain disputed. What if the *ḥameẓ* was left with a non-Jew? What if it is found on the Jew's property, such as in a distant field, but is not in the Jew's possession? What about ownerless *ḥameẓ* or that owned by the Temple treasury? These and other questions were debated in talmudic and subsequent rabbinic literature, with the end result being a complex set of rules that clearly allow for *ḥameẓ* to remain within the midst of the Jewish people. That is to say, *ḥameẓ* can be seen or found during Pesaḥ, even without any Jew violating *bal yera'eh bal yimmaẓe*.

The clearest manifestation of this law is the talmudic *midrash* that asserts that one only violates *bal yera'eh bal yimmaẓe* for owning one's own *ḥameẓ*, but not for possession of *ḥameẓ* owned by a gentile or

8. Lev. 2:11, 6:10; Ex. 23:18. The latter verse is particularly significant because it immediately follows an additional reiteration of the commandment to eat *maẓẓah* on Pesaḥ (Ex. 23:14-15).

9. *Yerushalmi Avodah Zarah* 1:1, citing *Amos* 4:5.

10. *Zohar*, vol. 2, 182a; *Guide of the Perplexed* 3:46.

11. See the comments of R. Meir Simḥah of Dvinsk, *Meshekh Ḥokhmah,* Ex. 23:15, and R. Ẕevi Elimelekh Shapiro, *Benei Yissoskhar: Nissan*, Excursus #8 (ed. Ẕevi Elimelekh Penet, Bnei Brak, 5765), 415-16. See also R. Yoel Bin-Nun, "*Ḥameẓ u-Maẓẓah be-Pesaḥ, Shavuot, ve-Korbanot ha-Leḥem*," *Megadim* 13 (Adar, 5751). In academic literature, see Nahum Sarna, *Exploring Exodus* (New York: Schocken, 1986), 89-91, and William H.C. Propp, *The Anchor Bible: Exodus 1-18* (New York: Doubleday, 1998), 433-34. But see as well the comments of Baruch A. Levine, *The JPS Torah Commentary: Leviticus* (Philadelphia: Jewish Publication Society, 1989), 12, who notes the "general aversion to leaven in altar offerings," yet concludes, "Until further evidence becomes available, it must be assumed that we do not clearly understand the attitudes in these prohibitions." Jacob Milgrom, *The Anchor Bible: Leviticus* 1-16 (New York: Doubleday, 1991), 188-90, explicitly rejects the connection to heathen worship and instead argues that "fermentation is equivalent to decay and corruption, and for this reason is prohibited on the altar." He, along with Sarna and Propp (and R. Shapiro, from his unique perspective), also discuss the connections made in rabbinic literature between *ḥameẓ* and the evil inclination. The common denominator to these interpretations, however, is that *ḥameẓ* represents some form of inherent or ontological evil and therefore should be out of our midst, and certainly not consumed.

the Temple.[12] These lenient developments drew the ire of at least one medieval Karaite writer, who further railed against the medieval development of *mekhirat ḥameẓ*, the legal fiction that allows Jews to sell their *ḥameẓ* to a gentile and then re-purchase it immediately after the holiday.[13] Karaite protests aside, the generally lenient phenomenon leads to many important questions about the development of these laws. In recent years, academics have speculated regarding some of these historical developments.[14]

Without getting into the details of the historical claim, I will argue that from a philosophy of law perspective, the phenomenon described within Jewish law is best understood as the Sages struggling to define the prohibitions regarding *ḥameẓ* as possession crimes. In other words, the Sages understood the Torah as prohibiting Jews from possessing *ḥameẓ*, but not having an obligation to destroy all *ḥameẓ* from the world or from within their province. Given this understanding, they labored to delineate permissible and prohibited forms of possession, a debate that continued into the medieval period and beyond. Their legalistic nuances can at times seem incredibly distant from the biblical verses. I will argue that once the prohibition became to rid *ḥameẓ* from one's ownership, these legalistic struggles became inevitable because they are

12. *Pesaḥim* 5b, discussed below.

13. See R. Eliyahu Nikomodeo, *Sefer ha-Miẓvot ha-Gadol Gan Eden* (Israel, 1972), 45, columns 3-4. The Cutheans also did not share all of the rabbinic exegesis regarding these prohibitions. As indicated in *Yerushalmi Pesaḥim* 1:1, they believed *ḥameẓ* had to be removed from the house but could be retained in courtyards.

14. Two academic scholars, Yitzchak Gilat (*Perakim be-Hishtalshelut ha-Halakhah*, 3rd edition [Ramat Gan: Bar Ilan University Press, 5761], 135-40) and David Henschke ("*Ḥameẓ Shel Aḥerim*: *Perek be-Toledot ha-Halakhah*," *Teudah* 16-17 [5761]: 155-202) have attempted to document different historical stands within the talmudic literature that indicate that early rabbinic figures held a much stricter and extensive conception of the prohibition. Gilat argues that in earlier times, the Sages mandated burning all *ḥameẓ* and did not even allow for a Jew to sell it (permanently) to a gentile, since the food might not be consumed before the holiday. The only possible exclusions to the prohibition, Gilat argues, were circumstances in which it was impossible for the Jew to physically destroy the *ḥameẓ*. In later eras, however, rabbinic hermeneutics generated various leniencies, including the dispensation for Jews to have on their property *ḥameẓ* belonging to gentiles. Henschke goes further, arguing that according to their original meaning, these dispensations only allowed for Jews to permit non-Jews within their borders to retain *ḥameẓ*; they did not permit Jews to keep *ḥameẓ* belonging to anyone in their possession. Only in the latest historical strands of the Talmud did ownership of the *ḥameẓ* become a prerequisite for violating the biblical prohibitions. The major prooftexts of Gilat and Henschke are discussed below, but I have no intention of discussing the alleged history of this prohibition, which would require further study and exploration. Instead, my analysis is focused on a philosophy of law perspective.

inherent to all laws regulating the possession of objects, as evidenced by similar debates in contemporary criminal law.

To make this point, I will document how similar debates take place in contemporary legal discourse about possession crimes, and I will contend that conceptualizing *bal yera'eh bal yimmaẓe* as a "possession sin" can help make sense of the developments and debates around these prohibitions in Jewish law. To defend this claim, we will first explore the basic literature around possession crimes and then use those concepts to analyze the halakhic debates.

Possession Crimes

A "possession crime" is a criminal offense created by statute that prohibits the possession of a certain item. These items can range from firearms and drugs to counterfeit instruments and fireworks.[15] Such offenses typically include possessing items that create a presumption of past or future problematic behavior. Possessing stolen goods or pornographic pictures of children indicates previous criminal action, such as burglary or child abuse, while owning burglary tools or carrying an unlicensed concealed weapon points to future activity.[16] In some cases, the act of ownership itself is viewed as being inherently dangerous, such as in the case of hard drugs, whereas at other times the object is objectionable only because it runs the risk of falling into the wrong hands, as in the case of wire-cutters.[17] In many Western countries, the law does not require legal ownership of the object or physical ("actual") possession. Instead, the law attributes liability to someone who has control over an object's fate, even though he might not have legal title or physical possession of the object, at least at the time of the arrest. Under the doctrine of "constructive possession," this can include, at times, cases in which a group of people are held liable for possession even though only one of them had actual possession of the prohibited article.[18]

15. For a detailed (yet incomplete) survey of different types of possession crimes, see Markus Dirk Dubber, "The Possession Paradigm: The Special Part and the Police Power Model of the Criminal Process," in *Defining Crimes: Essays on the Special Part of the Criminal Law*, ed. R. A. Duff and Stuart P. Green (Oxford: Oxford University Press, 2005), 96-97.

16. See Andrew Ashworth, "The Unfairness of Risk-Based Possession Offences," *Criminal Law and Philosophy* 5 (2011): 239.

17. See George Fletcher, *Rethinking Criminal Law* (Boston: Little, Brown, 1978), 201.

18. The Cornell University Law School Legal Information Institute defines "construc-

While possession crimes make up a significant percentage of the charges brought in court today, they remain controversial within legal theory. Much of the controversy surrounds whether possession crimes confine to the conventional definition of criminal behavior that requires a criminal act, the *actus reus*. Broadly defined, the *actus reus* includes all elements of the crime that do not relate to the defendant's mental state. These include the behavior of the defendant as well as the circumstances and consequences of the action. Many scholars have protested that possession crimes do not include an action, because the criminal is punished simply for a state of possession.[19] These crimes are thus similar to so-called status crimes, a problematic category of offenses in which people are punished for being in a certain state of being.[20]

Aside from the problem of *actus reus,* some legal scholars maintain that that possession crimes lead to injustice by producing an overwhelming number of "ancillary crimes" that impose stiff penalties and lead to the "over-criminalization" of non-harmful behavior.[21] While

tive possession" as "The legal possession of an object, even if it was not in a person's direct physical control. . . . Generally, for a court to find that a person had constructive possession of an object, the person must have had knowledge of the object, as well as the ability to control it." See http://www.law.cornell.edu/wex/constructive_possession (accessed June 2020). Black's *Law Dictionary* defines it as "Having control of an item but not having actual possession of it. The item may not yet be delivered or paid for." For the problematic nature of defining "constructive possession," see Charles H. Whitebread and Ronald Stevens, "Constructive Possession in Narcotics Cases: To Have and Have Not," *Virginia Law Review* 58,5 (May 1972): 751-5. As evidence of the continued difficulty in defining this type of possession as well as prosecuting criminals for these offenses, see H. Lee Harrell, "That Ain't Mine: Taking Possession of Your Constructive Possession Case," *Virginia Police Legal Bulletin* 6:1 (July 2011), available online at http://www.radford.edu/content/va-chiefs/home/july-2011.html (accessed June 2020). Harrell, a deputy commonwealth attorney in Virginia, surveys recent trends in Virginia courts and advises police how to find evidence that strengthens their claims that the defendant had knowledge of the object as well as dominion and control over it.

19. See the literature cited in Markus D. Dubber, "Policing Possession: The War on Crime and the End of Criminal Law," *The Journal of Law and Criminology* 91:4 (Summer 2001): 829-995. Almost all of the articles and books cited below address this issue in one way or another.

20. See P. R. Glazebrook, "Situational Liability," in *Reshaping the Criminal Law*, ed. P.R. Glazebrook (London, 1978), 108-109. On this basis, some scholars have even expressed skepticism regarding whether the "act requirement" truly exists within Anglo-American law, with some contending that it is honored mainly in the breach. See Michael S. Moore, *Act and Crime: The Philosophy of Action and its Implications for Criminal Law* (Oxford: Oxford University Press, 1993), 1-14.

21. Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (Oxford: Oxford University Press, 2008), 33-54. Some further contend that possession crimes are simply tools for the police and prosecutors to convict people when they cannot

perhaps enacted with the intention of apprehending criminals, they create criteria that do not require actual culpability and lend themselves to abuse by overzealous law enforcement officials or as a form of "discretionary social control."[22]

Defenders of the concept of possession crimes have responded to the critique that such offenses lack an action with two basic approaches: 1) possession includes an action, or 2) possession crimes are defined by a more critical element of culpability—namely, control.

The first approach, taken by Glanville Williams[23] and Michael S. Moore,[24] asserts that possession constitutes an action because it requires an act to take possession or a decision not to rid oneself of the possession. As the Model Penal Code asserts, "Possession is an act . . . if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession."[25] Consequently, the crime is not the possession per se, but rather the actions or decisions (including acts of omission) that facilitate the creation or maintenance of the possession.

The second approach, offered by Douglas Husak, asserts that the "act requirement" should be replaced with the "control requirement." For a person to deserve punishment and responsibility on a criminal level, he must have control over the state of affairs, even if he does not perform an action. For Husak, this helps justify the criminalization of acts of omission, while preventing the law from holding people responsible for a state of affairs over which they had no control.[26]

The more fundamental problem, however, remains regarding culpability. From mere ownership alone, what has a person done wrong that warrants their punishment? Defenders of the concept of possession

prove that they actually performed (or will perform) an illegal action. See Dubber, "Policing Possession."

22. Fletcher, *Rethinking Criminal Law*, 202.

23. Glanville Williams, *Criminal Law: The General Part* (2nd ed., London: Stevens, 1961), 8.

24. Michael S. Moore, *Act and Crime: The Philosophy of Action and its Implications for Criminal Law* (Oxford: Oxford University Press, 1993), 21.

25. Model Penal Code 2.01(4). Note, however, that in British law, there is no formal requirement for an act or omission by the defendant, even though convictions are usually explained in these terms. See A.P. Simester, et al., *Simester and Sullivan's Criminal Law*, 4th edition (Oxford: Oxford University Press, 2010), 83.

26. Douglas Husak, "Rethinking the Act Requirement," *Cardozo Law Review* 28,6 (2007): 2437-2460, and idem, "Does Criminal Liability Require an Act?" in *Philosophy and the Criminal Law: Principle and Critique*, ed. Antony Duff (Cambridge: Cambridge University Press, 1998), 60-90.

crimes argue that these are necessary tools for capturing criminals or preventing criminal behavior, since it remains too difficult for police to actually catch a crime in the act or definitely prove afterward that the event took place. Moreover, in some cases of possession, such as child pornography or weapons, one might argue that their mere possession is inherently dangerous because of accidental misuse or the exploitation of children. Therefore, the act of possession alone is worthy of punishment, even if the owner had no intent to harm.[27] It remains more difficult, however, to make a similar claim regarding items like wirecutters. At times, one might claim that possession indicates some form of past criminal activity (e.g., possession of stolen property), but there are many circumstances in which this is not the case.[28]

George Fletcher argues that one might justify such laws under a positivist thesis: "If the law is well-defined and the individual has fair warning of conduct that this is punishable, there is no substantive objection that the individual can make against his falling under the sovereign's power to punish." Yet as Fletcher himself notes, such an approach turns criminal law into a regulatory system, as opposed to a mechanism of punishment for sinister or immoral behavior.[29] Moreover, as Michael Moore writes, "Faced openly, impatience (for future crimes) and inability to prove guilt (for past crimes) are not comfortable rationales for criminalizing conduct. . . . Most crimes of possession perhaps should not be crimes, not because there is no act, but because there is no *wrongful* act being punished."[30]

Be that as it may, possession crimes remain prominent elements of all criminal codes, with many comfortably believing that possession indicates sinister behavior and that the prohibitions remain defensible under a positivist rationale.[31]

27. Fletcher, *Rethinking Criminal Law*, 201.

28. Some scholars seek to distinguish between "blameworthiness" and "wrongdoing" or between "broad" and "narrow" culpability. See, for example, the literature cited in Douglas Husak, "Broad Culpability and the Retributivist Dream," *Ohio State Journal of Criminal Law* 9 (2012): 449-85.

29. Fletcher, *Rethinking Criminal Law*, 204.

30. Moore, *Act and Crime*, 22, emphasis in original.

31. For a summary of the various rationales (and subsequent critiques) offered by scholars like Stuart Green ("Why It's a Crime to Tear the Tag off a Mattress: Overcriminalization and the Moral Content of Regulatory Offenses," *Emory Law Journal* 46 [1997]: 1533-1546), A.P. Simester and Adreas Von Hirsch (*Crimes, Harms, and Wrongs: On the Principles of Criminalization* [Oxford: Oxford University Press, 2011]), and R.A. Duff (*Answering for Crime* [Oxford: Oxford University Press, 2007]), see

Beyond these fundamental questions, legislators and theorists debate as to how to handle cases of possession in which one can argue that the defendant clearly had no criminal or malicious intent (*mens rea*). For example, does a museum keeper have responsibility for possessing brass knuckles? What about someone who inherits them as an heirloom? Many possession crimes include strict liability provisions, which can hold someone responsible even if they do not have accompanying mental state or criminal intent.[32] This raises a very high bar for the defendant to overcome.

Yet some cases of "involuntary possession" seemingly cannot be punishable. Suppose, for example, that a person is sleeping when someone places controlled drugs in their hands. More complex and frequent cases include situations in which a person does not have full knowledge of the precise nature of the material he owns, has knowledge of the object but not full control over its fate, or has shared control or ownership of the object or property.[33] These cases highlight the complexities of defining possession crimes, even once one has overcome the difficulties in justifying them in theoretical terms.

Goals of the Possession Prohibition: Do We Want to Eradicate *Ḥameẓ* or Regulate It?

With this background in mind, we can appreciate the development of the laws of *bal yeraʾeh bal yimmaṣe*. When examining the Torah's prohibitions regarding *ḥameẓ,* the Sages were confronted with a number

Brennar M. Fissel, "Abstract Risk and the Politics of Criminal Law," *American Criminal Law Review* 51 (Summer 2014): 9-15. For alternative solutions, see Andrew Ashworth and Lucia Zedner, "Prevention and Criminalization: Justification and Limits," *New Criminal Law Review* 1:4 (Fall 2012): 542-71.

32. On strict liability, see the detailed discussion in Dennis J. Baker, *Textbook of Criminal Law* (3rd ed., London: Sweet & Maxwell, 2012), 1267-95.

33. As a sampling of these complex cases, take four examples from recent Israeli case law: 1) The defendant was sent illegal drugs by his friend from overseas through the mail, but never had the object in his hands, since he left the country and allowed his friend to forge his name to collect the object from customs. 2) A thief stole a purse, only to later find inside of it a gun. After being apprehended, he was charged with illegal possession of a weapon. 3) Police seized drugs and drug instruments in a hotel room shared by three men, with one claiming that he had purchased and brought the drugs into the room. Are the other two also liable for possession? 4) Police entered the property of one defendant and found a gun under a jerry can. Surveillance videos reveal that multiple guests knew of the gun and participated in facilitating hiding it under the jerry can.

of questions regarding this prohibition, all of which are familiar from the discourse surrounding possession crimes. The Torah demands that *ḥameẓ* be destroyed (*tashbitu*), yet adds that *ḥameẓ* should not be "seen" or "found" in the two verses in two different types of locations—"houses" and "territory." Are these qualifiers, expansions, or modifications? What is the relationship between the different verses and commandments? One could surmise that the Torah clearly does not want Jews "to have *ḥameẓ* around" during this period, but what exactly does that mean? These ambiguities are the same types of problems that haunt many possession crimes and required clarification to make these severe prohibitions feasible and knowable.

The Sages began to solve these ambiguities by answering a more fundamental question: What is the goal of this prohibition—to rid *ḥameẓ* from the world during these dates or to regulate its possession within Israelite territory or Jewish-owned property? If the goal is the former, then we should even seek to prevent gentiles from possessing *ḥameẓ* over Pesaḥ (at least within the land of Israel), much as the Bible requires with regard to *avodah zarah*.[34] The Sages ultimately rejected that option, as explicitly stated in the Tosefta:

> Initially, they said that one may not sell *ḥameẓ* to a non-Jew, nor give it to him as a gift, unless he could possibly eat it before the time at which all *ḥameẓ* must be destroyed. Until R. Akiva came and taught that one is permitted to sell and give [*ḥameẓ*] as a gift even at the time that it must be destroyed. R. Yosei said: This [the former] is the view of Beit Shammai, whereas the other is the view of Beit Hillel; R. Akiva determined that we should rule in accordance with Beit Hillel.[35]

According to the Tosefta, initially one was required to burn his *ḥameẓ*

34. Many academic scholars claim that laws regarding *avodah zarah* also underwent certain developments. See, for example, Gerald Blidstein, "Nullification of Idolatry in Rabbinic Law," *PAAJR*, 41-42 (1973-1974): 1-44; Ephraim Urbach, "*Hilkhot Avodah Zarah ve-ha-Meẓi'ut ha-Arkiyologit ve-ha-Historit ba-Me'ah ha-Sheniyyah u-ba-Me'ah ha-Shelishit*," *Me-Olamam Shel Ḥakhamim* (*2002*), 125-79; Noam Zohar, "*Avodah Zarah u-Bittulah*," *Sidra* 17 (2002): 63-77; idem, "*Meḥiẓot Saviv Merḥav Ẓibburi Meshutaf*," *Reishit* 1 (2009): 145-64; Moshe Halbertal, "Coexisting with the Enemy: Jews and Pagans in the Mishna," in *Tolerance and Intolerance in Early Judaism and Christianity*, ed. G. Stanton and G. Strounsa (Cambridge: Cambridge University Press, 1988), 158-72; and Yishai Rozen-Zvi, "'*Abbed Te'abbedun et Kol ha-Mekomot:' Ha-Pulmus al Ḥovat Hashmadat Avodah Zarah be-Sifrut ha-Tanna'it*," *Reshit* 1 (2009): 91-116. Further study is required to examine potential parallel developments with the laws of *ḥameẓ*.

35. *Tosefta Pesaḥim* 1:7 (Lieberman ed.).

and could not sell it to a non-Jew as the Pesaḥ eve deadline approached. Similarly, one could not give it to a non-Jew as a gift if the food would not be consumed before the prohibition kicked in. This opinion was attributed to Beit Shammai, who sought to eradicate *ḥameẓ* from the world.[36] The law, under the influence of R. Akiva, came to follow the opinion of Beit Hillel, who ruled that *ḥameẓ* can be sold even at the time required for burning *ḥameẓ*. As such, the commandment demands ridding *ḥameẓ* from Jewish possession, but does not have a problem with that *ḥameẓ* going into the hands of non-Jewish neighbors for the duration of Pesaḥ. In other words, *bal yera'eh bal yimmaẓe* serves to regulate the presence of *ḥameẓ* among Jews during the Pesaḥ holiday, but not to destroy it entirely from the world.

Why did the Sages make this decision? We can only speculate. Although the term *tashbitu* might indicate a requirement to burn *ḥameẓ*, it is a sufficiently ambiguous term that can lend itself to other interpretations, including a more moderate requirement of ridding it from one's possession by any means.[37] In light of our framing of *bal yera'eh bal yimmaẓe* as a possession crime, we might speculate that the rationale behind Beit Hillel's ruling is that since the prohibition only lasts for seven days, it is irrational or unreasonable to eradicate something that is permissible (and sometimes mandated for use) both before and after the holiday. From this perspective, the prohibition of *ḥameẓ* is similar to certain possession crimes that apply only during certain times or areas, such as public festivals or school zones. In those cases, the goal clearly remains to regulate the object, not to rid it from the world.

Additionally, clarifying the goal of a possession crime is always critical because it helps delineate what type of behavior we are seeking to prevent. Perhaps the connection between *ḥameẓ* and *avodah zarah* or the *yeẓer ha-ra* had become somewhat lost, thereby dulling the nefarious impact of *ḥameẓ*. The goal of these commandments became clarified to focus on preventing another prohibition—namely, that of eating *ḥameẓ*.[38] Once the prohibition was defined as a means of preventing

36. See Rashi, *Pesaḥim* 21a, s.v. *ve-lav*; Meiri, *Pesaḥim* 21a, s.v. *u-mukhraḥ*; *Ḥasdei David* to *Tosefta Pesaḥim* 1:7. See also Shama Friedman, *Tosefta Atikta: Pesaḥ Rishon* (Ramat Gan: Bar Ilan University Press, 5763), 138.

37. See Friedman, *Tosefta Atiqta,* 348-51. For parallel discussion regarding *avodah zarah* and the legal process of *bittul*, see Amit Gvaryahu, "A New Reading of the Three Dialogues in Mishnah *Avodah Zarah*," *Jewish Studies Quarterly* 19 (2012): 207-29, p. 221 n. 50.

38. For a discussion of biblical commandments that are understood in rabbinic literature as intended to prevent the violation of other biblical commandments, see R. Yosef

eating *ḥameẓ*, it made sense to exclude *ḥameẓ* that belonged to non-Jews, because there would be no great temptation to eat it.[39] Moreover, pragmatically speaking, the possibility of eliminating all *ḥameẓ* from the entire territory would be a particularly onerous and confrontational task. Once that was not the mission, it was not necessary to prohibit selling Jewish-owned *ḥameẓ* to gentiles before the holiday, which also created an important method for Jews to rid themselves of *ḥameẓ* without the financial loss of destroying it.

Whatever the motivation or rationale, this ruling fundamentally shifted *bal yera'eh bal yimmaẓe* into a "possession sin" for Jews, calling for the regulation of its existence over Pesaḥ. There was no blanket mandate to destroy all *ḥameẓ* within Jewish territory. This naturally raised the question of which *ḥameẓ* could not be "found or seen" during this time period.

The Sages answered this question by addressing various discrepancies between the two verses, including the difference between "seen" and "found," as well as the location of the prohibited *ḥameẓ*. As R. Yehuda Brandes notes, from the plain reading of the text, one might have concluded that *ḥameẓ* must be eradicated from Jewish homes so that it is entirely not found, whether it is visible or otherwise (12:15,19), but can be found in other areas within Jewish territory so long as it is not visible (13:7).[40] The Sages, however, did not accept this possibility, which would further create overly broad distinctions between one's home and national territory and leave open complex cases such as caves, pits, ditches, vaults, and other private or enclosed areas within one's property.[41] Consequently, for most practical purposes, they equated the territory or property on which one cannot see or find *ḥameẓ*.

Engel, *Lekaḥ Tov, Kelal* #8, and R. Chaim Medini, *Sedei Ḥemed, Kelalim Ma'arekhet Aleph, Kelal* #121, and *Pe'at Sadeh, Kelal* #36.

39. This would also indicate that *ḥameẓ* was not seen as representing some ontological evil, but instead was a prohibition based on formal or social rationales. On the broader distinction, see Menachem Kellner, *Maimonides' Confrontation with Mysticism* (Oxford: Littman Library, 2006), and several recent essays of Yair Lorberbaum, including his "Halakhic Realism," *Dinei Israel* 30 (2015): 9-77.

40. Yehuda Brandes, *Madda Toratekha: Pesaḥim*, *Shiur* #6, available online at http://www.bmj.org.il/files/1401374727464.pdf.

41. These in-between locations are explicitly discussed in the key Talmudic passage on *Pesaḥim* 5b. Note as well that in *Beiẓah* 7b, the Sages equated *ḥameẓ* with *se'or* (the two food types prohibited in the Torah), thereby creating one uniform standard for the prohibited food. Despite this hermeneutical move, however, later decisors continued to debate the identity of different forms of *ḥameẓ*—similar to the continued debates regarding ownership, discussed below. For a basic survey of the different positions regarding *ḥameẓ*, see the entry "*Ḥameẓ*" in *Encyclopedia Talmudit*, vol. 16, 57-106.

Defining the Problematic Possession: "Control and Dominion" or "Legal Title"

Through different hermeneutical methods in reconciling these verses, the Sages also offered two different models as to how to understand the prohibition. These two models may be clearly understood by utilizing models from the world of possession crimes. The first model, offered in the *Mekhilta de-Rabbi Yishmael*, prohibits *ḥameẓ* that is in the "control and dominion" of a Jew:

> Why does the verse specify "[no leaven shall be found] in your houses"? Since the [other] verse refers to "in all your territory," I might have thought to understand it literally. The verse therefore specifies, "in your houses"—just as that in your house is in your possession, so too [the prohibition to have *ḥameẓ*] in your territory refers only to that which is in your possession. This excludes the *ḥameẓ* of a Jew that is in the possession of a non-Jew; **although he could burn it, it is not in his domain.** It [also] excludes the *ḥameẓ* of a non-Jew that is in the domain of a Jew and *ḥameẓ* upon which rocks fell; **even though it is in his [the Jew's] domain, he cannot burn it.**[42]

According to the *Mekhilta*, one violates the prohibition only if he has the *ḥameẓ* in his domain (*reshut*) and can control its fate, thereby allowing one to burn it. If Jewish-owned *ḥameẓ* is in the hands of a gentile (i.e., not in the Jew's domain) or is under a pile of rocks (i.e., not within his ability to burn it), or if the *ḥameẓ* is in the domain of a Jew but is owned by a gentile, the Jew is not liable for that *ḥameẓ*.

As we saw in our discussion about possession crimes, the key criterion is not just legal title or actual possession of the bread.[43] Instead, through an act of "constructive possession," one becomes liable for the *ḥameẓ* that one could destroy, as evidenced by it falling within one's control and dominion.[44]

42. *Mekhilta de-Rebbi Yishmael*, *Parashat Bo*, *Massekhta de-Pisḥa*, *Parashah* 10.

43. This point—emphasized by Henschke, "*Ḥameẓ Shel Aḥerim*," throughout his article—was already made by R. Naftali Ẕvi Yehudah Berlin (*Neẓiv*) in his *Haʿamek Sheʾelah* to *Sefer Sheiltot de-Rav Aḥai Gaon*, vol. 2, *Sheʾilta* 78, p. 71. See also his *Haʿamek Davar, Shemot* 12:19, s.v. *lo*. As *Neẓiv* notes, the *Mekhilta*, while oft-quoted by medieval authorities, did not agree with the *Bavli* regarding the nature of the prohibition.

44. Henschke, ibid., argues that many talmudic passages take a similar approach, explicit or otherwise. Accordingly, the key factor is whether a person can control the destiny of the *ḥameẓ* in order to burn it. It should be noted that there is no reason to assume that this ruling disagrees with the opinion in the *Tosefta* (1:7) regarding sell-

In contrast, building off the biblical word "yours" (*lekha*), the *Bavli* requires legal ownership over the *ḥameẓ* in order to violate the prohibition:

> The Sages taught: "No leaven shall be found in your houses for seven days"—What does this teach us? Did not the verse already state, "No leaven bread shall be found with you, and no leaven shall be found in all your territory"? Because when the verse states, "No leaven bread shall be seen with you (*lekha*)," it teaches that you may not see your own, but you may see that of others or that of the sanctuary. [45]

According to this approach, the sin cannot be violated unless one has legal possession of the *ḥameẓ*. As such, *ḥameẓ* that belongs to a non-Jew[46] or the sanctuary cannot generate a violation of the law.[47] In the *Bavli*, the Sages reject the model of "dominion and control" and require legal ownership for this prohibition, thereby raising the bar for violating this possession sin. This became the dominant position within normative Jewish law, although as we shall see, the *Mekhilta*'s position remained under consideration by some later scholars.

Accordingly, Jewish law developed in a more lenient direction regarding these prohibitions, asserting that one has no liability for *ḥameẓ* owned by a non-Jew and that a Jew can violate the prohi-

ing *ḥameẓ* to a non-Jew before the prohibition takes effect. In that case, the *Tosefta* is permitting one to get rid of liability by selling the *ḥameẓ* and giving full ownership and control to the non-Jew. In the case of the *Mekhilta*, the non-Jew has placed the *ḥameẓ* in the Jew's domain, thereby imposing responsibility on the Jew to get rid of it (even though he doesn't own it), unless the Jew cannot control the *ḥameẓ*'s fate because it is under the avalanche.

45. *Pesaḥim* 5b, emphasis added.

46. See Haim Y. Levine, *Meḥkarim bi-Mekhilta u-be-Mishnah Pesaḥim u-Bava Kamma* (Tel Aviv: Dvir, 1987), 76-101.

47. If ownership is required to violate these prohibitions, then maintaining ownerless (*hefker*) *ḥameẓ* in one's possession would seemingly not be prohibited. This is asserted by Tosafot, *Pesaḥim* 4b, s.v. *de-oraita*, and is seemingly assumed to be true by many medieval scholars who maintained that the concept of *bittul ḥameẓ* makes one's *ḥameẓ* officially ownerless. See, for example, Tosafot, *Pesaḥim* 2a, s.v. *mi-de-oraita*, and the entry on *bittul ḥameẓ* in the *Enẓiklopedyah Talmudit*. This would also seem to be the position stated in the *Yerushalmi Pesaḥim* 2:2, but see the arguments of Henschke, "*Ḥameẓ Shel Aḥerim*," 183-88. It should be noted that *Neẓiv* (*Haʿamek Davar,* Ex. 12:19, s.v. *ki*) also believes that this is the law, even as he expresses bewilderment that this should be the case given that the Torah seemingly states that the prohibition of ownership is meant to prevent consumption. As such, unlike *ḥameẓ* owned by non-Jews or the *Mikdash*, ownerless *ḥameẓ* should be prohibited because someone could be easily tempted to eat it. Nonetheless, he states that this is a case in which "accepted tradition" trumps the stated rationale of the law.

bition only if he owns the *ḥameẓ*. Why did the law develop in this direction? It is nearly impossible to give a definitive explanation.[48] In light of our analysis of possession crimes, however, one may suggest that these changes, in effect if not in intent, helped remove some of the over-reaching implications of possession crimes that make them problematic to many contemporary critics. If Jews were to have responsibility to destroy *ḥameẓ* that they do not own, this would lead to an incredibly low standard for culpability. These changes helped make the prohibitions more limited and more objective. Moreover, the model of legal ownership favored in the *Bavli* is much easier to define than "control and dominion" or forms of liability that stem from "constructive possession."[49]

That said, it remains clear that even with these important developments, the prohibitions of *bal yera'eh bal yimmaẓe* still required delineation. As with possession crimes, many questions emerge in ambiguous or multi-faceted cases of ownership. Some of these complex cases appear in talmudic literature, while others are discussed by medieval commentators. Furthermore, under the influence of the *Mekhilta* and the desire to harmonize the different sources, many medieval scholars discussed whether "control and dominion" might still be relevant to violating these commandments. In retrospect, these debates can be seen as practically inevitable in light of the status of *bal yera'eh bal yimmaẓe* as a possession sin. As noted above, possession crimes inevitably raise difficult questions of definition that require clear elucidation to avoid unfair expectations, and as we shall see, Jewish law was full of debates that aimed to define the parameters of the prohibition in a clear manner.

48. Gilat (*Perakim be-Hishtalshelut ha-Halakhah*, 140, n. 21), following a statement of Ephraim Urbach, speculates that this was necessary for socio-economic reasons, as Jews had greater interaction with gentiles in the Tannaitic period. Henschke ("*Ḥameẓ Shel Aḥerim*," 202, n. 143) rejects this interpretation, in part because he believes the shift in law took place at a later date. Ultimately, however, it is difficult to answer such questions.

49. It should be noted, however, that by adopting the ownership model, Jewish law created many situations in which *ḥameẓ* could be prohibited even though there was no fear of consuming it. For example, a Jew living in Israel is culpable for the *ḥameẓ* being used in his factory in China, even though he has absolutely no access to it. Conversely, as noted by *Neẓiv* (n. 42 above), Halakhah also allows for Jews to retain "ownerless" (*hefker*) *ḥameẓ*, even though one could easily eat such food.

"Possessory Liability of *Ḥameẓ*": Gentile-Owned *Ḥameẓ* Deposited with a Jew

One important question, already posed in the Talmud, is whether a Jew has any responsibility for *ḥameẓ* deposited with him by a gentile. On the one hand, in the case, the Jew has no legal title over the object; on the other hand, the object was knowingly placed in his domain.[50] This problem, as discussed above, is a classic question when it comes to possession crimes, as in cases of drugs or contraband belonging to a friend who enters one's property with one's knowledge or hides the prohibited items on one's premises.

The Talmud answers that *ḥameẓ* in the gentile's hand on a Jew's property does not make the Jew liable, but culpability can occur if the Jew accepts financial responsibility or liability (*aḥarayut*) as a guardian or bailee for the *ḥameẓ*. If the Jew accepted liability, this is sufficient to achieve "possessory liability," and he violates the prohibitions; if not, he bears no culpability for the *ḥameẓ*, even though it remains on his property. The Talmud adds that this position is even held by those who generally maintain that legal responsibility to compensate for losses does not give the bailee the status as an owner, since the verse with regard to *ḥameẓ*, "And it shall not be found" (*"lo yimmaẓe*"), generates stricter standards to create "possessory liability." As such, the fact that a non-Jew has brought *ḥameẓ* onto a Jew's property does not make the Jew liable for this prohibition, removing one concern regularly leveled against possession crimes. However, a person can be liable if he has financial responsibilities for the *ḥameẓ*.[51]

50. See below for a discussion regarding *ḥameẓ* that a person is not aware is on his property.

51. Medieval commentators debated what standard of legal responsibility for a non-Jew's *ḥameẓ* is necessary to violate *bal yera'eh bal yimmaẓe*. (The various opinions are all recorded in *Meiri, Bet ha-Beḥirah, Pesaḥim* 5b, s.v. *ve-yesh mi*.) Some argued that one must have full responsibility for any loss, even in the case of an unavoidable accident (*ones*), as is the case when one borrows an object (*sho'el*). This argument seems to contend that once the person has this level of responsibility, it is the equivalent to his becoming the owner of the object (*Tosafot, Bava Meẓi'a* 82b, s.v. *eimur*). In contrast, a second position asserts that one has sufficient responsibility to violate the prohibition of *ḥameẓ* as long as he has the basic responsibility of an unpaid guardian (*shomer ḥinam*), who is only liable to recompense the owner in case of negligence. This approach asserts that as long as one has a minimal legal connection to the object, he bears responsibility for it, and would therefore only be exempt from punishment if the non-Jewish owner remained on the premises with the *ḥameẓ*. This approach would

As noted above, scholars debate the appropriateness of deeming citizens culpable for "strict" liability, with many arguing that one cannot hold someone liable for a crime that he had no intent to commit.[52] This debate takes place in halakhic sources as well. Maimonides rules that even if the gentile forcibly placed the *ḥameẓ* on the Jew's property and would make the Jew compensate him if it were to be lost or stolen, the Jew would still violate *bal yera'eh bal yimmaẓe*.[53] In other words, despite the fact that one had no desire to have this *ḥameẓ* on his property or assume financial liability, he is nonetheless culpable. Maimonides seemingly draws this conclusion from the talmudic tale regarding the town of Maḥoza, in which non-Jewish soldiers deposited *ḥameẓ* in the homes of Jewish residents. The sage Rava made the Jews remove the *ḥameẓ* from their homes, since they would pay if the objects were lost or stolen. As he asserted: "Since if it becomes stolen or lost, it is [considered] in your possession and you would need to pay, as if it was yours; therefore it is forbidden [to keep it in your homes]."[54] This position was ultimately adopted in Jewish law by R. Yosef Karo.[55]

Yet many medieval scholars strongly object to any notion of forced liability. They assert that culpability for the *ḥameẓ* can only occur when one freely accepted legal responsibilities for the objects in their home. To address the case of Maḥoza, Rabad of Posquieres interprets the story as being a case of willful guardianship, in which the Jews could easily return the *ḥameẓ* to the soldiers before Pesaḥ.[56] R. Menachem ha-Meiri offers a fascinating alternative explanation.[57] He posits that the situation was a case in which local law required Jews to provide food to the soldiers. Since the Jews would need to provide their quota even if

weaken the requirement of legal ownership, but still fall short of creating "constructive possession." A third position contends that the Jew is responsible only if he has the liabilities shared by a paid bailee (*shomer sakhar*), who pays for damages in cases of theft or loss. Accordingly, we do not construct legal possession unless a person has accepted significant responsibility. The last two positions are quoted in Rosh, *Pesaḥim* 1:4. The position requiring liability in case of loss or theft (*shomer sakhar*) might find support in the story regarding Meḥoza, discussed below. Although the decisors disagreed regarding the exact standard, they continued to affirm that one requires financial responsibility in order to create "possessory liability." For further discussion, see R. Elḥanan Wasserman, *Koveẓ Shi'urim* (Jerusalem: n.p., 5719), vol. 1, *Pesaḥim*, 11-14.

52. This issue is discussed further in our discussion below regarding "mere possession."

53. *Mishneh Torah*, *Hilkhot Ḥameẓ u-Maẓẓah* 4:4.

54. *Pesaḥim* 5b.

55. *Shulḥan Arukh,* O*Ḥ* 440:1.

56. Glosses to *Mishneh Torah, Hilkhot Ḥameẓ u-Maẓẓah* 4:4.

57. *Beit ha-Beḥirah*, *Pesaḥim* 5b, s.v. *kabbalat*.

the *ḥameẓ* were lost or stolen, the *ḥameẓ* remained under the legal possession of the Jews, and they therefore had to act accordingly before Pesaḥ. According to Meiri, we must distinguish between two different types of compulsion—that imposed by physical force and that mandated by local law. In the latter case, one bears culpability for *bal yera'eh bal yimmaẓe* even though his possession (i.e., financial liability) was imposed against his will.[58] Meiri thus endorses something similar to the positivist approach later suggested by George Fletcher regarding possession crimes: If the regulation is clear and well-known, one is culpable for not following the law.

Significantly, scholars debated whether to allow for certain leniencies in "disposing" of *ḥameẓ* for which one bears financial liability. Meiri, for example, suggests that one could simply remove that *ḥameẓ* from inside his home and then return it after the holiday.[59] While this suggestion did not receive much traction in halakhic literature, other authorities debate whether we might allow someone to perform the *bittul* ("nullification") rite to prevent any liability for *ḥameẓ*.[60] Many authorities demur, contending that this rite requires full legal title over the object; the "possession liability" created by legal responsibility might create culpability for *ḥameẓ* possession, but does not empower one to nullify the *ḥameẓ*. Others, however, argue that if we create culpability for *ḥameẓ* ownership through financial connection, we must then also afford the same leniencies of ownership, including the ability to perform *bittul*.[61] Clearly, rabbinic scholars struggled with this category, recognizing the complexity of imposing legal responsibility for possession

58. This position was adopted by later authorities; see *Sha'ar ha-Ẓiyyun* 440:22.

59. *Beit ha-Beḥirah, Pesaḥim* 5b, s.v. *kabbalat*.

60. *Bittul* is a form of legal renunciation that eliminates legal culpability by declaring the *ḥameẓ* to be ownerless or like the dust of the earth. See the entry on *bittul ḥameẓ* in *Encyclopedia Talmudit*, vol. 3, 83-86. The unique role of *bittul ḥameẓ* to avoid these violations requires further thought in light of our understanding of *bal yera'eh bal yimmaẓe* as a possession sin. For one perspective on the development of this concept, see R. David Bigman, "*Hashbatat Ḥameẓ—Bittul ba-Lev* or *Bi'ur ba-Esh*?," *Ma'agalim* 4 (5765): 10-26.

61. There is a similar discussion with regard to the traditional fine imposed by Sages that forbids consumption of *ḥameẓ* illegally owned over the holiday (*ḥameẓ she-avar alav ha-Pesaḥ*). Some decisors contend that since a person had culpability for *ḥameẓ* for which they had financial responsibility, we must impose the fine in this case as well. Others, however, maintain that this fine was never imposed on *ḥameẓ* that is not completely owned (i.e., legal title) by a Jew. See the discussion in *Mishnah Berurah* 440:5 and the sources cited in *Sha'ar ha-Ẓiyun* 440:12. This is especially true in the case of possession imposed by physical force.

of *ḥameẓ* that a person does not truly own. As with possession crimes, the stricter standards of *ḥameẓ* ownership created by "possession liability" create complex legal dilemmas regarding the outlets we create for potential transgressors to avoid these violations.

Can One Receive Punishment for Violating *Bal Yera'eh Bal Yimmaẓe*?

As noted above, legal scholars question how a person may be punished for possession crimes if he has not committed an action. This question, in fact, also animated the Sages and subsequent halakhists, albeit not exclusively around *bal yera'eh bal yimmaẓe*. The Sages debate whether one could receive lashes for a *lav she-ein bo ma'aseh*, a prohibition that does not include any action, with the majority opinion contending that we do not punish someone if he did not perform an action.[62] Accordingly, the *Tosefta* notes that a person who keeps previously-possessed *ḥameẓ* in his control over the holiday does not receive lashes, as he has not performed any action.[63] As both Maimonides[64] and R. Yonatan Eybeschutz[65] argue, the apparent reason for not punishing a person for such crimes is that the damage done is minimal, making them insufficiently culpable for punishment. This reasoning, of course, recalls the claims of many thinkers who contend that in many cases, people who violate possession crimes have not done a sufficiently wrongful act worthy of punishment. Nonetheless, it should be noted that Maimonides does claim that if one actively purchases *ḥameẓ* during Pesaḥ, he has committed a forbidden action and does receive lashes. Moreover, he further claims that even in cases of merely retaining *ḥameẓ*, the violator would still receive a disciplinary flogging administered under Rabbinic authority

62. *Temurah* 3a, 4b; see also *Makkot* 16a and *Shevuot* 21a. As noted in these passages, there are a few exceptions to this rule.
63. *Tosefta Makkot* 4:5.
64. Maimonides writes in *The Guide for the Perplexed* (3:41) that we do not administer punishments in these cases, because transgressions "in which there is no action can only result in little damage, and it is also impossible not to commit them, for they consist in words only. If their perpetrators were punished, people would have their backs flogged all the time. Moreover, a warning with regard to them cannot be conceived." See *The Guide of the Perplexed*, vol. 2, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963), 561. Admittedly, the focus of Maimonides is on transgression committed via verbal statements, but the category and some of the rationales would also extend to our case.
65. *Tumim*, ḤM 34:1.

(*makkot mardut*).[66] The topic of *lav she-ein bo maʿaseh* is beyond the scope of this paper, but it clearly invokes parallel discourse regarding *actus reus* and possession crimes and requires further study.[67]

Does a Jew Have Liability for Possession of *Ḥameẓ* of Another Jew?

As noted above, according to the *Mekhilta*, the key criterion for culpability is that the *ḥameẓ* is found within the "control and domain" of a Jew. This criterion is seemingly rejected by the *Bavli*, which requires ownership for culpability. Nonetheless, a number of *Geʾonim* contend that "control and dominion" remains a mitigating factor for violating *bal yeraʾeh bal yimmaẓe*.[68] That is to say, if a Jew owns *ḥameẓ*, yet deposits

66. *Mishneh Torah*, *Hilkhot Ḥameẓ u-Maẓẓah* 1:3. See also the glosses of Rabbenu Manoaḥ. The notion of applying *makkot mardut* in such cases seemingly comes from *Ḥullin* 141b. Regarding *makkot mardut* in general, see *Ḥiddushei ha-Ritva*, *Ketubot* 45b, s.v. *lokeh makkot mardut*; *Mishneh Torah*, *Hilkhot Sanhedrin* 26:5; and R. Yosef ben Meir Teumim (author of *Peri Megadim*), *Shoshanat ha-Amakim*, *Kelal* #9, pp. 61-63.

67. This study would initially distinguish between the different types of transgressions included in a *lav she-ein bo maʿaseh*, including speech acts, internal thoughts, and other possession crimes. The two closest possession crimes that I have identified are possessing idols in one's property and possession of defective weights and measures. For the former, see Maimonides, *Book of Commandments*, Negative Commandment #3. For the latter, see Deut. 25:13-14; *Tosefta Bava Batra* 5:8; *Bava Batra* 89b; Maimonides, *Mishneh Torah*, *Hilkhot Geneivah* 7:3; and *Shulḥan Arukh*, ḤM 231:3. For further discussion, see Nachum Rakover, *Ha-Mishor be-Mishpat ha-Ivri* (Jerusalem, 1987), 23-24 and 45-49. Regarding all three examples, see the discussion in R. Yeḥezkel Abramsky, *Tosefta Ḥazon Yeḥezkel: Nezikin*, vol. 2 (Jerusalem, 5746), commentary to *Makkot* 4:5, pp. 51-54. Other examples of possession crimes discussed in Talmudic law, albeit of a slightly different nature, include retaining sham promissory notes (*shetar amanah*), paid-up loan documents (*shetar parua*), and a Torah scroll that has writing errors (*sefer she-eino mugah*). These cases are discussed in *Ketubbot* 19b; *Shulḥan Arukh*, ḤM 57:1, and *Shulḥan Arukh,* YD 279:1.

68. Cited in Rosh*, Pesaḥim* 1:4. R. Ḥezekiah de Silva, *Peri Ḥadash*, OḤ 440:4, asserts that the *Geʾonim* believe this to be true only in a case in which the holder of the *ḥameẓ* has accepted legal responsibility, as indicated in the text of the Rosh. He asserts that this is because the guardian has, as it were, accepted ownership for purposes of culpability for *bal yeraʾeh bal yimmaẓe*. R. Aryeh Leib Ginzburg, *Shuʾt Shaʾagat Aryeh* #83, however, contends that these *Geʾonim* believe that the owner loses culpability once the object is out of his control, even if the holder did not accept *aḥarayut*. Accordingly, these *Geʾonim* would assert that ownership is an insufficient criterion for culpability; one must have both ownership and control. R. Yaakov Lorberbaum of Lissa, in his *Mekor Ḥayyim*, OḤ 440:5, asserts that according to this position, in the case of a non-Jewish holder, there is no need for legal responsibility; in the case of a Jewish holder, culpability would be contingent on the holder accepting financial liability.

it under the guardianship (i.e., with financial responsibility) of a Jew or non-Jew, he then loses any culpability for *bal yera'eh bal yimmaẓe*. The vast majority of commentators, however, reject this opinion and argue that the Jew with legal title over the *ḥameẓ* retains full culpability for this *ḥameẓ*, at least under the rules of rabbinic decree.[69]

But what is the responsibility of the Jew who has the *ḥameẓ* of another Jew within his property or control? We previously discussed the case of a Jew having in his possession the *ḥameẓ* of a non-Jew. What about if he controls the *ḥameẓ* of fellow Jew? If he accepted financial liability (*acharayut*), we could certainly understand how he could violate *bal yera'eh bal yimmaẓe*, as we saw in the previous section.[70] But what about a case in which he did not accept any responsibility? In such a case, he has neither legal title nor any financial responsibility, and it therefore seems particularly difficult to impose any culpability. This, in fact, is the position of R. Yoel Sirkes and R. Avraham Gombiner:[71] The deposit holder (*ha-nifkad*) should get rid of the *ḥameẓ* to prevent

69. See the opinions of Rabbenu Asher and Rabbenu Yonah cited in Rosh, *Pesaḥim* 1:4. See also *Tosafot ha-Rid, Pesaḥim* 6a, s.v. *u-le-meimera*. This is also seemingly the opinion of Rambam, *Mishneh Torah*, *Hilkhot Ḥameẓ u-Maẓẓah* 4:2, as noted by *Maggid Mishnah* 4:1 and Rabbenu Nissim (cited below), and the normative ruling found in *Shulḥan Arukh,* OḤ 440:4. Significantly, Ramban (Commentary to Torah, Ex. 12:19), Rabbenu Nissim (*Ḥiddushei ha-Ran, Pesaḥim* 6a, s.v. *u-mihu*), Meiri (*Bet ha-Beḥirah* 4a, s.v. *ve-kol*), and Maharam Ḥalva (*Pesaḥim* 6a) all believe that this is only according to rabbinic decree. This is significant because according to them, Torah law adopts the standards of both the *Mekhilta* and the *Bavli*—i.e., a person must hold legal title *and* have the *ḥameẓ* under his "control and dominion" in order to violate *bal year'eh bal yimmaẓe*. Yet they contend that the Sages asserted that legal title is sufficient to require the person to get rid of the *ḥameẓ*. Ultimately, however, the resulting law is the same. See *Arukh ha-Shulḥan,* OḤ 440:7.

70. See the text of the *Shulḥan Arukh* found in the *Be'er ha-Golah* to OḤ 440:4 and the comments of R. Yeḥezkel Landau, *Tzelaḥ, Pesaḥim* 5b, s.v. *ve-hineh im ha-mafkid*. This is also the ruling in the *Mishnah Berurah* 443:20, citing a series of scholars. It should be noted that R. Mordekhai Jaffe (*Levush,* OḤ 440:4) maintains that the holder is not liable in the case of a Jewish owner, even if he has accepted financial liability. He seemingly believes that since the owner had the primary responsibility to destroy the *ḥameẓ*, the deposit holder cannot bear any culpability. However, in the case of a non-Jewish owner of the *ḥameẓ,* the deposit holder takes on primary responsibility (since the gentile has no obligation) and therefore can be culpable for violating *bal yera'eh bal yimmaẓe*. Nonetheless, R. Jaffe agrees that even in the case of a Jewish owner, the deposit holder should sell the *ḥameẓ* to prevent his fellow Jew from a financial loss or from violating the prohibition; see *Levush*, OḤ 443:2. The position of R. Jaffe was challenged by R. Landau and others.

71. *Baḥ*, OḤ 443:5; *Magen Avraham,* OḤ 443:5. *Mishnah Berurah* 443:14 cites this opinion approvingly, even as he also cites the opinion of the Vilna Gaon noted below.

the owner from violating the law, but he himself has no culpability for violating *bal yera'eh bal yimmaẓe*. Interestingly, however, the Vilna Gaon contends that even the deposit holder is responsible.[72] As noted by R. Yehoshua Falk, this position seemingly adopts the approach of the *Mekhilta* that a Jew who has "control and dominion" over Jewish-owned *ḥameẓ* must seek to destroy it, even if he does not have any ownership or legal responsibility for that property.[73]

How can we explain these conflicting trends? On the one hand, it seems clear that the dominant position within normative Jewish law affirms that legal ownership is required to violate these prohibitions, even though that definition is expanded to include financial responsibility ("possession liability"). At the same time, under the influence of the *Mekhilta*, it is not surprising that a few scholars attempted to expand these prohibitions to include "dominion and control" over Jewish-owned *ḥameẓ*. Given the nature of possession crimes and the tendency to make people liable for objects to which they do not have actual possession, the continued presence of this strand of thought makes perfect sense. That said, it remains clear that legal ownership remains the gold standard to violate these prohibitions. This criterion, however, leads to several ambiguous circumstances that are also disputed within legal discussions of possession crimes.

Undesired Possession of *Ḥameẓ*

"*Mere Possession:*"[74] How aware must the defendant be of possessing something illegal? This question is a major issue in legal theory regarding cases in which one doesn't know what he possesses. The British House of Lords, for example, has asserted that to be convicted of a possession crime, one must have some basic awareness of the object.

72. *Be'ur ha-GRA* 443:11.

73. *Penei Yehoshua, Pesaḥim* 5b, s.v. *be-ferush Rashi* and *lefi she-ne'emar*. This opinion is based on a questionable interpretation of a statement by Rashi. Yet independent of Rashi's actual opinion, this position might be shared by many other medieval figures; see Henschke, "*Ḥameẓ Shel Aḥerim*," 164, nn.25-26. To be clear, according to all opinions, the owner of the property should try to get rid of the *ḥameẓ*, but it remains significant whether failure to do so is a violation of possessing *ḥameẓ*, or just the general law that mandates helping a fellow Jew from avoiding sin (*lifnei iver*).

74. For use of this term, see Joel Samaha, *Criminal Law*, 11th edition (Belmont, CA: Wadsworth, 2014), 116. He gives the example of agreeing to hold your friend's backpack without knowing that it contains stolen money.

This is in consonance with the general principle of *animus possidendi*, the intention to possess, which asserts there must be a mental element involved in the act of possession. Yet as many have noted, this awareness can be extremely tenuous, such as simply knowing that one has taken possession of "something," without even knowing the identity of the object. Jurists further debate whether or not one is liable if he should have suspected some illegal substance might be there. For example, in an Irish case, *The People v. Boyle*, the court convicted the defendant for the use of drugs by others within his property, even though there was no evidence he had actual possession or control of the drugs, because it was apparent to the court that the drugs "could not have come and remained there without his knowledge and at least tacit, in the sense of passive, consent."[75] In contrast, in a British case, *R v. Lewis*, a tenant of a house where drugs were found was acquitted because there was no reason for the defendant to suspect that someone might have put drugs in his house.[76] The court ruled we cannot hold him liable for not looking for drugs that he has no reason to suspect exist.

Not surprisingly, a similar discussion takes place within halakhic literature regarding the requisite knowledge necessary to violate *bal yera'eh bal yimmaẓe*. Some scholars assert that one cannot be held liable if he doesn't know where the *ḥameẓ* is currently found; others distinguish between cases in which one knew of its existence but forgot and cases in which one never realized he ever had the *ḥameẓ* in his home. A third position maintains that since one should have performed *bittul ḥameẓ*, his failure to do so makes him liable for any *ḥameẓ*, even that which he didn't know about. A fourth position contends that it depends whether one checked his house for *ḥameẓ* before the holiday began. If he was negligent and did not, he is held liable for all *ḥameẓ*, even that which he knew nothing about.[77] In short, Jewish decisors were greatly divided over the requisite knowledge necessary to violate *bal yera'eh bal yimmaẓe*, just as we find regarding possession crimes.

75. [2010] 1 I.R. 787.

76. (1988) 87 Cr. App. R. 270. These cases are discussed in Dennis J. Baker, *Glanville Williams' Textbook of Criminal Law*, 3rd Edition (London: Sweet & Maxwell, 2012), 1291-92.

77. For relevant sources, see *Tosafot, Pesaḥim* 21a, s.v. *ve-i*; Rambam, *Mishneh Torah, Hilkhot Ḥameẓ u-Maẓẓah* 3:8; *Magen Avraham*, OḤ 434:5; *Taz,* OḤ 434:3; *Shulḥan Arukh ha-Rav*, OḤ, *Kuntres Aḥaron* 433:3. The sources are summarized in *Enẓiklopedyah Talmudit*, 3:311.

"Fleeting Possession" Exception:[78] If one comes into possession of a contraband object, does he have a reasonable amount of time to purge himself of the object? Many legal systems allow for one to rid himself of the prohibited object within a very short time frame. In *People v. Mijares*, for example, the California Supreme Court overturned a conviction of a defendant who had briefly grabbed heroin out of the pockets of an unconscious friend and threw it out of the window before driving him to a hospital. In this case, the court ruled that it was wrong to convict possession that was taken solely for the purpose of disposal. According to the British *Misuse of Drugs Act* 1971, a defendant can be acquitted of possession if he "took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to deliver it into the custody of such a person."[79] Fleeting possession exceptions contend that brief possession with no intent to keep the object should not be punishable.

Two interesting parallels exist within the laws of *ḥameẓ*. The first relates to the scenario of one who finds *ḥameẓ* during the course of the holiday.[80] Jewish law instructs him to remove or destroy it immediately; if he delays, he could be held liable for possession.[81] If the incident occurs on *Yom Tov* and he cannot burn or handle the *ḥameẓ*, then he must at least cover it with a utensil. The "fleeting possession" exemption, however, is only maintained if he quickly acts to destroy the *ḥameẓ*. Otherwise, he can violate the prohibition in those brief moments, even if he later decides to destroy it.[82]

A second fascinating case is discussed in the Mishnah.[83] A person is preparing dough on Pesaḥ, which normally would have a portion (*ḥallah*) removed to be given to the *Kohanim* (priests). For various reasons related to the complex laws of ritual impurity (*tumʾah*) and cooking on festivals, one can find oneself in a situation in which she cannot give the

78. For use of this term, see Matthew Lippman, *Contemporary Criminal Law* (3rd ed., Thousand Oaks, CA: SAGE Publications, 2013), 130.
79. Section 5(4).
80. The case is discussed in *Pesaḥim* 6a and *Tur/Shulḥan Arukh,* OḤ 446:1.
81. For *ḥameẓ* found that was previously his, he might also avoid culpability if he had performed *bittul ḥameẓ* beforehand. This, in fact, is a primary reason given by some medieval authorities for why *bittul* is mandated even when one's property has been searched for *ḥameẓ* (*bedikat ḥameẓ*).
82. See *Pesaḥim* 6b; Rashi ad loc., s.v. *ve-daʿato aleha*; Ran, *Pesaḥim* 1a in Rif's pages, s.v. *ela*; *Mishnah Berurah* 434:6.
83. *Pesaḥim* 46b.

portion to a *Kohen*, bake it to prevent it from becoming *ḥameẓ*, or burn it. What should she do in such a scenario? According to R. Eliezer and Benei Beteirah, she must take certain preventative measures to prevent the dough from becoming *ḥameẓ*. According to R. Yehuda, however, she simply sets it aside until the holiday has finished. As he states: "This is not the *ḥameẓ* concerning which we are warned, 'It should not be seen' and 'It shall not be found.' Rather, she separates it and sets it aside until the evening—and if it leavens, it leavens." The Talmud,[84] as well as a parallel text in the Tosefta,[85] base this disagreement on complex rules relating to whether one has financial ownership of such *ḥallah* or if one has responsibility for *ḥameẓ* that one is legally prevented from destroying. Without getting into the complexities of the case, it is a fascinating example of a situation in which one would like to make this a "fleeting possession," but is legally prevented from doing so.[86] Should the person still be held liable?

Other Cases of Parallel Discussions

There are many other interesting parallel cases between possession crimes and *ḥameẓ*. While beyond the scope of this paper, it is worthwhile to note some of these cases.

1) *Inheritance*: Regarding possession crimes, the problem of inheriting firearms is a complex matter, particularly in cases in which the deceased did not have a proper gun license and/or the inheritor is not licensed to own that type of gun.[87] Regarding *ḥameẓ,* two prominent eighteenth-century scholars, R. Yeḥezkel Landau and R. Yaakov Lorberbaum,[88] passionately disagree regarding whether a person could violate *bal yera'eh bal yimmaẓe* if he inherited (illegally-owned) *ḥameẓ* during the course of Pesaḥ.

84. Ibid. 48a.
85. *Pesaḥim* 3:7 (Lieberman ed.).
86. For a unique interpretation of this passage, see Henschke, "*Ḥameẓ Shel Aḥerim*," 158-64.
87. See, for example, the regulations and warnings of the Royal Canadian Mountain Police, "Inherited Firearms," available online at http://www.rcmp-grc.gc.ca/cfp-pcaf/faq/inh-her-eng.htm (accessed July 20, 2020).
88. See Landau, *Shu"t Noda bi-Yehudah, Kamma,* OḤ 20; Lorberbaum, *Mekor Ḥayyim*, *Be'urim,* OḤ 448:9. R. Landau and R. Lorberbaum also disagree regarding whether someone who has had his *ḥameẓ* stolen from him is still liable for *bal yera'eh bal yimmaẓe* if he has not despaired of having the *ḥameẓ* returned to them.

2) *Possession of Stolen Property*: Similar discussions exist regarding stolen property, albeit under the different paradigms of "financial liability" and "dominion and control." Western courts regularly find thieves liable for possessing stolen contraband or drugs, since they control the fate of these objects. Jewish law also holds thieves culpable for stealing *ḥameẓ*, since they have financial liability for the stolen property.[89]

3) *Shared Ownership or Responsibility*: Because "dominion and control" is such a dominant element of possession crimes, the problem of shared possession is particularly complex, as it remains difficult to determine who truly has control over an object's fate.[90] Since Jewish law has adopted an approach of legal title or financial responsibility for *ḥameẓ*, cases of partnerships are somewhat easier to clarify, even as a rich literature exists on the topics of partnerships with non-Jews, owning stocks in companies that possess *ḥameẓ*, and Jewish-owned insurance companies that provide coverage for *ḥameẓ* property.[91]

Methodological Conclusions

In this paper, we have suggested that talmudic and subsequent legal discussions regarding *bal yera'eh bal yimmaẓe* may be best understood under the analytical framework provided in possession crime literature. With these tools, we have understood how the Sages turned these prohibitions into a possession sin and then struggled with how to define the nature and scope of these violations. The parallels within the world of criminal law have further provided a framework for understanding the complex debates that take place regarding the details of these laws.

As one of the few "possession sins" in Jewish law, *bal yera'eh bal yimmaẓe* presents unique conceptual challenges, but by borrowing terms and concepts from criminal law, we can shed new light on these prominent prohibitions. In this regard, the paper also presents a new direction in using concepts from the general world of legal philosophy and applying them to halakhic research in unexpected places.

89. See, for example, *Shu"t Noda bi-Yehudah, Kamma,* OḤ 20; R. Ḥezekiah de Silva, *Peri Ḥadash* 448. More sources are cited in *Enẓiklopedyah Talmudit* 3:310.

90. See the discussion in S.Z. Fuller, *Yesodot Dinei Oneshin* (Jerusalem: Hebrew University Law School, 1992), 3: 121-40.

91. For a summary of the relevant responsa, see R. Simḥah Rabinowitz, *Sefer Piskei Teshuvot*, vol. 5 (Jerusalem, 5755), 22-24. See also Asher Meir, "Owning Stock in a Company which Possesses *Ḥameẓ* During Pesach," *Virtual Beit Midrash*, accessible online at https://www.etzion.org.il/en/owning-stock-company-which-possesses (accessed on July 20, 2020).

BARUCH A. BRODY

Varieties of Divine Providence in Medieval Jewish Philosophy

Editor's note: Baruch A. Brody z"l *(1943-2018) was one of the most prominent bioethicists in America as well as a contributor to both general and Jewish philosophy. When Prof. Brody passed away, he had been working on a paper on divine providence in Jewish philosophy. Like his article on the afterlife in volume 17 of this journal, the paper was designed as a presentation and critical appraisal of the views of medieval Jewish thinkers, followed by his own analysis based on elements in his earlier critique. He had not written the final section, however. An anonymous reviewer for this journal recommended publication despite the paper's unfinished state. Based on the reader's suggestions, and with the consent of the Brody family, I have made minor changes and inserted a few bracketed footnotes. I thank Rabbi Dr. Shlomo Brody for helping prepare the paper for publication.*

Deism, which emerged in the seventeenth and eighteenth centuries, was the belief that the physical universe was created and designed by God, but that He had no further relations with what He had created. God was needed according to the deists to explain the existence of the universe, but had no other role to play. It

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required, of course, just one step to move from deism to secular naturalism; one only needed to offer scientific accounts of the origins of the universe. But even before that occurred, it was clear that deism was not really a religion. If God had nothing to do with the physical universe, why should anything in that universe (including human beings) have anything to do with God? The deistic God was no more an object of religious worship than Aristotle's many prime movers, one for each of the spheres.

My purpose in making these remarks about deism is to introduce a discussion of the meaning and significance of the religious belief in divine providence. The belief in divine providence is the belief that deism is wrong; God exercises providence over the universe. But what does that mean? Many possible versions of this belief exist, and one can believe in several (perhaps even all) of them. To make things more complicated, there are different possible understandings of these versions. I think that it will be useful to begin with a brief characterization of the major ones that will receive further development throughout this essay:

1. *Epistemic providence*: God knows everything that is happening in the universe. For some, this includes knowledge of everything that will happen in the future. Others will deny such knowledge, at least when human free will is a causal factor.

2. *Caring providence*: God, for reasons that may be known only by Him, wants certain things to occur and others not to occur.

3. *Causal providence*: God is the cause of what occurs. For some, this is a general providence, a providence that is exercised by God's creating the universe subject to certain causal laws so that particular occurring events are directly caused by previous events in accordance with these divinely willed laws. (Taken alone, this view sounds similar to deism.) Others insist, however, that such providence is at least sometimes, or perhaps always, an individual providence, wherein God directly causes the particular event to occur.

4. *Human causal providence*: God's causal providence, general or individual, extends directly to human actions about which human beings seemingly deliberate and choose. Some will be led to the conclusion that human beings are not free choosers of their actions. Others will insist that they are, despite this providence, or will deny that human causal providence exists when human beings act freely.

5. *Moral providence*: God reveals to human beings what He wants them to do and what He wants them not to do.

6. *Justice providence*: God, as part of his providential rule, causes the good (those who follow his wishes) to be rewarded and the bad (those who do not) to be punished. These rewards and punishments may be seen as occurring in this life, or they may be seen as occurring primarily in some future life after the person has died.

7. *Eschatological providence*: God will cause the existence of a perfected world at the end of current historical time.

It is the belief in divine providence that turns the belief in a creator into a religion. For example, causal providence, especially in the individual version, grounds petitionary prayer, and moral providence grounds religious morality and ritual.

These beliefs about providence are not problem-free. Causal providence raises questions about the point of moral providence. Human causal providence, especially in the individual version, raises questions about human freedom. And justice providence is challenged by the observation that the wicked often prosper while the good often suffer. These problems have long been recognized and much of the philosophy of religion is devoted to an examination of them.

Judaism, like other theistic religions, believes in divine providence. But different major thinkers have understood that belief differently, in part because they have attempted to resolve these problems differently. This paper has two major goals. The first is to review some of the major medieval attempts to deal with these problems, thereby illustrating the variety of traditional positions. The second is to provide an account of components of divine providence that synthesizes some of the major insights of these authors, avoids unwarranted philosophical assumptions that complicated their accounts, and provides a sound basis for the many religious practices grounded in these beliefs in divine providence.[1]

1. [As indicated in my editor's note, the author passed away before he was able to provide his original account. - Ed.]

I. Sa'adyah Gaon[2]

A. Human Causal Providence

Treatise IV of *Sefer Emunot ve-De'ot* begins with a straightforward denial of human causal providence (again, the thesis that God's providence extends to human actions):

> The Creator, magnified be His majesty, does not in any way interfere with the actions of men and He does not exercise any force upon them either to obey or to disobey Him (IV:4, p. 188).

In defense of this claim, Sa'adyah offers a large number of arguments: (1) Our introspective awareness of our ability to choose one course of action or the other without any power limiting that choice. This is, presumably, part of the phenomenology of deliberation; (2) The rabbinic statement that "Everything is in the hands of heaven except the fear of Heaven (*Berakhot* 33b); (3) Furthermore, and probably most importantly, the whole notion of divine reward and punishment presupposes human freedom and not divine causation. As he puts it: "If God were to force him to perform some act, it would not be proper for Him to punish him for it" (p. 189). For Sa'adyah, human actions are free just because God does not cause them.

But there is a familiar argument that, even if uncaused by God, human actions are not free because God has foreknowledge.[3] If God knows in advance what you will choose to do and what you actually will do, then you cannot fail to do it because God is omniscient. Sa'adyah begins his response by reminding us that God's foreknowledge does not mean divine causality. But it could still be the case that God's foreknowledge precludes human freedom. How can you do anything other than what God knows you will do? Sa'adyah is aware of this argument and offers the following enigmatic response to it:

> Should it be asked therefore: But if God foreknows that a human being will speak, is it conceivable that he should remain silent? We would answer simply that, if a human being decided instead of speaking to be

2. Sa'adyah's views are found primarily in the Arabic work generally known by the Hebrew title *Sefer Emunot ve-De'ot*. Citations here are found primarily in *Book of Beliefs and Opinions*, trans. Samuel Rosenblatt (New Haven, CT: Yale University Press, 1947).

3. The roots of this argument are to be found in Aristotle's discussion of the Sea Battle in *De Interpretatione*, 9. There, however, the discussion is about the truth of a future-tensed statement about a human action or inaction, and not about God's foreknowledge.

> silent, we would merely modify our original assumption by saying that God knows that the human being will be silent (IV:4, p. 191).

What makes this response enigmatic is that it seems to be saying that the later choice of the person as to whether he will speak causes what God knew in advance, and this type of backward causality seems untenable, both because backward causation is problematic per se and because of the difficulty in understanding how, in particular, human beings can cause God's beliefs.

But I think that we can understand what Sa'adyah is saying, and even find his answer plausible, if we forget about all causal claims and employ instead a conditional analysis built upon the notion of dependency. Sa'adyah wants to say that, despite appearances, all of the following claims are true, and their joint truth establishes that divine for knowledge and human freedom are compatible.

(1) At time t2, you are free to speak.

(2) At time t2, you are free to keep silent.

(3) If you speak at t2,

i. God knew at t1 that you would speak at t2

ii. It is also true that if you had kept silent at t2, He would have known at t1 that you would keep silent at t2.

(4) If you keep silent at t2,

i. God knew at t1 that you would keep silent at t2

ii. It is also true that if you had spoken at t2, He would have known at t1 that you would speak at t2.

We are assuming, since humans are free, that (1) and (2) are true. Both (3i) and (4i) are true because of God's omniscience. The truth of (3ii) and (4ii) follow from God's omniscience and the standard logic of counterfactual conditionals. So, no matter what you do, (1)-(4) are jointly true and that is all that Sa'adyah needs to establish to make his point that freedom and foreknowledge are compatible.

There is an alternative potential interpretation of this text, which emerges if we apply an analysis offered by the contemporary philosopher Trenton Merricks, who does not discuss Sa'adyah but develops his own theory of divine foreknowledge and human freedom.[4] This approach asks us to distinguish between what the truth of the

4. See Trenton Merricks, "Truth and Freedom," *Philosophical Review* 118, 1 (2009): 29-57.

proposition depends upon (what fact F1 about the world must exist for the proposition to be true) and what caused the proposition *to be true* (what earlier fact caused Fl). There is no cause of the person speaking or of their keeping silent except their free choice, and what they choose to do does not cause God to have held the correct belief beforehand. That would be an untenable case of backward causation. But what is the truth about what God did believe beforehand does depend upon what the person chooses to do. Backward *dependency* is quite different from backward *causation*, and there is legitimate backward dependency. I think that the two analyses are quite compatible.

Having made and defended this strong claim that divine foreknowledge and human freedom are compatible, Sa'adyah spends considerable time explaining away scriptural verses and incidents that seem to affirm God's causation of human actions. Sa'adyah agrees that there are passages of this type, but argues that, contrary to appearances, they do not affirm that God causes human actions. A classic example is the passage stating that God hardened Pharaoh's heart so that he did not let the Jews leave Egypt (Ex. 7:3). Many of the classical commentators have been troubled by this passage; did God truly prevent Pharaoh from choosing to let the Jews go?[5] Sa'adyah suggests the following idea: Pharaoh freely chose to not let the Jews go, but he "needed a bolstering of the spirit in order not to die from the plagues . . . but remain alive until the rest of the punishment had been completely visited upon him" (199; see also 216). God gave him courage to carry out that choice. The difference is subtle, but important; it enables Sa'adyah to say that, even in this case, Pharaoh acted freely since, with God's help, he carried out that which he had freely chosen to do. Sa'adyah is saying that you act freely if you do what you freely choose to do, even if you need help in carrying out your free choice. Sa'adyah's commitment to denying God's control of human actions is clearly illustrated in this discussion.

5. Thus, Maimonides (*Laws of Repentance* 6:3) says that there are sinners who deserve so much to be punished that God prevents them from repenting their sins. This approach, while quite popular, is strongly criticized by Abarbanel in his commentary (Ex. 7:3) because it is incompatible with the strong Torah commitment to the efficacy of repentance.

B. Justice Providence

Saʿadyah believes in divine reward for the good and divine punishment for the wicked but he downplays the significance of that belief for how the good and the wicked fare in this world. The just distribution of rewards and punishments is what occurs in the World to Come.[6]

> God has also informed us that during our entire sojourn in this workaday world, He keeps a record of everyone's deeds. The recompense for them, however, has been reserved by Him for the second world, which is the world of compensation (Treatise IV, p. 208),

At the beginning of Treatise IX he reinforces this claim by arguing that this world is not structured to be the place of divine rewards and punishments and by quoting a number of rabbinic statements to support his view.[7] So for Saʿadyah, the righteous may pray that they fare well in this world, and do good deeds to support that prayer, but they have no reason to trust that this will actually occur.[8]

Despite having made this point, Saʿadyah seems reluctant to cut off all connections between what happens to an individual in this world and his merits or demerits. So he adds the following:

> Notwithstanding this, however, God does not leave his servants entirely without reward in this world for virtuous conduct and without punishment for iniquities. For such requitals serve as a sign and an example of the total compensation which is reserved for the time when a summary account is made of the deeds of God's servants (ibid.).

This account leaves open the issue of justice in the distribution of goods and evils in this world, so Saʿadyah presents still another idea, no doubt prompted by his sense of the apparent injustice of the distribution of the good and of suffering in this world:

6. See my discussion of his account of these rewards and punishments in Baruch A. Brody, "Jewish Reflections on the Resurrection of the Dead," *Torah u-Madda Journal* 17 (2016-2017): 93-122, at pp. 96-100.

7. One to which he ascribes particular importance is the familiar *mishnah* in *Avot* (4:21) that exhorts us to treat this world as a vestibule in which we should prepare ourselves to be fit to enter the main hall, the World to Come.

8. This may seem strange to many contemporary religious people whose practices seem to suggest that they believe otherwise. But a similar point was made by R. Avraham Yeshayahu Karelitz (Ḥazon Ish), in *Emunah u-Bittaḥon* (*Faith and Trust*, trans. Yaakov Goldstein [Jerusalem: Am HaSefer, 2008]) who insists that trust in God is just the belief in causal providence: " Trusting in Hashem is not [the belief that all will be good for the righteous]—but rather the belief that nothing happens by chance, and that everything that occurs under the sun is a result of a decree of the Almighty" (pp. 38-40).

> . . . It often happens that a generally virtuous person may be afflicted with many failings, on the account of which he deserves to be in torment for the greater part of his life. On the other hand, a generally impious individual may have to his credit many good deeds, for the sake of which he deserves to enjoy well-being for the greater part of his earthly existence (p. 211).

The good suffer in this world for the sins they have committed so that their life in the next world is pure reward, while the bad prosper in this world so that they receive the reward they deserve for their good deeds in this world, leaving the next world as a place of pure punishment for their evil deeds.

In addition to this general claim, Saʿadyah presents a series of ideas designed to at least partially restore our sense of justice providence. The good may suffer as a trial of their goodness so that they may receive greater rewards in the World to Come if they pass that trial.[9] He offers a series of reasons why evil people may survive and continue to flourish (e.g., that it is necessary so that some good person will benefit from them).

At one point (p. 194), Saʿadyah addresses the crucial questions raised by any theory of justice providence: how does it relate to causal providence and the natural order of the universe and how does it relate to human freedom. The latter question particularly troubles him. If God, as part of justice providence, decrees that someone should be killed or have his money stolen from him, what does that do to the freedom of the murderer or of the thief? Saʿadyah's response is: "For as long as [divine] wisdom demands the extermination of the individual in question, even if the actual slayer should not in his malice slay him, the victim might perish by some other means." But others might also freely choose not to slay him. So Saʿadyah must mean that he will die of natural causes. This raises another question. If there is a natural order of the universe, and God's causal providence is exercised indirectly through it, can justice providence be obtained in this world without God miraculously intervening as needed? If, on the other hand, God's causal providence is exercised directly without a natural order, so it is easy to see how justice providence can obtain, how do we explain the natural regularities we observe?

If Saʿadyah had stuck to his original claim that justice obtains only in the World to Come, this would be less of a problem because the natural

9. Saʿadyah, 214-15, even attempts to use this to justify the suffering of innocent children, but it is unclear how they can pass such a trial.

order applies only to this world, while the World to Come follows laws of justice. But once he makes these specific claims about this world, he must face this issue, and I do not see where he confronts it. We will see whether and how other authors confront this issue as we progress in our study.

II Maimonides[10]

A. Human Providence

Maimonides, like Saʿadyah, positively denies human causal providence (hereafter referred to simply as human providence) and insists that human actions are freely chosen without any divine impact. He calls this belief "a pillar of Torah and the commandments" in chapter five of Laws of Repentance, which is devoted to this topic and in which he says:

> If a person wants to go on the good path and to be righteous, he may do so. And if he wants to go on the wrong path and be wicked, he may do so. . . . That is to say that the creator does not force a person or decree upon a person to do good or bad but their heart is given to them. . . . And do not wonder or say how can a man do whatever he wants . . . can anything be done in the world without God's permission? . . . In the same way that He wants . . . all things in the world to behave like their custom that He has ordained, He wants that the person has the permission that all his deeds are his and God does not force him or incline him, but rather he by himself, with the wisdom the creator gave him, can do whatever a person is able to do (5: 1-4).[11]

There are several crucial points to note about this passage, and about its invocation of both human freedom and the natural order:

- Maimonides denies that God even inclines a person to do the good or the bad. People's choices are theirs, and while their pattern of past behavior may incline them to behave one way or the other, that is due to their choices and not the choice of God.

- Maimonides, in drawing the comparison between the natural

10. As always, when discussing Maimonides, I begin by looking at his discussion in the *Mishneh Torah*, as it was in Jewish history his most influential work. But especially on this topic, I will pay considerable attention to what he says in his *Guide for the Perplexed*, trans. Shlomo Pines (University of Chicago: 1963).

11. Maimonides, in a part of the passage we did not quote, denies any predestination. The classical commentators on his text attempt to explain away various talmudic passages that seem to say otherwise, but discussion of that talmudic exegesis lies beyond the scope of this paper.

> order ("their custom that He has ordained") and human freedom, implies that God is not the direct cause of what occurs naturally. Causal providence does not mean that God directly causes every natural event to occur; He is the ultimate cause because He created the world subject to a natural order by which things are directly caused. Similarly, human actions are directly caused by human free choices, but they are made possible by God's granting human beings freedom. He is the ultimate cause of those actions.[12]
>
> ∽ None of this is incompatible with God's being the direct cause of a human action (for example God compelling Pharaoh to not let the Jews leave) or the direct cause of some event that is not in accord with the usual natural order.

Like Sa'adyah, Maimonides is very aware of the problem that belief in divine foreknowledge poses for belief in human freedom, but he approaches that problem quite differently:

> We have already explained in chapter two of the Laws of the Fundamentals of the Torah that God does not know with a knowledge that is separate from Him as do people whose knowledge and self are different; He and His knowledge are one . . . and because this is so, we do not have the ability to know how God knows all created things and their actions (ibid 5:5).

This is an extremely difficult passage to interpret.[13] I think that what is most important is to focus on the theme of God being identical with His knowledge. What does it mean? Why does Maimonides assert its truth? And how does this solve the problem of foreknowledge and freedom? Any satisfactory interpretation of his views on this point must answer these three questions. We need to turn to the *Guide* for more insight into Maimonides' position on these issues.

12. [See also Guide 2:48. The difference between this account and deism can be explained via a point made by Eliezer Goldman. The key point is that, in deism, God is truly separate from the world, but in Maimonides there is a system of emanations or influences from God. See Goldman's "Responses to Modernity in Orthodox Jewish Thought," Studies in Contemporary Jewry, 2 (1986): 57. - Ed.].

13. For an interesting survey of views ranging from Meiri and Rivash up to R. Elḥanan Wasserman and *Or Sameaḥ*, see vol. 1 of R. Yosef Cohen's *Sefer ha-Teshuvah* (Jerusalem: Machon Harav Frank, 2006), 420-25. Some of the interpretations assimilate Maimonides' view to the claim of Boethius that the issue does not exist because God and His knowledge are outside of time. But that interpretation does not do justice to the passage quoted in the text.

His discussion of them (in *Guide* 3:20) centers on the nature of divine knowledge, but understanding it requires some understanding of Maimonides' general views about divine attributes. I refer here not to his special view about the negative understanding of these attributes (namely, we can say only what God is not), but rather to his views about divine simplicity. Maimonides, like most other medieval Jewish and non-Jewish philosophers,[14] is committed to the view of divine simplicity, the view that God is a total unity in which no parts or differences exist. His incorporeality rules out his having spatial parts. But simplicity is a more demanding belief; it requires that God be *metaphysically* simple. This is understood as meaning that (1) God does not have multiple different attributes and (2) His single attribute is identical with His very essence.[15] It is assumed in much of the contemporary literature that this belief was accepted as part of the view that God is absolutely perfect and that His having many attributes, separate from His very essence, would compromise his absolute perfection.[16]

Maimonides applies this doctrine to divine knowledge in the following passage:

> . . . So although we do not know the true reality of His knowledge, because it is His essence, we do know that He does not apprehend at certain times while being ignorant at others. I mean to say that no new knowledge comes to Him in any way . . . that nothing among all the beings is hidden from Him; and that his knowledge of them does not abolish their natures, for the possible remains as it was with the nature of possibility (p. 483).

The answer to our first two questions is that these claims about knowledge are just part of his commitment to divine simplicity. But what about the third question? How does our answer to the first two solve the problem of divine foreknowledge and human freedom? I interpret the passage to be saying the following: God will certainly know what you have

14. I used to think that this belief about divine attributes, often called the belief in divine simplicity, was just a Jewish and Muslim way of criticizing Trinitarian Christianity. But that cannot be the whole story because the classical Western fathers (Augustine, Anselm and Aquinas) all accepted this belief as well.

15. This is a difficult doctrine to understand, and faces many paradoxes. For a long time, it fell out of fashion, although there has been a revival of interest in it in recent years. See the entry "Divine Simplicity" in the online *Stanford Encyclopedia of Philosophy* for a full discussion.

16. Others, more historically inclined, see its acceptance as a result of the influence of Neoplatonic theories of the One and early Islamic theories of God's unity. See Alexander Altmann "the Divine Attributes," *Judaism* 15,1 (1966:) 40-60.

chosen after you choose it. But since His knowledge does not change, He must have known before you choose what you would choose. But you did choose freely. So we must deny the claim that God's foreknowledge entails that you could not choose otherwise, and that's okay because the logic of claims about God's knowledge is not the same as the logic of claims about our knowledge, since the two are so metaphysically different.

As is well known, R. Abraham ben David (Rabad), in his gloss on a similar remark of Maimonides in *Laws of Repentance* 5:5, criticizes Maimonides for raising the question but not really answering it. But the truth of the matter is that if you combine his remarks about divine simplicity in *Repentance* 5:5 with his view that God's nature is unchanging, you get a real answer, the one we just explained. But notice that this answer requires accepting two metaphysical views about God: divine simplicity and divine immutability. Sa'adyah's response requires no such metaphysical claims. In this regard, Sa'adyah's view has an advantage over that of Maimonides.

B. Justice Providence

A fuller understanding of Maimonides' position about providence, and its implication for justice providence, requires us to consult the *Guide*, where the topic of divine providence is discussed extensively (especially in 3:17-18). Just before that discussion, Maimonides was discussing unacceptable views about divine knowledge and he claimed that those views grew out of concerns about justice providence:

> What first impelled them toward this speculation was the fact that they considered the circumstances of the people, the wicked and the good, and that in their opinion these matters were not well ordered (463-64).

He presents five positions about divine providence, and its relation to justice, and he quickly rejects three. One is the Epicurean view of no providence, which he rejects on general cosmological grounds. The second is the view that God directly causes everything that occurs and that, because everything is God's will, there can be no injustice in what occurs. The third claims that human beings act freely, and when there appear to be injustices in their fates, God compensates them in the other world. The fourth is that God cannot do an unjust action, so that a good person cannot be afflicted, and that providence watches over all beings, including leaves and ants. Maimonides, though, adopts a position that he describes as a mixture of Aristotle and Jewish tradition. Its major claims are:

(1) Human beings act upon their own free will. (This is why he rejects the second position.)

(2) All that befalls human beings befalls them equitably (this is why he rejects the third position, which is close to Sa'adyah's).

(3) Justice providence extends only to human beings; all other living creatures are governed by chance, from a justice perspective, even while they are subject to natural forces. (This latter part is derived from Aristotle and disposes of the fourth view.)

(4) This justice providence over individual human beings is present in proportion to their excellence.

Claims (3) and (4) raise obvious questions. How does justice providence operate in relation to the natural order? And why don't less excellent beings still deserve full justice? There are two broad lines of interpretations of Maimonides' claims about justice providence.[17] One, a more conservative, traditionalist interpretation, is that God, as an act of justice providence, directly intervenes, in proportion to people's excellence, to stop harms that would naturally befall them. This would be very much like one of the interpretations we offered of Sa'adyah's position. The other reading, offered by Samuel Ibn Tibbon (translator of the *Guide*) and his son Moses, is that justice providence involved no direct divine intervention. Rather, Samuel argues, the more perfect you are, the more you develop your intellect, the more you recognize the unimportance of the harms that befall you because you are focused on the true goal of life—knowledge of God.[18] In addition, Moses Ibn Tibbon observes that there is a connection between knowing science and being able to protect oneself.[19]

17. See, for example, Moshe Halbertal, *Maimonides: Life and Thought* (Princeton University Press, 2014), 338-41. Note that divine providence is similar to divine prophecy, according to Maimonides, since both require human attainment of excellence. (See *Guide* 2:32 [prophecy] and 3:17-18 [providence]).

18. See especially *Guide* 3:23 on Job.

19. Of course, since both naturalistic interpretations (Samuel and Moses) downplay the role of God, they seem problematic to conservative interpreters. [To clarify: In 3:17-18, Maimonides declares, "Providence is consequent upon the intellect" (pp. 473-77). Many interpreters maintain that he conceives of the relationship between intellectual excellence and providence as naturalistic, and they seek a way of explaining how the former leads to the latter. The explanations of the Ibn Tibbons are examples of such an account. One may combine these explanations, and refer as well to the ability of an intellectually perfected individual to escape corporeality. - Ed.]

III. Interim Summary

We have reviewed the views of Saʿadyah and Maimonides on divine providence. There are some striking similarities between their views but also important differences between their views:

1. Both are strong opponents of the belief in human providence because they believe that justice requires that human beings act freely if they are to be rewarded or punished and that this is incompatible with God's causing their behavior. Maimonides believes that certain human actions, like the decisions of Pharaoh, are caused by God,[20] but Saʿadyah offers a different account of such cases in which human freedom still exists.

2. Both insist that God has foreknowledge of human actions despite the fact that the actions are freely chosen. To make this possible, Maimonides invokes the doctrine of divine simplicity and divine immutability. Saʿadyah offers a reconciliation of these two views without invoking such metaphysical beliefs.

3. Neither believes in the full working of justice providence in this world. Maimonides believes in justice providence. "Providence is consequent upon the intellect" (Guide 3:22-23), and human beings receive providence only in proportion to their excellence, as a result of which only some human beings will receive protection. For Saʿadyah, God has his reasons for extending some justice providence to both good and bad persons, but in the end, justice providence is really a feature of the World to Come.

4. Neither has a fully-worked out theory of the relation between human freedom, natural providence, and justice providence.

IV. Naḥmanides

To understand the position of Naḥmanides on issues of providence, we need to consider a wide variety of sources.[21] These include two of

20. [There are also naturalistic interpretations of Maimonides' account of hardening of the heart. For example: if we apply *Guide* 2:48, Pharaoh's earlier free hardening of *his own* heart took away his free will on later occasions in a naturalistic fashion. He could not break the habit. - Ed.]

21. This feature of his work helps explain its relative neglect in secular histories of Jewish thought. When you combine this feature with the facile claim that Naḥmanides is a Kabbalist, and not a philosopher, this neglect becomes easy to understand.

his essays[22] and his remarks in his commentary on the Torah and his commentary on the book of Job.[23] Moreover, his various remarks don't always fit easily within one interpretation. My goal is not to offer one account that completely explains all of his remarks, but rather to offer a picture of the tensions found in his remarks.

A. Human Providence

In his commentary on the Torah, Naḥmanides makes a startling claim about human freedom and human providence, one that also has important implications for the meaning of eschatological providence. Commenting on Deut. 30:6, he says:

> The Rabbis have said that if a person comes to purify himself, God helps him. God promises that if you return to Him with all your heart, He will help you. . . . From the time of creation, it was in the power of people to do what they want, good or bad. That was true in all of the time of the Torah in order that they should have a reward for choosing the good and a punishment for choosing the bad. But in the days of the Messiah, it will be natural for them to choose the good . . . and people will return in those days to how they were before the sin of Adam. . . . In the days of the Messiah, they will have no rewards or punishment because in those days humans will have no will; they will do naturally the fit action. Therefore there will be no rewards or punishments because those are dependent upon the will.

These themes had already been developed in his commentary on chapters 2-3 of Genesis. Naḥmanides seems to be making several points here:

a) Before the sin of Adam, human beings naturally did what was right. The ability to do what they wanted by willing to do it emerged after the sin of Adam, and it will disappear in the messianic era.

b) Reward and punishment is appropriate only for actions performed after the sin of Adam but before the coming of the Messiah, because it is only during this limited period of time that people act freely in accordance with their will.

22. *Torat Hashem Temimah*, in *Kitvei Ramban*, ed. Chaim (Charles) Chavel (Jerusalem: Mosad Harav Kook) 1:139-75; and *Sha'ar ha-Gemul*, ibid., 2: 264-311. Numbers in parentheses for *Kitvei Ramban* refer to volume and page.

23. Chavel, 1: 9-128. Ramban's introduction is of special importance and a quotation below (under "Justice Providence") is from that introduction.

c) Repentance is a special case. Once you freely choose to repent, God will help you overcome obstacles that stand in the way of repentance.

There are many puzzling features of this account.

- One is how to explain the sinning of Adam and Eve since they did not have the will to choose until after they sinned.

- The second is to understand the purpose of their being created; it could not be, as many have suggested, to enable them to receive rewards for their good deeds, because they were created in a way (without will and choice) that precluded deserving rewards.

- But the largest problem is with Naḥmanides' attitude towards free will. It seems to be a punishment for sin, rather than a gift of God that distinguishes humans from animals. To quote Isaac Abarbanel:

> All that is good and complete in a human being is in the choice and the ability to do good or bad according to his wishes. If that were not so, he would not be a person, and God would not have commanded him that he could eat from all the trees of the garden but must not eat from the tree of knowledge of good and evil. A commandment does not apply except to someone who has choice and will.[24]

I have a speculative hypothesis to explain Naḥmanides' thinking that at least resolves the second and third issues. The key to this hypothesis is a remark by Naḥmanides commenting on Gen. 2:17. Rejecting the view that humankind was always doomed to mortality, Naḥmanides says the following:

> According to the opinion of our rabbis, if Adam had not sinned, he would never have died. For the higher soul that was given to him lives forever. And it was God's wish for him at the time of his creation that he would cling to God forever and God would sustain him forever, as I explained on the verse "And God saw that it was good."

God had not created humans with free will so that they can earn merits and be rewarded. God had created humans as perfect beings to be with Him always, and they needed no merits to be with God forever. But Adam marred this perfection by sinning (leave aside question #1 about

24. Abarbanel, commentary to Gen. 2:15.

how he could do so) and this original plan was no longer possible. So God gave humans free will to enable them to earn the merits required to be with God forever at the time of the messiah. Free will is not a punishment; it's second best, but the best available for humans after Adam's sin.

Whether or not this interpretation is correct, the crucial point to note is the limited role of God in determining how humans act. Originally, human beings were so constituted that they always did what was the right thing to do. Given that this was so, God had no need to cause individual human actions. The most one could say, using classical terminology, is that God exercised general species providence over human actions, but he did not exercise individual providence over the specific actions of individual human beings. This will also be true at the time of the Messiah.[25] In the interim period, human beings have free will; God helps the efforts of the penitent, but otherwise, what you do is up to you.

The last point (c) about repentance resonates very well with Naḥmanides' discussion of God's hardening of Pharaoh's heart (Ex. 7:3), a text which, as noted earlier, has troubled many since it seems to take away Pharaoh's choice. Naḥmanides offers two accounts to explain why Pharaoh should be punished given that, at least in the second five plagues, his refusal was due to God acting to harden his heart. The first is the Maimonidean explanation that he was punished because of his refusal after the first five plagues. He did not deserve to be able to repent, so God hardened his heart so that he would not repent. The second is his own explanation: that God knew that if Pharaoh sent the Jews out, it would not be a true repentance; he would be doing it only because he was afraid. So God prevented him from performing this pseudo-repentance. The point that emerges from both of these passages is that acts of repentance are treated differently. God intervenes to help or prevent such acts in a way that to some degree supplants human freedom. Repentance is an exception, but the exception proves the rule that the actions of human beings are usually free and independent of God's wishes. Naḥmanides, like all the others we have covered, denies the claim of human providence.

25. It is unclear why he says this will occur at the time of the Messiah, rather than at the time of the Resurrection.

Naḥmanides' view about the change in the human condition after Adam's sin has some of the problems associated with the Pauline view of original sin. To be sure, there is no agreement with Paul that after Adam's sin, humanity is inherently corrupted and can only be saved by an act of divine sacrifice. But there is still the problematic notion that the sin of one individual can permanently harm the moral status of all of their descendants. But perhaps Naḥmanides found this less troubling, living in a Christian environment. Unfortunately, that issue did not arise in his debate before the king, so we cannot get any help from that text on this point.

But even if God does not cause individual human actions, doesn't His foreknowledge mean that there is no freedom? We get a hint about Naḥmanides' views from his discussion of God's testing Abraham when He commands him to sacrifice Isaac:

> In my mind, on the matter of tests, it is because the actions of men are completely free in their hands; they can do it if they want and if they don't want, they won't do it. So it is called a test from the perspective of the one who is tested. But from the perspective of the tester, God commands him so as to bring him from potentiality to actuality, so that he will receive the reward of a good deed and not just the reward of a good heart. Know that God tests the righteous when He knows that the righteous person will do it; He tests him so that he can show his righteousness. He doesn't test the wicked, who will not listen (commentary to Gen. 22:1).

This passage begins with a strong affirmation of human freedom and an apparent denial of human providence. It also clearly affirms that the purpose of the test is to reward the person who is tested. But then it limits God's testing to those cases in which He knows that the righteous person will pass the test by doing the action He commands.

B. Justice Providence

In his introduction to his commentary on the book of Job, Naḥmanides makes three central points:

> ***1.*** He distinguishes between the belief that God knows everything that occurs in the world (epistemic providence), and the belief that God determines what will happen to people, depending upon their behavior (justice providence). Both of these are essential beliefs, but they are two separate beliefs.

2. He believes that the problem of the suffering of the righteous and the flourishing of sinners led to two different types of heretics. One does not believe in epistemic providence, and the other does not believe in justice providence.

3. He believes that the correct solution to the problem of justice providence is to recognize that rewards or punishments extend to the World to Come. Good people who suffer in this world are being punished for their sins so that they will receive only rewards in the World to Come, while sinners who prosper in this world are being rewarded for their good deeds so that their fate in the World to Come is to receive only punishments.

The first two points seem obviously correct, and they support this paper's strategy of differentiating the different components of the belief in divine providence. The third point is similar to Saʿadyah's fundamental account of justice providence. Naḥmanides makes the point in the following passage:

> This question of Job would not be constantly bothering people if they believed in the world of the souls and in rewards in the World to Come. . . . Therefore, even the completely righteous person that does a small sin should be punished . . . . But the punishment is lightened from the righteous because it affects only the inferior thing, his body, and for a limited period of time in this world; and he will receive his reward in the World to Come. . . . Similarly for the sinners: it is unlikely that they did not ever do anything good so they receive their reward [in this world] (1: 23-24).

There is a passage in *Shaʿar ha-Gemul* that helps explain why the ideas in this passage were so important to Naḥmanides. The obvious challenge that Jews in the Middle Ages had to confront was, if they were right in their religious beliefs and practices, while the Christians and Muslims were wrong, why was their fate so much worse than the fate of the believers in these other religions? In a period of time in which Jews faced so much persecution, that must have been a major challenge to their faith. Naḥmanides uses this idea to deal with the challenge:

> In accordance with this standard, most Jews have pain and suffering in this world to a greater extent than other nations. How? It is not possible that other nations do not have good deeds, and it is not possible that Jews don't perform sins. But the idolatrous nations are punished for their sins of idolatry by Gehinnom and by destruction, while the Jews are rewarded by life

> eternal. . . . And therefore, the strict law is stretched out before all of Israel to exact a reckoning for the filth of their sins in this world, while the standard of goodness is placed over the idolatrous nations to pay them reward in this world for their pleasing actions and their acts of charity (2:268).

But like Saʿadyah, Naḥmanides wants at least some of the righteous to receive rewards in this world**.** But the way in which he does so raises serious interpretive questions.

One passage seems to offer a straightforward account:

> The completely righteous person who is constantly cleaving to God and whose thoughts are never distracted by matters of the world will be constantly protected from all that is occurring, even if it occurs naturally, by constant miracles. . . . Someone who is far from God in his thoughts and deeds, even if his sins do not deserve death, is left to chance. . . . And most of the world belongs to the middle group. . . . It is fitting that what happens to them happens by nature and chance.[26]

There are many passages that seem to adopt the same approach. I quote two more because they add crucial additional elements:

> The reason for now using this name of God [SH-D-Y] is because it is with it that He performs hidden miracles for the righteous: to save them from death and to let them live in times of famine and to redeem them in war from the sword like all the miracles that were performed for Abraham and the other patriarchs (Commentary to Gen. 17:1).

> In general, then, when Israel is in perfect [accord with God], constituting a large number, their affairs are not conducted at all by the natural

26. Commentary to Job 36:7, in Chavel 1:108-109. In these discussions, *rishonim* regularly use the notion of chance (*mikreh*). I do not think that they mean an event that is uncaused or purely accidental. I think that they are referring to the Aristotelian notion of chance, defined in the *Physics* as follows:

> A man is engaged in collecting subscriptions for a feast. He would have gone to such and such a place for the purpose of getting the money, if he had known. He actually went there for another purpose and it was only incidentally that he got his money by going there; and this was not due to the fact that he went there as a rule or necessarily, nor is the end effected (getting the money) a cause present in himself—it belongs to the class of things that are intentional and the result of intelligent deliberation. It is when these conditions are satisfied that the man is said to have gone by chance (*Physics* II: 5, in *The Basic Works of Aristotle*, ed. Richard McKeon [New York: Modern Library, 20th edition, 1966], 245.

A better word might be coincidence.

[As David Berger points out in the article cited in n. 30 (at pp. 141-43), the Naḥmanidean passage cited in the text closely resembles one in *Guide of the Perplexed* 3:18, yet contains significant divergences. - Ed.]

> order of things, neither in connection with themselves, nor with reference to their Land, neither collectively nor individually, for God blesses their bread and their water, and removes sickness from their midst, so that they do not need a physician and do not have to observe any of the rules of medicine, just as He said: "For I am the Lord who heals you" (commentary to Lev. 26:11).

Putting these two passages together, and using some of the material from the preface of the Job commentary, we get the following view:

- What happens to most people in this world happens by nature and chance, and is independent of their merits and demerits.
- The completely righteous are a special case, because God will (sometimes? always?) miraculously save them from bad things that would otherwise happen because of natural causes.
- These miracles are "hidden miracles," presumably because their miraculous nature is not evident.
- Justice providence for the rest of us is provided in the World to Come.
- This situation will change if Israel is righteous; the natural order will no longer prevail over Israel.

But if this is his view, how can he make claim (3) of his remarks in the preface to the Job commentary? If what happens to all except the completely righteous is determined by nature and chance, how can he maintain that what happens to them relates to the inverse type of justice providence he describes in (3)?

There is a much more serious problem. There are other passages in which he seems to be saying something very different. Consider the following oft-quoted passage from *Torat Hashem Temimah*:

> We see that a man does not have a share in the Torah of our teacher Moses until he believes that all that occurs to us and our actions are all miracles, and there is in them no nature or the way of the world. . . . For if we say that nature is what sustains and causes everything in the world, then a man does not die or live because of his merits or demerits. Since we believe that God cut off the life of this person before he would have died naturally, behold "the hand of the Lord did this" (Is. 41:20) [caused his death]. And he changed nature just like in the splitting of the Yam Suf. . . (1:153).[27]

27. Chavel, in his edition, notes at least six other passages in which Naḥmanides makes a similar point. Perhaps the most famous of these passages occurs in his commentary

There is actually an internal tension in this passage, because the beginning seems to deny that a natural order exists while the end seems to suggest that it does exist but is sometimes superseded by God's direct intervention. More crucially, it seems to challenge the claim that divine providence miracles are only for the very righteous or for the very evil (unless anyone who deserves *karet* for even one sin is considered very evil).

What are we to make of all of this? One way of reconciling these conflicting remarks is to affirm that events which occur by the natural order are also acts of divine providence, because God has decided not to intervene. This strategy is adopted by R. Aryeh Leibowitz, who says:

> If an individual suffers hardship, and is not saved from calamity, it may be an indication that the individual was not righteous enough to merit divine intervention. . . . In other words, specific individual divine providence is always the determinant of what transpires in one's life. Sometimes specific individual divine providence dictates that God will intervene on one's behalf, and other times specific individual divine providence dictates that God will not.[28]

This is a thoughtful suggestion about what a follower of Naḥmanides should say. Even though the fate of most of us is determined by nature and chance, God could have chosen to intervene but He did not. But I don't think that this could be the interpretation of a text that says "there is in them no nature or the way of the world."

R. Leibowitz is clearly intending to expand our understanding of divine providence so as to support the centrality for Naḥmanides of divine providence in all human affairs. David Berger argues for a more naturalistic interpretation of Naḥmanides, in which for the most part natural forces determine what happens in the world.[29] At the end of his essay, most of which is devoted to establishing the importance of naturalistic themes in Naḥmanides, Berger directly confronts the question of how he interprets the absolute denial of nature by Naḥmanides in passages like the one in *Torat Hashem Temimah*. He says:

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to Ex. 13:16.

28. Aryeh Leibowitz, *Hashgacha Pratis* (Brooklyn, NY: Targum Press, 2014), 76. A similar position has recently been advocated in Micah Segelman, "Divine Providence and Natural Forces," *Ḥakirah* 19 (2015): 257-72.

29. David Berger "Miracles and the Natural Order in Nahmanides," repr. in Berger, *Cultures in Collision and Conversation: Essays in the Intellectual History of the Jews* (Boston: Academic Studies Press, 2011), 129-51.

> To resolve this question, we must look again at his standard argument for hidden miracles and the terms in which it is couched. As we have already seen, the essence of this argument is invariably the fact that the Torah promises rewards and punishments that cannot come naturally; hence, they are all miracles. . . . Nahmanides' intention is that "all things that happen to us" in the context of reward and punishment " are miracles."[30]

While this is an important suggestion, it faces a problem with petitionary prayer. Naḥmanides says the following in the very same passage in *Torat Hashem Temimah*:

> In short, no person ever prayed to God to give him a good or to save him from something bad, or to curse his enemy by name, unless he believes in all of these miracles as I have said, because it is with a change in the nature of the world all is done, not by something else (1:153-54).

Berger might respond by saying that all answers to petitionary prayers are matters of reward and punishment, a suggestion supported by the language used by Naḥmanides himself late in the passage. Even so, I am not sure we can accept that claim about prayer. God may have many reasons for responding to petitionary prayer.

I don't think that we are going to be able to find an interpretation that fully and consistently explains all of what Naḥmanides said on this topic. Remember that he has no single treatment of the entire topic; we are trying to interpret remarks made in many different contexts. But I think that the following claims capture the spirit of what Naḥmanides said about justice providence:

> ***1.*** Most of the things that happen in the world are due to the natural order of the world.
>
> ***2.*** God always can, and sometimes does, intervene to bring about some other outcome. Some of these interventions are clearly miracles, but others are hidden miracles because they could have occurred naturally.
>
> ***3.*** Justice providence is primarily a matter of what occurs in the world of the souls, but God does sometimes intervene in this world for reasons of justice. These may be the rewards and punishments mentioned in the Torah. But these interventions may be rewards

30. Ibid., 149.

for sinners insofar as they have done some good things or punishments for the righteous insofar as they have sometimes sinned.

4. There are those who are fully righteous and to whom God offers special protections.

5. God may also intervene in response to petitionary prayers.

Keep in mind, however, that all this describes the world post-Adam's sin, where humans have free will and deserve rewards and punishment. The messianic world, where free will no longer exists, is governed by other principles.

V. Gersonides[31]

Unlike Naḥmanides, Gersonides presents a comprehensive treatment of our issues; it appears in Books III and IV of *The Wars of the Lord*, his major philosophical treatise.[32] Book III deals with divine knowledge, while Book IV deals with divine providence. His treatment of these topics is, as we shall see, an attempt to maintain the belief in human freedom by denying epistemic providence, while at the same time defending the belief in justice providence.

A. Human providence

All of the authors we have considered have rejected the doctrine of human providence. If human beings are to be responsible for their actions, making free choices, then God cannot cause their actions. But rejecting human providence is not sufficient to ensure human freedom. There remains the challenge posed by divine foreknowledge, a problem to which Saʿadyah and Maimonides offer very different answers. Although their answers differ, they agree that there is divine foreknowledge of human free choices. It is this assumption that Gersonides challenges in Book III, chapter 4.

He states his position as follows:

31. Much of Gersonides' discussion of the fates of human is presented employing his astrological views. I will try to do justice to his claims about providence without invoking those beliefs.

32. All references will be to the translation by Seymour Feldman, *Wars of the Lord* (Philadelphia: Jewish Publication Society: 1987), volume 2 only.

> It has previously been shown that these particulars[33] are ordered and determined in one sense, yet contingent in another. Accordingly, it is evident that the sense in which God knows these particulars is the sense in which they are ordered and determined. . . . On the other hand, the sense in which God does not know particulars is the sense in which they are not ordered, i.e., the sense in which they are contingent. For in the latter sense, knowledge of them is not possible. However, God does know from this aspect that these events may not occur because of the choice, which he has given man . . . . But He does not know which of the contradictory outcomes will be realized insofar as they are [genuinely] contingent affairs; for if He did, there would not be any contingency at all (pp.117-18).

From His general knowledge, God knows which choices are possible. But in the case of free choices, contrary to Sa'adyah and Maimonides, He does not know beforehand which choice will be made. This seems a limitation on epistemic providence, but it can be argued that it is not really a limitation, for the future-tensed statement is not true before the events it describes happens. Gersonides himself makes this argument in Book III, chapter 4. The point is that there is no truth to be known before the free choice has been made.

Obviously, the main reason for Gersonides' belief about foreknowledge is his concern to maintain human freedom by insisting that the contingency of human choices requires the absence of divine foreknowledge of what people will choose to do. This view of Gersonides has not won much acceptance in Jewish theology. But it is interesting to note that one recent movement in Protestant theology, the "open theist" position, has adopted a viewpoint that closely resembles the views of Gersonides:

> Where Scripture certainly depicts aspects of the future as settled in God's mind (foreknowledge) or by God's Will (predestination), no Scripture forces the conclusion that the future is *exhaustively* settled, that it is necessarily settled for all eternity.[34]

The natural way to interpret Gersonides' approach would see it as claiming that God does not know what the person will do before the person makes their free decision, but once they make that decision and acted upon it, then God certainly knows what they decided

33. The particulars he is most directly talking about are free human beings.
34. Gregory Boyd, "God Limits his Control" in *Four Views of Divine Providence*, ed. Dennis Jowers (Grand Rapids, MI: Zondervan , 2011), 197-98.

and what they freely did. Gersonides was criticized on this point by R. Isaac b. Sheshet (Rivash)[35] who pointed out that if God knows after the person's action what the person did, but did not know beforehand because it was a free choice, then this is a change in God's knowledge and a challenge to His immutability. This was acceptable to the open theists who saw the doctrine of divine immutability as a corruption of biblical faith by Greek philosophy. So admitting that God's knowledge changed after the free choice was not a problem for them. But Gersonides believed in divine immutability. So how could he resolve this problem?

It seems that Gersonides had a more radical view in mind:

> . . . God's knowledge of generated events does not change with the actual generation of these events—even if the event in question has changed from a possible state of affairs to a state of affairs that actually has occurred. . . . God's knowledge of these events is based upon the intelligible order in His intellect, and since this order is immutable, His knowledge does not change when one of these events is realized (p. 134).

This is a difficult passage, but apparently Gersonides is saying that God's knowledge does not change; the occurrence of the event after the person's choice is not knowable by God because He knows only those truths whose truth is based upon the intelligible order. In other words, God does not know what the person actually did. This would be, of course, a major limitation of epistemic providence. In the same responsum, Rivash point out the problems with such a view: "If God does not know [what the person did] after it was done, then God does not know the acts of people, and this nullifies reward and punishment and all the principles of the Torah that are related." In short, Gersonides cannot account for justice providence.

B, Justice Providence

The real problem with Gersonides' position is his attempt to combine three different views that taken together seem to represent an inconsistent triad:

> ***1.*** To preserve human freedom: God does not have foreknowledge of what you will do.

35. Rivash was a fourteenth century halakhist who discusses this problem in his *Responsa*, #118.

2. To preserve divine immutability: God cannot know what you did after you do it.

3. Individual justice providence is based upon divine knowledge of what you did do.

It looks like the only way out is for Gersonides to reject claim 3. He could do so by rejecting entirely the idea of individual providence or by offering a different account of that providence. Gersonides does believe in at least some cases of individual providence, presumably to avoid the type of objection later raised by the Rivash. But he was well aware of the difficulty that he was left with:

> Now that it has been shown that divine providence reaches some men in an individual way, it is necessary to determine how the principle established in the previous book with respect to divine knowledge can be made compatible with this conclusion. [It was maintained in Book Three] that God's knowledge does not extend over particulars insofar as they are particular and individual. It would seem that there is a difficulty here (p.176).

We can put this point another way. Gersonides accepted the standard view that when God created various species, he gave them a nature that was common to all members of the species and was beneficial to them. This is called general providence, and it posed no particular problem for his theory of divine cognition. But like Maimonides, he believed that God acted beneficially to at least some human beings, based upon their merits. It is this particular providence that poses a problem for Gersonides. Since God does not know how people have acted, how can he know which individuals deserve this particular providence? So Gersonides' only way to avoid the inconsistency is to modify thesis 3 by giving an account of divine individual providence that is independent of God's knowing what you actually did do. Seymour Feldman describes his modification as follows: ". . . for Gersonides, the concepts of providence and divine cognition are not identical, although they are closely related."[36] I shall try to show something stronger: for Gersonides, divine cognition of what human beings do is totally irrelevant to individual providence.

There are two crucial passages that contain his theory. The first offers his account of how divine individual providence works while the

36. In his translation of *Wars of the Lord*, 145.

second argues that it requires no knowledge by God of the actions of human beings:

> Since it is evident from what has preceded that God (may He be blessed) informs some men of impending good or evil fortune because of His providential concern for their preservation, it follows from this fact that His providence with respect to individual men consists in informing them of the good or evil that is to come upon them, so that they will avoid the evil and pursue the good. This communication varies according to the different degrees of proximation to the Agent Intellect exhibited by these men (p. 178).
>
> This [kind of providence] emanates from God because it is its nature to reach anybody who is prepared to receive this kind of providence. . . . Thus, it is clear that our admission that God's knowledge does not range over particulars as particulars does not entail that there is no individual providence with respect to some men, according to the manner in which we have explained this view (p. 181).

Gersonides' first point is that God's individual providence consists of letting it be known what will happen so that people can be guided in their actions. His second point is that this is not targeted to any specific individual, but only worthy individuals will in fact be able to receive this knowledge. As a result of these two points, he concludes that God's providence requires no knowledge on His part of what anyone has done. Providence is possible without epistemic providence.

It is important to note that this account of divine providence involves cases where knowledge of what will happen, known only to good people, can be used by them to avoid evils and obtain goods. The wicked, who do not receive this knowledge, are punished because they act mistakenly. This seems like a very limited type of divine providence. Are there not cases in which divine providence is extended to individuals in some other manner and are there not cases in which individual providence is extended to people who are not sufficiently developed intellectually? There is an important passage in which Gersonides seems to want to allow for those possibilities:

> Yet it is possible that they are provided for insofar as they suffer certain pains providentially which protect them from even greater evils either that would have happened to them or direct them toward benefits. An example of this protection against harm would be when a good man is travelling with some merchants [who plan] eventually to go on a sea trip, but he gets a thorn in his foot and cannot continue with them. [This turns out to be] the cause why he escapes from drowning in the sea (p.179).

It is hard to see how this individual providence can operate without God's acting based upon His knowledge of particulars. Robert Eisen discusses two theories that attempt to deal with this issue. One, which he attributes to Charles Touati, accepts this difficulty and therefore argues that these examples are really cases of general providence.[37] Eisen correctly points out that this cannot be right because they are given as part of Gersonides' discussion of individual providence. His own view is that Gersonides was treating this case as similar to the cases of providence based upon knowledge. But Eisen himself points out the implausibility of this account: ". . . it is unclear how the perfection of an individual's intellect causes the higher order of providence [individual providence] to become operative and affect events in his vicinity." Nor can we solve the problem by treating these cases as miracles, for Gersonides' theory of miracles cannot allow for knowledge of particulars. As Menachem Kellner points out:

> In the present context, Gersonides merely extends this description to include miracles. Miracles occur just as prophecy and providence occur, authored by the Active Intellect, without its having new instances of will or knowledge.[38]

Gersonides has an extensive discussion of the distribution of good and evil to people given the limitations on divine knowledge imposed by his theory. But I want to focus on one passage that might offer him a way out of all these problems. It would do so by saying that individual justice providence, outside the cases of knowledge of what will occur, does not exist in this world:

> Similarly, the view of our rabbis (of blessed memory) is that true reward and punishment occur in the World to Come, and that there is no necessity for reward and punishment in this world to be such that the righteous and the sinner receive material benefits and evils, respectively (p. 197).

Naturally, he would have to explain how rewards and punishments in the World to Come occur without divine knowledge of the actions of people, but I believe, without discussing this here, that the account he offers of immortality (in Book I) offers such an explanation.

37. Robert Eisen, *Gersonides on Providence, Covenant and the Chosen People* (Albany, NY: SUNY Press: 1995), 15-17.
38. Menachem Kellner, "Gersonides on Miracles, the Messiah and the Resurrection," *Daat* 4 (Winter 5740): 25.

I still find this account of providence problematic. Religious people normally think of divine providence as God's responding to their needs based upon their prayers, their merits, or just His general kindness and mercy. I share this understanding, because it is what differentiates the religious worldview from the deistic view. Gersonides' account leaves out this whole dimension of the religious belief in providence because it leaves out all divine knowledge of the individual's needs, prayers, merits, etc. Providence becomes just one more of the laws operative in this world. This is part of what led the "open theists" described above to assert God's knowledge of, and responsiveness to, human actions by denying that God is immutable. But that seems a small price to pay in order to maintain God's responsiveness to individual humans. Unfortunately, Gersonides did not appreciate this possibility. His commitment to divine immutability was absolute.

Let me put this point another way. The religious difficulties faced by Gersonides are not due to his denial of divine foreknowledge in order to preserve human freedom. They are due to his commitment to divine immutability, for that, as Rivash had pointed out, led him to his insistence that God did not know after the person acted what they had done. This, in turn, led to his problems with commitment to divine immutability.

VI. Hasdai Crescas[39]

A. Human providence

There is a standard account of the contrast between Gersonides and Crescas: Gersonides had been able to account for human free will by denying God's knowledge of individuals qua individuals. Crescas, though, upheld God's absolute knowledge of particulars, and, therefore, Crescas was incapable of allowing free will. He held that human choices and actions are determined by a chain of causes and effects that

39. Crescas' *Or Hashem* is his major philosophical treatise. I have used the translation in Charles Manekin, *Medieval Jewish Philosophical Writings* (Cambridge: 2007). I have also used the translations of part of Part II (on Providence) in Warren Zev Harvey's 1973 doctoral thesis at Columbia University, *Hasdai Crescas' Critique of the Theory of the Acquired Intellect*. Harvey is currently preparing a critical edition of *Or Hashem*. [After Prof. Brody passed away, a full translation of *Or Hashem* was published. See *Light of the Lord* , translated with introduction and notes by Roslyn Weiss (New York: Oxford University Press, 2018) - Ed.]

makes those choices and actions determined.[40]

Late medieval authors criticized Crescas for holding just this deterministic view.[41] Even if he did, this does not mean that he believed in human providence, in the claim that God is the cause of human actions, since we are not told the causes of human actions. But if this account is correct, then human providence is a possibility according to Crescas. I think, however, that there are two accounts in Crescas, one the ordinary account and one that is more subtle than the one normally attributed to him, and I will argue for that claim by a close reading of the text of Crescas.

Crescas begins Part V with an affirmation of the existence of human choice and power. That seems to be a denial of any cause of human choices and actions, in accord with the views of all the authors we have covered. But this accord becomes questionable when he develops his account of human choice. As he says (p. 216): "The foundation of choice is that the nature of the possible exists." What does this mean for Crescas?

In the course of his analysis, Crescas distinguishes three concepts of the possible:

> ⇀ *Possible with respect to themselves*: There is nothing incoherent either with the statement *action A was performed* or with the statement *action A was not performed*.
>
> ⇀ *Possible with respect to its causes*: Both action A being performed and action A not being performed are compatible with the occurrence of all relevant causal factors
>
> ⇀ *Possible with respect to God's knowledge*: Action A being performed and action A not being performed are both compatible with a complete description of what God knew in advance.

Consider now some action A, which we think of as a result of human choice and power. In what respect are both that action and its opposite possible? The standard interpretation of Crescas, as fully developed by Feldman, is that he is a determinist, believing that human actions are neither causally possible nor possible with respect to God's knowledge.

40. See Daniel Lasker, "Chasdai Crescas" in *History of Jewish Philosophy,* ed. Daniel Frank and Oliver Leaman (Routledge, 1997), 407.

41. Seymour Feldman, "A Debate Concerning Determinism in Late Medieval Jewish Philosophy" *Proceedings of the American Academy for Jewish Research* 51 (1984): 15-54.

They are, of course, possible with respect to themselves, and that is the only sense in which they are possible. To quote one of many passages in Crescas supporting this interpretation:[42]

> Similarly, it is evident that the arguments taken from God's knowledge of the future and the fact that He informed the prophets of future events, even if they are dependent upon choice, do not imply the annulment of possibility with respect to itself. But things are possible with respect to themselves and necessary with respect to their causes, and from the aspect of their being necessary, they are known prior to their becoming necessary. . . . Thus, the complete truth implied by the Torah and by speculation is that the nature of the possible exists in things with respect to themselves but not with respect to their causes (p. 224).

This is the standard account of Crescas, and it is certainly supported by much of the text. But I think that there is another account that is also found in Crescas, one that is importantly different than the standard account, which relates directly to the question of human providence. The text of Crescas is notoriously difficult, and different accounts are given on different issues, so this is quite possible.

But introducing this account requires a discussion of the distinction between causes and reasons. A simple example will help explain the distinction between these two. Suppose you are hypnotized and ordered by the hypnotist to tie your shoes. You do so. What is the explanation of your doing it? You were caused to tie your shoes by the instructions of the hypnotist. Now suppose, walking down the street, you noticed that your shoes were getting loose. You stopped and tied them. What is the explanation of your doing it? You did it because you were afraid that you might otherwise trip and fall. In the one case, your action was caused. In the other case, you acted for a reason. The two answers are of a very different logical type. But they are both answers to a "why?" question, and in that way, they both are explanations of your action. There has been much controversy about the legitimacy of this distinction between causes and reasons, but its initial intuitive plausibility makes it reasonable to use it in interpreting Crescas.[43]

42. Strangely enough, shortly afterwards, Crescas asserts just the opposite, claiming that when the will is involved, the actions are possible with respect to their causes. This passage was found in the margins of the Florentine manuscript and then incorporated into the printed texts, and may not necessarily be Crescas' view. [Cf. Zeev Harvey, "*Le-zihui Meḥabberan shel ha-Determinizim be-Sefer Or Hashem le-Rav Ḥasdai Crescas: Edut Ketav Yad Firenzah*," *Kiryat Sefer* 55, 4 (September 1980): 794-801- Ed.]

43. The controversy was sparked by Donald Davidson's paper, "Actions, Reasons, and Causes," *Journal of Philosophy* 60 (1963): 685-700.

With that distinction in mind, let us turn back to the text of Crescas. He was faced by the standard challenge to determinists who also believe in divine commandments: if all of our actions are caused, then God's commandments are futile. To quote Crescas:

> However, if things were possible from their own aspect and necessary with respect to their causes, then the commandments and prohibitions are not futile, but rather serve an important purpose. For they are causes which move things which are possible in themselves in the same way which other causes produce effects. Thus the divine wisdom consigned them, i.e., the commandments and prohibitions, to be intermediate movers and powerful causes, to direct us human beings towards human happiness (pp. 222-24).

In what sense are the commandments and prohibitions causes of our actions? Crescas thought, I believe, that they are reasons for which we do the action. If asked why you did something, the answer that it was in accord with God's commandments is a perfectly good answer. But it is an answer that provides a reason for doing the action, not the cause of the action.

For Crescas, then, God's role in determining human actions is promulgating commandments whose existence provides reasons for human actions. These are "intermediate movers" of human choices; they are providers of reasons for human beings to act. But of course not everyone follows those commands. They act for a different reason. At this point, Crescas adds an important distinction among these other reasons:

> But when human beings act under coercion or compulsion and not through their wills, the coerced and compelled actions are not acts of their souls. . . . Thus it is not appropriate that a punishment should follow (p. 224).

So, on this account, there are three types of actors: those whose reason is that God commanded it, those whose reason is that they are compelled by others, and those whose reasons are based on their other desires. Only the latter are culpable, but all three are necessitated by the actor's reason. So the actions of all three are necessary with respect to the reasons that explain the performance of the action.

But why do some people choose to act for one reason while others chose to act for a different reason? It is here, on this account, that human freedom exists. All choices of actions faced by a human being are

among actions that are possible in themselves. The human being chooses for one reason rather than another. These reasons are the cause of the action and they necessitate the action, so the actions are necessary with respect to their causes. And the choice of reason is known by God, so it is necessary with respect to God's knowledge. But the choice of reason remains free.

But doesn't God's knowledge necessitate the action in itself? Crescas thought that it did not. He responded as follows:

> If God's knowledge of things precedes their existence, then they are not possible with respect to His Knowledge, because that which is necessitated prior to its existence is not possible; but they are possible with respect to themselves. And since God's knowledge is not temporal, His knowledge of the future is like our knowledge of existing things, which does not entail compulsion and necessity in the essence of the things (p. 225).

God's knowledge poses no challenge to the freedom of the choice of reasons or to the possibility of the things in themselves, because God's knowledge is atemporal.[44]

44. [As indicated in the prefatory editor's note, Professor Brody z"l passed away before finishing this paper. In a brief handwritten note to a draft of the paper, he indicated that he wanted to add here a discussion of Crescas' position on why a person may be rewarded or punished for believing (or not believing) in God. (See Harvey, *Rav Ḥasdai Crescas,* 107-13.) Brody also seemed interested in an article by Lynne Rudder Baker, "Persons and the Natural Order," in *Persons: Human and Divine*, ed. Peter Van Inwagen & Dean Zimmerman (Oxford University Press, 2007), 261-78. It is possible that he wanted to include some insights from that essay in his planned last section, but we cannot be sure. A brief paragraph in the last two pages of Baker's paper also seems related to a suggestion by Crescas about resurrection, which Brody refers to in a footnote in "Jewish Reflections on the Resurrection of the Dead," 117, n. 43. -Ed.]

Y. TZVI LANGERMANN

Aspects of Maimonides' Historiosophy

Did Maimonides believe in human freedom of action—that is, that humans freely choose what to do and what not to do, and hence bear moral (and legal) responsibility for their actions?[1]

For a long time, that question would have seemed superfluous; human freedom of choice was considered one of the flagship teachings of Maimonides, one that went hand in hand with his repudiation of astrology. However, two leading scholars of the preceding generation, Alexander Altmann and Shlomo Pines, published closely reasoned investigations that argue for some determinism in Maimonides' philosophy.[2] Human freedom of action—and related issues, including astrology—have now joined the long list of topics whose place in Maimonides' system of beliefs—his "true" beliefs, one should always add—are a matter of debate.

Not too long ago, after years of worrying over these very critical issues, I arrived at what I think to be a precious clue towards their proper

1. No attempt has been made to supply exhaustive references to the ever-growing body of studies on Maimonides. The sources cited in the few footnotes are with very few exceptions only those that I consulted in the course of writing.

2. Shlomo Pines, "Studies on Abu al-Barakat al-Baghdadi's Poetics and Metaphysics," *Scripta Hierosolymitana* 6 (1960): 195-1988, on p. 198; Alexander Altmann, "The Religion of the Thinkers: Free Will and Predestination in Saadya, Bahya, and Maimonides," in *Religion in a Religious Age*, ed. S. D. Gotein (Cambridge: Harvard, MA, 1974), 25-52, esp. 41 ff.

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understanding. I will not hide my Archimedean moment, even if it is not the usual type of academic reference. It came while watching a video talk (on YouTube, of course) by the late Professor Joseph Ben-Shlomo, who was explaining what he calls the Bible's historiosophy.[3]

Historiosophy, simply and sufficiently put, is the idea that history serves some divine purpose.[4] The train of events looks human enough—the sum of good and bad choices on the part of freely choosing and cap able actors. In truth, though, the end was already decreed by the One Above, and whatever train of events actually occurred would have led to it, no matter what.

Maimonides' historiosophy, as I understand it, may be formulated more precisely: There are *some* predetermined events whose future occurrence is decreed. There follow a series of events, involving human choice, and each choice is judged on its moral merits or demerits. The series terminates at the final event, whose occurrence has been foretold. But not all events are so predetermined. It seems that we are speaking of only a few pivotal events in the divine plan for humankind in general and the Jewish People in particular. But—and this will be a recurrent theme—we do not know for sure.

The classic example is the book of Genesis. Abraham receives a divine revelation that his descendants will go to Egypt and remain there for some time. This is followed by a series of stories involving ethical choices—especially the choice of Joseph's brothers to sell him into slavery, which sends him down to Egypt, and the choice of Joseph to resist the temptation of Potiphar's wife, which leads to his imprisonment, where he interprets the dream of Pharaoh's cup-bearer. This chain of events, in all its sometimes bizarre detail, leads to the end result that Joseph, as the viceroy, invites Abraham's descendants to settle in Egypt. That event had been foretold centuries beforehand; yet the actors in the events leading up to it were free to choose and capable of executing their choices. They are therefore held morally responsible for their actions.

I will argue that, by and large, this biblical story is the model for Maimonides' understanding of some critical events in Jewish history,

3. https://www.youtube.com/watch?v=Yj6r8MxmUpw (accessed April 1, 2017). Google in Hebrew: *Shiv'im Panim- Parashat Va-yiggash*).

4. Prof. Ben-Shlomo apparently learned of the term and/or concept from Gershom Scholem; Prof. Ben-Shlomo is said to have been the only one of Scholem's students with whom the master had a close personal bonding. See the detailed and reliable Hebrew Wikipedia biography.

both past and future. There are some predetermined events that will happen, no doubt about it; but along the way, humans make choices, for which they are accountable, even though the final event that ostensibly resulted from those choices would have happened in any case.

This point can be illustrated by a number of passages from Maimonides' writings. Of course, in common with all people who think, Maimonides' mind was not frozen with regard to any particular issue. Nonetheless, I think that, with regard to the topics of this paper, he maintained the same line of thought consistently, even if his thoughts at a given moment are not the exact replica of an opinion he expressed years earlier. As is always the case, the level of detail that Maimonides decides to display, as well as the text and context within which the passage occurs, will differ from case to case. And like all attempts to systematize Maimonides' thought, the present offering will have its rough edges.

Does the element of determinism in his thought affect in any way Maimonides' repudiation of astrology, and if it does, how? Clearly, it does not impinge at all on the micro-level of individual human actions (discrete actions of individual humans), which remain free and undetermined by the stars. But how about on the macro, world history level? Maimonides surely knew of astrological theories that connect human history, the rise and fall of kingdoms, the emergence and decline of religious communities, and the coming of prophets, among other things, with the movements of the planets, especially the cyclical conjunctions of Jupiter and Saturn.[5] The very notion of a predetermined instant—that is, not just the notion that a certain event must occur, but also that the instant of its realization has already been fixed—calls up astral associations.

I will argue that Maimonides rejects any astral connection to whatever determinism does figure in his historiosophy. There are no fuzzy boundaries; the stars do not effect or affect future events in any way. Indeed, precisely because the astral connection begs to be drawn, Maimonides goes to great lengths to exclude any such possibility.

Maimonides remains, in this respect at least, an orthodox Aristotelian. The celestial motions mark time—and that is all. Significantly, Maimonides occasionally speaks of time as being a causative agent. While this may be a figure of speech in Arabic (and other languages), I suspect that it may be more than that. I will add a few thoughts on this point near the end of this paper.

5. E.S. Kennedy and David Pingree, *The Astrological History of Māʾshāʾallāh* (Cambridge, MA: Harvard University Press, 1971).

In sum, then, Maimonides adopts a biblical historiosophy, in which there are some predetermined events that must inevitably occur. In my view, it is hard to conceive of an authentic Jewish worldview that is not historiosophic in some way. Jews have never thought of themselves as aimlessly adrift on the sea of history, even when we suspect that God chooses not to look, or we sense that we cannot come up with a good captain and crew. As for humans as individuals, they freely choose their actions and hence are responsible for them, even if it turns out that a particular choice looks to have precipitated a happening that had been divinely pre-ordained. In all of this, the stars fulfill the role that Aristotle has assigned to them, marking time and nothing more.

Historiosophy in Maimonides

We will begin by examining the final *halakhah* in *Mishneh Torah, Laws of Repentance*, chapter 6:

> Is it not written in the Torah, "They will enslave and oppress them" (Gen. 15:13)? He decreed that the Egyptians will do evil! And it is written, "This people will rise up and stray after the deities of the nations of the land" (Deut. 31:16). See now, He decreed that Israel will worship false gods,[6] so why did He punish them? It is because He did not decree for a given, discrete individual that he will be the one who strays. Rather, each and every one of those who strayed and worshiped false gods could have not worshiped if he had so wished. The Creator has only made known the way of the world.[7]
>
> To what may this be compared? To someone who says, "This nation will have both righteous people and evildoers." That is no reason to say that it has been decreed for the evildoer that he will be an evildoer, [simply] because the Holy One, Blessed be He, informed Moses that there will be evildoers in Israel, just like it is said, "For there will not cease to be a pauper in the land" (Deut. 15:11).
>
> So also with regard to the Egyptians: Each and every one of those who afflicted and harmed Israel had the authority not to harm them had he [so] wished, for He did not decree concerning a particular individual. Instead, He made it known that in the end, his [Abraham's] offspring will

6. *Avodah zarah*, literally "foreign worship," is often translated as "idolatry," but it is certainly not limited—especially for Maimonides—to the worship of idols.
7. *Minhago shel olam*, the natural course of events. In Maimonides' parlance, this is the *ʿāda* of the *kalām*, a rough equivalent of the philosopher's "nature." However, I am not sure that this particular choice of term is very significant here.

> be enslaved in a land that is not theirs. We have already stated that humans do not have the capacity (*koaḥ*) to know how the Holy One, blessed be He knows, future events.

Note the shift within this *halakhah*. At first, Maimonides intimates that it is simply the natural course of events that there be good and bad Egyptians, much like there is a fixed economic course of events according to which there will always be poor people. However, at the end Maimonides acknowledges that there was a discrete event—the enslavement of the Israelites in a foreign land—that had to come to pass; was this really just the natural course of events, given that there are good and bad Egyptians? Moreover, there is no way that humans can know about this, other than by being informed of it by God. Even though each Egyptian could freely choose whether or not to do wrong to the Israelites, it was inevitable that some Egyptians—I should think, a critical mass of Egyptians, especially of those in power—would choose to enslave the Israelites. It is not clear from this passage whether there was a particular instant of time that was foreordained for this event.

Finally, note that the very same case is studied almost in the same words (though in a different language) in the eighth chapter of the introduction to Maimonides' commentary on *Avot*, with one difference: Maimonides does not there stress the inevitability of the enslavement, as he does in his final words on the subject in *Mishneh Torah*. This is not to say, however, that Maimonides changed his mind; we will shortly look at an even stronger statement on the inevitability of divinely decreed events from a different passage in his *Commentary on the Mishnah*.

The next passage I call up for examination will illuminate some important facets of our question, but remain silent on some other, no less important ones. In *Guide* III:32, Maimonides squeezes a lot of information out of Ex. 13:17-18, where the Torah informs us that God did not lead the Israelites on the shortest route to the Land of Israel—that is, the northern coast of Sinai—out of concern that the inevitable combat they would encounter there would cause them to return to Egypt; instead, He led them on a circuitous route, hugging the southern coast of the Sinai Peninsula.[8] However, Maimonides writes, even the

8. I cannot help but entertain the thought that Maimonides saw a hint at his historiosophy in Ex. 13:18; the verb *va-yassev,* generally interpreted as "He [God] turned" or "diverted," can also be taken to mean also "He caused" or "He brought about." Ibn Ezra for one insists that the root is *sabab*, the same root that denotes causation in Arabic (and later in Hebrew, following the Arabic philosophical literature).

circuitous route would not have stalled their entry enough. It would not have been enough time for there "to be born a people who had not been schooled in submission and slavery."[9] The entire journey, including the ostensible wandering for an entire generation, was "by means of divine commands through the agency of our master Moses": "At the Lord's bidding they would encamp, and at the Lord's bidding they would travel; they kept the charge of the Lord by the word of the Lord through Moses" (Num. 9:23).

But any reader of the Bible knows that the forty years of wandering were a punishment for the sin of "the spies" (Num.14:34)—a sin that must have been committed of their own free will, according to the basic principles of Maimonides' system. Could, then, the sin of the spies have been a wily trap contrived in order to justify the pre-ordained delay? That shocking suggestion, as we shall see, is an option for Maimonides; how exactly it may be harmonized with his views on freedom of choice is a question I must leave unanswered.

We saw in the final words of the passage from *Laws of Repentance* that humans have no access to the how and what of future events. However, in Maimonides' discussion of Ex. 13:17-18 (in the same chapter III:32 of the *Guide*), he does probe the divine mind concerning the why. The context is significant here. Maimonides is easing the reader into his rationale for the biblical commandments, and he (Oh so correctly!) surmises that the reader will resist the idea that the copious, detailed, and eternally binding legislation concerning animal sacrifices and other Temple rituals is only a means towards the true goal of the Torah, which is to instill true conceptions concerning the one God:

> In your heart you will question me, saying, "How could there come commands and prohibitions, and great, highly precise, timed [*muwaqatta*, at precisely determined times] actions, when all of them are not sought for their own end, but rather on account of something else?" This was a stratagem devised by God for us, in order to achieve the primary purpose.[10]

Maimonides was not above dabbling in philology (even if it would appear amateurish to today's linguists). The verb chosen by the Torah could also be taken to mean "God brought about."

9. The translations of *Guide of the Perplexed* are my own, using the Judeo-Arabic text in Rabbenu Moshe ben Maimon, *Moreh Nevukhim, Dalālat al-Ḥā'irīn*, 3 vols., ed. and trans. Yosef Qafih (Jerusalem, Mossad Harav Kook, 1972). The quotation is from p. 577.

10. Kafih edition, 576; compare p. 527 of the English translation by Shlomo Pines:

The Exodus involved supernatural events, which we call miracles, but the edification of the Israelites and their transformation into a community of monotheists had perforce to take a natural course.[11] In the natural course of events, a people can be rid of paganism only gradually. The first step was to appropriate elements of pagan ritual and retool them for the service of the one, true God. Similarly, a people raised in slavery could not be transformed overnight, or even in a year, into hardy, fighting stock. Moreover, by the same token that these transformations cannot take place all of a sudden, so also the people who are to be transformed are incapable of understanding just why things have to transpire in a certain way. Hence, the Temple rituals are presented to them as service that finds favor in the Lord's eyes and the delay of entry into the Promised Land is explained as punishment for a specific event that did indeed transpire.

However, the two cases are not entirely symmetrical. It may be confusing that the Torah has legislated, for all eternity, an elaborate Temple ritual that is not an end in itself, and whose details have no deep, inner meaning, but this does not call into question divine justice.[12] On the other hand, if the sin of the spies had been somehow divinely engineered so as to justify the delay in entering the Promised Land until the entire generation of the Exodus had perished, this would seem unjust. Was it?

The clearest statement of Maimonides' historiosophy, as well as the most shocking remark concerning its entanglement with divine justice and human free will, is found in his long gloss to the last *mishnah* in the tractate *Berakhot*, which is actually an interpretation of Ps. 119:126. This startling passage has not been integrated into analyses of Maimonides' worldview or system. The reason may be that few Maimonidean scholars study closely his entire commentary to the Mishnah. Alternatively, it is perhaps due to the stark contents of the passage, which resist harmonization with Maimonidean philosophy, whichever of the many flavors you may prefer to regard as the master's "true" belief.[13]

Moses Maimonides, *The Guide of the Perplexed*, trans. Shlomo Pines (University of Chicago Press, 1963).

11. As such, it parallels Abraham's personal transformation, which occurred, according to Maimonides, when he was a mature adult of forty, and not a wonder-child of three.

12. Clearly, one could question the justice of slaughtering animals that will be burned on an altar, but that cannot be compared to the slew of human events connected to the episode of the spies and its aftermath, whose justice would seem questionable.

13. The only extended discussion of this passage is in a fragment from an anonymous Yemeni commentary to the *Guide*; see Tzvi Langermann, "A Study of Dalalat al-Ha'irin and its Interpretation in the Arabophone Jewish Communities," in *Tribute to Michael:*

Here follows my translation of the passage. I leave out the first few lines of the commentary, which are not relevant to our topic. The verse from Psalms—"A time to act for God, they have violated your Torah"—is the key proof-text for post-biblical rabbinic ordinances, enacted in extraordinary circumstances that mandate the violation of earlier rulings. This understanding works best when the hemistiches are reversed, so that the verse says:, "They have violated your Torah; now is the time to act for God!" The most famous example is R. Yehudah Ha-Nasi's decision to commit the Oral Torah to writing. Maimonides himself cites this verse towards the end of his preface to the *Guide* (Pines translation, 16) as justification for revealing "concealed things" in his own book. Here, though, In the context of his commentary on the *mishnah*, he will investigate the meaning the verse takes on when left to its original word order:

> However, whoever abandons the verse to its [original word] order and interprets it—and it says, "A time to act for God, they have violated your Torah"—will say: When the time comes for punishment and revenge, causes will come about (*yastabibu*) for the people such that they will violate the Torah, so that it will come down upon them justifiably (*bi-istiḥqāq*). This issue (*gharaḍ*) is long and distant, "deep, deep, who can find it," because it will take us on an excursus into the topic of [human] capacity and [divine] decree (*al-qadr wa-l-qaḍā'*). Do not ask of me, in the course of what I am now engaged, anything more than to expose the discourse of the *mutakallimuūn*, in line with glossing the plain meaning of the statement. Scriptural verses contain many contradictions concerning this, and so also the statements of the sages.
>
> Nevertheless, the principle (*qā'ida*) is that God rewards those who do good and punishes those who do bad. This is justice on His part; after all, He testifies about Himself that He is just in everything, "For all of His ways are just" (Deut. 32:4). However, it is beyond the ability of man to perceive the manner in which it is just, just as human intellects do not have the capacity to fully grasp His knowledge. We have already spoken of how it is beyond the ability of our thoughts to perceive His wisdom and justice in every act that He did and will do. This is [the sense] of the verse, "Just as the heavens are high above the earth, so also are My ways high above your ways, and My thoughts above your thoughts" (Is. 55:9). So rely upon this principle, and do not busy yourself by delving into this

Studies in Jewish and Muslim Thought Presented to Professor Michael Schwartz, ed. Sara Klein-Braslavy, Binyamin Abrahamov, and Joseph Sadan (Tel Aviv: Tel Aviv University Press, 2009) (Hebrew), 67-90.

> topic. Indeed, those of our religion (*sharīʿa*) and others who delved into it did not come up with much. Instead, it is like they [the Sages] of blessed memory said, "He dove into mighty waters and came up with pot-shard" (*Bava Kamma* 91:1).
>
> You might see in the discourse of the *mutakallim* on this topic some imaginings and verbiage that resemble an argument, but it is not. Rather, should you examine it well, that mask will disappear and it [the pseudo-argument] will be met by objections. It will revert to what I have [already] said to you, but we will have incurred the loss of a [superfluous] long discourse and the composition of books. As for the discourse of the philosophers who are expert in philosophy, it is a wondrous, amazing, and very profound discourse, which, however, requires many premises as well as training in the sciences. A man who is proficient will handle these doctrines with care (*yatadabbaru*) and will extract [the intent] of their discourse together with[14] His saying—Mighty and Exalted is He—"Look, I have placed before you today life and the good, and death and the bad. . . . " (Deut. 30:15), letter by letter, and he will interpret (*yuʾawwilu*) their discourse [in a manner] markedly similar to what I have mentioned in this fundamental [principle], or something even more perspicacious and fine.
>
> We will have something to say about this topic in [our commentary to] the tractate *Avot*. We will show you in part the concordance of the discourse of the proficient philosophers with the sages in all topics. This is not the place to present that discourse. However, it is always my intention, whenever coming upon [even] a hint of a discourse on belief (*iʿtiqād*),[15] to explain something about it, because advising on one of the principles (*uṣūl*) is for me the most important advice [that I can] give.

I would not be surprised if many or most Maimonidean scholars would see this passage as one more instance in which Maimonides denigrates the *mutakallimūn* for a long-winded discourse that leads nowhere, choosing instead the wondrous and profound path trod by the philosophers. A closer look, however, may reveal that an insight of that sort, worthy as it is, by no means exhausts Maimonides' reading of the passage. Maimonides studies the verse in its original order and informs us of its meaning; he does not cite a source for his interpretation, even anonymously, and so I feel that there is a good chance—an excellent chance—that it is his own. Left to its original order, the verse says that an

14. The intent of the preposition, *maʿa*, seems here to be "in harmony with." R. Qafih translates *yakhruju . . . maʿa* to mean just that.
15. See below regarding my choice of this translation here.

appointed time for vengeance will arrive, and God will then see to it that the people sin so as to justify the pre-ordained punishment.

Maimonides does not address this shocking idea directly. He does not pronounce it to be false. Instead, he tells the reader that any attempt at analysis would lead to the vexing issues of divine decree and human capabilities, which is turn leads to the subject of divine justice, which must be affirmed even though the justice of the deity's actions is utterly inscrutable and incomprehensible.

At this point, I ask a simple question: In the end, does Maimonides accept the verse in its original order, with all that it implies?

My answer is in the affirmative. True, as Maimonides will soon say, neither Jewish (those of our *sharīʿa*) nor presumably Muslim (though perhaps also Christian) *mutakallimūn* have had anything of value to say about divine justice. However, since it is beyond human ability to fathom divine justice, how can anyone say something meaningful other than admitting we do not, and cannot, comprehend?

Though Maimonides is rightly regarded as a pioneer in the philosophical allegorization of Scripture, we should recall two critical points. First, Ps. 119:126 is not being allegorized, in the sense of choosing alternative meanings for its key words, along the lines set down by Maimonides in the first part of his *Guide* for a whole slew of biblical Hebrew nouns and verbs. We are talking here about the order of the words, not their meaning. The key word here, *et*, equivalent to the Arabic *waqt*, "time," retains its meaning whether we invert the hemistiches or leave them as they are. However, in the original word order, the word takes on a more specific, and sinister, connotation as "instant"—specifically, a pre-ordained instant. Second, as a rule, Maimonides insists that we seek to understand biblical verses in their literal meaning, even when the rabbis have long ago imposed upon them a non-literal understanding. Examples are Ex. 21:23 ("an eye for an eye"), explicated near the beginning of *Guide* III:41, and Lev. 19:26 ("do not eat above the blood"), discussed in *Guide* III:46. Both of those verses contain valid lessons when read literally, even though their normative force is exercised by way of rabbinic interpretation.

In short, even after acknowledging Maimonides' clear preference for *falsafa* over the *kalām*, I do not see that Maimonides is rejecting the verse in its original word order. The verse remains.

Note further that Maimonides has changed the subject a number of times, moving first to questions of free will and then to divine justice.

This looks to be an evasive tactic, which may cause the reader to forget that the question here is the meaning of the verse in its original word order. Still, after the *mutakallimūn* have been scolded and the philosophers endorsed, we remain with the verse in its original word order. The switch in the order of the hemistiches was done by the Rabbis, not the philosophers, and the reason for doing so has nothing to do with the issues that Maimonides has introduced into the discussion. The fundamental problem with leaving the verse as it is lies in the uneasiness that it causes for us with regard to divine justice. I do not see how the appeal to the philosophers helps, unless it is to secure the fact that divine justice is something that we cannot understand. This would make sense; it is the philosophers who have fully demonstrated (in Maimonides' view, at least) that God's justice cannot be distinguished from His knowledge or His essence.

Consider again the story of the spies. Maimonides does not devote special attention to the story of the spies in his *Guide*, but the pieces of the puzzle are for the most part clarified here and there in his writings, as I have tried to show. Divine wisdom had decreed that the generation that grew up in slavery could not enter the Promised Land. A divine command, not a human initiative, called for the sending of spies (Num. 13:2).[16] The reaction of the recently emancipated slaves to reports about the gargantuan inhabitants of Canaan and their fortified cities should not have come as a surprise. What came of this? A punishment, justified by the sinful reaction of the Israelites, which led to the realization of the divine will—the will that had been revealed already at the moment of the Exodus.

Of course, Maimonides does not hold that divine justice can *never* be understood. Often it can, and important lessons can be drawn from it. Consider, for example, the first two chapters of his *Guide*, which I take to be programmatic in that they clarify the essential properties of the human raw material with which Maimonides will work: what we are, the unique endowment that we have received in the form of intellect, and what we are morally charged to make of ourselves. Critical features of the human condition—specifically, the difficulty of attaining intellectual knowledge (the biblical "bread" that we earn only by the sweat of our

16. Rashi's comment that the Hebrew *shelaḥ lekha* transfers the initiative to Moses seems to me to be aimed at neutralizing precisely the issue I point to: It was a divine command, with easily foreseeable consequences, given the nature and track record of the Israelites, that led to the sin and its punishment.

brow)—are the result of a just divine punishment, measure for measure, meted out in retribution for the human turn away from intellect and toward the imagination and the body. Even though God and His justice are always one and the same, and hence beyond human comprehension, it is only for special cases that we invoke the inscrutability of divine justice. The pre-ordained moments of wrath are such special cases.

Let us return to Ps. 119:126 and Maimonides' understanding of the verse when it is left to its original word order. I find a strikingly similar idea in a Qur'an commentary by ʿAbd al-Razzāq al-Kāshānī (d. 1329), one of the early exponents of the thought of the great Andalusian mystic Ibn ʿArabī, but also someone who had studied philosophy before embracing mysticism and whose Sufi ideologies are articulated in a philosophical key and, in part, in a philosophical idiom. However, his exposition of the verse from the Qur'an is neither Sufi nor philosophical. Instead, he extracts and explicates the plain and direct meaning of the text.

The verse is found in Surat al-Isrāʾ (Q 17:16) and announces, "When we intend to destroy a city, we command its wealthy people; they act unlawfully therein; thus, the word is justified for them, and we destroy them utterly." The plain sense of the verse, taken in its original word order, is very much like the timeline Maimonides sets down. There is first a divine intent to destroy, then a command, then disobedience, which then justifies "the word" (*al-qawl*)—here referring to the intent, i.e. the primordial divine decree—mentioned earlier in the verse; all of this is followed by the destruction of the city. The commentary of al-Kāshānī expands upon this, finessing all along the tricky question of free will. Al-Kāshānī writes:

> . . . When the moment (*waqt*) of the city's destruction comes, there must be some deservingness (*istiḥqāq*) for its destruction. That would be its disobedience and its disobeying God. When His will attaches to her destruction, it must necessarily be first preceded by the disobedience of her people of wealth and ease, those who enjoy God's kindness with pride and insolence and do within her inappropriate things. This [comes about] by means of God's command and power, on account of misbehavior that necessarily ensued from their readiness. Now their destruction is mandated.[17]

17. His commentary is the often reprinted two-volume *Tafsīr Ibn ʿArabī*; I translate from pp. 712-13 of the first volume. It has been suggested that the printers know by now that Al-Kāshānī is the true author, but they expect the book to sell better when it is attributed to Ibn ʿArabī.

Note here the same components and the same sequence of events that are found in Maimonides' reading of the verse from Psalms: a destruction that looks to be divinely foreordained, a moment when this is to be executed, and divine command—a divine ruse—that sees to it that the people act in a way that demands punishment. It is not clear how much, if any, free will is at play here.

Readiness, *isti'dād,* is an important philosophical concept, and of course it plays a major role in Maimonides' thought as well. God does not react. His blessing, bounty, effulgence, and radiance overflow without pause; what it does to the material objects that populate the cosmos depends on their individual readiness to receive. However, one can ready oneself; one can purchase a better configuration (*hay'a*) through spiritual and ethical exercises. Just how much leeway this gives to an individual is not certain.[18] Recall Maimonides' warning that at a certain, unspecified, and unspecifiable point, the individual has no recourse but to leave a corrupt city and to go it alone.

One final observation, not directly relevant to the present discussion but worth making: Maimonides calls the inscrutability of divine justice a *qā'ida*, a fundamental principle. This is the word he uses elsewhere in his commentary to the Mishnah to label the thirteen fundamental principles that every Jew must accept. These are commonly called beliefs, but, as R. Yosef Qafih was fond of noting, they are not beliefs that are ratified uncritically, but rather convictions arrived at by investigation and cogitation; the word for conviction is *i'tiqād*. That word appears only in the final sentence of the commentary cited above. However, with regard to at least some cases of divine justice, it seems that we are dealing with a belief rather than a conviction. Whatever happens, however difficult it is to understand, we must believe that God acts justly.

Astrology

What role do the stars play in this scheme of things? None at all, in my understanding of Maimonides. Notions of world history, or national histories, with certain critical moments foreordained certainly do conjure up the notion of astral governance, but Maimonides will have

18. A chapter in a book now in preparation, *In and Around Maimonides* (under contract with Gorgias Press), will address these issues in detail. For a preview, see the slide presentation at https://www.youtube.com/watch?v=DvlZGdx-RFg. (Google "Maimonides on the Possibilities of Moral Improvement.")

none of it. He sees no scientific problem in excluding the stars; there is nothing in the astrological theories that he knows about that gives him any cause to ponder a role for them.[19] Astrology is indeed an issue—but only in the popular imagination. For this reason, it is only in his *Epistle to Yemen* that he undertakes a systematic refutation of astrological history. The messianic fervor that had gripped the Jewish community in that land was in part due to astrological forecasts predicting a great upheaval; Maimonides labored to put those ideas to rest.

The first and most extensive part of his refutation consists in a lengthy analysis of critical events in Jewish history and the astral cycles that are alleged to govern those events. Maimonides would not on his own initiate any such discussion, in my view; that would amount to acknowledging that there is some plausibility to astrology and that it hence must be refuted. For this reason, there is no discussion of astrological history in the *Guide*.[20] His rebuttal was rather dictated by the particular circumstances that led to the writing of the text in question, the *Epistle to Yemen*, and the role astrology played in the messianism that had gripped the Jewish community there. His critique covers several pages of text;[21] I will present only a few highlights.

Maimonides begins by urging his correspondent, Yaaqov ben Fayyumi, to rinse his mind of astrology the way one rinses clothing in order to remove filth. The falsity of astrology is well-known, and there are solid proofs demonstrating its falsity—but (as usual) this is not the place to go into them. He then surveys a long list of critical events in Jewish history in which the events that transpired were exactly the opposite of the astral forecast, beginning with the redemption from Egyptian slavery, which took place at a time which the astrologers had declared to be maleficent in the extreme. So also will the messiah come at a time that all astrologers, and other seers as well, will agree that there is no hope for the Jewish People.

Yaaqov ben Fayyumi had remarked in his letter (which unfortunately has not been preserved for posterity) that the sciences had declined in

19. Maimonides' stance on astrology is reviewed in detail and with bibliography in Y. Tzvi Langermann, "Maimonides' Repudiation of Astrology," *Maimonidean Studies* 2 (1991): 123-58, and reprinted in *Maimonides and the Sciences*, ed. Robert Cohen and Hillel Levine (Dordrecht, 2000).

20. I trust that the reader can distinguish between astrolatry (worship of stars and heavenly bodies), which is indeed discussed in the Guide, and astrological history. The key extant text of the latter is David Edwin Pingree, The Thousands of Abu Mashar (London: Warburg Institute, 1968).

21. Yitzchak Sheilat (ed.), *Iggerot ha-Rambam* (Ma'ale Adumim, 1987), 100:24-104:9 (Arabic), 145:3-150:12 (trans.).

Yemen because the most recent Jupiter-Saturn conjunction took place in the earthly triad. (Astrologers grouped the twelve signs into four sub-groups of three; each sub-group was identified with one of the four elements.) Maimonides counters that the activities of the three forefathers, as well as King Solomon—all high points of intellectual achievement—took place in "earthly" parts of the conjunction cycle.

Perhaps the strongest indication of the zeal of Maimonides' opposition to astrology is his rejection of the conjunction forecast for 1186, which is the next item on his list of fears to dispel. He remarks:

> And so also with regard to your saying that some people have computed the next conjunction, and they found that all seven stars will conjoin in a single sign. This is an incorrect statement on the part of whoever said it to you. For there is no conjunction of seven at all, not in the next conjunction, nor in any number of conjunctions that will follow upon it. This is nothing but the talk of someone who has not attended to the computation well at all.[22]

Is Maimonides correct? The *Epistle to Yemen* was most likely written in 1172 or 1173. The next Jupiter-Saturn conjunction (the cyclical conjugations that indicate turning points in history, of which Maimonides speaks in the preceding lines) took place in 1186. That year saw—on September 15, to be precise—one of the closest bunchings ever of the seven planets, all of which were grouped together within a span of 12°.[23] Many sources discuss this conjunction, and dire predictions were made. Computations, including one recorded in a Genizah fragment, placed all seven bodies (and other significant points) within the sign of Libra. Bernard R. Goldstein and David Pingree, who published the text from the Genizah, cite Maimonides and comment: "In denying that a conjunction will take place, Maimonides was referring to a true conjunction of all the planets at a single point, rather than a conjunction of the planets in a single zodiacal sign."[24]

22. My translation from the Judaeo-Arabic, published in Sheilat, *Iggerot ha-Rambam* 1:102; in a variant recorded there in n. 62, Maimonides states that such a conjugation will not happen "even in ten thousand years, as anyone who knows the true calculation (*ta'dīl*, literally "equation" or "correction") will know."

23. Salvo De Meis and Jean Meeus, "Quintuple Planetary Groupings—Rarity, Historical Events, and Popular Beliefs," *Journal of the British Astronomical Association* 104 (1994): 293-7.

24. Bernard R. Goldstein and David Pingree, "Horoscopes from the Cairo Geniza," *Journal of Near Eastern Studies* 36:2 (1977): 113-44, at 114-15. Goldstein and Pingree cite some other accounts for that conjunction. Additional reports can be found in Godefroid de Callataÿ, "La grande conjonction de 1186," in *Occident et Proche-Orient: Contacts Scientifiques*, ed. Isabelle Draelant et al. (Turnhout, 2000), 369-84.

Goldstein and Pingree are certainly correct about Maimonides' denial that the planets will ever conjoin (in their true longitude)[25] in a single point. In *Mishneh Torah*, Maimonides indicates that he holds the planets all to have been placed at creation in 0° Ari, with no latitude to the north or south, and the blessing "*Oseh ma'aseh bereshit*" is recited upon their individual returns to that point.[26] Maimonides gives no hint of a collective return, and it seems that he denies that their orbits are commensurable, a point made by Philoponus as well. Ibn Rushd and Gersonides, by contrast, held that the orbital motions have a common ratio; the latter considers this to be important for his theory of astral providence. Maimonides' view is consistent with his own opinion that the cosmos did have a beginning in time, but will continue to exist forever.[27]

However, in the *Epistle to Yemen* Maimonides is not talking about a return of all seven bodies to a single point, but rather to their falling within a single sign, "*fī burj wāḥid*"—that is (precisely or approximately) within a span of thirty degrees. Clearly, this is a much stronger denial, which may not be true even if the planetary motions are incommensurable.[28] I cannot say if Maimonides was correct on this point; astrologers worked with different methods for dividing the zodiac, and I cannot be sure that there was no such division according to which Maimonides' statement would be true.[29] But I wonder if Maimonides actually thought this issue through completely. I tend to think that the extreme statement is an expression of Maimonides' uncompromising opposition to astrology, rather than the scientific conclusion arrived at by a competent astronomer, which he certainly was.

It would indeed be unsettling if Maimonides had knowingly made a false proclamation. In his commentary to the Mishnah, he lambastes Sa'adyah Gaon for making a false statement about the history of the

25. That we are speaking of true longitude is clear from the variant noted in n. 23 above; *ta'dīl* means "correction" or "equation"—i.e., correcting the mean longitudes to the true ones.

26. *Laws of Blessings* 10:18, following what appears to be his own interpretation of *Berakhot* 59b.

27. For a much fuller discussion and source references, see Tzvi Langermann, "Maimonides and Astronomy: Some Further Reflections," in Langermann, *The Jews and the Sciences in the Middle Ages* (Ashgate, 1999), essay IV.

28. Goldstein and Pingree were likely misled by the English translation of Maimonides' *Epistle* that they cite. See, however, their references in n. 11.

29. John North, *Cosmos: An Illustrated History of Astronomy and Cosmology* (University of Chicago Press, 2008), 187-88.

calendar.[30] Sa'adyah's aim was noble; he was polemicizing against the Karaites. Nonetheless, Maimonides warns, this is no excuse for making incorrect remarks. If he himself had done the same here—and, again, I hope that there is some other way to interpret his remark—it would be a further indication of the extremity of his opposition to astrology.

Back to the *Epistle to Yemen*. Another belief that must be shaken off is the association of the cycle through the four groups of signs with large-scale disasters, which then look to be natural disasters rather than divine retribution. In this manner, some non-believers have explained Noah's flood, as well as conflagrations (a flood of fire), and floods of air and earth as well.[31] All of these are false teachings that undermine the Torah and the morality which the Torah seeks to instill.

There is one passage from a different text that must be brought into this discussion. Maimonides' *Letter on Astrology*, which is in fact a repudiation of astrology, does not directly raise the topic of astrological history. However, there is one indirect reference that I find to be supportive of the line I am taking in this paper. Maimonides complains that our ancestors' fascination with astrology led to the loss of Jewish sovereignty and the destruction of the Temple:

> They erred, and hewed to them [the books on astrology], thinking that they were praiseworthy sciences and that they had great utility. They did not engage in learning the art of war, nor in the conquest of territories. Instead, they thought that those things would be of use to them. For that reason the prophets labelled them stupid and foolish. They were certainly stupid. . . .[32]

While this is not stated explicitly, I think that Maimonides means to say that those stupid people thought that astrology would foretell the rise and fall of political entities, the expansion of contraction of empires, and the like; therefore, there was no need to actually do anything. Maimonides emphasizes that while there may be indeed divinely ordained moments of historical import—for example, that which led to the drowning of the Egyptian army in the Red Sea, or the future coming of the messiah—the stars will not help. There is no way of divining when

30. *Commentary on the Mishnah*, *Rosh Hashanah* 2:7. Sa'adya's name is not mentioned, but it is quite certain that he is the intended target of the criticism. R. Qafih, in n. 12 to his Hebrew translation of this comment, refers to Sa'adya's gloss on Ex. 13:10.

31. These remarks were later incorporated in the Yemenite compilation *Midrash ha-Gadol*; see Y. Tzvi Langermann, *Yemenite Midrash: Philosophical Commentaries on the Torah* (New York, 1996), 213.

32. Sheilat, *Iggerot*, 2:480.

these moments will occur. We are all charged with acting according to the hard-nosed realities and the moral choices that come our way.

This, in my view, is the Maimonidean philosophy.

Time

Is there any role at all for the stars in this scheme? As far as I can see, they do no more than to mark time, the role assigned to them in Aristotelianism. The fifteenth of the twenty-five premises of "Aristotle and the Peripatetics after him" (set down at the beginning of book II of the *Guide*) states that "Time is an accident of motion." In *Guide* II:30, Maimonides avers that:

> The foundation (*qāʿida*) of the whole Law (*sharīʿa*) is the view that God has brought the world into being out of nothing without there having been a temporal beginning. For time is created, being consequent upon the motion of the sphere, which is created.[33]

The stars do a play a role in the transfer of divine bounty; it is at the level of the astral bodies that the *fayḍ* or divine effusion is transformed into physical, material forces. Maimonides' presentation of the path from the deity down to earth via the stars was designed precisely to disarm the stars of the powers that astrology had given to them.[34]

But what about time? I have just noted Maimonides' endorsement of the Aristotelian conception. He also states that there is no relation (*nisba*) between God and time (*Guide* I:52). Nonetheless, in the same premise 15 cited above, he adds that "time cannot be conceived by the intellect except together with motion." Does this allow for another sort of time that is not bound to motion, even though we cannot grasp it? I think that the answer is in the affirmative. There are scattered remarks in Maimonides' writings that hint at this. Each can be explained away or dismissed, but I would not hasten to do that.

For example, Maimonides praises Galen—the same Galen whom he derides for being a failed amateur in philosophy—for calling time "something divine whose true nature cannot be grasped."[35] In the seventh of the eight chapters that form his introduction to *Avot*, Maimonides speaks of the wealthy person being the one "who is satisfied with what

33. Trans. Pines, 349-50.
34. See Langermann, "Maimonides' Repudiation of Astrology," *Maimonidean Studies* 2 (1991): 123-58.
35. *Guide* I:73, third premise, trans. Pines, 196-7.

time has brought into existence for him (*awjadahu al-zamān*)." I am sure that most if not all readers take this to be said just in a manner of speaking, and I do not entirely disagree. But maybe not.

The divine aspect of time, if one may call it that, reveals itself in the way that certain events occur at precise moments that have been pre-programmed into the universe. Maimonides advances that idea in connection with miracles. In his view, this is a way to accept both a fixed natural law—which disallows a divine intervention induced by an emotional reaction (anger, pleasure) and/or certain human behavior that He ought to have known about beforehand—but allows at the same time the miracles that the Jewish tradition cannot do without. God "put into these natures that all the miracles that occurred would be produced in them at the time when they occurred."[36] Maimonides ascribes this view to the Sages, praises it and, in my opinion, accepts it into his system.

Similarly, with regard to those Egyptians who drowned in the Red Sea, "each and every one of those who afflicted and harmed Israel had the authority not to harm them had he [so] wished" perished at the specific moment (*waqt*) that had been determined to be that very moment when waters of the Red Sea, which had violated their natural motion to stand upright as the Israelites passed, would again follow their lawful, natural motion downwards.[37] How did it happen that just "in time" for the termination of that pre-ordained aberration from the natural order, those squadrons that were made up of the Egyptians who had chosen badly and had decided to harm the Israelites were passing under the standing columns of water? Was this justice? It must have been, but we cannot understand how—nor can the philosophers, the *mutakallimūn*, or the sages of Israel. This event, and others like it, manifest the coalescence of an unfathomable divine justice and the equally incomprehensible divine timing.

All of this applies—within even greater urgency, I submit—to the great *eschatos*, the messianic redemption. In the *Epistle to Yemen*, Maimonides expends some extra words in order to make it clear that this cannot be known exactly. *Wa-amā taḥqīq al-waqt ʿalā taḥrīr fa-lam yuʿlam*; "But as for the true determination of the moment, with precision, it was not known."[38] Scribes apparently were not sure about this sentence; some versions replace the perfective *fa-lam* with *fa-lā*, the imperfective mode (often functioning as a future tense), yielding "it

36. *Guide* II:29, trans. Pines, 345.
37. *Guide*, ibid.
38. Sheilat, *Iggerot*, I:105.

is not known" or "it will not be known" (that is, it will not be known until it happens). What we do know, and this is the main message that Maimonides tries to get across at every opportunity, is this: At every moment, in every circumstance, whatever life throws before us or, to use his phrase, time brings into existence for us, we must make the proper moral choice. Do what is right. Maimonides never, ever speaks of doing things in order to hasten the coming of the messiah. Do now what is proper because it is proper.

Conclusions

Time and justice, two key concepts of Maimonides' religious philosophy, have precise definitions with critical application in our daily lives. However, they have divine aspects, which, in Maimonides' austere monotheism, make them indistinguishable from God. With regard to justice, this is stated very clearly; with regard to time, the matter is more subtle. It is only the divine side of those concepts that is relevant to this paper. Maimonides holds, I submit, that history, especially Jewish history, is directed by God; certain events, none of which are foreseeable unless revealed by a prophet, will occur at certain moments (*awqāt*). The timing has been set at creation, and the justice of the result—which may not be apparent, indeed the result may appear to us to be unjust—is simply beyond human ken.

I began this paper with a personal confession, revealing how a YouTube video by a distinguished academic helped me to make sense out of these issues. I will end with a different personal recollection. Many years ago, I attended a lecture by the late Professor Isadore Twersky at the Israel Academy. The topic was Maimonides on history. The auditorium was packed, every seat taken and all the aisles filled as well, and many people were standing at the back of the room. Coming from Boston, I knew Professor Twersky well; he was a close friend of my father, and our families were and remain friends. I was proud that a scholar from Boston had such standing in Jerusalem. However, I left the lecture with a feeling of unease; my impression was that the entire lecture consisted of Professor Twersky citing again and again the verse from Is. 55:8, "Just as the heavens are high above the earth, so also are My ways high above your ways, and My thoughts above your thoughts." This is the verse cited by Maimonides in the long excursus cited earlier. I now realize that that verse sums up as nicely as anything Maimonides' historiosophy.

YITZCHAK BLAU

Contrasting Historical-Critical and Literary Approaches to Biblical Interpretation: The Case of Exodus 1-2

In this essay, I contrast what I call the Historical-Critical approach, the predominant methodology in academic bible scholarship as practiced in the university world for the past two centuries, with a Literary approach that has grown in popularity, both inside and outside academia, in the past half century. Setting these two approaches to biblical interpretation side by side enhances our understanding of the strengths and weaknesses of each approach.

As a test case, we will examine both methodologies at work regarding the first two chapters of Exodus. I argue that some textual problems that the Historical-Critical approach seeks to resolve are resolved more plausibly by the literary method, and also that literary categories such as intertextuality and *leitwort* (key word) illuminate the text in a way that the Historical-Critical method cannot.

Describing these two approaches obviously involves a significant degree of generalization, and some scholars utilize both methods; reality does not always split neatly into binary divisions. Yair Zakovich[1]

1. Yair Zakovich, *Ḥayyei Shimshon: Nittuah Sifruti Bikkorti* (Jerusalem: Magnes Press, 1982).

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and Yaira Amit[2] are examples of scholars who combine these methodologies. At the same time, other prominent scholars remain fully entrenched in the Historical-Critical approach. James Kugel, for example, has long portrayed the Literary approach in a negative light.[3] There is value in comparing the methods in their pure forms, a project that is facilitated by examining older scholarly works, those preceding the literary movement.

I also note that this essay obviously can only analyze a small sample size. In the future, however, I hope to increase the sample and illustrate a similar pattern over a much larger canvas of biblical material.

General Contrasts

Critical biblical scholarship in the university setting emphasizes questions of composition and history. With regard to the Pentateuch, scholars developed various theories as to the different strands woven together into the final product. Although there is much disagreement within this field about the correct historical reconstruction, the most famous theory—the Documentary Hypothesis of Graf and Wellhausen—remains a good starting point. According to this theory, writers referred to as J, E, P, and D were the main contributors to the final product. Scholars rely upon the biblical usage of different names for God, other linguistic variants, and doublets (parallel stories with differences, such as multiple wife/sister stories about Abraham and Sarah) to identify the various authors.

Historical-Critical Bible scholars like to situate the Pentateuch within the context of other cultures in the ancient Near East. They compare biblical covenants to ancient Hittite suzerain treaties, the flood story to the Gilgamesh epic, biblical law to the Code of Hammurabi, and so on. While these scholars do occasionally take note of salient differences between the Bible and these Near Eastern texts, the scholarly thrust stresses the similarities.

2. Yaira Amit, "*Iẓẓuv u-Mashmaʿut be-Sippur Kerem Navot ha-Yizraeli* (*Melakhim* I 21)," *Beit Mikra* 60:1 (5775): 19-36.

3. James Kugel, "On the Bible and Literary Criticism," *Prooftexts* 1:3 (1981): 217-36. See also the subsequent exchange between Kugel and Adele Berlin, "On the Bible as Literature," *Prooftexts* 2:3 (1982): 323-32, and his online essay, "Appendix 1: Apologetics and 'Biblical Criticism Lite,'" 1-23, available at http:// www.jameskugel.com/wp-content/uploads/2014/10/Aplogetics-and-Biblical-Criticism-Lite.pdf.

While traditional Western religions view the Bible as a source of religious guidance, moral instruction, and psychological insight, such themes find muted expression in Historical-Critical biblical scholarship. Instead, stories are viewed as etiological tales, stories intending to explain how places were named or how different languages developed, or as power plays in which representatives of the Northern or Southern kingdom or Aaronoid and non-Aaronoid priests portray their side in the best possible light.[4]

In the early part of the twentieth century, Martin Buber and Franz Rosenzweig pointed the way towards another approach. Although they accepted many of the findings of critical scholarship, they tended to read the text we have as a unity that holds together well. In Rosenzweig's famous phrase, R stands not for Redactor, but for Rabbenu.[5] Secondly, they saw great moral pathos and keen insight in the biblical world. Finally, they noted how the Bible uses sophisticated literary techniques to great effect. For example, Buber emphasized the *leitwort*, a word repeated multiple times that adds resonance to a story.[6] Thus, for instance, repetition of the word "brother" in the Cain and Abel story (Gen. 4) underscores that the first murder is a fratricide. Sensitive to the use of word play, Buber and Rosenzweig attempted to maintain the word play of the Hebrew original even in their German translation.

The past fifty years have witnessed great flowering of this literary approach, with the two most significant contributions being Robert Alter's *The Art of Biblical Narrative*[7] and Meir Sternberg's *The Poetics of Biblical Narrative*.[8] Many other scholars—such as Adele Berlin,[9] Michael

4. A good contemporary example is James Kugel, *How to Read the Bible: A Guide to Scripture Then and Now* (New York: Free Press, 2007). In each chapter, he contrasts the biblical account per se with the readings of ancient interpreters. In Kugel's presentation, the Bible never has any moral grandeur or psychological insight until the ancient interpreters have their way with it. See my critique of this volume in BDD 29 (2014): 7-13.

5. Martin Buber and Franz Rosenzweig, *Scripture and Translation,* trans. Lawrence Rosenwald with Everettt Fox (Bloomington, IN: University of Indiana,, 1994), 23.

6. Ibid. 114-28, 143-50.

7. Robert Alter, *The Art of Biblical Narrative* (2nd ed., New York: Basic Books, 2011).

8. Meir Sternberg, *The Poetics of Biblical Narrative: Ideological Literature and the Drama of Reading* (Bloomington, IN: University of Indiana Press, 1987).

9. Adele Berlin, *Poetics and Interpretation of Biblical Narrative* (Sheffield: Almond Press, 1983).

Fishbane,[10] J. P. Fokkelman,[11] Yonatan Grossman[12] and Meir Weiss[13]—have penned important works of literary biblical interpretation. In addition to *leitwort*, they analyze intertextuality, clever word choice, irony, variation in repetition, type scenes, point of view, and many other literary techniques. Their readings discern great ethical and religious meaning in the Pentateuch.

It is interesting to note that both Alter and Sternberg are professors of comparative literature who came to Bible later in their careers. This reflects the fact that it sometimes takes an outsider's perspective to get beyond methodologies standard in a field. That being said, Berlin, Fokkelman, and Fishbane are all professors of Bible and Jewish studies, so insiders also helped generate this revolution.

The Literary approach has made enough inroads that students now frequently encounter such ideas in university Bible courses. At the same time, the Historical-Critical approach remains alive and well.

We have noted three salient distinctions between the two approaches: Historical-Critical Bible professors divide the text into various authors, whereas the Literary approach reads the text as a unified whole. Classical biblical scholarship dedicates much time to comparative study with other cultures, whereas the Literary school emphasizes the artistry of the biblical writing in and of itself. The former approach tends to identify little wisdom and insight in the Pentateuch, while the latter locates a great deal.

It should be clear that preferring one approach does not mandate viewing the other as worthless. If study of ancient ziggurats helps us understand the Tower of Babel story or if expertise in Akkadian illuminates the meaning of an obscure biblical term, those are positive developments. Nonetheless, we will take note of three shortcomings of Historical-Critical scholarship. First, there are methodological flaws in the approach per se. Second, the exclusive focus on issues of history and composition blinds these scholars to alternative and preferable solutions to textual problems. Finally, practitioners from this school are often indifferent to literary techniques that provide meaning and depth.

10. Michael Fishbane, *Text and Texture: Close Readings of Biblical Texts* (New York: Schocken 1979).
11. J. P. Fokkelman, *Narrative Art in Genesis* (Assun: Von Gorcum, 1979).
12. Yonatan Grossman, *Galuy u-Mazpun: Al Kammah mi-Darkei ha-Iẓẓuv shel Sippur ha-Mikra'i* (Tel Aviv: Hakibbutz Hameuchad, 2015).
13. Meir Weiss, *The Bible From Within: The Method of Total Interpretation* (Jerusalem: Magnes Press, 1984).

With this background in mind, we will examine how each school reads the first two chapter of Exodus, chapters that describe the enslavement of the Israelites in Egypt, the birth and hiding of Moses, and three episodes from Moses' youth.

Exodus 1

Our presentation of the Historical-Critical approach relies primarily on the work of Brevard Childs,[14] Samuel Lowenstamm,[15] Martin Noth,[16] and John van Seters.[17] Although, as noted above, some contemporary scholars combine the methods or appreciate both, these scholars did their primary work before the growth of the Literary approach. They therefore bring the Historical-Critical approach into relief in its pure form, and thus facilitate contrasting the methods.

For the most part, the works of these scholars share the characteristics enumerated above, but Childs, with his "canonical approach," is quite interested in both theological meaning and the current form of the masoretic text. In his commentary on Exodus, Childs first engages in source criticism and then addresses the text in its final, canonical from.

We will first present some of the verses that will occupy our attention:

> 8 Now there arose a new king over Egypt, who knew not Joseph. 9 And he said unto his people: "Behold, the people of the children of Israel are too many and too mighty for us. 10 Come, let us deal wisely with them, lest they multiply and it come to pass that when there befall us any war, they also join themselves unto our enemies, and fight against us, and get them up out of the land." 11 Therefore, they did set over them taskmasters to afflict them with their burdens. And they built for Pharaoh store-cities, Pitom and Raamses. 12 But the more they afflicted them, the more they multiplied and the more they spread abroad. And they were afraid because of the children of Israel. 13 And the Egyptians made the children of Israel to serve with rigor. 14 And they made their lives bitter with hard service, in mortar and in brick, and in all

14. Brevard S. Childs, *Exodus: A Commentary* (London: S.C.M. Press, 1974).
15. Samuel Lowenstamm, "The Story of Moses' Birth," in Lowenstamm, *From Babylon to Canaan: Studies in the Bible and its Oriental Background*, ed. Yitzhak Avishur and Joshua Blau (Jerusalem: Magnes Press, 1992), 201-21.
16. Martin Noth, *Exodus: A Commentary* (Philadelphia: Westminster Press, 1962).
17. John Van Seters, *The Life of Moses: The Yahawist as Historian in Exodus-Numbers* (Louisville, KY: Westminster/John Knox Press, 1994).

> manner of service in the field; in all their service, wherein they made them serve with rigor. 15 And the king of Egypt spoke to the Hebrew midwives, of whom the name of the one was Shifrah and the name of the other Puah. 16 And he said: "When you do the office of a midwife to the Hebrew women, you shall look upon the birth-stool: if it be a son, then you shall kill him, but if it be a daughter, then she shall live." 17 But the midwives feared God, and did not as the king of Egypt commanded them, but saved the male children alive. 18 And the king of Egypt called for the midwives, and said unto them: "Why have you done this thing and have saved the male children alive?" 19 And the midwives said unto Pharaoh: "Because the Hebrew women are not as the Egyptian women; for they are lively, and are delivered ere the midwife come unto them." 20 And God dealt well with the midwives; and the people multiplied, and waxed very mighty. 21 And it came to pass, because the midwives feared God, that He made them houses. 22 And Pharaoh charged all his people, saying: "Every son that is born you shall cast into the river, and every daughter you shall save alive."[18]

Before proceeding, it is important to note that the first two chapters of Exodus read smoothly as is. Furthermore, the classic supports for multiple authorship, such as variant names of God and striking doublets, are absent in these chapters. This is admirably admitted by Childs, who confirms "a unified quality to the narrative in its present form" and adds that "the usual criteria of the divine name or duplicated story occur too infrequently to aid."[19]

Nonetheless, many academic scholars see multiple strands in the first chapter. Consensus attributes vv. 13-14 to P, but debate ensues about the surrounding verses. Hugo Gressmann argued that the "wise dealings" of v. 10 refer to the subtle plan of having the midwives kill the babies (v. 15) while pretending that the babies were stillborn. Thus, he viewed vv. 11-12 as a separate unit and v. 10 as continuing in v. 15.[20] The problem with this view is that "the more they multiplied" of v. 12 refers back to Pharoah's fear of "lest they multiply" in v. 10. Apparently, then, the passage of vv. 8-12 is a unified whole.

Martin Noth divides between vv. 8-12 and vv. 15-21, attributing the former to J and the latter to E. To bolster his position, he notes that

18. The biblical translations in this essay are taken from the JPS 1917 translation, with some minor modifications.
19. Childs, *Exodus*, 7.
20. Gressman is cited by Lowenstamm, "The Story of Moses' Birth," 201.

v. 11 uses the term "Pharaoh," whereas vv. 15-21 refer to "the king of Egypt." Yet matters are not so simple, since v. 19 includes a reference to "Pharaoh" as well. Noth suggests that this term may be a later addition, a suggestion that exhibits one of the oft-noted flaws of Historical-Critical biblical scholarship—its use of what philosophers of science call ad hoc hypotheses.[21] It is far too easy to dismiss contrary evidence as a later interpolation. Scientific research becomes far less convincing when we can effortlessly dispense with experiments that counter our thesis.

Most scholars view v. 22 as an independent tradition, noting that Jewish males do not seem to be in any danger in chapter 5 and that the rest of Tanakh stresses the servitude in Egypt without mentioning the decree to annihilate the males (with the exception of Ps. 105:25). We will later explore alternative explanations of this phenomenon.

Intertextuality

We will now turn to literary readings of the first chapter, relying upon an insightful essay by James Ackerman.[22] Ackerman argues that the beginning of Exodus harks back to the beginning of Genesis. The terms for Israelite multiplication in Ex. 1:7 (*paru . . . va-yirbu*) match the command to be fruitful and multiply in the creation story (Gen. 1:28).[23] Furthermore, the image of a mother "seeing" that her baby is "good" (Ex. 2:2) parallels the multiple times God sees and declares His creations to be good in the first chapter of Genesis. Intertextuality conveys how the formation of the nation of Israel is a new beginning, almost a second creation.

Ackerman[24] and Judy Klitsner[25] also note parallels to the Tower of Babel episode. Both stories use the phrases "*havah*" (behold) and "*pen*" (lest). Both involve major building projects using "mortar" and "brick." Finally, no names appear in either story. The absence of names is even more pronounced in the second chapter of Exodus, in which the parents of Moses are described as being a man and women from the tribe of Levi. Klitsner suggests that the absence of names reflects

21. Noth, *Exodus*, 23.
22. James Ackerman, "The Literary Context of the Moses Birth Story," in *Literary Interpretations of Biblical Narratives*, ed. Kenneth R. Gros Louis, James Ackerman, and Thayer S. Warshaw (Nashville: Abingdon, 1974), 74-119.
23. Ibid. 74-77.
24. Ibid. 81.
25. Judy Klitsner, *Subversive Sequels in the Bible: How Biblical Stories Mine and Undermine Each Other* (Philadelphia: Jewish Publication Society, 2009), 48-61.

the depersonalization involved in totalitarian society and its projects. Slaves and menial workers lose their individual identities; individuals do not matter as long as the collective achieves its goals.

Leitwort

The key word in vv. 13-14 is clearly AVD, with the word appearing four times in v. 14 and once in v. 13. This repetition leaves the note of servitude ringing in our ears. The Egyptian taskmasters go to great lengths to enslave the Hebrews and make their lives miserable.

Irony

Irony plays a strong role in this chapter. Not only are Pharaoh's decrees ineffectual, they bring about the very things he fears. Pharaoh hopes that servitude will decrease the Jewish birth rate, but it actually increases after the enslavement. He tries to kill the males, but the midwives defy his tyrannical orders. Indeed, his attempt to kill the males eventually leads to his downfall, as Moses grows up in the palace and becomes the beneficiary of an upbringing that leaves him more equipped to lead a revolt. Finally, Pharaoh does not perceive the girls as a threat, yet females are his undoing throughout the first two chapters. His commands are successfully countered by two midwives, his own daughter, and Moses' mother and sister.

Ongoing Themes

This last idea highlights an advantage of the literary approach. Traditional rabbinic medieval commentaries for the most part made their invaluable contributions via painstaking verse by verse analysis. While Naḥmanides and Don Isaac Abravanel did analyze larger sections, most of the rabbinic commentators did not. In contrast, the literary interpreters employ a wide lens, enabling them to see larger pictures. In our context, the themes of heroic women and the irony of Pharaonic futility run through the narrative. The coherence of running themes provides further reason to read the chapter as a unified whole.

Bible scholars consider a practical question in addressing this story: How could two midwives service the entire Jewish population? Answers provided by medieval commentaries prove helpful. Ibn Ezra and others

suggest that these women were, as it were, the heads of the obstetrics department in Egypt, presiding over all the other midwives.[26] One difficulty with his explanation is that the Bible does not refer to these women as "*sarei ha-meyalledot*." Abravanel explains that Shifrah and Puah are not the names of individual women, but rather the names of two distinct nursing positions—one aiding the mother and the other helping with the baby. Thus, Pharaoh actually addressed many women.[27] R. Ovadiah Seforno adds what I consider to be the most profound interpretation. He writes that Pharaoh did a trial run with two women, and their resistance led him to abandon that particular plan.[28] Accordingly, this anecdote illustrates the influence a few individuals can have in defying tyranny. As noted, the defiance theme fits with the actions of Pharaoh's daughter in the subsequent chapter.

The Literary approach might deny the cogency of the question altogether. According to this approach, the Bible is more interested in conveying ideas and ideals with great artistry and less interested in painting a precise historical picture. From this perspective, the literary benefits of a personal conversation between Pharaoh and a small number of midwives trump historical concerns about the precise number of midwives.[29] From that vantage point, Exodus conveys the heroic resistance of two women, without addressing pragmatic questions about how many midwives were actually commanded in the historical Egypt.

The defiance theme may also help us understand why the killing of the male babies does not receive extensive reporting in the Bible. Note that Pharaoh does not begin with a genocidal command to his entire nation. As Naḥmanides observes, tyrants cannot simply command whatever they want; they rely upon propaganda and subtlety to convince their countrymen to go along with their sinister plans.[30] Pharaoh was concerned that the Hebrews, or even the Egyptians themselves, would forcefully resist such a murderous edict. Indeed, the heroic actions of two midwives and of his own daughter indicate that his fears were well-founded. Perhaps Pharaoh's directive to his nation to toss babies into the Nile met with enough resistance that the plan was soon cancelled. If so, this theme is understandably muted in subsequent accounts.

26. Ibn Ezra, Ex. 1:15.
27. Don Isaac Abravanel, commentary on Exodus, p. 7 in the Jerusalem 5744 edition.
28. R. Ovadiah Seforno, Ex. 1:15.
29. I am indebted to Prof. Yonatan Grossman and Zecharya Blau for this last point.
30. Naḥmanides, Ex. 1:10.

We now turn to the second chapter.

Exodus 2

1 And there went a man of the house of Levi and took to wife a daughter of Levi. 2 And the woman conceived and bore a son; and when she saw him that he was a goodly child, she hid him three months. 3 And when she could no longer hide him, she took for him an ark of bulrushes and daubed it with slime and with pitch; and she put the child therein and laid it among the reeds by the river's brink. 4 And his sister stood afar off, to know what would be done to him. 5 And the daughter of Pharaoh came down to bathe in the river; and her maidens walked along by the riverside; and she saw the ark among the reeds and sent her handmaid to fetch it. 6 And she opened it and saw it, even the child; and behold, a boy that wept. And she had compassion on him, and said: "This is one of the Hebrews' children." 7 Then said his sister to Pharaoh's daughter: "Shall I go and call thee a nurse of the Hebrew women, that she may nurse the child for you?" 8 And Pharaoh's daughter said to her: "Go." And the maiden went and called the child's mother. 9 And Pharaoh's daughter said to her: "Take this child away and nurse it for me, and I will give you your wages." And the woman took the child and nursed it. 10 And the child grew, and she brought him unto Pharaoh's daughter, and he became her son. And she called his name "Mosheh" and said: "Because I drew him [meshitihu] out of the water." 11 And it came to pass in those days, when Moses was grown up, that he went out unto his brethren and looked on their burdens; and he saw an Egyptian smiting a Hebrew, one of his brethren. 12 And he looked this way and that way, and when he saw that there was no man, he smote the Egyptian and hid him in the sand. 13 And he went out the second day, and behold, two men of the Hebrews were striving together; and he said to him that did the wrong: "Why do you strike your fellow?" 14 And he said: "Who made you a ruler and a judge over us? Do you think to kill me, as you did kill the Egyptian?" And Moses feared and said: "Surely the thing is known." 15 Now when Pharaoh heard this thing, he sought to slay Moses. But Moses fled from the face of Pharaoh and dwelt in the land of Midian; and he sat down by a well. 16 Now the priest of Midian had seven daughters; and they came and drew water and filled the troughs to water their father's flock. 17 And the shepherds came and drove them away; but

> Moses stood up and helped them and watered their flock. 18 And when they came to Re'uel their father, he said: "How is it that you are come so soon today?" 19 And they said: "An Egyptian man delivered us out of the hand of the shepherds, and moreover he drew water for us and watered the flock." 20 And he said to his daughters: "And where is he? Why is it that you have left the man? Call him, that he may eat bread." 21 And Moses was content to dwell with the man; and he gave Moses Ẓipporah his daughter. 22 And she bore a son, and he called his name Gershom; for he said, "I have been a stranger in a strange land."

Most Bible scholars agree that this chapter is a unified whole. They attempt to augment understanding of this chapter by turning to other ancient literature about misplaced babies. The theme of a baby brought up by a family other than his biological parents who subsequently goes on to great things appears in the stories of Oedipus, Romulus, Sargon, and Cyrus. But in all of those tales, a child of royal lineage is brought up by commoners, the very opposite of the Moses story. This point bothered historian Eduard Mayer so much that he asserted that in the original account, Pharaoh's daughter was the biological mother.[31] A different approach could highlight how the world of the Bible does not idolize royalty; the biblical perspective deems it more honorable to come from a simple Levite couple.

Parallels to the Sargon legend lead Lowenstamm to conclude that the original account involved an illegitimate birth, which induced Moses' mother to hide the baby. He cites further support from the total absence of the father after the birth. Lowenstamm writes that the parental lack of concern "would be intelligible only in the case of a man who has begotten an illegitimate child."[32] In response to the problem of discrepancies between the Sargon story and the biblical episode, Lowenstamm states that "the remaining discrepancy between the two narratives disappears once it is recognized that the biblical form of the story betrays its origin in the legend describing the exposure of an illegitimate child."[33] To some degree, this strategy again enables scholars to ignore contrary evidence. If the current form of a narrative does not fit a theory, they can always claim that the original form did so. A methodological desire to read biblical stories in the light of ancient Near

31. Mayer is cited by Lowenstamm, "The Story of Moses' Birth," 201.
32. Ibid. 204.
33. Ibid. 204-5.

Eastern parallels sometimes leads scholars astray. Instead, we should investigate if Lowenstamm's approach is truly the only way to restore intelligibility to this tale.

Abravanel offers three alternative explanations for the father's absence. The father may have already perished or was simply away. We can further the second option by suggesting that he was conscripted for work; after all, we are talking about slaves. More intriguingly, Abravanel proposes that the father may have despaired, leaving the mother as the only parent with the wherewithal to attempt a desperate measure to save her son.[34] This would cohere with the running theme of heroic women in the opening two chapters of Exodus. When males lost hope and courage, their female counterparts remained stalwart as they pursued any small strand of possibility.

From this point on, I will not compare treatments of specific textual problems by the Historical and Literary methods. Instead, I will illustrate how, independent of any specific difficulties, certain literary techniques greatly enhance our understanding of the Exodus narrative. A purely Historical approach would not draw on those techniques, and is to that extent poorer.

Type Scenes

Literary readers find significant technique and meaning in the second chapter of Exodus. Robert Alter has developed the idea of a type scene, in which the text uses a common trope but introduces variants into that trope.[35] This technique simultaneously generates a sense of continuity—Isaac emulates the endeavors of Abraham—while also allowing for differences relevant to the individual characters.

Thus, for example, biblical heroes—including Jacob and Rachel, Moses and Ẓipporah, and Abraham's servant and Rebecca—all meet spouses at a well. It is quite noticeable that in the Rebecca example, she meets a representative at the well, and not the groom himself. For Alter, this highlights the more passive element of Isaac's personality. Unlike his son Jacob, Isaac does not find a wife on his own.[36] Alternatively, David Sykes explains that Isaac was the only one of the patriarchs commanded not to leave the Land of Israel (see Gen. 26:2-3).[37]

34. Abravanel, commentary to Exodus, p. 12.
35. Alter, *The Art of Biblical Narrative*, 55-79.
36. Ibid. 64.
37. David K. Sykes, *Patterns in Genesis and Beyond* (New York: Patterns Publications, 2014), 141-42.

In the Moses marriage episode, Moses does the work himself, but the other side seems represented more by a father than a daughter. No dialogue ensues between Moses and Ẓipporah; only Reʿuel insists on inviting Moses home. This variation sets the tone for Moses' ongoing relationship with his father-in-law. Indeed, in the Bible, Moses interacts with his father-in-law (Ex. 18; Num. 10) more than with his wife.

None of these suggestions is available in the Historical-Critical method, nor are those that follow.

Purposeful Ambiguity or Double Entendres

Some biblical texts may consciously lend themselves to two different meanings, as in the case of Jonah's prophetic cry: "In another forty days, Ninveh will be overturned" (Jonah 3:4). Although the simplest reading foresees a calamity for Ninveh, another reading interprets the verse as referring to the locals turning over a new leaf and improving their behavior. Perhaps the prophet intends both meanings, since either eventuality could turn out to be the case. The same technique applies to Abraham's statement before the *akedah*: "God will provide for us the lamb for a burnt offering, my son" (Gen. 22:8). On a basic level, Abraham informs his son that they will find an animal to offer. Yet the juxtaposition of "burnt offering" and "my son" reminds the knowing reader of another, far more frightening option.

The account in Exodus 2 utilizes a similar technique. As Yael Ziegler has shown, this chapter highlights a tension in Moses' identity. The daughter of Pharaoh apparently names Moses, but the etymology of his name is given in Hebrew, not Egyptian, although there is a simple Egyptian etymology for his name; the Egyptian root MSY means "child of," as in the name Ramesses (child of Ra). Moses grows up an Egyptian palace, but his Jewish mother nurses him. He stands up for his fellow Jews, but having fled to Midian, he is identified by Reʿuel's daughters as an "Egyptian man." Finally, v. 11 refers to Moses "going out to his brethren." Almost all commentators understand the verse as referring to his Jewish brethren, but Ibn Ezra suggests that Moses went out to his Egyptian brethren. Perhaps the twin possible readings emphasize the ambiguities of Moses' identity and the choice of ultimate allegiance that he will soon have to make. Again, the Historical-Critical method does not mine any of the interpretive options I have mentioned.

Development

The Bible frequently presents multiple consecutive stories conveying the development of a character or theme. In our context, Moses stands up for justice on three occasions. He kills an Egyptian taskmaster who was striking a Jew. He then tries to prevent two Jews from fighting. Finally, he defends the daughters of Re'uel from the aggression of local shepherds.

In an incisive essay, Aḥad Ha-Am illustrates two patterns of development between the stories.[38] On one level, we have an ever expanding circle of Mosaic involvement: The first case provides the strongest motivation; a clear bad guy strikes at his brother. The second case is less obvious, since two Jews are fighting and his allegiance lies with neither one. In the final episode, Moses provides succor to total strangers from a different ethnic group. After Moses develops into a universal crusader for justice, God appears to him in the burning bush.

Aḥad Ha-Am adds a second profound point:

> But this time [after intervening in the argument between two Israelites], he discovers that it is no easy matter to fight the battle of justice, that the world is stronger than himself, and that he who stands against the world does so at his peril. Yet this experience does not make him prudent or cautious. His zeal for justice drives him from his country, and as soon as he reaches another haunt of men, while he is still sitting by the well outside the city, before he has time to find a friend and shelter, he hears once more the cry of outraged justice and runs immediately to its aid.[39]

A young idealist begins his career with great optimism about his ability to perfect the world. Quick success in his first attempt seems to confirm his rosy initial outlook, before the harsh limitations and conundrums of reality immediately appear. Not only are Moses' brothers not grateful for his heroism, their response indicates that his life is endangered. Duly chastened, he flees to Midian, where we imagine he will strenuously avoid involvement in any further crusades. Yet he enters the fray at the first sign of injustice. Such an undaunted and idealistic individual merits leading God's people out of bondage.

38. Aḥad Ha-Am, "Moses," in *Selected Essays*, trans. Leon Simon (Boston: Academic Studies Press, 2011), 292-315.
39. Ibid. 300-301.

Patterns of Three

In his doctoral thesis, Yair Zakovitch writes that the number three is the most significant biblical number and that it is often used to establish a pattern.[40] Although his doctorate focuses on instances in which a pattern of three gives way to a very different fourth, the three pattern per se remains part of the biblical world. The early chapters of Exodus repeatedly exhibit this pattern. Pharaoh tries three times to curtail Jewish population growth (servitude, the midwives, and a directive to the whole nation), Moses has three stories of protesting injustice, God gives Moses three signs (ch. 4), and the plagues clearly break up into three units of three.[41] This recurring pattern supports a unified reading of the first several chapters of Exodus, although it is certainly not absolute proof.

Leitwort

The root RAH, to see, appears seven times in the second chapter, many of them connoting a look that inspires mercy. Moses is seen by others three times; he then looks out three times at others when he decides to help his Jewish brethren. Finally, God sees the plight of *Benei Yisrael* (Ex. 2:25). The human mercy manifest in sight motivates Divine action and leads directly to the revelation at the burning bush.[42]

Intertextuality

The word *teivah* (ark) appears only twice in scripture—in the flood story and in our narrative. In both instances, the ark provides salvation from threatening waters. We have already noted how the first chapter of Exodus resonates with imagery from the creation story. Now we see that the second chapter hearkens back to the flood story, in which Noah and his family represent a new beginning after a failed generation. Here too, the Jewish people begin anew after baby Moses emerges from the ark.[43]

40. Yair Zakovich, *Ha-Degem ha-Sifruti: Sheloshah-Arba ba-Mikra* (PhD thesis, Hebrew University, 1977).

41. Convincing evidence for dividing the plagues into units of three appears in Nahum M. Sarna, *Exploring Exodus: The Origins of Biblical Israel* (New York: Schocken, 1996), 76-77.

42. I am indebted to Prof. Yonatan Grossman for this point as well. Yael Ziegler noted the possible relevance of *Shemot Rabbah* 1:27.

43. Ackerman, "The Literary Context," 91.

Irony

Carol Meyers, professor of religion at Duke University, notes that Pharaoh wants to kill the Jewish boys by throwing them in the Nile, but Moses' mother ultimately saves him by placing him in that same body of water. Thus, the river of death turns into waters of salvation.[44] In general, Meyers' commentary reflects the inroads that the Literary approach has made in university Bible courses.

Inclusio

The biblical text sometimes demarcates a unit through a parallel between the opening and closing verses. Abraham's career begins with God's command of "*lekh lekha*" (Gen. 12:1), commanding him to leave his birthplace, and comes to a crescendo with another "*lekh lekha*" (ibid. 22:2), sending him to the *akedah*. Meyers writes that the second chapter of Exodus utilizes a similar technique. The story begins with marriage and the birth of a boy (Moses) and concludes with marriage and the birth of a boy (Gershom).[45]

Narrative Pace

The Bible often skips over long periods of time. We know nothing about Moses' time in Midian before he returns to Egypt at the age of eighty; the account in Numbers of wandering in the desert jumps from the second year after the exodus to the fortieth year. On the other hand, sometimes the narrative slows the pace to create a more intensive focus. In our context, the narrative attributes seven different verbs to the daughter of Pharaoh, considerably slowing the pace. This shift in pace creates drama and highlights her heroic decision.[46]

Conclusion

The critical point about intertextuality, *leitwort*, type scenes, and other literary techniques is simply that if we utilize the Historical-Critical

44. Carol Meyers, *Exodus* (Cambridge: Cambridge University Press, 2005), 42.
45. Ibid. 46.
46. See Joshua Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (New York: Oxford University Press, 2008), 149-56.

method exclusively, we deprive ourselves of the deep readings afforded by studying these techniques. It is possible, though I do not profess to know, that the increase in the ranks of scholars who combine a Historical-Critical approach with a Literary one owes to recognition of this truth.

The Historical-Critical reading of the first two chapters of Exodus breaks the story apart into purported original strands and views the biblical account as of a piece with other ancient texts about hidden babies. In its pure form, it locates no profundity in the account and fails to identify literary artistry. The aspiring Bible student will not discover discussion of any of the literary techniques outlined in this essay by reading Noth, Lowenstamm, Van Seters, or Childs.[47] In contrast, the Literary approach notes a host of artistic techniques conveying depth and adding wisdom. I think it clear which reading is more interesting, insightful, and inspiring. It is this essay's contention that the literary reading is both more convincing and much richer.

Acknowledgments

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47. William H. C. Propp's Anchor Bible volume on Exodus (New Haven, CT: Yale University Press, 1999) does a far better job of combing standard academic scholarship with literary sensitivity, but his expressed aims downplay the literary element:

> My basic approach to the Bible is anthropological. My goal is to understand, as best we can, Israelite social institutions and perceptions of reality. This orientation will be most apparent in my use of the methods of folktale analysis and in my interpretation of *Pesah-Massot* as a rite of purification and riddance. . . . I am also interested in how aspects of the Bible and Israelite culture relate to the ancient Near Eastern milieu(s) from and against which they arose. And I am very interested in words: their contextual meanings, their semiconscious resonances and their ultimate etymologies. Lastly, I am interested in history. What reality underlies the accounts? How, when, where and why did Israel emerge as a nation? (p. 39)

Other than one sentence about words, Propp focuses on anthropology, folklore analysis, the ancient Near East, and history.

MICHELLE J. LEVINE

Form and Rhetoric in Biblical Song: Ramban's Commentary on the Song of the Sea (Exodus 15:1-18)

Modern literary scholarship on biblical poetry has systematically defined its formal structure, which distinguishes it from narrative prose texts. Although there is no definitive description of this genre, scholars have delineated certain characteristic stylistic elements that identify a text as poetry in the Bible.

As Adele Berlin stipulates:

> Biblical poetry is a type of elevated discourse, composed of terse lines, and employing a high degree of parallelism and imagery. Other tropes and figures may also be present, most commonly, word and sound repetition and patterning.[1]

This is an expanded version of my paper delivered in Hebrew at the 16th World Congress of Jewish Studies, Hebrew University, Jerusalem, Israel (August 2013), titled, "*Omanut U-Mashma'ut Ha-Shirah Ha-Mikra'it Be-Peirusho shel Ha-Ramban*."

1. Adele Berlin, "Reading Biblical Poetry," in *The Jewish Study Bible*, ed. Adele Berlin and Marc Zvi Brettler (Oxford/New York: Oxford University Press, 2004), 2098; see also her discussion, ibid., 2097-2104. Compare idem, "Introduction to Hebrew Poetry," in *The New Interpreter's Bible* (Nashville: Abingdon Press, 1996), 4:301-15. On the definition of biblical poetry, see also Andrea L. Weiss, "Poetry," *Encyclopedia Judaica*, *EncJud on CD-ROM,* 2nd ed., eds. Michael Berenbaum and Fred Skolnik (Detroit: Macmillan Reference, 2007), 16:254-62; Lynell Zogbo and Ernst R. Wend-

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While many of these features appear in biblical prose as well, scholars have observed that their density, high rate of occurrence, and predominance within a compact unit mark a biblical text as being poetic.[2]

With regard to the structural organization of the biblical poem, the marked poetic feature of parallelism– in which two (or sometimes three and, less often, four) poetic lines are paired in a balanced grammatical structure, style, and/or mirroring of ideas—creates a strong sense of proportion and consistency in the presentation of the poem's design and lends a rhythmic awareness to the composition.[3]

From a broader perspective, scholars have also noted that in order to fully appreciate the form and rhetoric of a biblical poem, it is essential to delimit its parameters, marking its clear beginning and end, as well as to divide its contents into larger structural segments—stanzas (and their subdivisions, strophes)—"that share a combination of common theme, style, imagery, vocabulary, metrical pattern, or like elements," so that one may discern "the elegant *structural balance of compositional units* . . . through which the poetic masterbuilder creates the architecture of his poem" (emphasis in the original).[4]

As a tightly structured composition, in terms of its individual related lines and larger groupings of lines, the poem can only be fully

land, *Hebrew Poetry in the Bible: A Guide for Understanding and for Translating* (New York: United Bible Societies, 2000), 19-60; Robert Alter, *The Art of Biblical Poetry* (New York: Basic Books, 1985); and Murray H. Lichtenstein, "Biblical Poetry," in *Back To The Sources: Reading the Classic Jewish Texts*, ed. Barry W. Holtz (New York: Summit Books, 1984), 105-27.

2. See Berlin's observation, "Reading Biblical Poetry," 2097, and compare Weiss, "Poetry," *Encyclopaedia Judaica,* 16:262. Although James Kugel, *The Idea of Biblical Poetry: Parallelism and Its History* (New Haven and London: Yale University Press, 1981), 69, 83, 85, maintains that there is no clear dividing line between "prose" and "poetry" in the Bible, scholars such as Adele Berlin (*The Dynamics of Biblical Parallelism* [Grand Rapids, Michigan: William B. Eerdmans Pub. Co. and Dearborn, Michigan: Dove Booksellers, 2008; originally published Bloomington: Indiana University Press, 1985], 4–6) and Alter (*Art of Biblical Poetry*, 4-5) argue that one can and should classify certain biblical passages as "poetry," a categorization that reflects their particular style and meaning.

3. See Lichtenstein, "Biblical Poetry," 115-16, who focuses on the element of "balance" that is the characteristic feature of biblical poetry. This is particularly evident on a narrow, internal level in the technique of parallelism, in which there is "the resulting *parallelism of thought*, the echoing of a single sentiment . . . everything expressed in its first half is balanced by some counterpart in the second, be it specific word or general idea." See also ibid., 117-18, where he notes that parallelism in biblical poetry is thus viewed as "*the qualitative balance of sense units* (be they specific words, grammatical forms or constructions, concepts or images). . . ."

4. Lichtenstein, "Biblical Poetry," 118.

understood when the parts are then integrated into a coherent whole, revealing how the poem develops and advances its primary content and themes from inception to conclusion.[5] As Andrea Weiss observes:

> Appreciating the artistry of biblical poetry and the depth of its meaning requires being a skillful reader, one who can unpack the language, structure, and imagery of a poetic passage and then *piece everything back together* [my emphasis] in a way that gives voice to the ideas conveyed in the elevated discourse of poetry.[6]

In the present study, I will illustrate how the commentary of the preeminent Andalusian exegete, R. Moshe ben Naḥman (Ramban) (c. 1194-1270), offers a noteworthy medieval contribution to the study of the genre of biblical poetry in his interpretation of the Song of the Sea (Ex. 15:1-18). This study builds on the scholarship on Ramban's commentary to this biblical song, which has focused on how Ramban is insightfully aware of specific poetic features, such as the distinctive technique of parallelism and the song's chronological ordering of events. The primary goal of the present analysis is to apply this scholarship to develop a comprehensive, holistic investigation of Ramban's perceptive *peshat*-reading of this song in its entirety. This study aims to elucidate how Ramban coheres all of the parts of the song into a cohesive whole, discerning its sophisticated, intricate structure from beginning to end and creating an elaborate text that interweaves its individual components into a tightly organized composition.

This broad view of Ramban's commentary on the complete Song will demonstrate how he succeeds in eliciting the main thematic motifs developed and elaborated as the song progresses from one stanza to the next to its climactic conclusion. We will see that Ramban's integrated reading discerns the expressive force of biblical song as a literary means to convey its rhetorical potency and theological pedagogy.[7]

5. On this general approach to the analysis of biblical poetry, see the seminal work of Wilfred G.E. Watson, *Classical Hebrew Poetry: A Guide to its Techniques* (Sheffield: Sheffield Academic Press, 1995; originally published JSOT Press, 1984), 14-35, in which he delineates a step by step procedure for interpreting a biblical poem, involving two angles of investigation: analysis of the poem's individual components and features and synthesis of these separate elements in order to demonstrate how they merge to create the literary product.

6. Weiss, "Poetry," *Encyclopaedia Judaica,* 16:262. Compare the observations of Ernst R. Wendland, "The Discourse Analysis of Hebrew Poetry: A Procedural Outline," in *Discourse Perspectives on Hebrew Poetry in the Scriptures*, UBS Monograph Series 7, ed. Ernst R. Wendland (Reading, UK/New York: United Bible Societies, 1994), 1, 7, and Lichtenstein, "Biblical Poetry," 126.

7. It is noteworthy that a number of important works on Jewish biblical exegesis of

Before proceeding to Ramban's commentary on Exodus 15, some general observations about his view on the literary composition of biblical song are in order. In delineating the qualifying features of Scriptural *shirah* with regard to the song of *Ha'azinu* (Deut. 32), Ramban writes:

> And [Scripture] designates it [*Ha'azinu*] as *shirah* because Israel will recite it regularly with song and with music (בשיר ובזמרה) Therefore, it is written like a song/poem (כשירה), for the songs are written with pauses in them in the places for the melody (כי השירים יכתבו בהם הפסק במקומות הנעימה).[8]

According to Ramban, *shirah* in the Bible is distinguished in its primary meaning by its oral mode of recitation.[9] Perhaps prompted by the

biblical poetry do not examine Ramban's commentary on biblical song: Kugel, *Idea of Biblical Poetry*; Adele Berlin, *Biblical Poetry Through Medieval Jewish Eyes* (Bloomington and Indianapolis: Indiana University Press, 1991); and Amira Meir, "Medieval Jewish Interpretation of Pentateuchal Poetry" (Ph.D dissertation, McGill University, 1994) (Hebrew). I plan to develop Ramban's analysis of biblical poetic texts in further publications, based on the following papers delivered at academic conferences: "Israel on Trial: Naḥmanides' Commentary on the Poetic Testimony of *Ha'azinu* (Deut. 32)," International Annual Conference of the National Association of the Professors of Hebrew Language and Literature (NAPH), Brown University, Providence, Rhode Island (June 2016); and "The Literary and Thematic Unity of Balaam's Prophecies in Ramban's Biblical Commentary," The 17th World Congress of Jewish Studies, Jerusalem, Israel (August 2017).

8. Ramban, commentary to Deut. 31:19 in *Mikra'ot Gedolot Ha-Keter—Deuteronomy*, ed. Menachem Cohen (Ramat Gan: Bar-Ilan University Press, 2011), 213. Translations of biblical verses and commentaries are my own.

9. Ramban's focus on the melodic, oral feature of biblical *shirah* is echoed among earlier and later exegetes on biblical poetry. See, for example, Yehudah ha-Levi, *Sefer ha-Kuzari*, trans. and annotated by Yehudah Even Shmuel (Tel Aviv: Dvir Pub., 1972), 2:70–72 (pp. 87-88). On ha-Levi's approach, see Kugel, *Idea of Biblical Poetry,* 190-91, and Berlin, *Biblical Poetry through Medieval Jewish Eyes*, 39, 45–46, 64–65. Compare the view of Abravanel in his introduction to Exodus 15 (*Peirush Ha-Torah Le-Rabbenu Yizḥak Abravanel*, ed. Avishai Shutland [Jerusalem: Chorev Pub., 1997], Exodus, 2:210–13). Abravanel delineates three types of poetry: metrical poems; non-metrical poems that deal with metaphysical matters, which are set to music with defined melodic arrangements; and poems classified by their figurative language. Concluding that the first type does not exist in the Bible, Abravanel determines that the song of Exodus 15 fits the second and third categories. On Abravanel's discussion, see Kugel, ibid. 193–4, and Berlin, ibid. 120–28. In contrast to ha-Levi, however, Abravanel claims that the words and their number correspond to the demands of the melodic arrangement; see Berlin, ibid. 45, 120. Compare, among modern scholars, J.P. Fokkelman, *Reading Biblical Poetry: An Introductory Guide*, trans. Ineke Smit (Louisville/London:Westminster John Knox Press, 2001), 34, who observes that in ancient times, the poet was frequently a singer, such that the poetic lines "take up singing time . . . and the proportions of cola and verses, of strophes and stanzas lend structure both to this singing, and to meaning and content of the song=poem." See also Watson, *Classical Hebrew Poetry*, 76–82; Luis Alonso-Schökel, *A Manual of Hebrew Poetics* (Rome: Editrice Pontificio

anomalous assignation of this term to the context of Deut. 32, which is replete with rebuke and predictions of sin and punishment, Ramban infers that the title "*shirah*" does not classify a text based on its content of praise or celebration,[10] but rather specifies a distinct form of expression: a text set to a musical tune, which is meant to be sung, not merely read or spoken.[11] Its oral form of communication is also emphasized in God's command to Moses to "teach it to the Israelites, *place it in their mouths*. . ." (Deut. 31:19). As Ramban interprets, Moses is instructed to teach the song to his nation so that they will fully memorize its words.[12]

Additionally, Ramban correlates the acoustic mode of biblical *shirah* with its structural presentation in written form, which facili-

Instituto Biblico, 1988), 20**;** and William H.C. Propp, *Exodus 1-18: A New Translation with Introduction and Commentary, The Anchor Bible* (New York: Doubleday, 1999), 504, on the oral, performative aspect of biblical poetry.

10. See, however, Elḥanan Samet, *Iyyunim Be-Parashot Ha-Shavuʿa: Sidrah Sheniyah, Vayikra-Bemidbar-Devarim*, ed. Eyal Fishler and Ariel Shaveh (Jerusalem: Makhon Maʿaliyot, 2005), 474–75, who proposes that Ramban questions the designation of Deut. 32 as *shirah*, since "song" usually originates from human initiative, assisted by the Holy Spirit (*ruaḥ ha-kodesh*), whereas the text of *Haʾazinu* is a prophetic communication. In this regard, note that Ramban (Ex. 15:1,19) focuses on the spontaneity of the composition of the Song of the Sea; he also maintains that Moses inserts a prayer into the Song of the Sea (Ex. 15:16,18). Yet, one must keep in mind how Ramban, introduction to the Book of Genesis, maintains that Moses received the Torah from "the mouth of God," describing Moses as "a scribe copying and transcribing from an ancient book." This premise suggests that the unique poetic style of *shirah* is part of the divine revelation communicated to Moses. On this latter point, see Malkah Shenvald, "*Kefel Lashon Ve-Kefel Inyan she-ba-Torah u-be-Iyov be-Peirush Ramban*," *Beit Mikra* 60, 2 (2015): 283-84. Samet (ibid., 475 n.23) also considers the possibility that Ramban is defining *shirah* based on form, not content.

11. Lichtenstein, "Biblical Poetry," 107, also observes that the Hebrew term "*shir*" denotes in a limited sense its oral quality—that it is sung to a melody—in contrast to the broader literary English term, "poetry." Nevertheless, it will become apparent that Ramban distinguishes this text as being marked by characteristic stylistic features that exhibit its poetic mode and that he correlates its oral recitation with its written medium.

12. See Ramban, Num. 23:5, with regard to a similar phrasing: "God put a word in Balaam's mouth," in *Mikraʾot Gedolot Ha-Keter—Numbers*, ed. Menachem Cohen (Ramat Gan: Bar-Ilan University Press, 2011), 157. Compare Abravanel, introduction to Ex. 15 (ed. Shutland, 212), who notes that singing and music facilitate memory and enhance attentiveness to the deep messages of a biblical *shirah*, in contrast to prose ("*ha-sippurim ve-ha-dibburim ha-peshutim*"), which is often forgotten. See also Robert Alter, *The Five Books of Moses: A Translation with Commentary* (New York/London: W.W. Norton and Co., 2004), 1035, notes to Deut. 31:19, who associates the command to memorize the song with its literary genre as poetry, which is structurally arranged through parallel phrases to assist in this endeavor. As will be discussed, Ramban's comment also connects the structure of biblical *shirah* with its mode of articulation.

tates memorization. Noting the stichographic formatting of Deut. 32, Ramban maintains that this biblical section has the structural look of a *shirah* in that it is organized with clear pauses to allow for its proper and measured melodic performance.[13] Significantly, his formulation of this defining feature correlates biblical *shirah*'s written format with "songs/poems (*shirim*)" in general, reflecting his view that this compositional mode has various qualities in common with a broad literary category.

Taking into consideration that Ramban himself composed poetry and liturgical *piyyutim*,[14] it is of interest that he maintains that the Bible classifies a biblical portion as *shirah* in order to set it apart from other surrounding texts based on its performative mode, which in turn is integrally associated with its complementary written formatting that facilitates its melodic recitation and accommodates its memorization.[15]

Furthermore, in his commentary on *Ha'azinu* (Deut. 32), Ramban notes that this song is written in a condensed manner, *ketannah be-dibbur*, encapsulating many ideas within its brevity.[16] Similarly,

13. Ramban presumably bases his analysis on the talmudic tradition regarding the stichography of Deut. 32, which is written in a series of broken lines. See *Soferim* 12:8–9 on Deut. 32; compare *b. Megillah* 16b; *Yerushalmi Megillah* 3:7; and *Soferim*12:10–12, regarding other songs, such as the Song of the Sea and the Song of Deborah (Jud. 5), which are designated by their stichographic writing. Notably, however, this scribal tradition is also applied to texts, such as Josh. 12:9–24, that would not be classified in modern terms as "poetry." On these writing patterns, see Kugel, *Idea of Biblical Poetry*, 119–27; compare Berlin, *Biblical Poetry Through Medieval Jewish Eyes*, 7–8.

14. Ramban's poems have been collected in *Kitvei Rabbenu Moshe ben Naḥman*, ed. Hayyim Dov Chavel (Jerusalem: Mosad Harav Kook, 1963), 1:392–439. See also Bernard Septimus, "'Open Rebuke and Concealed Love': Naḥmanides and the Andalusian Tradition," in *Rabbi Moses Naḥmanides (Ramban): Explorations in His Religious and Literary Virtuosity*, ed. Isadore Twersky (Cambridge, MA: Harvard University, 1983), 27–30; Ezra Fleisher, "'The Gerona School' of Hebrew Poetry," in Twersky, *Rabbi Moses Naḥmanides*, 35–49; Hayyim Schirmann, *Toledot ha-Shirah ha-Ivrit be-Sefarad ha-Noḥrit u-ve-Darom Ẓarfat*, rev. and ed. Ezra Fleisher (Jerusalem: Hebrew University, Magnes Press, 1997), 322–29; and Peter Cole (ed. and trans.), *The Dream of the Poem: Hebrew Poetry from Muslim and Christian Spain, 950-1492* (Princeton: Princeton University Press, 2007), 233–39.

15. Compare the important insight of Samuel David Luzzatto, Ex. 15:2, in *Peirush Shadal, R. Shmuel David Luzzatto Al Ḥamishah Ḥummeshei Torah*, ed. P. Schlesinger (Tel Aviv: Dvir Pub., 1965), 278, who writes that a predominant feature of biblical *shirah* is its binary organization, referring to the medieval conception of "the repetition of ideas in different words" (*kefel inyan be-milot shonot*) as well as his more modern conception of parallelism (*tikbolet*). In his view, this poetic device divides the literary composition into small segments, "so that it will make a greater impression on the listener *and also so that it is made fit to sing it* (וגם כדי שיכשר לשורר בו)."

16. Ramban, Deut. 32:40-41, on v. 44 (*Ha-Keter* Deut., 235), based on *Sifrei, Ha'azinu, piska* 333, analyzing the emphasis that Moses spoke "*all* of the words of this song," even though it is only 43 verses.

he observes in another context, that songs/poems (*shirot*) are communicated in brief language (*lashon kaẓar*).[17] As one modern scholar observes, "Poetry is the most compact and concentrated form of speech possible."[18]

Accordingly, readers of Ramban's commentary on the Song of the Sea will anticipate that Ramban will draw out the full meaning of this poetic text through careful and close examination of its condensed language and measured structure.

In his commentary on Ex. 15, Ramban further discerns that biblical song may be distinguished by its language (*lashon*), which differentiates it from the surrounding context through characteristic linguistic and stylistic features.[19] Responding to Abraham Ibn Ezra, who maintains that the verse, כי בא סוס פרעה ברכבו ובפרשיו בים . . . (Ex. 15:19), is part of the Song,[20] Ramban asserts, "But this is not like the language of the song and the prophecies (ואיננו כלשון השירה והנבואות)."[21] Here, Ramban

17. Ramban, Num. 21:18-20 (*Ha-Keter* Num., 141, 143). This comment is an addendum that Ramban supplemented to his commentary, as noted in Yosef Ofer and Yehonatan Jacobs, *Tosafot Ramban le-Peirusho la-Torah she-Nikhtevu be-Ereẓ Yisrael* (Jerusalem: Herzog Academic College, World Union of Jewish Studies, 2013), 463-64.

18. Fokkelman, *Reading Biblical Poetry,* 15. See also Berlin, "Introduction to Hebrew Poetry," *New Interpreter's Bible,* 4:303, on terseness as a defining feature of biblical poetry.

19. The versions for Ramban's commentary, as well as those of the medieval commentators Rashi, Rashbam, Ibn Ezra, and Bekhor Shor, to Ex. 15, derive from *Mikra'ot Gedolot ha-Keter—Exodus*, part I, ed. Menachem Cohen (Ramat Gan: Bar-Ilan University Press, 2012). Ḥizkuni's biblical commentary derives from *Ḥizkuni: Peirushei ha-Torah le-Rabbenu Ḥizkiyyah b"r Manoaḥ*, ed. Hayyim Dov Chavel (Jerusalem: Mosad Harav Kook, 1981). Regarding Ibn Ezra's commentary on Exodus, this study follows the conclusions of Yehonatan Jacobs, "*Ramban u-Shenei Peirushei R. Avraham Ibn Ezra le-Sefer Shemot*," *Hispania Judaica* 13 (2017): 51-70, Hebrew section, that Ramban had access only to Ibn Ezra's long commentary and not his short commentary on the Book of Exodus. Additionally, Yehonatan Jacobs,"*Ha-im Hikkir Ramban et Peirush Rashbam La-Torah?" Madda'ei ha-Yahadut* 46 (2009):85-108, surmises that Ramban did not have direct access to Rashbam's Torah commentary. Nevertheless, Rashbam's readings will be cited in the notes for comparative analysis to Ramban's own interpretations.

20. See the long commentary of Ibn Ezra, Ex. 15:19, who renders the word *ki* in this verse as "for," connecting this verse with the previous one as part of the song. Presumably, Ibn Ezra assigns this verse to the song due to its stichography; see *Soferim* 12:11 and Maimonides, *Hilkhot Sefer Torah*, end of ch. 8.

21. Ramban, Ex. 15:19. The wording of this comment is based on Cohen, *ha-Keter*, Exodus, part I, 127. See, however, the version in Hayyim Dov Chavel, *Peirushei ha-Torah le-Rabbenu Moshe ben Naḥman* (Jerusalem: Mosad Harav Kook, 1959), 1:358, which reads, "ואיננו בלשון השירה והנבואות". This is the only place in his biblical commentary that Ramban demarcates the phrase, "language of the song." Compare Yosef Nitzan, "*Le-Mashma'utah shel 'Shirat Ha-yam' Ve-hora'atah*," *Shema'atin* 147-148 (2002): 14-15, who also notes Ramban's disagreement with Ibn Ezra about the

does not qualify the particular "*lashon*" that distinguishes this biblical song from other texts.[22] Referring to Ramban's analysis, Shmuel David Luzzatto, a nineteenth-century Italian exegete, explains, "The language (*lashon*) of this verse (v. 19) is not like the language of the *shirah,* but the manner of a straightforward narrative (*derekh sippur pashut*)."[23] According to Luzzatto's reading of Ramban's interpretation, the language of *shirah* is distinguished from the plain style of narrative prose, implying that the language of a *shirah* is more complex, with a loftier style, which makes a different impression on the listener than that of narrative. Having defined biblical song based on its structured style, formatted with clear pauses, and having pointed out that it is noteworthy for its compact mode of communication, Ramban directs his readers to how he is attuned to the unique linguistic and stylistic features of biblical song in order to elicit its particular message and meaning.[24]

Significantly, in his argument against Ibn Ezra, Ramban references two apparently different literary modes of composition in the Bible: song (שירה) and prophecies (נבואות), the latter classification noted as a distinct

parameters of this biblical song.

22. The term *lashon*, which appears frequently in Ramban's commentary, is applied broadly to philological matters (grammatical, etymological, or indicative of voice), as well as stylistic matters (repetition, style and tone of expression, choice of words, and word order); it is not used to denote subject matter or context. There are numerous references in Ramban's commentary to the view of *ba'alei ha-lashon*, in which he focuses on grammar and linguistic issues; see, for example, his commentary to Gen. 6:4; Ex. 4:9, 13:16. Ramban uses the phrase *minhag ha-lashon* or *mishpat ha-lashon* with reference to grammatical matters (Ex. 15:1) and stylistic repetition (Gen. 12:1). He uses the phrase *derekh ha-lashon* with reference to certain choices of phrasing and expressions (Gen. 23:9; Lev. 4:14, 25). He uses the term *lashon* when defining words (Gen 1:1, 7; 14:22; 17:17; 19:2; 20:17; 45:1), and he also employs this term when delving into the language in relation to its meaning; note how he juxtaposes *lashon* with *inyan* in his commentary to Gen. 49:6. Furthermore, he uses the term *lashon* to refer to a manner of speaking and the voice in which it is spoken (Gen. 27:12, 31:46, 32:21, 37:17; Ex. 1:10, 14:10).

23. Luzzatto, Ex. 15:19 (ed. Schlesinger, 293).

24. Compare Shenvald, "*Kefel Lashon ve-Kefel Inyan,*" 282 and 282 n. 43, who infers that Ramban is distinguishing the "language" of song based on its stylistic feature of "doubling," that is, in modern terms, parallelism. In this regard, note that Luzzatto, ibid., Ex. 15:2 (ed. Schlesinger, 278-279), distinguishes biblical songs' characteristic stylistic feature as the doubling of ideas in the mode of parallelism. As will be discussed, Ramban's sensitivity to parallelism is a key aspect of his analysis of the "language" of biblical song, but it is also correlated to his perception of other stylistic poetic features such as the song's condensed style and its larger structure and organization in addition to its use of figurative language.

form of discourse by Ibn Ezra.[25] Juxtaposing these literary modes, Ramban appears to assign them a common "language" (*lashon*), although in his commentary on Ex. 15, he indicates that biblical song does not always adhere to all of the grammatical practices of the literary mode of prophecies.[26] Perhaps we might qualify that in this context, Ramban is associating "song" and "prophecies" as belonging to the same broad mode of discourse of "poetry," based on characteristic stylistic features and method of communication, while distinguishing between them in their form of recitation; "song" is oral in origin and meant to be sung, whereas "prophecies" are spoken and/or written.[27]

It is important to note what Ramban does not include in his definition of biblical *shirah*. First, considerations of meter and rhyme are not taken into account. This may be because Ramban realizes that this criterion is not a basic component of this biblical literary genre.[28] While Jewish exegetes of Muslim Spain were preoccupied with evaluating biblical texts as "poetry" based on the standards of medieval Arabic poetry, particularly defined by a regular meter and rhyme,[29] Ramban's commentary

25. See, for example, Ibn Ezra, Gen. 49:3, 6; Ex. 14:19, long commentary; Ex. 19:3, short commentary; Lev. 16:29; Num. 10:35, 12:6; Deut. 32:2. Ibn Ezra references this literary genre of "the prophecies" particularly with regard to his perception of the doubling (*kaful*) of ideas in parallel phrases in these biblical texts; see Jair Haas, *"Muda'ut Ve-yaḥas le-'Kefel Inyan be-Milot Shonot' ke-Tofa'ah Ofyanit le-Signon ha-Mikra'i be-Parshanut ha-Mikra ha-Yehudit Bimei ha-Beinayim,"* (Ph.D dissertation, Bar-Ilan University, 2005), especially 79–89, 94–106. Note Haas's references to the sources in Ibn Ezra's biblical commentaries for his observations of this biblical stylistic feature, ibid., 79 n.184 and 84 n.195.

26. See Ramban, Ex. 15:13, discussed below; compare his commentary to Ex. 15:1, regarding the mode of prophecies.

27. Ramban would perhaps acknowledge that *shirah*/song could refer secondarily to the genre of praise and celebration.

28. Among modern scholars, there is a general consensus that biblical poetry is not defined by a consistent, measurable meter, as is the case in poetry of other cultures. See, for example, N.K. Gottwald, "Poetry, Hebrew," in *The Interpreter's Dictionary of the Bible: An Illustrated Encyclopedia* (New York/Nashville: Abingdon Press, 1962), 3:834–35; Kugel, *Idea of Biblical Poetry*, 301; Watson, *Poetry*, 98; Berlin, "Introduction to Hebrew Poetry," *New Interpreter's Bible,* 4:308; and Propp, *Exodus 1-18,* 503.

29. See Berlin, *Biblical Poetry Through Medieval Jewish Eyes*, 10–11, 22–29. Compare Uriel Simon, *Four Approaches to the Book of Psalms: From Saadia Gaon to Abraham Ibn Ezra*, trans. Lenn J. Schramm (Albany: State University of New York Press, 1991), 167–69 and 269 n.60; Mordechai Z. Cohen, "'The Best of Poetry': Literary Approaches to the Bible in the Spanish *Peshat* Tradition," *The Torah U-Madda Journal* 6 (1995-1996): 22–23; and Jair Haas, "Did Medieval Jewish Commentators Understand Biblical Parallelism? A Critique of Robert Harris' 'Discerning Parallelism,'" *Revue Des Études Juives* 166:3-4 (2007): 471 n.21, who note the hesitancy of medieval Spanish exegetes to label a biblical text as "poetry," since it does not conform to the criteria of medieval Arabic poetry.

does not appear to consider a position on this debate. Instead, a study of his analysis of the Song of the Sea from the perspective of the genre of poetry elicits his keen literary insights into the relationship between the form and rhetoric of this biblical text. Furthermore, the issue of how to present the superiority of the Bible's composition in relation to the doctrine of *'Arabiyya,* which promoted the preeminence of the Arabic language and writings, does not seem to be on Ramban's mind in his commentary on biblical songs.[30] In addition, Ramban does not specify the presence of figurative language or imagery as part of his definition of what constitutes a biblical *shirah.* Yet, in these texts, Ramban does show an interest in the figurative language of biblical song, as will become apparent in his commentary on the Song of the Sea.

Therefore, the question to be explored is how Ramban applies his delineation of the genre of *shirah* to his perception of the integral relationship between its form and meaning. Having stipulated that biblical song is configured with marked pauses, facilitating its oral, melodic recitation, Ramban intimates that his close reading of this type of text will focus on the arrangement of the song's lines into discernible patterns and relationships. In his commentary on the Song of the Sea, Ramban does not classify the corresponding relationship between related parts of a biblical verse, except in his analysis of v. 6, where he stipulates that its two parts are "doubled" (*kaful*), a term adapted from Ibn Ezra to signify a repetition of meaning in different words ("*kefel inyan be-milot shonot*"), or what is known in modern terms as synonymous parallelism.[31] Yet, Ramban does not read most verses of this song synonymously,

30. Ramban espouses the superiority and sanctity of the language of the Bible, designated as the "holy language" (*lashon ha-kodesh*) by the Sages; see his commentary to Ex. 30:13, based on *b. Berakhot* 13a. Furthermore, in the introduction to his biblical commentary, he advocates the kabbalistic premise that the entire Torah is composed of the names of God. Nevertheless, this perspective is not positioned within a wider theoretical discussion in his commentary regarding the evaluative relationship between Hebrew and Arabic, which was a concern for Spanish Andalusian exegetes. On this latter issue, see Berlin, *Biblical Poetry Through Medieval Jewish Eyes*, 17–22. Furthermore, the term, צחות, a Hebrew term coined by Saadia Gaon to convey the Bible's elegant form of expression, particularly its poetic eloquence, while it appears as an aesthetic rationale for synonymous repetition and semantic doubling in Ibn Ezra's writings (on this, see Haas, "*Kefel Inyan*," 94, 96-98, 102-103, and Cohen,"The Best of Poetry," 25, 32, and 51n.89), is used minimally by Ramban, with reference to the Bible's use of homonyms [see Ramban, Gen. 49:22; Exod. 3:2, in relation as well to Jud. 10:4; and Lev. 23:11], and it does not appear in his commentaries on biblical texts designated as *shirah.*

31. See further in my discussion on v. 6 above.

and only if one appreciates his perception of the diverse, variegated relationships between related paired lines can one ascertain the basis for his specific interpretations. Accordingly, applying the general inroads of modern literary scholarship, we will describe how Ramban views the parallelism between associated poetic lines by noting how he aligns them grammatically and semantically; with regard to semantic parallelism, we will note how he associates these relationships based on logical and descriptive correlations.[32] In doing so, we will seek to discern how he views the internal links between poetic lines and the ways in which he also establishes external links between lines from different stanzas, to integrate the song into a cohesive whole, informed by an elaborate network of interrelated themes and messages.[33]

32. The eighteenth-century Bishop Robert Lowth is credited with delineating three primary categories of parallelism in biblical poetic texts—synonymous, antithetical, and synthetic. See Robert Lowth, *Lectures on the Sacred Poetry of the Hebrews*, trans. G. Gregory (Andover: Codman Press by Flagg and Gould, 1829), Lecture III, 34, 35; Lecture IV, 43–44; Lecture XIX, 154, 157–64. Nonetheless, scholars have since questioned the category of synonymous parallelism, presuming that the second related line in a poetic couplet contributes something additional to the first. On this point, see Kugel, *Idea of Biblical Poetry*, 8, 13, who notes that parallel lines should be analyzed with the approach of "A is so, and *what's more,* B is so," emphasizing that "*B must inevitably be understood as A's completion.*" See his discussion, ibid., 1–58. Compare Alter, *Art of Biblical Poetry*, 19, who surmises that in biblical poetry, when there is "semantic parallelism," then "the characteristic movement of meaning is one of heightening or intensification . . . of focusing, specification, concretization, even what can be called dramatization." See his discussion, ibid., 5–26. See also idem, "The Characteristics of Ancient Hebrew Poetry," in *The Literary Guide to the Bible*, ed. Robert Alter and Frank Kermode (Cambridge, MA: Harvard University Press, 1987), 615–16. Compare the earlier observations of J. Muilenburg, "A Study in Hebrew Rhetoric: Repetition and Style," in *International Organization for the Study of the Old Testament Congress Volume VTS* 1 (Copenhagen/Leiden: E.J. Brill, 1953), 98. Furthermore, scholars have delineated additional categories of parallelism prevalent in biblical poetry; see, for example, Berlin, *Dynamics of Biblical Parallelism*, and idem, "Introduction to Hebrew Poetry," *New Interpreter's Bible,* 4:304–308, who adopts a linguistic approach that takes into consideration biblical parallelism's lexical, grammatical, semantic, and phonologic features. Additional resources for categorizing different types of biblical parallelism are Watson, *Poetry*, 114–59; David L. Petersen and Kent Harold Richards, *Interpreting Hebrew Poetry* (Minneapolis: Fortress Press, 1992), 21–35; and Zogbo and Wendland, *Hebrew Poetry*, 20–30.

33. In this regard, I will apply the general conclusion of Jair Haas, "*Kefel Inyan*," 107–19, with which I concur, who notes that while Ramban demonstrates his awareness of the literary phenomenon of "the doubling of meaning in different words" (*kefel inyan be-milot shonot*), influenced particularly by the approach of Abraham Ibn Ezra, and he sometimes assigns two parallel poetic lines synonymous correspondence, he often prefers to differentiate between analogous lines and to distinguish a separate meaning for each one. Notably, Haas does not restrict his study of Ramban's perception of the

Ramban's Demarcation of the Overall Literary Structure of the Song of the Sea

In order to determine Ramban's insights into the poetic character of the Song of the Sea from a holistic perspective, it is necessary to first categorize how he delineates the song's structural parameters.

Ramban delimits the song to Ex. 15:1b–18, inferring that it is framed by the narrative statements in vv. 1a and 19, which serve to mark the song's timing. Clarifying this temporal background, Ramban links the adverbs of these verses and reads: "*Then* (אז) *Moses did sing* [v. 1a] *when* (כי) *Pharaoh came with his chariots into the sea* [v. 19]—on that very day immediately, not the next day or later." Alternatively, he renders that the connection between these verses stresses the greater immediacy of their melodic outburst:

> *Then* [Moses did sing (v. 1)], *when* Pharaoh came with his horse into the sea and God turned the waters back on them while the children of Israel were walking on the dry land in its midst (v. 19)—to inform that while they were walking in its midst on dry land, they said the song.[34]

Ramban does not explain why the description of the song's timing is interrupted by the song itself. Yet, his analysis frames the song within the setting of circumstances that prompts its composition, drawing the reader's attention to the integral relationship between its content and the surrounding narrative events. Furthermore, while the Israelite crossing through the split sea is emphasized primarily in Ex. 14 (vv. 16, 21-23, 29) and after the song, and referenced allusively only in the song itself (15:8), Ramban's juxtaposition of vv. 1a and 19 as the frame of the song associates the central connection between this event, along with the drowning

relation between parallel lines to biblical song; he also examines narrative contexts, as well as Ramban's commentary on Job, which Ramban classifies in the genre of *tokhaḥot* argumentation (see his commentary to Job 12:23, 14:10). While it is not wholly evident that Ramban deems the phenomenon of parallelism as a defining feature of biblical song, the preponderance of his focus on the relationship between parallel lines within his commentary on the Song of the Sea indicates his awareness that the frequency of parallelism in this literary mode demands attentive analysis and careful examination. On this latter point, compare Shenvald, "*Kefel Lashon ve-Kefel Inyan*," 281-83.

34. Ramban, Ex. 15:19. Note that Rashi, Ex. 15:19, also renders *ki* as "when," but he does not link this verse to the prologue in v.1. Luzzatto, Ex. 15:19 (ed. Schlesinger, 293), similarly agrees with Ramban. Propp, *Exodus 1–18*, 546, however, finds Ramban's reading "less plausible" than other alternatives, presumably because of the necessity to link two distant verses. Instead, he interprets v. 19 as a narrative summation, rendering *ki* as "for."

of the Egyptians, as the primary motivation for the song's composition.[35] Accordingly, one anticipates that Ramban will apply his understanding of the catalytic narrative events in order to elicit the key motifs of the song and that he will interpret the song in relation to the prose description of the events.

The immediacy and spontaneity of the song conveyed through this narrative framework puts the reader in the mindset of those who have just experienced these defining events. This is evident in Ramban's grammatical reading of the opening words in v. 1a.[36] Noting the incongruity between the future construct of the verb signifying the act of singing, "Then Moses and Israel *will sing* this song (*az yashir*)," and the reality that the narrator is relating a past event, Ramban resolves that this linguistic formulation sets the proper tone for the ensuing poetic text. The intent is to create the impression that the song is transpiring at that moment, "as if they are singing before him." As Ramban explains, "The narrator (*ha-mesapper inyan*) positions himself in a particular time frame, and he hints to the situation from that [reference]." Ramban notes that the narrated frame establishes the mood of this scene, "speaking of it as a matter that is current, placing himself at its onset."[37] The implication is that this perspective immerses the reader in the unfolding scene, thus contributing to the vibrancy of the ensuing song. This dynamism integrally connects to the spontaneity of the song's oral composition.[38]

The narrative frame also focuses the reader on the song's participants. While v. 1a records that Moses and the children of Israel (that is, the men) sing this song, the temporal adverb, *ki—then*, in relation to vv. 19, 20–21, indicates that when Pharaoh and his army drowned and

35. Compare Richard D. Patterson, "Victory at Sea: Prose and Poetry in Exodus 14–15," *Bibliotheca Sacra* 161:641 (January–March 2004): 50 and 50 n.27, who observes how the Israelite crossing through the split sea is highlighted in Exod. 14 and after the song, but only obliquely referenced in the song itself.

36. Ramban, Ex. 15:1.

37. Ramban, ibid., indicates that it is a "norm of the language [of Scripture] (*minhag ha-lashon*)" for the narrator to describe events in this scenic mode. He further stipulates that the reverse scenario is also common, whereby the narrator speaks about a future event in the past tense as if it has already occurred, particularly in prophetic contexts.

38. Ramban is apparently influenced by Onkelos and Ibn Ezra, who advocate a reading of past tense for the grammatical construct of the future verb *yashir*, "will sing," particularly when this verb is juxtaposed to the adverb *az,* "then." Cf. Rashi's reading of Ex. 15:1. On these medieval approaches to this grammatical conundrum, see Simcha Kogut, *Ha-Mikra bein Taḥbir le-Parshanut* (Jerusalem: Hebrew University, Magnes Press, 2002), 57–59.

the Israelites crossed through dry land, "Miriam the prophetess took her drum in her hand and sang back to them (ותענה להם) the first verse of the song, that they [the women] should chant thus after Moses and Israel."[39] Although Ramban does not clarify, it is possible that he reads the repetition of the first verse of the song in Miriam's rendition (v. 21) as an indication that the women responded the entire song in kind.[40] Alternatively, this first verse was meant to serve as a chorus that the women would chant after each verse sung by the men.[41]

Presuming that biblical song is organized with a deliberate structure, Ramban's commentary integrates an analysis of individual poetic lines into a broad schema. A close reading of his analysis of the Song of the Sea reveals that Ramban implicitly demarcates this text into distinct stanzas by eliciting the primary motif within each literary grouping. But, reading this song holistically, Ramban has an eye to integrating each of these motifs such that they interconnect to an overall cohesive text that pivots on the main goal of this song—to praise God's attributes and actions that were manifested through the events at the sea.

The scholarly debate regarding the literary segments of the Song of the Sea is exemplified in Brevard Childs' observation on this text:

> The division into strophes . . . continues to be a highly subjective enterprise which is chiefly determined by the content of the poem in spite of the claims for larger poetic patterns.[42]

Nevertheless, modern scholars generally agree that this song consists of two or three primary stanzas.[43] Although Ramban does not present

39. Ramban, Ex. 15:19. Cf. Rashbam, Bekhor Shor, and Ḥizkuni, Ex. 15:19, who, interpreting *ki* as "when," infer that the conclusion of the statement in v. 19 is vv. 20–21. Ramban also links these verses, but he sees them as integrally associated with the temporal clause noted in v. 1a.

40. See Bekhor Shor and Ḥizkuni, Ex. 15:21, who claim that it was only necessary to repeat the first verse, as it represented the entire song that has just been recorded. This also appears to be Rashi's approach.

41. See Propp, *Exodus 1–18*, 548. Ramban is not clear whether *lahem* in v. 21 refers to singing to the men in response or to repeating the song's lines to the women, even though the word is in the masculine form.

42. Brevard S. Childs, *The Book of Exodus: A Critical, Theological Commentary* (Philadelphia: Westminster Press, 1974), 247. Compare George Wesley Coats, Jr., "The Song of the Sea," *Catholic Biblical Quarterly* 31 (1969): 2 and nn.7, 9, who charts a range of scholarly opinions about the division of the song of Ex. 15 into strophes, demonstrating the lack of agreement among them, though there is general consensus regarding the boundaries of the poem as being vv.1b–18.

43. Among modern scholars, Childs, ibid., 250–53, and Maribeth Howell, "Exodus 15, 1b-18: A Poetic Analysis," *Ephemerides Theologicae Lovanienses* 65:1 (1989): 9,

his insights with regard to all of the song's poetic units, a close reading of his commentary leads to the conclusion that he demarcates four major stanzas: verses 1b–7; 8–11; 12–17; and the climactic closure in verse 18.[44] This division is based on Ramban's perception of the progression of events depicted in the song in relation to the divine attribute that is the focus of Israel's praise in each stanza.

The first stanza (vv. 1b–7) introduces the catalyst and purpose of the song, and it foregrounds the main event of the Egyptian defeat, with the motifs of God's exaltedness and Israel's destiny as the central thematic pivots. The second stanza (vv. 8–11) details the events that result in the Egyptians' demise, with the goal of illustrating God's ability to perform miracles, which Ramban reveals to be His performance of diametrically opposed actions simultaneously. The third stanza (vv. 12–17) elaborates on God's diametric actions performed with regard to the Egyptians and the Israelites, transitioning to focus on the divine plans for the future destiny of His people. The song concludes in the fourth and final stanza (v. 18), which culminates in a succinct and powerful declaration of God's kingship. In Ramban's view, these words are the ultimate summation of all the divine attributes that have been delineated throughout the song.[45]

schematize this song with two stanzas, vv. 1b–12 and 13–18. Alter, *Art of Biblical Poetry*, 51–54; Propp, *Exodus 1 –18*, 505; and Patterson, "Victory at Sea," 47–49, divide this song into three stanzas, noting various literary features, such as repetition of imagery (as in the similes of vv. 5, 10, 16), staircase parallelism (vv. 6, 11, 16b), and concluding praises of God's power (as in vv. 6, 11, 18). These scholars disagree, however, regarding the exact verses comprising each stanza. Alter and Patterson begin the second stanza with v. 7 and the third stanza with v. 12, while Propp begins the second stanza with v. 8 and the third stanza with v. 13. Cf. J. P. Fokkelman, *Major Poems of the Hebrew Bible at the Interface of Hermeneutics and Structural Analysis: Volume I: Ex. 15*, *Deut. 32*, *and Job 3* (Assen, The Netherlands: Van Gorcum, 1998), 34–35, who delineates four stanzas, separating vv. 17–18 as the last one.

44. Ramban considers stanzaic divisions of a poetic biblical text to be an integral aspect of his literary analysis of this type of genre of biblical text. Significantly, this is evident in his discussion of the literary structure of the song of *Ha'azinu* at the end of his commentary to Deut. 32:40-41 (*Ha-Keter*, Deut., 235). In the context of Ex. 15, however, the reader must do inferential analysis to discern Ramban's perception of the song's stanzaic divisions.

45. Compare the parallel insight of Isaac B. Gottlieb, *Yesh Seder la-Mikra: Ḥazal u-Parshanei Yemei ha-Beinayim Al Mukdam u-Me'uḥar ba-Torah* (Jerusalem: Hebrew University, Magnes Press; Ramat Gan: Bar-Ilan University Press, 2009), 323–24 and 324 n.32, who notes how Ramban observes that vv. 4–5 describe the events at the sea generally, while the next unit, which begins with v. 8, focuses in detail on this scene. As will be discussed, the presumption that Ramban marks four stanzas is based on how he views vv. 6–7 as a reiteration of the primary motifs of the first stanza, with v. 8 beginning a new unit that delineates God's defeat of the enemy, culminating in v. 11,

Stanza I: The Motif of *Ge'ut*—Antithetical Actions: God's Rising Up Above the Enemy that is Lowered

Ramban discerns the first significant theme of this stanza by analyzing the linguistic meaning of the verb גאה in the first line of v. 1 in relation to the image of the horse and rider hurled into the sea in the second line:

> אשירה לה׳ כי גאה גאה / סוס ורכבו רמה בים
>
> I shall sing to God, for He is greatly exalted/ horse and rider, He has hurled into the sea.

Ramban disagrees with Rashi, who renders the verb גאה in the stative sense and interprets *ki* as a negative qualifier, thus construing this line antithetically, aiming to delimit the song's parameters: "I will sing to God, *even though* He is lofty beyond all songs."[46] Like Onkelos, Ramban renders גאה in the active sense—acting exaltedly, in a proud manner: "The one who is *mitga'eh* elevates himself in distinction." Applying this meaning, as well as Onkelos' interpretation of the deictic particle *ki* as "for," Ramban interprets this line as a logical relationship of action-reason. Praising this divine attribute is the catalyst for this melodic forum.[47]

This idea is expanded in the second, corresponding paired line, which delineates how God exhibits this attribute in relation to His enemy: "For (*ki*) He raised Himself (*nitga'eh*) above the horse that is exalted in battle (*she-mitga'eh be-milḥamah*) and over the warrior (*gibbor*) who rides it, for (*ki*) He hurled both into the sea."[48] The linking *ki* term that

and the way in which he juxtaposes vv. 12 and 13 in relation to the ensuing verses of this third stanza.

46. This is Rashi's second opinion, Ex. 15:1. In Ramban's assessment, Rashi has rendered this verb with the denotation of loftiness, greatness, and increase. Rashi, however, does cite Onkelos' opinion first, though without elaboration. While Ramban focuses on the meaning of *ga'ah*, his disagreement with Rashi and his stipulation that "the correct [meaning] is the opinion of Onkelos" indicates that he reads the entire couplet in accordance with Onkelos' rendition.

47. Ramban, Ex. 15:1. Propp, *Exodus 1-18*, 509–10, also prefers to render this phrase in the active sense. Luzzatto, Ex. 15:1 (ed. Schlesinger, 275), observes that the coupling of the finite verb *ga'ah* with the infinitive absolute *ga'oh* points to the meaning of the verb in the active sense. Howell, "Exodus 15," 17, presents a reading like that of Ramban, rendering, "for He is gloriously triumphant."

48. Ramban, Ex. 15:1; apparently, his interpretation is also influenced by Ibn Ezra, long commentary to Ex. 15:1. Ramban's reading may also be rendering the double verb, *ga'oh ga'ah*, as an indication of God's exalted actions above and against the double exalted enemy, horse and rider. Compare Rashbam, Ex. 15:1, who observes that the term *ga'ah* is used in military victory.

Ramban introduces to connect the two poetic lines establishes the logical semantic relationship between the lines of this couplet.[49] By assigning God and His enemy, horse and rider, similar qualities of pride and exaltation, this poetic couplet sharpens the enemy's defeat, which is the primary topic of the song as stated in this opening stanza: God raises Himself above those who are themselves exalted.

Ramban's interpretation enables the reader to focus on the motif of opposition of raising and lowering (גאה in relation to רמה), which prevails throughout the first stanza.[50] This becomes evident in the extended observations in Ramban's commentary that follow.

Ramban pays attention to the poetic force of the figurative simile in v. 5 used to depict the ramifications of the Egyptian defeat:[51]

תהמת יכסימו / ירדו במצולת כמו אבן

The deep waters covered them/ they descended into the depths *like stone*.

Applying modern terms, Ramban perceives that the vehicle, the image of the stone, conveys the tenor, the idea of the finality of the Egyptian drowning in the deep waters.[52] Noting that the tenor is not wholly elucidated in v. 5, Ramban infers that this poetic device captures graphically the facts related in the prose version—that not one Egyptian survived this ordeal (Ex. 14:28).[53] Ramban notes that the Egyptians could have swum to the nearby shore or clung for safety to their shields or to

49. This is how Ramban clarifies that Onkelos views the second line as complementary to the first line in thought. As will become apparent, because Ramban is quite attuned to the paratactic, compact style of biblical song, which modern scholars have isolated as a key feature of biblical poetry, he often inserts linking terms to establish the connections between poetic lines in order to decode their conceptual relationship. On the succinctness of biblical poetry in modern scholarship, see the discussion, for example, in Watson, *Poetry*, 81–82; Berlin, "Introduction to Hebrew Poetry," *New Interpreter's Bible,* 4:303; and Weiss, "Poetry," *Encyclopedia Judaica*, 16: 258–59.

50. Compare Propp, *Exodus 1-18*, 510, 519, 521, 542, 571, on the insight that this song has many verbs that convey the antithetical themes of lifting up and bringing down. See also Robert L. Shreckhise, "The Rhetoric of the Expressions in the Song by the Sea (Exodus 15, 1–18)," *Scandinavian Journal of the Old Testament: An Internal Journal of Nordic Theology* 21:2 (2007): 203–11. Shreckhise, ibid., 210, notes that this unifying theme creates the general impression of "the irony and mockery of Pharaoh's power and evil intent," juxtaposed to God's incomparable powers that bring about salvation.

51. For this analysis, see Ramban, Ex. 15:10, to v. 5 (and, as will be discussed, in relation to the parallel simile in v. 10).

52. For the components of a simile, vehicle and tenor, based on I.A. Richard's analysis, see M.H. Abrams, *A Glossary of Literary Terms*, 6th edition. (Fort Worth: Harcourt Brace and Company, 1993), 67.

53. Ramban, Ex. 15:10, paraphrases Ex. 14:28, noting, "Yet here [in this incident], not one of them escaped."

the horses that would float on the waters. Therefore, he surmises that the simile, "like stone," emphasizes that they were completely defeated because of "the hand of God."

The significance of the simile's tenor is discerned by Ramban in his decoding of v. 5 in relation to v. 4:

> מרכבות פרעה וחילו ירה בים / ומבחר שלישיו טבעו בים סוף.
>
> Pharaoh's chariots and his army He hurled into the sea / and the select of his officers sank in the Sea of Reeds.

Observing the terse style of these verses, Ramban paraphrases their content with linking conjunctive *vav*s ("and") in order to clarify the dynamic, sequential relationship between them:

> For at the beginning, [the song] stated "They were drowned in the Sea" [v. 4] *and* "They went down into the depths" [v. 5], *and* this was when the waters came back and "covered" [v. 5] the chariots and horsemen. [54]

Focusing on the relationship between the drowning in the Reed Sea (v. 4, טבעו בים סוף) and the descent into the depths (v. 5, ירדו במצולת), which describe the end result, Ramban decodes how the first line of v. 5 delineates its cause: תהמת יכסימו—the waters cover Pharaoh's chariots and army.[55] Ramban implicitly quotes from the narrative version in the last phrase of his summary: "The waters came back *and covered the chariots and the horsemen* and all of Pharaoh's army who were coming after them into the Sea" (Ex. 14:28),[56] in order to alert the reader that the song version only alludes to the background setting, which necessitated the bringing back of the waters to cover Pharaoh's army.

54. Ramban, Ex. 15:9. Ramban observes the interrelationship between vv. 4-5, which provides a general overview of God's actions against the Egyptian enemy, resulting in its final demise. Note that in light of the three perfect verbs surrounding the description of the deep waters covering the Egyptians—ירדו, טבעו, ירה—Ramban apparently determines that the imperfect verb יכסימו, which relates to the same occurrence, also refers to an action completed in the past. On this point, compare David Noel Freedman, "Moses and Miriam: The Song of the Sea (Exodus 15:1–18, 21)," in *Realia Dei: Essays in Archaeology and Biblical Interpretation in Honor of Edward F. Campbell, Jr. at His Retirement*, ed. Prescott H. Williams, Jr. and Theodore Hiebert (Atlanta: Scholars Press, 1999), 74.

55. Compare Alter, *Art of Biblical Poetry*, 38, on the semantic relationship between parallel lines, which often results in a "small-scale narrative within the poem" that relates its sequential progression.

56. This translation follows Ramban, Ex. 14:28. Gottlieb, *Yesh Seder la-Mikra*, 324n.32, also observes this indirect reference to the prose version, signaling how Ramban interprets the song as a chronological recounting of the events at the sea.

Apparently perceiving the subtle distinction between v.4, which describes God actively hurling the Egyptian army into the sea, and v. 5, which assigns the cause of their drowning to the deep waters that covered them, Ramban infers that the simile in v. 5—"like stone"—imparts how God manipulates natural agents in order to bring about the enemy's total demise.[57] He develops his insight by correlating the prose version, which relates that "God shook the Egyptians into the midst of the sea" (Ex. 14:27), and by applying the agency of the wind mentioned in v. 10 of the song. As he explains, "God *raised them* (שהיה ה׳ מגביהם) with His harsh wind (v. 10) and *cast them down* (ומפילם) into the sea," without allowing them to swim to shore.

This analysis directs the reader to discern how Ramban takes as his cue the motif that opens this song to guide him to understand the implications of the ensuing descriptions. V. 1b declares that the song intends to praise God's action of גאה, raising Himself above His enemy and causing them to be lowered in defeat into the sea. This contrast of raising/lowering is continued in Ramban's description of the tenor of the simile "like stone," which connotes how God "raised up" the enemy only to cast them down to their demise without any chance for survival.[58]

Ramban detects how this motif reaches its climax at the conclusion of the first stanza, vv. 6–7. Unlike many modern scholars, who view v. 6 as a general refrain that describes God's strength broadly, Ramban maintains that this verse rounds out the primary focus of the first stanza on God's exaltedness in relation to the lowering of His Egyptian enemy, encapsulating the very divine attribute that has been demonstrated throughout this stanza.[59] In order to elicit this main motif, he decodes the relationship between the parallel lines in the pairing:

57. Note Ramban's reiterated focus in his commentary to Ex. 15:9, in relation to vv. 4-5, regarding the multiple descriptions of the sea in these verses (sea, depths, waters), which suggests that these lines aim to develop the theme of the enemy's fate through the role of this natural agent.

58. Note that Chavel, *Peirush ha-Ramban*, 1:356, has the version, "ומשפילם בים," which directly focuses on the opposition of raising/lowering in this comment of Ramban.

59. Ramban, Ex. 15:6. Cf. James Muilenburg, "A Liturgy on the Triumphs of Yahweh," in *Studia Biblica Et Semitica*, ed. W. C. Van Unnik and A.S. Van Der Woude (Wageningen: H. Veenman & Zonen, 1966), 241; Fokkelman, *Major Poems*, 27–29, 41–42; as well as David Noel Freedman, "Strophe and Meter in Exodus 15," in idem, *Pottery, Poetry, and Prophecy: Studies in Early Hebrew Poetry* (Winona Lake, Indiana: Eisenbrauns, 1980), 188–89, 191, who view this verse as a refrain, parallel to the style of vv. 11 and 16b, serving to mark the divisions of the literary units in this song. Ramban, however, associates v. 6 with v. 7 through the reiterative motif of גאה, and he maintains that v. 6 describes particular divine attributes that have been delineated in this first stanza.

ימינך ה׳ נאדרי בכח / ימינך ה׳ תרעץ אויב.

Your right hand, God, mighty in strength / Your right hand, God, crushes the enemy.

Influenced by Ibn Ezra, Ramban interprets the verbatim repetition in v. 6, "Your right hand, God," as having the rhetorical effect of conveying the idea of a continuous phenomenon.[60] Furthermore, Ramban renders these two corresponding lines as an example of synonymous parallelism, wherein each line expresses a complete statement, the second line reiterating the ideas in the first. As he observes, "And it [this verse] is doubled, as is the way of the prophecies (*ve-hu kaful ke-derekh ha-nevu'ot*)." As noted by Jair Haas, this reading exemplifies how Ramban adopts Ibn Ezra's interpretative approach that the literary strategy of "semantic doubling," the repetition of the same idea in different words (*kefel inyan be-milot shonot*), is an integral stylistic phenomenon of "prophecies."[61] It is significant to note, however, that Ramban presupposes that the parallel semantic relationship between these lines is only couched in the poetic brevity of v. 6; the reader is charged with clearly establishing the balance implied in them. Filling in the presumed gaps, Ramban's expansive reading accentuates the primary motif of the first stanza, thus eliciting its circular thematic frame.

Accordingly, Ramban interpolates this verse:

ימינך ה׳ *הוא* נאדר בכח *להשפיל כל גאה ורם* / ימינך ה׳ תרעץ אויב *בכח גדול*.

Your right hand, God, *is* mighty in strength *to lower every proud and haughty person*[62] / Your right hand, God, crushes the enemy *with great strength.*

60. Ramban, Ex. 15:6. See Ibn Ezra, long commentary to Ex. 15:6, and compare his commentaries to Gen. 49:22; Deut. 16:20; Ps. 77:2, 113:1, 118:16. Compare Haas, "*Kefel Inyan*," 102.

61. Ramban, ibid. See Haas, ibid., 107–108, regarding Ibn Ezra's influence on Ramban's literary insights into this style within biblical texts. For the phrase, "semantic doubling," regarding this phenomenon, see Haas, "Did Medieval Jewish Commentators Understand Biblical Parallelism," 466. On Ibn Ezra's qualification of this style being prevalent within "prophecies," see Haas, "*Kefel Inyan*," 79-80, 98, 103. Note, however, that Ibn Ezra describes this literary feature often as *ha-ta'am kaful,* as, for example, in his commentary to Num. 23:18, 24:17. Notably, however, in this context, Ramban is applying this literary phenomenon to explain the structural alignment of lines in biblical song, noting its stylistic parallels to "the prophecies." Furthermore, as will be discussed, Ramban does not agree with Ibn Ezra's reading of v. 6, arguing that his explanation does not elicit fully the "semantic doubling" in this verse; this point is not noted in Haas's analysis.

62. Note that Ramban's phrasing is an indirect intertextual quotation of Isa. 2:12, in which God is described as lowering all those who are haughty to presume that true worship is through idolatry. Regarding Ramban's technique of oblique intertextual

The first line describes God's right hand, a feminine noun, with the masculine participle, נאדרי בכח, signifying His great power.[63] Ramban presumes that this power refers to God's ability to lower those who raise themselves high in stature, which allows the reader to interrelate this verse by distant parallelism to the motif of גאה introduced in v. 1. Correlatively, Ramban interprets the second line as expressing how God's right hand represents His great strength, which He uses to crush the enemy. With his interpolation, Ramban verifies that the enemy in the second, parallel line represents the proud and haughty, who are lowered by God, described in the first line.

Furthermore, Ramban's reading demonstrates not only semantic parallelism between the two lines; he has connected them grammatically as well, as each line correspondingly has a subject, verb, object, and indirect object. The grammatical correspondence elicits their semantic correlations.

It is significant that Ramban does not adopt his predecessors' readings, even though he quotes their views. Like Ramban, Rashi presumes that the masculine participle of נאדרי בכח describes God's right hand. But, Rashi, as cited by Ramban, reads: "Your right hand, *which* is mighty in strength—what is its function? Your right hand, God, crushes the enemy."[64] One could explain, in modern terms, that Rashi reads this verse as a case of "staircase" or "incremental" parallelism, in which the thought is begun in the first line and is then reiterated and completed in the second line.[65] Ramban, however, critiques Rashi, expressly

references that have conceptual significance within his commentary, see Ephraim Chazan, "*Kavvim Aḥadim li-Leshono shel Ramban be-Peirusho la-Torah: le-Darkhei ha-Shibbuẓ ve-Shilluvei ha-Mekorot u-Khetivato*," *Meḥkerei Morashtenu* 1 (1999): 163–74. On characterization and intertextuality in Ramban's commentary, see Michelle J. Levine, "Character, Characterization, and Intertextuality in Nahmanides' Commentary on Biblical Narrative," *Hebrew Studies* 53 (2012): 121-42.

63. Ramban, Ex. 15:6, cites Ezek. 2:9 to prove this gender flexibility with regard to the Hebrew term for "hand."

64. Rashi, Ex. 15:6. Although Rashi also cites a midrashic interpretation, the focus here is on the comment of Rashi cited by Ramban, Ex. 15:6. See Robert A. Harris, *Discerning Parallelism: A Study in Northern French Medieval Jewish Biblical Exegesis*, Brown Judaic Studies Number 341 (Providence, RI: Brown University Press, 2004), 38–40, on this interpretation in Rashi's commentary, particularly regarding manuscripts that do not have this comment, and how Rashi presumably learned from his grandson, Rashbam, to detect this stylistic mode of parallelism; cf. Rashbam, Ex. 15:6. Cohen, *Ha-Keter*, Ex. part I, 120, concludes that this comment is not originally that of Rashi. Nevertheless, for this analysis, it is significant that Ramban cites it in his name.

65. For the definition of "staircase parallelism," see Watson, *Poetry*, 150–56; Watson, ibid., 154, classifies v. 6 as staircase parallelism, along with vv. 11 and 16, whose

declaring, "But this is not correct in my opinion." Ramban maintains that this verse is not comparable in its structure and form to other cases of staircase parallelism, such as Ps. 92:10 (כי הנה אויביך ה׳, כי הנה אויביך יאבדו) in which only the subject is noted in the first line, while the second line completes the thought by repeating the subject and then stating something about the subject.[66] In his view, v. 6a already stipulates additional information about the divine right hand—namely that it is mighty in strength. Were Rashi's reading correct, Ramban claims the verse should have been formulated, "Your right hand God/ Your right hand God, crushes the enemy."[67]

Although Ramban adopts Ibn Ezra's premise of the stylistic device of "doubling" in this context, Ibn Ezra himself reads this verse differently. Claiming that the modifying phrase, "mighty in strength," should be attributed to God, not His feminine right hand, Ibn Ezra renders, "Your right hand, God Who is mighty in strength/ Your right hand crushes the enemy."[68] Here, significantly, Ibn Ezra is not reading the two parallel lines as an example of synonymous parallelism, of the doubling of the same idea in different words, but more in line with Rashi's presumption of staircase parallelism. Yet, Ibn Ezra's reading seems to be more plausible to Ramban than that of Rashi; when Ramban presents his own view in relation to that of Ibn Ezra, he stipulates, "And it is more correct to say," indicating that he has not totally discounted Ibn Ezra's reading. Presumably, Ramban is more inclined to Ibn Ezra's analysis because it maintains that the thought of the first line about God's right hand is not explicated until the second line, correlating with other cases of staircase parallelism, whereas Rashi indicates that the strength of God's right hand is already stipulated in the first line.[69]

function is to serve as a refrain and mark the closure of a stanza; similarly, Muilenburg, "Liturgy," 237, 241–42. Compare Propp, *Exodus 1-18*, 518, who observes that even if one were to render each line of v. 6 as an independent statement, the thought is nevertheless completed only with the second line; on this, see also Fokkelman, *Major Poems*, 27–28, 41. Through his interpolations of each line, however, Ramban illustrates his position that these are two separate, complete thoughts that are intended to parallel one another stylistically and thematically.

66. Note that Ramban cites Rashi's version of this interpretation as referencing additional examples of staircase parallelism, as in Ps. 93:3, 94:3; cf., however, Harris, *Discerning Parallelism*, 38n.10, who observes that not all editions and manuscripts of Rashi's commentary include these other examples.

67. See Ramban, Ex. 15:6.

68. See Ibn Ezra, long commentary to Ex. 15:6.

69. On this point, see Yehudah Meir Devir, *Peirush ha-Ramban al ha-Torah*, *Shemot*, *im Be'ur Beit ha-Yayin* (Jerusalem: Makhon Megillat Sefer, 2002), 163n.4. Cf.,

In contrast to his predecessors' analyses, Ramban, who assigns the descriptive clause, "mighty in strength," to the divine right hand, develops an expansive reading of these paired lines as synonymous parallelism. By aligning these lines grammatically and semantically, Ramban succeeds in eliciting how this verse serves as a culmination of the first stanza, presenting an emphatic doubled statement about its primary motifs—God's glorious strength exhibited through His defeat of the haughty enemy.

Ramban correlates this reading consistently to the beginning of v. 7:

וברב גאונך תהרס קמיך . . .

And in Your great *exaltedness* You have overpowered Your enemy.[70]

This interlinear correspondence implicitly demonstrates how Ramban discerns the tightly balanced structure of the first stanza, reiterating its opening ideas about God's exalted status in the final verse of the stanza.[71]

The Motif of Israel's Salvation for a Future Destiny

The second primary theme introduced in the first stanza—Israel's salvation being a means toward its greater future destiny—serves to interconnect the beginning of the song to the third stanza. This idea is evident

however, Ibn Ezra's long commentary to Ex. 15:6, which cites a reading like that of Rashi. Compare Bekhor Shor, Ex. 15:6, who interprets the verse in accord with Ibn Ezra's preferred reading; on Bekhor Shor, see Harris, *Discerning Parallelism*, 88–89. Similarly, see Luzzatto, Ex. 15:6 (ed. Schlesinger, 281–82), though he disagrees with Ibn Ezra's premise that the repeated wording conveys God's constant smashing of the enemy, claiming that this verbatim repetition adds forcefulness to this statement and heightens the listener's anticipation to find out the culmination of the thought.

70. Ramban, Ex. 15:1; see Devir, *Peirush ha-Ramban, Shemot,* 163 n.5, for his brief observation of Ramban's semantic parallels between vv. 1, 6, and 7. This reading coheres with the literal meaning of קמיך in v. 7, "those who rise up," to describe the enemy whom God now lowers by acting exaltedly; on this, compare Ibn Ezra, long commentary to Ex. 15:7.

71. Note as well that Ramban, Ex. 15:9, infers that the particulars begin with v. 8, implying that the first poetic unit ends with v. 7. Howell, "Exodus 15," 22–23, aligns vv. 6–7 based on their 'hymnic' nature," as compared to the preceding and following verses, which have a narrative mode; she also notes the parallel between the imperfect verbs of these two verses. This position is also adopted by Childs, *Exodus*, 251, and Propp, *Exodus 1-18*, 505, 520–21. Cf. Muilenburg, "Liturgy," 242–43; Alter, *Art of Biblical Poetry*, 51–52; and Fokkelman, *Major Poems*, 35, 42, who maintain that v. 7 is the beginning of the second stanza, with the verb גאה marking its beginning in relation to the start of the first stanza. This would also align the examples of staircase parallelism in vv. 6 and 11 as culminating each of these literary units, as noted by Fokkelman, ibid., 27–28.

in Ramban's analysis of the second pair of lines in v. 2: זה אלי ואנוהו / אלהי אבי וארממנהו. In this context, Ramban, in contrast to Rashi, accepts Ibn Ezra's premise that this is not an example of synonymous parallelism, and he thus differentiates between the verbs in each line. In fact, Ramban classifies this reading as "certainly the linguistic-contextual reading (ודאי פשוטו של מקרא)."[72]

According to Ramban, the first line of v. 2 declares Israel's intent to establish for God an earthly abode, from the root נוה. Presumably, Ramban concurs with Ibn Ezra's reading from both linguistic and thematic considerations, as the verb ואנוהו has linguistic echoes to v. 13, which declares that the people are guided "to Your holy abode (אל נוה קדשך)."[73] This analysis is suggestive of an external, distant parallelism between poetic lines through the reiteration of this key term, which has the advantage of creating a kind of "envelope" or "inclusio" that unites the first and third stanzas thematically and demonstrates how the first stanza anticipates later units of the song.[74] Accordingly, this reading implies the song's broader agenda. The song is not meant only to celebrate a past event, praising God for His wondrous acts; it also declares that Israel's salvation is a means to realize a greater national destiny.[75]

72. Ramban, Ex. 15:2–3, citing Ibn Ezra, long commentary to Ex. 15:2. Compare Haas, "*Kefel Inyan*," 89–93, who cites various instances in which Ibn Ezra does not identify a biblical verse as an example of the doubling of ideas in different words. Additionally, Ramban may have applied Ibn Ezra's reading because it coheres with his kabbalistic reading of vv. 2–3; on this aspect of his analysis, see Haviva Pedaya, *Ha-Ramban: Hit'alut: Zeman Maḥzori ve-Tekst Kadosh* (Tel Aviv: Am Oved Publishers, 2003), 355 and 410 n37.

73. Ramban's rendering of ואנוהו also follows Onkelos, Ex. 15:2. Bekhor Shor, Ex. 15:2, supports Onkelos by juxtaposing v. 13 to v. 2; similarly, see R. Beḥayei, Ex. 15:2, in *Rabbenu Beḥayei al Ha-Torah*, ed. Hayyim Dov Chavel (Jerusalem: Mosad Harav Kook, 1967), 2:127. In modern literary terms, this suggests an example of paronomasia, in which the poet applies two different words that sound alike; see Watson, *Poetry*, 242–43. Compare Nitzan, "*Le-Mashma'utah shel 'Shirat ha-Yam'*," 10, on this device in this song. Cf. Rashi and Bekhor Shor on this verse, who also consider that ואנוהו derives from the root נוי, referring to Israel's intent to praise God; compare Rashbam, Ex. 15:2, who supports this reading based on its parallel to וארממנהו. See also Luzzatto, Ex. 15:2 (ed. Schlesinger, 278), who applies this couplet as a prime example of *kefel inyan be-milot shonot*. Similarly, see among modern scholars, Muilenburg, "Liturgy," 239–40, and Howell, "Exodus 15," 18. Interestingly, Propp, *Exodus* 1-18, 514, combines the two possible meanings of ואנוהו, inferring that the optimal mode of exaltation is building God His abode.

74. On the concept of the envelope or inclusio device in biblical poetry in relation to distant parallelism, see Watson, *Poetry*, 282–86, and Zogbo and Wendland, *Hebrew Poetry*, 33–34.

75. Compare Ibn Ezra, long commentary to Ex. 29:46, cited by Ramban on this text, in which he notes that God redeemed Israel for the express purpose that they should

Adapting Ibn Ezra's reading, which assumes ellipsis and carries over the demonstrative *zeh* to the second line, Ramban interprets that the Israelites praise "this God of my father" and "speak of His heroic actions." The logical relationship between the paired lines is that of goal-catalyst. Uppermost in the Israelite mind is the understanding that its salvation and the enemy's defeat are for a loftier purpose. With the telling over of God's heroic deeds, Israel demonstrates how it absorbs the national ramifications of these divine actions.

In this manner, Ramban's reading allows the reader to construct an interlinear, semantic parallelism between the two couplets of v. 2. The first couplet, עזי וזמרת י-ה / ויהי לי לישועה, is interpreted by Ramban, adapting Ibn Ezra's reading, to mean that God's strength, exhibited through His people's salvation, is the subject of the song:

> My strength and the song of my strength is God. And the meaning is that he gave thanks that his strength and power of which he sings belong to God and He was its [Israel's] salvation.[76]

Thus, in a complementary manner, the second couplet of v. 2 elaborates that this salvation heralds the opportunity to bring about a greater purpose in establishing God's abode among His people.

Stanza II: The Motif of God as Doer of Miracles, "The Thing and its Opposite"

Ramban pinpoints the thematic pivot of the second stanza (vv. 8–11) by focusing on its culminating declaration in v. 11—that God is a doer of wonders (עשה פלא). In Ramban's view, this divine attribute is exhibited through miraculous acts in which God performs diametrically opposed actions (עושה גדולות ונפלאות בדבר והפכו).[77] These acts are the focus of the second stanza, which are elucidated by Ramban's intuitive reading of vv. 8-10 as sequential parallelism, describing a mini-narrative that depicts how God works to confound the enemy by the opposing actions of the winds on the sea waters.

Ramban observes that the second stanza develops this theme by expanding upon the content of the first stanza. Organizing the sequential,

build for Him a Tabernacle "so that I could dwell in their midst." This was already anticipated in God's declaration to Moses, Ex. 3:12.

76. See Ramban, Ex. 15:2-3, citing Ibn Ezra's long commentary to 15:2.

77. Ramban, Ex. 15:9, on v. 11.

interlinear relationship between the two stanzas, Ramban asserts:

> *From the beginning*, [the song] stated that they drowned in the sea and went down into its depths (vv. 4–5) . . . *and afterward*, [the song] returns to state how this was done (vv. 8–10).[78]

Ramban discerns how the second stanza elucidates the divine attribute of performing diametrically opposed actions through its deliberate structure. The frame (vv. 8, 10) focuses on the opposing roles of the winds,[79] while the centered description of the enemy's perspective (v. 9) accentuates how God manipulates the enemy's will to act in a manner contrary to all logic and common-sense in order to bring about their demise.

Specifically, Ramban infers that two winds produce opposite effects on the sea waters in order to implement the divine plan. The figurative language in v. 8, "with the breath of Your nostrils (וברוח אפיך)," is a metaphoric vehicle that signifies the tenor of the blowing of a "strong east wind" through which God dries up the sea, as noted in the prose account (Ex. 14:21). Ramban does not analyze the anthropomorphic image of God's nostrils, in contrast to Rashi, who interprets this image as indicative of God's anger, as if hot breath emanates from His nostrils, drying up the waters.[80] However, he does distinguish between this harsh wind, and a second wind, identified as "your wind (ברוחך) [v.10]," the normal airstream that blows over the sea and causes its waves that brings about the opposite effect by drowning the Egyptians. Juxtaposing the song's account with the prose version, Ramban clarifies an apparent ambiguity in the narrative account (Ex. 14:27-28), inferring that this second wind is responsible for causing the sea to "return toward morning to its full strength" and ordinary course, resulting in the waters covering the Egyptian army.[81]

78. Ramban, ibid. See Gottlieb, *Yesh Seder la-Mikra*, 323–24, who notes that Ramban applies the literary organizing perspective of "general to particular" (*kelal/perat*) in order to describe the structural arrangement between the stanzas. On this logical relationship between vv. 4–5 and 8–10, compare Childs, *Exodus*, 251.

79. Note that Ramban, Ex. 15:10, assumes an interlinear juxtaposition between vv. 8 and 10, by discussing the winds in both verses under the heading, "And the idea of this text (*ve-inyan ha-katuv*)." Compare Howell, "Exodus 15," 29, who also observes the frame of the wind in vv. 8 and 10, which acts as an agent on the waters.

80. This analysis is based on Ramban, Ex. 15:9-10. Note how he combines the metaphor and its tenor in his paraphrase in his commentary to v. 10: "With the strong and harsh wind of His nostrils (ברוח אפיך העזה והקשה) the waters of the sea were heaped." This manner of interpretation seems to point to Ramban's presumption that in this context, the image does not play an essential role in relation to its tenor. Cf. Rashi's detailed interpretation of the image of the "breath of God's nostrils," Ex. 15:8.

81. Ramban, Ex. 15:9. In this context, he interprets נשפת to mean "blew," parallel to

Aligning the temporal progression of events described in the second stanza, Ramban discerns a poetic mini-narrative, which reveals a successive chain of events in a relation of cause-effect that exposes how God miraculously defeats the enemy through enacting acts of "the thing and its opposite." In order to elicit this idea, he clarifies the interlinear links between the poetic lines by inserting conjunctive *vav*s in his paraphrase of these verses, which are expressed in an elliptical, staccato style.[82] Furthermore, contrary to Rashi, Ramban presumes that the enemy's declaration in v. 9—"The enemy *said (amar):* I will pursue, I will overtake, I will divide the spoil; my desire shall have its fill of them . . . "—is not a verbalized statement, but a reflection of the enemy's inner point of view, rendering *amar* as thought. In addition, as noted by Isaac Gottlieb, Ramban disagrees with Rashi who reassigns this verse to the beginning of the song, inferring that the enemy's declaration was Pharaoh's initial attempt to persuade his people to chase after the fleeing Israelites. Ramban claims its position is properly placed within this stanza and is pivotal to understanding its major theme.[83] As Ramban explains:

נשבת. See also his comment to Ex. 15:10, where he nevertheless classifies this second force as being a "harsh wind," implying that even the usual wind of the sea had enough power to bring about the enemy's complete demise. Perhaps his description of the second wind aims to juxtapose the roles of both winds, illustrating how God manipulates natural agents to perform two opposite actions. Propp, *Exodus 1-18*, 526, also assumes there were two winds, noting that the gap in the prose account of Ex. 14:26-27 is filled by the song.

82. Compare Luzzatto, Ex. 15:9 (ed. Schlesinger, 283), who observes that the lack of conjunctive *vav*s "points to the succession of activities." See also Alter, *Art of Biblical Poetry*, 53. For a different perspective on the paratactic construction of v. 9, see Fokkelman, *Major Poems*, 44.

83. As Ramban, Ex. 15:9, asserts: "But in my view, by way of the contextual meaning (*ha-peshat*), this [verse] is arranged in conjunction with the verse that precedes it." Cf. Rashi, Ex. 15:9, based on midrashic sources (*Mekhilta Shirata*, *parashah* 7, and *Kohelet Rabbah* 1:12), cited by Ramban, who maintains that v. 9 is out of chronological order within the Song, and compare Rashi, Ex. 14:6. Gottlieb, *Yesh Seder la-Mikra*, 323–24, cites this example as illustrative of Ramban's overall preference to maintain the chronological order within the Torah, as compared to Rashi, who often applies the rabbinic principle *ein mukdam u-me'uḥar ba-Torah*. As noted by Gottlieb, ibid., 324, Ramban does acknowledge the song presents the events in a general manner and then backtracks to specify them in detail (*kelal/perat*); but Ramban maintains that overall, the Song preserves a chronological order. Ramban will allow for events to be recorded out of chronological order between stanzas in this Song. However, he insists that within a particular stanza, the events are meant to be recorded in their proper order, and, as I have analyzed, to communicate a message about the divine attribute that is being praised. Gottlieb does not discuss, however, how Ramban frames the delineation in vv. 8–10 in light of the culminating declaration of v. 11, and how Ramban views this latter verse as the key to placing the events of the preceding

> For "with the breath of your nostrils"—that is, the strong east wind—"the waters piled up" *at the outset, and* the deep waters congealed, *and because of this,* "the enemy thought (אמר אויב)" *that* "it would pursue" *and* "overtake" them at the sea *and* would "divide their spoils" *and* his "desire would be filled from them" *and* [or: *but*] "You blew with Your wind over them and the sea covered them." And [the song] mentions this [the enemy's viewpoint], for *also* [in addition to the opposing actions of the winds], in this thought of his [the enemy] there is a cause and wonder from God (סבה ופלא מאת השם),Who hardened their hearts and frustrated their counsel, [leading them] to come into the sea, as I have explained above. *Therefore, there follows* "Who is like God among the angels" (v. 11), Who performs great acts and wondrous deeds, with the thing and its opposite.[84]

The events of vv. 8–10 are singled out for particular mention because they serve the song's rhetorical purpose to praise God's ways. The Israelites acknowledge how God's providential attribute of acting miraculously through opposing actions (v. 11) is exemplified through His willful manipulation of the natural phenomenon of the winds (vv. 8, 10). Furthermore, God's diametric conduct (v. 11) is revealed through His confounding of the enemy's perspective (v. 9), so that it would pursue a reverse, absurd course of action, contrary to reason and logic, and chase the Israelites into the sea.

Ramban clarifies God's manner of conduct in his commentaries on the narrative version; as he indicates, his earlier explanations on the narrative are meant to elucidate the song's context. While the Egyptians should have realized that the splitting of the sea was a divine act, ironically, they are deluded into thinking that this was a mere natural coincidence, prompting them to continue with their evil designs to overtake and plunder the escaping Israelites. This ironic situation is instigated by God's active manipulation of the Egyptian perception, described as the "hardening/strengthening of their heart (חזק לבם)."

verses in perspective, also in relation to the agency of the winds in these verses. These aspects are the focus of the current analysis.

84. Ramban, Ex. 15:9, to vv. 8–10. Compare his analysis to Ex. 15:10 on the sequential relationship between the actions of the two winds in these verses, elucidated with the conjunctive *vav*. Compare Ḥizkuni, Ex. 15:9, and Rashbam, Ex. 15:9, who also read the enemy's declaration in response to the split waters, although it appears that they render *amar* as speech. Among modern scholars, see Alter, *Art of Biblical Poetry*, 52–53; Howell, "Exodus 15," 28-29; Propp, *Exodus 1-18*, 521; and Patterson, "Victory at Sea," 48-49, who have a reading like that of Ramban in relation to the chronology of vv. 8–10, though some render *amar* as speech. Compare Fokkelman, *Major Poems*, 43–44, who presents an approach like that of Rashi and accordingly divides vv. 8–10 into three strophes.

Following the plague of the firstborn, Pharaoh is so fearful that he has no desire to chase after the Israelites. Therefore, God informs Moses that He will strengthen the king's will, making him more stubborn and resilient, in order to implement the divine plan to vanquish the enemy (Ex. 14:4).[85] As Ramban notes, applying oblique references to the song (and to his commentary on Ex. 15):

> For when they [the Egyptians] will see that the sea has been split before the children of Israel and they are walking in the dry land in its midst, how could they *fill their hearts* [with the desire] [compare Ex. 15:9] to come after them to bring evil upon them? For among all of the wonders, there is none *like this wonder* [compare Ex. 15:11]. For this is truly madness among them. Nevertheless, [God] frustrated their plan and hardened/strengthened their hearts to enter into the sea.[86]

Similarly, analyzing God's decision to use the wind to split the sea, Ramban obliquely introduces terms and phrases from the song's account:

> It was the Almighty's will to split the sea with a desiccative, east *wind* so that it would appear as if the wind was drying up the sea . . . For as a result of this, they *thought* that perhaps the wind made the sea into dry land, and not that the *hand of God* did this on Israel's behalf. And while the wind does not split the sea into divisions, they also did not pay attention to this, and they came after them out of their great lust to do harm to them . . . for [God] had hardened/strengthened their hearts (Ex. 14:4) to say, "I shall pursue my enemy and overtake them" [compare Ex. 15:9] in the sea and none may be saved from *My hand*, and they did not remember at this juncture that God *makes war* for them against Egypt (Ex. 14:25).[87]

Applying the image of the "hand," Ramban alludes to a key motif in the song: the battle waged between the "hand" of the Egyptian enemy (noted

85. See Ramban, Ex. 7:3, for his reading of the "hardening of Pharaoh's heart." Cf. Lichtenstein, *Biblical Poetry*, 111, who distinguishes between the prose version, which assigns the enemy's actions to God's hardening his heart, and the song account, which accentuates the enemy's autonomous thought. Ramban juxtaposes the two renditions, maintaining that the enemy's thoughts are influenced by God's manipulation of the enemy's "heart."

86. Ramban, Ex. 14:4.

87. Ramban, Ex. 14:21. Compare Simcha Ziskind Broyde, *Sam Derekh: Be'urim u-Ma'amarim al ha-Torah u-Peirush ha-Ramban* (Jerusalem: Oẓar ha-Poskim, 2001), Exod., vol. 1, 95–96, 104–5, 337–39, who observes how Ramban's commentary to Ex. 14:4 and 21 indicates that the wonder of performing a thing and its opposite should also be applied to the Egyptian pursuit of the Israelites. The first wonder, the splitting of the sea, should have caused them to abandon pursuit of the Israelites; the fact that they did not constitutes a "reversal" through God's deliberate manipulation of the enemy's "heart."

in Ex. 15:9) and the "hand" of God, which will defeat them (explicitly referenced in v. 6 of the song). Ramban's citation from Ex. 14:25, that God wages war against the Egyptians, also recalls God's attribution as "a man of war" in the song (v. 3), which is juxtaposed to the Egyptian intent, noted in v. 9 of the song. The battle lines are drawn, with God always in control to ensure the proper outcome of events, which is praised by Israel as a miraculous act of the "the thing and its opposite."

Sensitive to the repetition of key images that create a thematic link between the stanzas, Ramban observes how parallel similes invoke the idea of God's decisive blow against the enemy. Ramban juxtaposes v. 5, which describes how the Egyptians "went down into the depths (מצולות) *like stone*," with the correlating image in v. 10, which relates how the enemy "went down into the depths (צללו) *like lead* into the mighty waters." He observes how the linguistic parallels of the verb צלל in v. 10 with the plural noun מצולות in v. 5 align the corresponding similes to convey an emphatic message.[88]

In contrast to Ramban's reading, Rashi's midrashic explanation infers that the three images in the song—stone, straw, lead (vv. 5, 7, 10)—impart different nuances, each relating to a form of death, from the least severe (immediate, sinking like lead) to the most extreme (delayed, due to the constant floating like straw).[89] Ramban (who does not comment on the image of straw, presumably viewing this simile in relation to God's anger in v. 7[90]) deduces that this doubled visual imagery emphasizes the totality of the Egyptian defeat: "And he [Moses] noted this twice in the song, "like stone, like lead," for this *also* [came] to them from *the hand of God*."[91] Ramban's use of the superlative, "also," indicates how he

88. Ramban, Ex. 15:10, associates these terms linguistically, noting that the verb צלל (a rare usage in the Bible) means "coming into the depths" (באו במצולות); this reading concurs with that of Rashi, Ex. 15:10, and Ibn Ezra, long commentary to Ex. 15:10. Cf. Ibn Ezra, long commentary to Ex. 15:10, who also posits that this verb might mean a loud banging, as in Hab. 3:16.

89. Rashi, Ex. 15:5, based on *Mekhilta Shirata*, *parashah* 5 (ed. Horovitz-Rabin, 133).

90. On this point, compare Propp, *Exodus 1-18*, 520.

91. Ramban, Ex. 15:10. Cf. Nitzan, "*Le-Mashma'utah shel 'Shirat ha-Yam*,'" 17, who infers that Ramban views the second image as more intense than the first image; his quotation of Ramban is not complete, seeming to shift the focus to the image of the lead, not that of the stone. In my view, Ramban's main idea is that the two images work together to create an overall, emphatic impression about the complete defeat of the Egyptian army due to God's involvement. Perhaps Ibn Ezra's observation that repeated terms convey the impression of constancy (noted in v. 6) influences Ramban's deduction that these parallel images focus on the unusual completeness of the drowning, which could only occur by God's hand.

analyzes the semantic relationship between the two sets of parallel lines in v. 10. The first line elucidates that God manipulates nature to cause the Egyptian drowning (נשפת ברוחך כסמו ים), in relation to His control over the enemy's decision to pursue the Israelites, as noted in v. 9. The second line (צללו כעופרת במים אדירים) reiterates that their complete demise was a result of God's use of the wind to continually cast them back into the sea, until no one was left alive.

In this manner, Ramban elicits how the song employs poetic devices to concretize its theological messages. The images of stone and lead are not intended only to memorialize the event of sinking; rather, they convey how the Israelites process the lesson of God's providential intervention that brings about the enemy's defeat. Ramban's analysis implicitly explains why the song focuses on the act of sinking in the first stanza (vv. 4-5), which is then reiterated in the second stanza. This event not only represents God's climactic victory over the enemy, but also acquires the deeper ramification of illustrating God's unique powers to ensure their absolute destruction.[92]

As a result, Ramban does not interpret v. 11 as a general praise of God, but rather regards it as a culminating statement, parallel to vv. 6–7 of the first stanza, that encapsulates the pedagogical lessons to be gleaned about the divine attributes exemplified in the second stanza.[93] It is presumed that Ramban divides v. 11 into four interrelated poetic lines.[94] The first two lines, מי כמכה באלים ה׳ / מי כמכה נאדר בקדש, form a synonymous parallelism, declaring through rhetorical questions God's uniqueness as compared to the angels. The third line, נורא תהלת, progresses by delineating what makes God's powers incomparable; in Ramban's view, this line contrasts God's unmatched capacities with

92. As I have argued elsewhere, Ramban is often inclined to differentiate between multiple images, assigning each one a contributory role to the message of the metaphors or similes, but here, he determines that collapsing both similes (like stone, like lead) into one main message creates a cohesive integration between the two stanzas of the Song. I hope to publish a more extensive analysis of Ramban's literary approach to biblical imagery, based on the following two papers that I have delivered: "The Versatile Inventiveness of Biblical Imagery in Ramban's Torah Commentary," Annual International Conference of National Association of the Professors of Hebrew Language and Literature (NAPH), University of Amsterdam (June 2018), and "Ramban's Literary Approach to the Poetic Efficacy of Metaphor and Simile," *Bakesh Torah:* International Conference on Research on the Bible and its Exegesis in Honor of Prof. Uriel Simon, Bar-Ilan University, Ramat Gan (June 2019).

93. Modern scholars consider this verse, like v. 6, to be a "refrain" of general praise of God; see, for example, Muilenburg, "Liturgy," 244; Freedman, "Strophe and Meter," 191, 209; and Fokkelman, *Major Poems*, 27–29, 45–46.

94. The analysis that follows is based on Ramban, Ex. 15:11.

those of earthly kings. Therefore, the fourth line, עשה פלא, is viewed by Ramban as a climactic specification of God's particular ability that sets Him apart from all other beings, both heavenly and mortal powers.

Aligning the first two lines as synonymous parallelism, Ramban renders, "Who is like You, God, among the heavenly angels?/ Who is like You, powerful in the holy residence of the heavens?" Although he concedes that the term אלים in the first line denotes the mighty and powerful, which could refer to humans, as Rashi renders,[95] in this context, it refers pointedly to the heavenly angelic powers. This reading contrasts God, who is designated elsewhere as the "Supreme Power (*El Elyon*)" (Gen. 14:18), with the lower celestial forces, described only as *elim*.[96] Detecting an external linguistic parallel to the term *El* in v. 2, "This is my God–*zeh Eli,*" Ramban supports his inference that the main focus of this couplet is on God and the angels.[97] Furthermore, this juxtaposition may suggest how the primary theme of this song is continued from the first to the second stanza, conveying the intention to praise "my God," who is incomparable in bringing about Israel's salvation.[98]

In order to establish semantic synonymy between the first two lines, Ramban does not render *ba-kodesh* as "in holiness," but rather specifies that this describes the holy residence of the heavens, in which God reigns supreme. As in his interpretation of v. 6, Ramban does not read this verse as an example of staircase parallelism; each line communicates a complete thought that declares God's incomparable powers in the heavenly realm. In this manner, he retains the consistent style between the conclusion of each of the two stanzas, implicitly highlighting their balanced presentation of God's praiseworthy attributes. Had Ramban read נאדר בקדש as "awesome (or: majestic) in holiness," the second line of the couplet would have specified the divine attribute that makes God unmatched to other celestial beings. Ramban maintains, however, that

95. Rashi, Ex. 15:11, citing Ezek. 17:13.

96. See the parallel reading in Ibn Ezra, long commentary to Ex. 15:11. Compare Ramban, Gen. 14:18, who renders the epithet *El Elyon* as "God, Who is supremely mighty over all the powers"; in that comment, he references his understanding of Ex. 15:11.

97. Note Ramban's stipulation, Ex. 15:11, that the term אלים refers to the heavenly angels, "from the language of 'This is my God'- v. 2."

98. Perhaps this reading could serve to counter that offered by various modern scholars who, rendering אלים as the gods of foreign nations, interpret the first rhetorical question as a declaration that God surpasses them, particularly the Egyptian gods; see Muilenburg, "Liturgy," 242, 244; Alter, *Art of Biblical Poetry*, 51–52; Howell, "Exodus 15," 30; and Propp, *Exodus 1-18*, 464, 526–27. Propp, ibid. 527, considers a reading like that of Ramban.

the answers to these rhetorical questions are revealed only in the third and fourth lines of this verse.[99]

The third line delineates how God is set apart from other heavenly powers in that He is נורא תהלת—that is, "awe-inspiring through praises (*nora bi-tehillot*)." In order to clarify God's awesomeness, Ramban apparently applies the verb "to do" (*oseh*) from the final line and capitalizes on the plural "praises," thus interpolating, "For [God] does awe-inspiring things and is praised through them. "[100] However, Ramban presumes that this line distinguishes the Divine from the powers of earthly kings: "And because earthly kings are awesome 'through tyranny and corruption' (Is. 30:12), [the song] states that God is awe-inspiring through the things for which He is extolled."[101] The oblique intertextual allusion to the text in Isa. 30 that describes the Egyptian kings as oppressive and corrupt, intimates that Ramban views v. 11 as a declaration of how God renders the powerful earthly authorities, the Pharaohs, impotent through His absolute might, evidenced by His fearsome, praiseworthy, unparalleled actions.

The implication of Ramban's analysis is that v. 11 aims to characterize God not only as the supreme heavenly power, but, in this third line, as the absolute sovereign who emerges victorious against the kings of Egypt.[102] Thus, Ramban's reading elicits an additional underlying

99. Ramban's reading of *ba-kodesh* anticipates the reference to God's holy abode in v. 13 and the *mikdash* (Temple) in v. 17. Ramban is influenced by Ibn Ezra, long commentary to Ex. 15:11. Cf. Rashbam, Ex. 15:11, who juxtaposes this verse with v. 6, reading the couplet as "staircase parallelism": "Who among the celestials is like You, God, as majestic in holiness as You are." Compare Harris, *Discerning Parallelism*, 66n.42, on Rashbam's analysis. The presumption that this is an example of staircase parallelism in which the rhetorical questions are answered through the three qualifiers of נאדר בקדש, נורא תהלות, עשה פלא is also the view of Luzzatto, Ex. 15:11 (ed. Schlesinger, 284–85), and modern scholars such as Howell, "Exodus 15," 30, and Propp, *Exodus 1-18,* 526-28.

100. Ramban, Ex. 15:11. See Alter, *Five Books of Moses*, 400, notes to v. 11, who observes that the plural "praises" "may refer in a kind of ellipsis to the tremendous acts performed by God that make Him the object of praise." It appears this is why Ramban renders this phrase as he does, which also correlates with his reading of the last line that specifies God's praiseworthy, incomparable actions. Ramban disagrees with Rashi and Bekhor Shor, Ex. 15:11, who interpret this phrase as a declaration that everyone fears to praise God, for praise of Him is boundless, an analysis that parallels Rashi's interpretation of v. 1b. Ramban maintains that vv. 1b and 11 assert that the song intends to praise God for His particular incomparable actions.

101. Ramban, ibid. Ramban's contrast between God and earthly kings is not found among his predecessors' readings.

102. Ironically, however, in Isa. 30, the prophet chastises the Judean kingdom for trust-

thematic pivot: The divine authority trumps the sovereignty of the Egyptian monarchy. As will be seen, this divine characterization serves as the basis for Ramban's analysis of the song's closure in the final stanza.

Specifying these fearsome acts that bring praises, Ramban delineates that the fourth line proclaims God as a "doer of wonders (עשה פלא)," miraculous acts in which He performs diametrically opposed actions:[103]

> For He enacted vengeances against those who transgressed His will, and through them [these retaliatory acts], He rescued (הושיע) His servants And therefore, through this, He is very awesome and praised.[104]

Manipulating the natural winds, God saves His people by causing the waters to pile up and congeal (although Israel's crossing of the sea is only implied), and, antithetically, returning the waters to their normal course so that the enemy is continually plunged into its depths. Furthermore, God manipulates the enemy's heart and will, causing it to act in opposition to common sense and logic. The dichotomy is established between the incomparable wondrous deeds of God, which simultaneously accomplish opposite results, and those of the angelic beings and the earthly kings.

Stanza III: The Motif of God's Diametric Acts: Revenge Against the Enemy and Guiding the Israelites to the Holy Land

Ramban perceives that the third stanza (vv. 12–17) follows from the description of God's attribute in v. 11 by centering on the thematic focus of God's diametric acts. In this stanza, the juxtaposed opposing acts are God's revenge against the enemy and His simultaneous guidance of His people toward their future destiny in the Holy Land, which will culminate with the building of a Temple in which God will reside.

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ing in an Egyptian alliance to save them from their enemies. Applying Ramban's intertextual juxtaposition, one could sharpen Isaiah's message by inferring that the prophet is rebuking his people for not absorbing the lessons of the Song of the Sea.

103. Ramban, Ex. 15:9, on v. 11. Note that he understands פלא as a collective noun. Compare R. Beḥayei, Ex. 15:11 (ed. Chavel, 2:132), who interprets Ramban's reading of v. 11 in relation to the oppositional roles of the wind, even though he maintains that it was the same wind that performed both functions.

104. Ramban, Ex. 15:11. Compare Ramban, Ex. 17:5, who applies the phrase "a thing and its opposite" to delineate the miracle inherent in the fact that the staff that had turned water to blood could bring forth water from a rock.

Thus, Ramban explains that v. 12, נטית ימינך / תבלעמו ארץ, which resumes the account of the action at sea, also serves to move the song forward to its culmination. Integrating the second and third stanzas, he clarifies:

> The meaning (*ha-ta'am*) [of v. 12] is: *For after* "You blew with Your wind" *and* "the sea covered them" (v. 10), "You stretched out Your right hand" *over them and Your outstretched arm* (וזרועך הנטויה) *and* the "earth swallowed them (ותבלעמו הארץ)." [105] And the idea is (*ve-ha-inyan*) that after they drowned, the sea expelled them like the norm of seas. Similarly, Scripture stated, "Israel saw Egypt dead on the shore of the sea" (וירא ישראל את מצרים מת על שפת הים) (Ex. 14:30), and there they would disintegrate and the dust would return as it was on the earth. Thus, they [the Egyptians] were "swallowed up" and destroyed.[106]

This analysis reads the semantic relationship between the two lines of v. 12 as action-consequence. As a result of God extending His "right hand," which Ramban infers has as its indirect object the Egyptian enemy, the earth subsequently "swallows" them.[107] Correlating the events at sea described in v. 10, Ramban surmises that v. 12 continues the action where the second stanza left off, because of the interruption of v. 11, describing how the ocean persists in its normal fashion and tosses the Egyptian bodies ashore, where they will disintegrate.

Ramban presumes that the song proceeds to relate the events chronologically by aligning the prose version in Ex. 14, which delineates how the Israelites witness the Egyptians dead on the seashore. Accordingly, he reads the phrase, "the earth swallowed them," as a mixed expression, in which "earth" is understood literally but the act of "swallowing" is an applied reference to the bodies' eventual decomposition without burial.[108]

105. Ramban's addition of the *vav* to the verb תבלעמו (and see similarly in his commentary on v. 13) is also indicative that he regards this imperfect verb in the past tense, as a completed action, paralleling the perfect verb, "You stretched out," at the beginning of this couplet. On the fluidity of the tenses in this verse, compare Freedman, "Moses and Miriam," 75.

106. Ramban, Ex. 15:12. Ramban's introductory markers to his analyses—"the meaning is" and "the idea is"—indicate that he intends to fill in the gaps of the song account, in this case, by establishing the juxtaposition between vv. 10 and 12 and by decoding the idea conveyed in the line, "earth swallowed them," through comparative association with the prose account and interpretation of the verb's applied connotation.

107. Note Ramban's specification of the indirect object as "the enemy—*ha-oyev*" in his commentary to Ex. 15:13, on v. 12, observing obliquely the correlation with the enemy's antithetical plans in v. 9.

108. Ramban, Ex. 15:12, cites other biblical verses—Job 10:8; Lam. 2:2; Is. 3:12—

Ramban does not adopt Ibn Ezra's reading, which presumes that v. 12 describes the divine mediation that brought about the Egyptian drowning, recapping the events of v. 10 and interpreting "the earth" figuratively as referring to the ocean floor. In line with this analysis, Ibn Ezra maintains that Ex. 14:30 should be understood as describing the Israelites standing on the shore of the sea and witnessing the Egyptians being drowned by the waters.[109] In contrast, adhering to his presumption that the song relates the events sequentially, Ramban maintains that v. 12 begins a new section, progressing in its condensed narrative form to relate the final defeat of the Egyptian enemy.[110] This description closes the song's first main motif—the Egyptian downfall—and opens the way for the second motif—Israel's salvation and future destiny, beginning in v. 13.

Ramban also does not adopt Rashi's reading of v. 12, which views the sea's expulsion of the Egyptian bodies as a miraculous occurrence prompted by the Israelites' doubts about the enemy's death. Rashi interprets the "earth swallowed up" literally, signifying that the Egyptians ultimately merited burial. Ramban, however, counters that God's "right hand" is consistently used for acts of revenge and destruction. Although he posits that perhaps God uses His "right hand" to drown the Egyptians, and only afterward are they buried with a different divine action, Ramban prefers to decipher v. 12 as a poetic description of God's working through nature, the ocean currents being responsible for washing the bodies ashore. He therefore interprets the verse as saying that, following this exposure, the bodies remain to disintegrate without burial, which is described metaphorically.[111]

to corroborate that the verb of "swallowing" may be secondarily applied to an act of destruction and disintegration. Compare Bekhor Shor, Ex. 15:12, who has a similar reading; however, on Ex. 14:30, he maintains that "on the seashore" refers to the Israelites who witnessed the sea wash the Egyptian bodies ashore.

109. See Ibn Ezra, long commentary to Ex. 15:12, and compare his long commentary to Ex. 14:30. Ibn Ezra explains the "right hand" as a figurative reference to God's power. See Rashbam, Ex. 14:30, for a reading like that of Ibn Ezra; note, however, that Rashbam, Ex. 15:12, interprets the "right hand" as that of Moses, corresponding to Ex. 14:26, as does Ḥizkuni, Ex. 15:12. Among modern scholars, compare for this latter view, Propp, *Exodus 1-18*, 529; Alter, *Art of Biblical Poetry*, 53–54; idem, *Five Books of Moses*, 400, notes to v.12. Presumably, Ramban prefers to relate the event described in v. 12 to God's "hand," as the focus in vv. 12-13 is on God's direct actions, not those of Moses, who is never named in the song.

110. This observation supports Gottlieb's analysis, *Yesh Seder la-Mikra,* 316-412, of Ramban's adherence to the chronological order within the Torah.

111. See Rashi, Ex. 14:30, based on *Mekhilta va-Yeḥi, parashah* 6 (ed. Horovitz-Rabin, 113) and *Pesaḥim* 118b, on the sea's expulsion of the Egyptian bodies, and Rashi, Ex.

Ramban's expansion of v. 12 to include both God's "right hand" and His "outstretched arm" demonstrates indirectly how he views this text as anticipatory of forthcoming poetic lines, thus exposing their extended parallelism. The description of God's hand that defeats the enemy predicts that He will exercise His powers against the nations whom Israel will encounter on its journey to Canaan; as v. 16 declares, "By your arm's greatness (בגדל זרועך) they be still as stone."[112] Furthermore, in light of the description of Israel's destiny foretold in Ex. 6:6, "And I shall redeem them with an outstretched arm ," one may deduce that Ramban intends obliquely to juxtapose the hand of God against the enemy with His power that directs His nation toward their destination, linking v. 12 to v. 13, which relates, "You have guided them with Your kindness, this people *whom You redeemed*." In his comments on Ex. 6:6, Ramban observes that the metaphoric image of the outstretched hand is an indication that God will pursue the enemy relentlessly until Israel is saved. [113]

In this regard, Ramban's analysis of v. 12 is sharpened. While the prose account relates that after the Egyptians are drowned, the sea expels their bodies, the song version adds that God continues His unremitting vengeance to demonstrate the enemy's decisive demise, leaving their bodies to decay into the dust of the earth. Through this extended association, Ramban proves that the song not only echoes the immediately preceding narrative, but it is framed by the entire Exodus narrative and validates the divine commitment to fulfill His promises to His nation. Furthermore, this intertextual allusion continues the main motif that unifies this song, as noted in v. 11—the oppositional actions enacted by God. The divine "hand" that destroys the enemies of Israel, past and future, with judgment, is the "hand" that leads Israel in kindness to fulfill its future role, as described in v. 13.

Accordingly, one may deduce how Ramban is correlating the interlinear antithetical parallelism of v. 12 with v. 13, נחית בחסדך עם זו גאלת / נהלת בעזך אל נוה קדשך, juxtaposing God's diametric acts of destroying the

15:12, based on *Mekhilta Shirata*, *parashah* 9 (ed. Horovitz-Rabin, 145), on his literal reading of the "earth swallowed up." Ramban's critique of Rashi is found in his commentary to Ex. 15:12.

112. Compare Alter, *Art of Biblical Poetry*, 54; Fokkelman, *Major Poems*, 46; and Propp, *Exodus 1-18*, 537, who correlate the images of stone and lead from the first two stanzas with the reference to stone in v. 16 in the third stanza.

113. Ramban, Ex. 6:6. Shreckhise, "Rhetoric of the Expressions," 212 and 212 n.25, also makes the association between v. 13 and Ex. 6:6.

enemy and guiding His people to their future destiny.[114] Disagreeing with Ibn Ezra, who argues that the verbs in v. 13 should be understood as "prophetic perfects," in which future events are described as if they have already transpired, Ramban retains the past tense of the verbs, parallel to their tense in v. 12.[115] He interpolates vv. 12-13 with additional insertions of linking *vav* conjunctions to expose the interlinear, temporal sequencing:

> He [Moses] says (v. 12): "You stretched out Your right hand" *against the enemy, and* "the earth swallowed them" *and* (v. 13) "You guided with Your benevolence" (נחית בחסדך) *through the pillar of cloud to guide them on the way* (לנחותם הדרך) "this nation *whom* You have redeemed" (עם זו שגאלת). *And* "You led *them* with the strength" *of Your hand* (ונהלת אותם בעז ידך) "to Your holy abode" (אל נוה קדשך) *for they are going toward it*.[116]

While God is stretching His right hand in vengeance against the enemy, He is concurrently guiding His people with divine benevolence by means of the cloud toward His "holy abode," even though the journey through the wilderness and conquest of Canaan has yet to take place.

A close reading of Ramban's commentary suggests that Ramban intuitively deciphers the parallelism between the two lines of v. 13 by inferring that the second line specifies the message of the first, identifying the ultimate destination. Knowing the second line sharpens the meaning of the first line; the purpose of redemption is to direct the people to fulfill a spiritual destiny. Expanding on their terse construction, Ramban fills in the gaps so that each line shares grammatical parallelism, containing a subject, verb, object, indirect object, and the means by which Israel is guided. The first line indicates that God is guiding His redeemed nation toward the way—לנחותם הדרך, obliquely citing from Ex. 13:21, which he also applies to decode the song's allusive reference to the means of guidance by the divinely protective pillar of cloud.[117] Similarly, the second line

114. Ramban's semantic link between vv. 12 and 13 also leads one to presume that he views v. 12 as the beginning of a new poetic unit in this song. For the phonetic and semantic relationships between these verses, compare Muilenburg, "Liturgy," 237, 244–46; Coats, "Song of the Sea," 6, 10; Alter, *Art of Biblical Poetry*, 54; and Fokkelman, *Major Poems*, 46–47.

115. Citing Ibn Ezra, Ramban, Ex. 15:13, observes that his predecessor reads the perfect verbs in v. 13 in the future tense, "for this [style] appears in the prophecies." However, Ibn Ezra, long commentary to Ex. 15:13, also considers that the perfect verbs in v. 13 should retain their past tense meaning.

116. Ramban, Ex. 15:13.

117. Compare Ibn Ezra, long commentary to Ex. 15:13, who also associates God's

explicates that God is leading the implied Israel by the might of His hand toward the specified destination, the "holy abode." Correlating vv. 12 and 13, Ramban introduces the image of the "hand" into his reading of "with Your might (בעזך)," obliquely interrelating God's actions of justice against the enemy (with His "right hand") and of benevolence toward His people (with the "strength of Your hand").[118]

In contrast to his predecessors, who associate the "holy abode" with Mt. Sinai or the land of Canaan,[119] Ramban searches for its reference within the song itself, identifying it as the future Temple noted in v. 17.[120] Presumably, this reading is buttressed by the additional linguistic parallel between the root קדש in נוה קדשך and מקדש. Apparently, Ramban detects that the poetic device of repetitive terms facilitates decoding its ambiguities. Furthermore, this reading demonstrates the interlinear correlations between poetic lines, aligning vv. 13 and 17 semantically.

Ramban's analysis exposes the song's extended thematic frame. What is anticipated in the first stanza, in v. 2, in which Israel declares its intent to establish God's abode (ואנוהו), is now explicated in the third stanza as being part of God's plan when He avenges the enemy and redeems His people, for He is already guiding them toward this holy objective. In his introduction to the Book of Exodus, Ramban observes that Israel is not considered fully redeemed until "the day of their return to their place and to the stature of the patriarchs," which occurs with the building of the Tabernacle, when God's glory is present continuously among them. Correspondingly, his interpretation of v. 13 stipulates how the song focuses on the broader national purpose—to establish for God an abode, as it were, on earth, where He will be perpetually sanctified within their land.[121]

benevolence with the guidance through the pillars of the cloud and fire, even though he renders the verbs in v. 13 in a future sense. Cf. Lichtenstein, "Biblical Poetry," 112, who claims that the cloud is not referenced in the Song.

118. Ramban's interpolation also indirectly guides the reader to correlate the "strength of Your hand" in v. 13 with "Your hands" that establish the sanctuary in v. 17. Compare Howell, "Exodus 15," 40, who observes that only in v. 17 is God's hand referred to as *yad* (contrasted with the hand of the enemy in v. 9). With Ramban's interpolation, one may infer that he juxtaposes the "hand" of God that guides His redeemed people in v. 13 with the goal of building the Temple.

119. Ibn Ezra, long commentary to Ex. 15:13, identifies the "holy abode" as Mt. Sinai. Cf. Bekhor Shor, Ex. 15:13–15, who identifies the holy abode as the land of Canaan.

120. Ramban, Ex. 15:13, on v. 17. Note, however, that he does not explain v. 17 in its entirety; presumably, he interprets the "mountain of Your inheritance" and "the firm place for Your dwelling" as the Temple as well, which is situated on Mt. Moriah.

121. Ramban, Ex. 15:13, cites Isa. 2:2 to clarify that the preposition "to" in the phrase,

Ramban detects that the culmination of this stanza is marked by a shift in tone from a song of praise to one of prayer, which coheres with its thematic transition in this stanza to focus on Israel's future destiny. This shift is also evident in and integrated with the final verse of the song, which marks its closure. The thematic move to focus on the fear of the neighboring nations in vv. 14-15, who react in trepidation to the terrifying news of the events at the sea,[122] culminates in Moses' prayer concerning Israel's future encounters with these hostile nations. Focusing on the first couplet of v. 16, תפל עליהם אימתה ופחד / בגדל זרועך ידמו כאבן, Ramban notes the imperfect verb, *tippol*, and explains: "And he [Moses] prays that even more fear and dread shall befall them, that they shall not accost Israel in war."[123] While the stone image previously portrayed the Egyptians' absolute defeat, Ramban implies that the same image modifies its relevance depending on context; in v. 16, it relates the tenor of the enemy's paralysis and immobility.[124] The semantic relationship in the first couplet is read as cause-effect and interpreted both in relation to the following temporal couplet,[125] עד יעבר עמך ה׳ / עד יעבר עם זו קנית, and

"to Your holy abode," means they are walking in that direction, even though they have not yet reached their goal. As noted by Yaakov K. Schwartz, *Sefer Yekev Efrayim: Reshimot shel He'arot u-Be'urim be-Peirushei Ramban al ha-Torah* (New York: Chen Pub., 1995), 2:67, on Ex. 15:13, this citation supports Ramban's conception that the final destination of the Israelites' journey is the Temple, for this is the place to which all nations will eventually arrive in messianic times. Ramban also cites *Mekhilta Shirata, parashah* 9, which identifies *neveh* as the Temple, referencing Isa. 33:20. Regarding the circularity of the Song in describing the Israelites' intent at the moment of the Exodus to build for God a permanent abode, see Rachel Friedman, "Searching for Holiness: The Song of the Sea in the Bible and in the Liturgy," http://www.mesorahmatrix.com/essays/8_SearchingforHoliness-RachelFriedman.pdf, 214-216.

122. For discussion of these verses, see Ramban, Ex. 15:14-16. In that context, Ramban also considers that the nations had already been expressing fear from the time they heard about the plagues in Egypt.

123. Ramban, ibid. Apparently, he understands אימתה ופחד as a hendiadys; contrast Rashi, Ex. 15:16, who distinguishes between these nouns. Compare Bekhor Shor and Ḥizkuni, as well as Abravanel, Ex. 15:16 (ed. Shutland, 220), who also read the verb in the future imperfect, signifying a prayer. Cf. Howell, "Exodus 15," 36; Everett Fox, *The Five Books of Moses* (New York: Schocken Books, 1995), 338; and Freedman, "Moses and Miriam," 76, who render *tippol* in the perfect sense, aligned with the verbs of vv. 14–15. Alter, *Five Books of Moses*, 401, translates, "did fall," perhaps to capture the effect of the imperfect verbal form. By rendering *tippol* as an imperfect verb, Ramban decodes the song's transition in tone and emphasis.

124. Presumably, Ramban renders the verb ידמו from the root דמם, meaning "silent." Compare Luzzatto, Ex. 15:16 (ed. Schlesinger, 290), as well as Propp, *Exodus* 1-18 pp. 536–37, and Shreckhise, "Rhetoric of the Expressions," 214n.31. Cf. Alter, *Five Books of Moses*, 401, who renders "like a stone," based on the root דמה. In his notes, however, he considers the former reading.

125. While Ramban does not comment on the parallelism of the third repetitive

to the previous couplets of vv. 14–15. As Ramban elaborates, Moses prays that God should continue to bring fear upon the nations, so that they will not wage war against Israel until it enters Canaan. Because the indirect object of this prayer is described ambiguously in v. 16 as "on them," Ramban considers, in disagreement with Ibn Ezra, that Moses includes all nations, and the Canaanites (v. 15), in his request that Israel should not be attacked before it safely traverses Canaan's borders[126]

In light of this reading, one can determine how Ramban views vv. 14–16 structurally. The general designations, "nations" (v. 14) and "them" (v. 16), frame the centered delineation of the specific peoples that heard and reacted with fear (Philistia, Edom, Moab, Canaan), and whom Moses hopes will continue to exhibit dread and terror.

Presuming an interactional relationship between the song's composer and his divine addressee, Ramban infers that Moses shifts to a liturgical mode, inserting a subjective request into his lyrical recounting of the events and hymnal praise of God's miraculous feats, which also introduces an anticipatory tone into the song. Having focused the reader on the song's expression of Israel's distant goal of building God a holy sanctuary (vv. 2, 13, paralleling v. 17), Ramban interprets v. 16 to mean that Moses aims to project the song's purpose beyond its commemoration of past events, in order to serve as a paradigm for Israel's future expectations of how God will deal with their enemies and protect them so that they may fulfill their destiny.

Stanza IV: The Motif of God's Kingship

The song's shift to the liturgical mode persists in the conclusion of v. 18, ה׳ ימלך לעלם ועד. Notably, Ramban does not interpret this verse as a general declaration of praise about God's kingship, but rather analyzes

couplet in this song, "until Your people cross, O Lord/until this people, whom You acquired, cross," presumably he regards these lines as synonymous parallelism as well. Cf. Rashbam, Ex. 15:16, who associates these lines stylistically as staircase parallelism, corresponding to v. 6. Similarly, see Muilenburg, "Liturgy," 248; Howell, "Exodus 15," 37–38; and Propp, *Exodus 1-18*, 505.

126. Ramban, Ex. 15:14–16, and cf. Ibn Ezra, long commentary to Ex. 15:16. In order to maintain this reading, Ramban cites the midrash (*Tanḥuma*, *Ḥukkat* 18) that the Canaanites who attacked from Arad (Num. 21:1) were not pure Canaanites; compare Rashi, Num. 21:1. Ramban, ibid., observes the efficacy of Moses' prayer, for while Edom confronted Israel "with massive troops and a strong hand" (Num. 20:20), and "they were desiring to fight them because of their hatred of them," their fear prevented them from acting.

its specific proclamation as a climactic conclusion to the song's prevalent motifs:

> He [Moses] was saying that God displayed currently that He is king and He has dominion over everything, for He liberated (הושיע) His servants and brought His rebels to ruin. So may it be His will to do [so] in all generations forever: "May He never withdraw His eye from the righteous" (Job 36:7), nor hide it from the malicious wicked.[127]

This analysis coincides with Ramban's rendition of v. 11, the conclusion of the second stanza, in which God is lauded for performing the simultaneous, opposite actions of revenge against His enemy and salvation of His people and, in doing so, proving that He is incomparable to the greatest of earthly kings.[128] In order to bring "thematic closure" to the song,[129] Moses reiterates this primary motif, emphasizing that God has demonstrated His absolute dominion over "everything"—perhaps implying over nature as well—throughout these historical occurrences.[130] In contrast to his predecessors, who claim that God's kingship will only become apparent when Israel has built His Temple, Ramban's reading suggests how he conducts a conceptual "retroactive reading" of the song, implying that God's sovereignty has been evident in the divine antithetical conduct with the Egyptians and Israel.[131]

127. Ramban, Ex. 15:18.

128. Employing similar wording in his commentary to both verses, regarding both God's vengeance against transgressors and rescue of His servants (עשה נקמות בעוברי רצונו והושיע בהם את עבדיו—v. 11; שהושיע את עבדיו ואבד את מורדיו—v. 18), Ramban directs his readers to make this extended parallel juxtaposition. Significantly, the phrase, הושיע את עבדיו appears only in these two verses in Ramban's biblical commentary; עוברי רצונו appears only in his commentary to Ex. 15:11, 26 (as well as Num. 11:22, Deut. 11:2).

129. For this description of how poems end, see Barbara Herenstein Smith, *Poetic Closure: A Study of How Poems End* (Chicago/London: University of Chicago, 1968), 96–98; compare her discussion of how poems achieve closure through identifications of their thematic structure, 98–150. See also Watson, *Poetry*, 63–65.

130. In a reading parallel to that of Ramban, Alter, *Five Books of Moses*, 402, notes to v. 18, indicates that this poetic line is not an epilogue; rather, "its celebration of God's supremacy corresponds to the endings of the two previous strophes (vv. 6 and 11). God's regal dominion is confirmed both by the victory over the Egyptians and the establishing of a terrestrial throne in Jerusalem." Similarly Fox, *Five Books of Moses*, 334, observes that the subject of God's sovereignty in v. 18 resonates with the broad themes of the Exodus story; since chapters 4 and 5, the subject "revolved around just who shall be king (God or Pharaoh) and just who shall be served," and this is resolved by God's defeat of the Egyptian ruler, so that God "can now be acclaimed as king, while we hear nothing further of Pharaoh."

131. On the views of Ramban's predecessors, see, for example, Rashi, Ex. 15:18, and Ibn Ezra, long commentary to Ex. 15:18. For a modern reading parallel to Ramban's predecessors, see Propp, *Exodus 1-18*, 545. On retroactive reading of poetry, see

On the other hand, rendering *yimlokh* as future imperfect, Ramban analyzes v. 18 as a culminating prayer that positions this song within a broader theological framework, aligning with the liturgical, future tone of v. 16.[132] For this purpose, Ramban specifies that God's kingship in this context refers to the divine providential manner, guarding the righteous and punishing the wicked.[133] Accordingly, he exposes the thematic continuum of the defining aspect of God's sovereign authority that has been displayed throughout the events described in the song, which establishes a prototype of Israel's expectations from God in His manner of justice that should persist for all generations.

In modern terms, Ramban's reading implies that the song ends on a note of finality, as v. 18 is its conclusion, integrating thematically with the details of the song, but not "absolute finality," for it intends to be boundless, extending beyond its structural confines so that its thematic principles become applicable to situations other than the immediate historical context that prompted its composition.[134]

Conclusion

In his study of biblical poems, Robert Alter observes:

> [P]oetry is quintessentially the mode of expression in which the surface is the depth, so that through careful scrutiny of the configurations of the surface—the articulation of the line, the movement from line to poem, the imagery, the arabesques of syntax and grammar, the design of the poem as a whole—we come to apprehend more fully the depth of the poem's meaning.[135]

Watson, *Poetry*, 64. Compare Ramban, Ex. 13:16, who notes that the plagues are a "wondrous miracle" that impart essential principles of faith, teaching God's qualifications as the Creator Who is providentially omnipresent, performs acts of kindness toward those who fulfill His will , and is omnipotent with incomparable powers over all.

132. Ḥizkuni, Ex. 15:18, similarly reads this verse as a prayer, but without Ramban's additional clarifications. Cf. Luzzatto, Ex. 15:18 (ed. Schlesinger, 291), who claims that Ramban's reading requires that v. 18 be formulated in the order of: "He will rule, God, for eternity." Luzzatto maintains that this statement only refers to the time when God will become the eternal king with the building of the Temple.

133. Ramban's description of God's ways with the righteous derives from Job 36:7, which fittingly records Elihu's speech about God's relationship with earthly kings; those who follow His ways are exalted on their thrones, while those who are corrupt will perish by His judgment.

134. On closure of a poem that does not aim for absolute finality, see Smith, *Poetic Closure*, 120, 130–31.

135. Alter, *Art of Biblical Poetry,* 205; compare his observations, 113, 151, 160–61. See also Fokkelman, *Major Poems*, 23, who insists that proper interpretation of biblical poems must employ a "hermeneutic awareness," comprising an analysis that unearths

The present study illustrates how Ramban deciphers a biblical song's diverse poetic devices and complex literary structure, which coalesce to create a coherent and meaningful literary product. In his analysis of the Song of the Sea, Ramban investigates the song's prevalent poetic features in order to identify the primary themes that organize and integrate the specific contents of each stanza and interrelate the stanzas into a coherent whole—the motif of *ge'ut*, God's rising up above the enemy that is lowered; Israel's salvation for a future destiny; God as doer of miracles, the thing and its opposite; and God's diametric acts of revenge against the enemy and guiding the Israelites to the Holy Land, all culminating in the final expression of God's demonstrated kingship. His commentary reveals a discerning eye for the rich poetic features that combine to produce a densely textured, multifaceted composition with a clear purpose, conveyed on multiple levels, through subtle and effective linkages that bind the different parts of the poem thematically. Ramban displays an intuitive awareness of the integral relationship between form and rhetoric within a biblical song/*shirah*, which distinguishes it as a distinctive mode of discourse.

As M. H. Lichtenstein asserts, to truly appreciate biblical poetry, one must decipher its "unique vision and voice."[136] A close reading of Ramban's commentary reveals his insights into the Song of the Sea's "vision and voice" through his exploration of how its integrated and cohesive poetic form communicates its rhetoric, which has far-reaching relevance.

the wealth of "meanings and sense" through close consideration of "the impressive array of artistically and thematically relevant signals given off by language, style and structure." In *Reading Biblical Poetry*, 34–35, Fokkelman expands this approach, stipulating that a Hebrew poem contains both "quantity" and "quality," "language and prosody," as its composition as "a well-constructed hierarchy" contributes to its "meaning and sense." Compare Zogbo and Wendland, *Hebrew Poetry*, 2, regarding the prominence of the "form of the message" in poetry, as compared to prose; see also Berlin, "Introduction to Hebrew Poetry," *New Interpreter's Bible,* 4:302, and Petersen and Richards, *Interpreting Hebrew Poetry*, 14.

136. Lichtenstein, "Biblical Poetry," 113.

GEULA TWERSKY

And I Shall Dwell Among Them: The Mishkan as a Microcosm of the Human Condition

Four Torah portions are devoted to the construction of the Mishkan (Tabernacle). *Parashot Terumah* and *Teẓavveh* (Ex. 25:1-30:10) inventory the materials required, while *Parashot Vayakhel* and *Pekudei* (Ex. 35-40) provide a record of the task's completion, including a reckoning of the supplies used. The points of correlation between the two accountings both reinforce their similarities and highlight their differences.

This article presents a holistic framework for integrating the Torah's two presentations of the Mishkan project. The suggested framework provides a comprehensive explanation for the distinctions, utilizing them to identify the overall message and thrust of the Torah portions. I will suggest that the Torah's two complementary yet divergent accounts of the Mishkan construction are inversely parallel to the two Genesis creation narratives. The first creation story corresponds to *Vayakhel-Pekudei* while the second correlates with *Terumah-Teẓavveh*. The chiastic-like relationship between Genesis' telling and retelling of humanity's creation, and Exodus' telling and retelling of the Mishkan's construction reflects a fundamental dichotomy inherent in humanity's

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religious experience.[1] Understanding the Torah's two descriptions of the Mishkan's construction as part of a broader meditation on the conflicting Genesis stories of the creation of humanity creates a holistic framework for understanding their subtle differences, while pointing to the unified compositional strategy of the entire Torah. The Torah portions recounting the Mishkan construction emerge as a unified exposition on the wider implications of the creation of humanity.

The Telos of the Mishkan

Parashat Terumah opens with the construction of the *aron* (ark) and its attendant *keruvim* (cherubs). This in effect places the *aron* at the center of the Mishkan's theological universe, with the rest of the holy vessels as constellations in its orbit. The *keruvim* that guarded the *aron,* served as a conduit for the divine voice, which emanated from between their embrace (Ex. 25:22). The role of the *aron*, as presented in *Terumah*, reflects the investiture of God's presence in the Mishkan as the telos of the Mishkan project: "Have them make a sanctuary for me, and I will dwell among them" (ibid. 25:8).

The conspicuous reversal of the order in *Parashat Vayakhel*—with the Mishkan structure presented first, followed by the vessels—did not escape the notice of the Sages. They understood Beẓalel, the chief artisan of the Mishkan, to have had superior intuition to Moses in matters pertaining to the implementation of the Mishkan's construction plans (*Berakhot* 55a).[2] An attuned reading of the language used to describe the Mishkan edifice will illuminate the theological implications of *Vayakhel*'s presentation of the Mishkan: that it is the structure, as opposed to the *aron ha-berit* (ark of the covenant), that forms the crux of the Mishkan's theological universe.

The Mishkan as a Metaphor for Creation

The Mishkan edifice rested upon support beams. The Torah's peculiar choice of words for describing these support beams in both *Terumah* and

1. A chiasm is a literary device in which a sequence of ideas is presented and then repeated in reverse order. I use the phrase "chiastic-like" to describe the inverse relationship between the Torah portions describing the creation and the Mishkan, as not *all* elements of the two are mirrored in the text.
2. Cf. Rashi, Ex. 38:22.

Vayakhel demands our attention, as they exhibit the distinctive quality of simultaneously referencing human anatomy. The Mishkan beams are described as featuring a head (*rosh*), a hairline (*pe'ah*),[3] a side-chamber (*ẓela*),[4] hands (*shetei yadot*), and legs/thighs (*yerekh*) (ibid. 26:15-27; 36:20-32). The anthropomorphic description of the beams is topped off with the instruction to use "standing acacia wood," *aẓei shittim omedim*, for their construction (ibid. 26:15).[5] It should be noted that although this form of imagery is utilized on an individual basis in the descriptions of other Mishkan vessels, it is specifically within the context of the Mishkan beams that all of these lexical units combine, forming a complete set. If one were to draw a crude picture based on this unique collection of terms, the result would bear an uncanny resemblance to an erect human being.

Further indicators of the deliberate anthropomorphic depiction of the Mishkan structure are the portrayal of the pegs that protruded from the beams as a woman facing her sister, "*ishah el aḥotah*" (ibid. 26:17) and the description of the two corner beams as twins, "*te'omim*" (ibid. 26:24; 36:29).[6]

Based on this, we can argue that the dichotomy present in the Torah's two divergent accounts of the Mishkan's construction portrays humanity in opposing roles. The *Terumah-Teẓavveh* account, which opens with the *aron* and presents the Temple frame almost as an afterthought to its vessels, points to God's presence as the focal point of the Temple universe. The unit *Vayakhel-Pekudei*, on the other hand, commences with a depiction of the Mishkan edifice, supported by an erect human-like frame, suggesting that humanity's role is literally and figuratively at the foundation of the Mishkan enterprise.

The tension inherent in these diametrically opposed worldviews brings to mind the two Genesis accounts of the creation of the first man and woman. Like *Vayakhel-Pekudei*'s emphasis on the fundamental role of humanity, the first creation account describes humanity as the final product of creation and the pinnacle of God's handiwork. This contrasts

3. Cf. L. Koehler, W. Baumgartner, M.E.J. Richardson, and J.J. Stamm, *The Hebrew and Aramaic Lexicon of the Old Testament* (hereafter, *HALOT*) (Leiden: Brill, 1994–2000), "*pe'ah*," 907–08.
4. *HALOT*, "*ẓela*," 1030.
5. The other Mishkan vessels were made from standard acacia wood. Feliks identifies the "standing acacia" as Acacia albida or "whitish acacia." See Yehuda Feliks, *Nature and Man in the Bible: Chapters in Biblical Ecology* (London: Soncino, 1981), 20-23.
6. Cf. *HALOT*, "*te'omim*," 1694.

with the second creation account, in which the creation of the first human being does not represent God's final creative act. Furthermore, man's given role in that story as caretaker of the garden (Gen. 2:15, 19) would seem to give him subordinate status.

The parallel theme of humanity's conflicting role in the Mishkan project and the Genesis creation narrative is especially interesting in light of a *midrash* that correlates the fashioning of the Mishkan as described in *Pekudei* with God's creation of the world:

> Why does it say, "O Lord, I love your abode and the place of your glory" (Ps. 26:8)? For it [the Mishkan] is equivalent to the creation of the world (*Tanḥuma*, *Pekudei* 2).

Franz Rosenzweig observes that there are seven lexical points of contact between the Genesis creation story and the Mishkan construction account in *Pekudei*.[7] Most notable are his observations regarding the resonances between the Mishkan's completion and the consecration of the Sabbath day:

> So all the work on the Mishkan, the Tent of Meeting, was completed (*va-tekhel*). The Israelites did everything just as the LORD commanded Moses. (Ex. 39:32)
>
> Moses inspected the work and saw (*va-yar*) that they had done it just as the Lord had commanded. So Moses blessed (*va-yevarekh*) them. (Ibid. 39:43)
>
> God saw (*va-yar*) all that he had made, and it was very good. And there was evening, and there was morning—the sixth day. Thus the heavens and the earth were completed (*va-yekhullu)*, in all their vast array. By the seventh day God had finished (*va-yekhal*) the work He had been doing; so on the seventh day he rested from all his work. Then God blessed (*va-ye-varekh)* the seventh day and made it holy, because on it He rested from all the work of creating that He had done. (Gen. 1:31-2:1-3)[8]

The numerous correlations between the creation account and the Mishkan material point us in the direction of the Genesis creation narrative in our pursuit of a holistic approach to the contrasting Mishkan construction accounts.

7. Martin Buber and Franz Rosenzweig, *D. Schrift und ihre Verdeutschung* (Berlin: Schocken, 1936), 39-42, 116-17.

8. The strong textual correlation between the creation and Mishkan accounts lends insight into the rationale behind the linking of the thirty-nine categories of forbidden work on the Sabbath with the essential activities involved in the Mishkan construction (*Shabbat* 49b). See our discussion below regarding the Sabbath in the parallel accounts.

Adam I and Adam II

In his seminal essay, "The Lonely Man of Faith," R. Joseph B. Soloveitchik examines the two seemingly incompatible Genesis accounts of humanity's creation.[9] R. Soloveitchik speaks of Adam the first (henceforth Adam I) in the first creation account and of Adam the second (henceforth Adam II) in the second as archetypes of humanity's conflicted nature.

Adam I is the product of God's final creative act, the pinnacle of creation, "majestic man." The seventh day is blessed and consecrated following his creation. Adam I is charged with directing all of his energy, his very being, toward the mastering of his environment. Adam II, on the other hand, marks the beginning of the creative process. He is the keeper of the garden, in perpetual search of God's presence. R. Soloveitchik attributes these discrepancies to the tension that characterizes the human condition:

> The Biblical dialectic stems from the fact that Adam the first, majestic man of dominion and success, and Adam the second, the lonely man of faith, obedience and defeat, are not two different people locked in an external confrontation as in an "I" opposed a "thou," but one person who is involved in self confrontation.[10]

The existential dichotomy inherent in the human condition, which is expressed in the two divergent creation reports, is directly relevant to the two accounts of the Mishkan construction and their implications for humanity's religious experience. The Adam I narrative can be examined in light of the parallels to the Mishkan construction as presented in *Vayakhel–Pekudei,* while the Adam II material can be analyzed in light of its relationship with *Terumah-Teẓavveh*.

The inversion of the parallel between the two Mishkan construction accounts and the two Genesis creation accounts suggests deliberate

9. Joseph B. Soloveitchik, "The Lonely Man of Faith," *Tradition* 7 (1965): 5-67; see also *Berakhot* 61a; *Ketuvot* 8a; *Mishnat Rabbi Eliezer* 1:24; Naḥmanides, Gen. 2:7; and *Kuzari* 4:3, which address the incongruity of the two biblical creation accounts. R. Soloveitchik rejects the theories suggested by Bible critics, who attribute the two accounts to two different sources, suggesting that they ignored the essential content and message of the biblical story.

10. Soloveitchik, "The Lonely Man of Faith," 54. Cf. Erich Fromm, *On Being Human* (London: Continuum, 1997), 75. Fromm also views humanity's essential condition to be an existential dichotomy:

> It is precisely one of a contradiction between man as an animal who is within nature and between man as the only thing in nature that has awareness of itself. Hence, man can be aware of his separateness and lostness and weakness. Hence, man has to find new ways of union with nature and with his fellow man.

internal referencing, in accordance with the "biblical inverted quotation" documented by P.C. Beentjes.[11] This principle describes the way in which the Bible inverts quotations from earlier canonical texts in a chiastic way.[12]

Divine Presence

Probably the most commented-upon variance between the two Mishkan accounts relates to *Terumah-Teẓavveh*'s description of the golden altar (*mizbaḥ ha-zahav*) apart from the rest of the sanctuary vessels (Ex. 30:1-10) and after the concluding verses of the unit (ibid. 29:45-46). In *Vayakhel-Pekudei*, in contrast, the golden altar is presented together with the rest of the sanctuary vessels (ibid. 37:25-29; 39:38; 40:26).

Naḥmanides attributes this discrepancy to the unique role of the golden altar in preventing the spread of plague, which only became relevant following the sin of the golden calf described in *Parashat Ki Tissa*. Ḥizkuni posits that the unusual placement of the golden altar in *Terumah-Teẓavveh* emphasizes the prohibition against its misuse for general sacrificial offerings. Seforno proposes that whereas the function of the *menorah* and the *shulḥan* (table) was to *invite* God's presence, the role of the golden altar was to *receive* God's presence once it had arrived.[13] The suggestion that I offer here is not meant to counter these explanations, but rather to add insight to the discussion.

One of the features common to the *aron ha-berit*, the *shulḥan*, and the *menorah* was the quality of "facing," expressed in the root *PNH*.[14] The cover of the *aron* was fashioned from a solid piece of gold, connecting it to the *keruvim*, which faced each other: "*u-**feneihem** ish el aḥiv*" (ibid. 25:20). The *shulḥan* was perpetually laden with showbread, "*leḥem ha-**panim***," which functioned as an integral part of that vessel (ibid. 25:30), and the *menorah* was lit in such a way as to shine upon its face or front, "*ve-he'ir al ever **paneha***" (ibid. 25:37). The emphasis on the word *panim* that these vessels share is indicative of their

11. P.C. Beentjes, "Discovering a New Path of Intertextuality: Inverted Quotations and Their Dynamics," in L. J. de Regt et al. (ed.), *Literary Structure and Rhetorical Strategies in the Hebrew Bible* (Assen: Eisenbrauns, 1996), 31-50.

12. This phenomenon has been further documented in Isaiah's inverted quotations from Psalms. Cf. Moshe Seidel, "Resemblances Between the Book of Isaiah and the Book of Psalms" (Hebrew), *Sinai Yarḥon* 19 (1955-1956): 149-72, 229-40, 273-80, 333-53.

13. Cf. Naḥmanides, Ḥizkuni, and Seforno on Ex. 30:1.

14. *HALOT*, "*PNH*," 938-9.

common role in inviting the divine presence. The *aron* was a conduit for divine communication, the illumination of the *menorah* represented spiritual enlightenment, and the s*hulḥan* with its showbread facilitated communion between God and human beings.

Unlike the other sanctuary vessels, however, the golden altar is not described as embodying the aspect of "facing." Although the root *PNH* appears in the description of the placement of the golden altar—describing its location opposite the veil, "***lifnei*** *ha-parokhet*" (ibid. 30:6), which is under discussion in the context—it does not appear in the description of the vessel itself. The subtle variation in the use of the root *PNH* in the context of the golden altar supports the overall approach of the commentators cited above: The function of the golden altar was fundamentally different than that of the other sanctuary vessels.

Interestingly, the emphasis on God's presence, crucial to *Terumah*'s presentation of the Mishkan, is not present in *Vayakhel*. There (ibid. 30:10-29), the recounting of the fashioning of the *menorah*, the s*hulḥan*, and the golden altar fails to mention the term *panim*.[15]

The emphasis on God's presence in *Terumah* is especially interesting in light of its correlation with Adam II and his insatiable yearning for God's presence. After eating from the forbidden fruit, Adam II becomes distraught and feels compelled to hide from God's face, "***mippenei*** *Hashem*" (Gen. 3:8). The trajectory of sin continues in Genesis 4, with the murder of Abel and the casting out of Cain from God's presence, "*u-mi-****panekha*** *essater*" (ibid. 4:14).

Furthermore, in *Terumah*, the *keruvim*—who are described as facing each other, "*u-****feneihem*** *ish el aḥiv*" (Ex. 25:20)—are assigned the role of serving as the conduits for the divine voice (ibid. 25:22). This suggests a rectification of the menacing mandate of Eden's guardian *keruvim*, who prevent humanity's return to the garden (Gen. 3:24).[16] *Terumah*'s description of the voice of God emanating from between the *keruvim* harks back to Eden, where God's voice resonated clearly and palpably (ibid. 3:8).

15. It should be noted that the showbread, *leḥem ha-panim*, is mentioned together with the instruction to fashion the table in 35:13. Cf. Lev. 24:1-9, where the *menorah* and *shulḥan* are again discussed. There, the term "*lifnei Hashem*," "before God," is used to describe the position of the *menorah* and the *shulḥan*, as opposed to describing the vessels themselves. Additionally, the showbread is referred to there simply as loaves, "*ḥalot*," as opposed to *leḥem ha-panim*. This contrasts with the centrality of the term *panim* in the context of the *menorah* and *shulḥan* in *Terumah*.

16. Menahem ben Benjamin Recanati (1223–1290), in his commentary on Gen. 3:24, quotes from a *midrash* that is no longer extant that suggests that the *keruvim* of the Mishkan were representations of the *keruvim* in the Garden of Eden.

God's discernible presence in the Adam II narrative is expounded upon by R. Soloveitchik:

> The Biblical metaphor referring to God breathing life into Adam alludes to the actual preoccupation of the latter with God, to his genuine living experience of God, rather than to some divine potential or endowment in Adam symbolized by *imago Dei*. Adam the second lives in close union with God. His existential "I" experience is interwoven in the awareness of communing with the Great Self whose footprints he discovers along the many tortuous paths of creation.[17]

God's call to Adam in the Garden of Eden, "*Ayekah*," "Where are you?" (Gen. 3:9), which went unanswered in Genesis, is ultimately responded to in the book of Exodus through Israel's alacrity in procuring the necessary materials for the Mishkan's construction (Ex. 36:5-7). Israel's energetic response to God's mandate—"Have them make a sanctuary for me, and I will dwell among them" (ibid. 25:8; 29:45)—is a reciprocal expression of their seeking out of God's presence. As noted above, this formulation of God's desire to dwell among humanity appears exclusively in the *Parashot* of *Terumah* and *Teẓavveh*.

Priestly Vestments

This understanding of *Vayakhel–Pekudei* as a metaphoric re-creation of the once unblemished world of Adam I and *Terumah–Teẓavveh* as a reclamation of the divine presence experienced by Adam II in the Garden of Eden adds insight to the Torah's descriptions of Aaron's vestments.

Like the tunic (*kotnot or*) donned by Adam following his sin (Gen. 3:21), the essential priestly garment was the full body garment (*ketonet*) (Ex. 29:8-9; Lev. 16:3-4). But although Aaron's vestments are described in *Teẓavveh* and again in *Vayakhel-Pekudei*, it is only in *Teẓavveh* that the text explicitly stipulates by each individual vestment that it was to be worn upon entering the sanctuary (*ha-kodesh*) before God (*lifnei Hashem*) (Ex. 28:29-30, 35, 38, 43). Furthermore, only *Teẓavveh* relates that the priestly undergarments served the function of covering nakedness (ibid. 28:42), bringing to mind Adam II and his sudden awareness of his nakedness (Gen. 3:10-11).

Adam II was expelled from the garden following his sin, his re-admittance barred by menacing *keruvim* stationed along the return path (Gen. 3:24). Humanity's expulsion from God's presence is

17. Soloveitchik, "Lonely Man of Faith," 17-18.

metaphorically rectified in the Mishkan through the priestly investiture rite recounted in *Teẓavveh*. The ceremony featured Aaron and his sons firmly ensconced within the Mishkan's entrance gate (Ex. 29), against the backdrop of its *keruvim*-adorned curtains (Ex. 26:1).

The Women's Role

The approach we have advanced, in which the Torah's two accounts of the Mishkan project are inverse reflections of the two Genesis creation accounts, draws further support from the way in which it resolves other core discrepancies, such as the role of women in the construction of the Mishkan. The full and active role played by the women in the Mishkan construction in *Vayakhel-Pekudei*[18] stands in stark contrast to the presentation in *Terumah-Teẓavveh*, which is completely silent on the subject. Indeed, the repeated emphasis on the active participation of the women in *Vayakhel-Pekudei* is highly atypical of the biblical text in general. The overall sense that one gets is that the text in *Vayakhel-Pekudei* is doing more than merely chronicling events; it is conveying something fundamental about women's egalitarian role in the Mishkan project. The women's equal status in *Vayakhel-Pekudei* correlates well with woman's simultaneous creation with Adam I and with her role in Genesis 1 as a full and equal partner.

The Sabbath Day

Another core discrepancy between the two Mishkan accounts that may be explained through the prism of the creation theme is the emphasis placed on the Sabbath. Adam I is closely connected with the sanctification of the Sabbath day (Gen. 2:1-3), which is the climax of the creation story in general and the culmination of the creation of humanity in particular. The close relationship between humanity and the Sabbath day is clearly articulated in the Decalogue, which categorically states that humanity's obligation to rest on the seventh day is a direct corollary of God's having rested on the seventh day of creation (Ex. 20:8-10). Indeed, the very notion of the sanctification of the Sabbath day can be rendered meaningful only insofar as humanity is devoted to the preservation of the day's sanctity.

Whereas *Vayakhel* commences with the sanctification of the Sabbath day (Ex. 35:1-3), the Sabbath is notably absent from *Terumah* and *Teẓavveh*. The command to refrain from building the Mishkan on the

18. See Ex. 35:21-29; 36:6; 38:8; cf. Rashi 38:8.

Sabbath was in effect the means through which the Sabbath was installed into the framework of the Mishkan as a microcosm of creation.[19] It is noteworthy that whereas the term *melakhah*, work, closely associated with the Sabbath day,[20] appears a total of twenty-one times in *Vayakhel-Pekudei*, it is entirely absent from *Terumah-Teẓavveh*.[21] Furthermore, we may view the dramatic refrain that serves as a consistent backdrop to *Vayakhel–Pekudei*—that Israel did "as the Lord commanded Moses"—as parallel to the notion of creation via Divine command, which punctuates the first chapter of Genesis.[22]

Conclusion

The Torah's two accounts of the Mishkan's construction may be viewed through the prism of the Genesis creation narratives, from which they emerge as inversely parallel. The first creation story may be understood to correspond with *Vayakhel* and *Pekudei*, and the second to correlate with *Terumah* and *Teẓavveh*. Understanding the Torah's two expositions of the Mishkan's construction as a broad meditation on the conflicting stories of humanity's creation in Genesis does more than provide us with a framework for being able to evaluate the variances between the two Mishkan accounts. This phenomenon provides valuable insight into the unified compositional strategy of the entire Torah. The chiastic-like relationship between, on the one hand, the Genesis telling and retelling of humanity's creation and, on the other hand, the Exodus telling and retelling of the Mishkan's construction reflects a fundamental dichotomy inherent in the human condition. The Torah's dialectical reflection on humanity's role gets to the heart of what it means to be human.

R. Soloveitchik writes:

> The man of faith, animated by his great experience, is able to reach the point at which not only his logic of the mind but even his logic of the heart and of the will, everything—even his own "I" awareness—has to give in to an "absurd" commitment. The man of faith is "insanely" committed to and "madly" in love with God.[23]

19. Cf. *Tanḥuma*, *Pekudei* 2; *Bereshit Rabbah*, *Bereshit* 10.
20. Cf. Gen. 2:2, 3; Ex. 20:10; *Shabbat* 7:2.
21. Ex. 35:21, 24, 29, 30, 31, 33, 35; 36:1, 2, 3, 4, 5, 6, 7, 8; 38:24; 39:43; 40:43. Note also the significance of the number twenty-one, seven times three.
22. Cf. *Avot* 5:1.
23. Soloveitchik, "The Lonely Man of Faith," 61.

Humanity's intense desire for a relationship with God, which began at the moment of his creation, found its ultimate expression in the Mishkan, where the divine presence was invited to dwell among human beings. But in the varying accounts of the Mishkan's construction, humanity plays two diametrically opposed roles. *Terumah* and *Teẓavveh* portray humanity in a state of eternal yearning for God's presence, while *Vayakhel* and *Pekudei* hint at humanity's place at the epicenter of the Mishkan, with the weight of the Mishkan structure literally and figuratively resting upon humanity's shoulders. Man and woman's contrasting roles in the two Mishkan construction accounts emerge as a reflection upon and a continuation of the dichotomy inherent in their creation.

Nahum Sarna reflects on the opening of the Torah with the Genesis creation account, observing that the creation story is far more than a discourse on the provenance of humanity:

> Genesis is but a prologue to the historical drama that unfolds itself in the ensuing pages of the Bible. It proclaims, loudly and unambiguously, the absolute subordination of all creation to the supreme Creator, who thus can make use of the forces of nature to fulfill His mighty deeds in history.[24]

The four Torah portions that recount the Mishkan construction collectively expand and expound upon the story of humanity's creation in Genesis. The human condition, which paradoxically encompasses both strong emotional attachments and debilitating existential loneliness, is reflected in the full religious experience embodied within the Mishkan. In *Terumah-Teẓavveh*, humanity is secondary to God, whose presence palpably and overwhelmingly permeates the Mishkan, echoing God's pervasive presence in the Garden of Eden. In *Vayakhel-Pekudei*, humanity, like Adam the first, is elevated to the role of God's partner, poised and ready to shoulder the responsibilities of that partnership—so that, in Sarna's words, together they might "fulfill His mighty deeds in history."

Acknowledgments

I thank the anonymous referee and Meira Mintz for conspiring to make me sound a good deal better than I do when left to my own devices.

24. Nahum M. Sarna, *Understanding Genesis* (New York: Schocken, 1966), 8-9.

ZVI RON

The Story of Judith and the Custom of Eating Dairy Foods on Ḥanukkah

Rema (R. Moshe Isserles) writes in his glosses to the *Shulḥan Arukh*: "Some say it is customary to eat cheese on Ḥanukkah because the miracle was done with the milk that Judith fed the enemy."[1]

The sources given for this ruling of Rema in the parentheses following his gloss are the commentary of R. Nissim (Ran) to Rif and *Kol Bo*. These sources were not provided by R. Isserles himself, but rather by the printers of the *Shulḥan Arukh* beginning in the early 1600s.[2] Although these sources are sometimes imprecise, in this case they appear to be accurate.

R. Nissim discusses this story in the context of explaining that women are also obligated to light Ḥanukkah candles because they were involved in the miracle of Ḥanukkah:

> The Greeks decreed that all virgins getting married must sleep with the governor (*hegmon*) first, and through a woman a miracle occurred, as it is said in the *midrash* that the daughter of Yoḥanan fed the chief of the enemies cheese in order to get him [to drink wine, and so make him]

1. Rema, *Oraḥ Ḥayyim* 670:2.
2. See Yitzchak Nissim, "*Ha-Haggahot al Shulḥan Arukh*," in *Rabbi Yosef Karo*, ed. Yitzhak Rafael (Jerusalem: Mossad Harav Kook, 1969), 70-71.

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> drunk, and she cut off his head and they all fled, and because of this it is customary to eat cheese on Ḥanukkah.[3]

Kol Bo has a slightly expanded version of the story in his explanation of the obligation of women to light Ḥanukkah candles and the custom to eat cheese on Ḥanukkah:

> Yoḥanan the High Priest had a very, very beautiful daughter, and the king of Greece wanted to sleep with her. She fed him a dish of cheese in order to make him thirsty, so that he would drink a lot and get drunk and lie down and fall asleep. That is what happened; he lay down and fell asleep. She took his sword and cut off his head and brought it to Jerusalem. When the army saw that their hero was dead, they fled.[4]

What is the source of this story found in Rema, Ran, and *Kol Bo*? The story of Judith is mentioned by numerous early authorities as the reason that women are obligated to light Ḥanukkah candles "because they were involved in the miracle." Without elaborating on the details of the story, Judith is mentioned in Tosafot in the name of Rashbam,[5] *Sefer Miẓvot Gadol*,[6] Mordekhai,[7] Ritva, and Meiri,[8] and well as in many other early sources.[9] However, none of these sources mention that she

3. Ran (1320-1376), *Shabbat* 10a in the Rif's pages, s.v. *she-af hen*, commenting on *Shabbat* 23b. Ran also mentions this in his commentary to *Megillah* 4a, but without mentioning many of the details found in his comments on *Shabbat*. See the overview in Deborah Levine Gera, "The Jewish Textual Traditions," in *The Sword of Judith: Jewish Studies Across the Disciplines*, ed. Kevin Brine, Elena Ciletti, and Hernike Lähnemann (Cambridge: Open Book Publishers, 2010), 35-36.

4. David Abraham, ed., *Kol Bo* (Jerusalem: 2007), vol. 1, p. 162, *siman* 44. The date and authorship of *Kol Bo* is uncertain, but it seems to be from the thirteeth century. See the Introduction by R. Shlomo Zalman Havlin in *Sefer Kol Bo* (Jerusalem: Even Yisroel, 1997), 7-10. The same story, with very similar wording, is found in *Oreḥot Ḥayyim*, *Hilkhot Ḥanukkah, siman* 12 (Jerusalem: Sela Publishers, 1956), 262.

5. Tosafot, *Megillah* 4a, s.v. *she-af hen*. See also Tosafot, *Pesaḥim* 108b, s.v. *hayu*.

6. *Sefer Miẓvot Gadol*, positive commandments, rabbinic commandment 5.

7. Mordekhai, in the additions to *Pesaḥim* 108b.

8. Ritva and Meiri, *Megillah* 4a.

9. Judith is also mentioned in *Sefer Abudraham* (Jerusalem, 1995), 32, in the context of the obligation of women to light Ḥanukkah candles with a blessing. There it is stated that she cut off the head of Antiokhus. Judith is mentioned as a member of the Hasmonean family *Sefer ha-Manhig*, ed. Yitzhak Rafael (Jerusalem: Mossad haRav Kook, 1978), *Hilkhot Megillah*, p. 249. The story is also cited in Moshe and Yehudah Hershler, eds., *Peirushei Siddur Ha-Tefillah Le-Rokeaḥ* (Jerusalem: Machon HaRav Hershler, 1992), vol. 2, *siman* 141, pp. 717-18. There the story is abbreviated and stops before the dairy element of the story. However, Judith is definitively not presented as the daughter of the High Priest, and in some manuscripts her name is given as Hannah, not Judith.

was the daughter of the High Priest or that she gave the Greek leader milk or cheese; their only concern is using Judith as a proof that women participated in the Ḥanukkah miracle.

The Book of Judith

The *Book of Judith* is a book of the Apocrypha that recounts the story of how Nebuchadnezzar sent his general Holofernes to attack Israel, and how Judith, a pious and beautiful widow, saved her town of Betulia. Using her beauty and cunning, she ingratiates herself with Holofernes and then manages to behead him with his own sword after he falls into a drunken slumber at a party. Taking the severed head with her, Judith uses it to inspire the Jews and demoralize the enemy troops, leading to a Jewish victory. Judith is identified as the daughter of Merari and the widow of Menashe (*Judith* 8:1-2), from the tribe of Shimon (ibid. 9:2).[10]

The story itself has no obvious connection to Ḥanukkah or the Greeks; the enemies are identified as Assyrians, although the book was probably written around the second century B.C.E[11] and seems to reflect the Maccabean times.[12] The *Book of Judith* follows the style of many Apocryphal works in that it is based on plot elements already found in the Bible and contains many parts that are essentially rewritten Biblical narratives.[13] These elements are also found in abundance in later retellings of the story.[14] The work is generally considered a historical drama, or at best a fictionalized account of an historical event,[15] filled with literary artistry.[16]

10. In some versions, she is from the tribe of Reuven; see A.M. Dubarle, *Judith: Formes et Sens des Diverses Traditions—Tome II: Textes* (Rome: Institut Biblique Pontifical, 1966), 47, version E. She is also described as being from the tribe of Reuven in some midrashic and liturgical versions of the story (ibid., 126, *midrash* 7a; 132, *midrash* 7b; 168).

11. Lawrence M. Wills, *Ancient Jewish Novels* (Oxford: Oxford University Press, 2000), 89.

12. See Benedikt Otzen, *Tobit and Judith* (London: Sheffield Academic Press, 2002), 57, 78, 86, 96, 132-4.

13. See, for example, Erich Gruen, *Heritage and Hellenism* (Berkley: University of California Press, 1998), 124-5.

14. Susan Weingarten, "Food, Sex, and Redemption in *Megillat Yehudit* (the "Scroll of Judith")," in Kevin Brine et al., eds., *The Sword of Judith*, 97-109.

15. Carey A. Moore, *Judith—Anchor Bible Series* (Garden City, New York: Doubleday & Company, Inc., 1985), 46-49; see Otzen, *Tobit and Judith*, 81-87, particularly 82, n. d; Deborah Levine Gera, *Judith* (Berlin: Walter de Gruyter, 2014), 26-30.

16. For a detailed discussion of the literary elements, see Toni Craven, *Artistry and Faith in the Book of Judith* (Chico, California: Scholars Press, 1983), 47-112.

The *Book of Judith* cannot be the source of Rema, Ran, or *Kol Bo*, as it is missing some key elements that they mention—the most prominent being that the enemies in the *Book of Judith* are not Greeks. While some versions of the *Book of Judith* have her bringing cheese along as part of her personal food supply when going to the camp of Holofernes, in no version is she reported to have fed him milk or cheese.[17] Furthermore, while the *Book of Judith* does include the character of a high priest, he is named Joakim,[18] or in some versions Eliakim,[19] and is a minor character, with no family relation to Judith.

Medieval Judith Stories

Although there is no mention of Judith in the Talmud or standard collections of *midrash*,[20] there are more than a dozen variants of the Judith story that have been published in more recent collections of midrashic material, some only fragments.[21] These have been categorized into a few basic versions.[22] These retellings and reworkings of the material in the Apocrypha generally place the story of Judith in Maccabean times, switching the enemies from Assyrians to Greeks,[23] and they were known to the *rishonim*.[24]

The central element of the beautiful Jewish woman beheading the enemy leader appears in all of the versions, but just about every other plot element is subject to change. For example, in the version recorded by R. David Ha-Naggid, grandson of Rambam, the woman is not named, but only identified as from the priestly Hasmonean family, the villain is the Greek general Nicanor, and the Jewish woman put sleep-inducing drugs into the wine to knock out Nicanor.[25]

17. Gera, *Judith*, 333-34.
18. Ibid. 174-75.
19. Solomon Zeitlin, ed., *The Book of Judith* (Leiden: Brill, 1972), 45.
20. Moshe Leiter, *Mamlekhet Kohanim* (Modiin Illit: 2002), 361.
21. See the introduction and bibliography in Michael Higger, *Halakhot va-Aggadot* (New York, 1933), 91-94; Dubarle, *Judith*, 98-100; and the overview in Moore, *Judith—Anchor Bible Series*, 103-107.
22. Yehoshua Grintz, *Sefer Yehudit* (Jerusalem: Bialik Institute, 1957), 197-208; Gera, "The Jewish Textual Traditions," 32-34.
23. David Samuel Lowinger, *Yehudit–Shoshana* (Budapest, 1940), 5-6; Otzen, *Tobit and Judith*, 139.
24. Moshe Hershler, *Ma'aseh Yehudit*, in *Genuzot I* (Jerusalem: Moznaim, 1984), 165.
25. *Midrash Rabbi David ha-Naggid—Bereshit*, ed. Avraham Yitzchak Katz (Jerusalem: Mossad Harav Kook, 1964), 199.

Most of the Judith narratives can be immediately ruled out as the source of Rema, Ran, and *Kol Bo*, because they do not mention that Judith gave the enemy leader milk or cheese.[26] Rather, in these accounts, as in the Apocryphal *Book of Judith*, the Greek leader falls asleep from getting drunk, without the help of a dairy product.[27] While the Syriac version of Judith includes cheese (*gavta*) as one of the foods that Judith brings, it is not connected with making the villain thirsty and then drunk.[28]

Furthermore, in these versions, Judith is generally identified as the daughter of Merari, as she appears in the Vulgate of the Apocryphal *Book of Judith*,[29] and sometimes as the daughter of Be'eri (such that she has the same name as Judith the daughter of Be'eri, the wife of Esau, Gen. 26:34),[30] or the daughter of Mordekhai,[31] or even the daughter of Matityahu[32]—but never as the daughter of the High Priest Yoḥanan.[33] For example, in *Midrash le-Ḥanukkah*, included in the collection *Batei Midrash*, although the story takes place during the time of Greek oppression, Judith is identified only as a widow, and the enemy gets drunk at his party, without eating cheese or drinking milk first.[34]

What, then, is the source of the oft quoted story that serves as the reason for eating dairy on Ḥanukkah?

There is one extant version of the Judith story in which she gives the Greek leader milk prior to him getting drunk. This version, *Ma'aseh*

26. Samuel Mirsky, *She'iltot—Genesis 2* (Jerusalem: Sura, 1961), 189; J. D. Eisenstein, *Oẓar Midrashim* (New York: 1915), vol. 1, pp. 192-93; Higger, *Halakhot ve-Aggadot*, 99-100, 110-113; A. Habermann, *Ḥaddashim Gam Yeshanim* (Jerusalem: Reuven Mass, 1971), 52, 56, 60; Hershler, *Ma'aseh Yehudit*, 167. In the version found in the writings of Rambam's grandson, R. David ha-Naggid, the Jewish heroine (unnamed in that version) puts a sleep-inducing drug in the wine of the Greek general (Nicanor in that version); see Leiter, *Mamlekhet Kohanim*, 419.

27. Moshe Chaim Leiter, "*She'iltot be-Inyanei Ḥanukkah,*" *Yeshurun* 19 (2007): 42.

28. Weingarten, "Food, Sex, and Redemption," 98, n. 8. Cheese appears also in the Latin version, but as in the Syriac, it is not connected with getting Holofernes drunk. See Zeitlin, *The Book of Judith*, 35.

29. Habermann, *Ḥadashim Gam Yeshanim*, 52; Dubarle, *Judith*, 46-47, Vulgate and version B.

30. Adolph Jellinek, *Beit ha-Midrash* (Jerusalem: Wahrman Books, 1967), 2:15; Dubarle, *Judith,* 46, version C. On this identification of Judith, see Grintz, *Sefer Yehudit*, 204.

31. Dubarle, *Judith*, 47, version E, and 126, *midrash* 7a; *Likkutei Aggadot* (Oxford, Bodelian Library, Heb. D.47), 36-39.

32. Dubarle, *Judith*, 170, *midrash* 12.

33. It has also been suggested that when Judith is described as the daughter of the High Priest Yoḥanan, what is meant that she is his descendant; he was actually her grandfather or some other ancestor. See Leiter, *Mamlekhet Kohanim*, 375.

34. Jellinek, *Beit ha-Midrash* 1:133-34.

Yehudit, states that Judith gave Holofernes[35] a skin of milk (*nod*) to drink from.[36] This is a reference to Yael's actions in Judges 4:19, where Yael gets Sisera sleepy by feeding him milk from a skin and then killing him with a tent peg to his head.[37] This version seems to have been used by Menaḥem ben Makhir of Ratisbon (11th century) when composing the poem *Ein Moshia ve-Go'el*.[38]

Note that while Rema writes that it is customary to eat cheese on Ḥanukkah, he states that it is "because the miracle was done with milk that Judith fed the enemy," unlike Ran and *Kol Bo*, who write that Judith fed the enemy cheese.[39] Thus, the story that fits with the statement of Rema is this version of *Ma'aseh Yehudit*. This also may have been the narrative source for the authorities who note a custom to eat dairy on Ḥanukkah but do not specifically mention cheese.[40]

We now see that it is imprecise to say that the source of this statement of Rema is Ran and *Kol Bo*, as recorded in the parentheses in the published editions of *Shulḥan Arukh*. In Rema's version, Judith fed the enemy milk, as recorded in *Ma'aseh Yehudit*, not cheese, as stated by Ran and *Kol Bo*. Having found the narrative source for the custom noted by Rema, we must still locate the source of Ran and *Kol Bo*.[41]

In the medieval *Megillat Yehudit*, the feeding of cheese does appear. There we are told that Judith's maidservant prepared two fritters

35. In the Hebrew text, his name is Eliporni, a Hebrew version of Holofernes, the general in the Apocryphal *Book of Judith*; see Dubarle, *Judith*, 24-25, 140. He is sometimes referred to as Olopirno or Oliporno (see Grintz, *Sefer Yehudit*, 6, 201), Olopirnes (Dubarle, 120), Elipirni (ibid., 152), or Elporna (see David Ganz, *Ẓemach David* [Warsaw, 1878], vol. 1, p. 29).

36. Jellinek, *Beit ha-Midrash* 2:19; Eisenstein, *Oẓar Midrashim*, 1:207. In this version of the story, Judith is identified as the daughter of Be'eri.

37. Another variant of the Yael and Judith plot is found in the pseudepigraphal *Words of Gad the Seer*, chap. 13, where Tamar kills Pirshaz, king of Geshur, after lulling him to sleep with her harp-playing. See Meir Bar-Ilan, *Divrei Gad ha-Ḥozeh* (Rehovot: Meir Bar-Ilan, 2015), 301-303.

38. Grintz, *Sefer Yehudit*, 198. However, the poem does not contain a reference to milk. This poem has also been attributed to Ephraim ben Isaac of Regensburg (12th century); see Macy Nulman, *The Encyclopedia of Jewish Prayer* (Northvale, New Jersey: Jason Aronson, Inc., 1996), 74.

39. Moshe Rosenwasser, "Hidden *Midrashim* as Sources for the *Piyyut Odekha*," *Ha-Ma'ayan* 43:2 (2002): 30.

40. See the list in Chaim Simons, "Eating Cheese and *Levivot* on Chanukah," *Sinai* 115 (1995): 62-63.

41. Note that the specific motif of cheese, rather than milk, is so strong that Menaḥem Azariah de Fano—who in his *Sefer Gilgulei Neshamot* (Lublin, 1907), 25-26, writes that Judith was a reincarnation of Yael—still points out that Yael gave Sisera milk, while Judith gave the enemy cheese.

(*levivot*)[42] that were overly salted and cheese (*ḥariẓei ḥalav*) before the feast. Judith gives these foods to Holofernes, who then drinks wine, gets drunk, and falls asleep.[43] The manuscript this was taken from ends with a colophon giving the scribe's name as Moshe Dascola, and the year it was written, or copied from an earlier document, as 1402.[44] This seems to be the only currently known version of the story to record that Judith fed the enemy cheese specifically.[45]

The term for cheese here, *ḥariẓei ḥalav*, appears as one of the foods that David brought to the captain at the beginning of the Goliath episode (I Sam. 17:18). Its use in Judith is just one of the many allusions to Goliath, who was also beheaded by his own sword (ibid. 17:50).[46]

However, even this version cannot be the source for Ran and *Kol Bo*, since here Judith is not identified as the daughter of the High Priest Yoḥanan, but only as "one of the wives of the *benei ha-nevi'im*."[47]

A Possible Source?

In the beginning of his account of the story of Judith, Ran mentions a decree that virgin brides had to sleep with the Greek governor before going to their husbands. This plot element is not found in the Apocryphal *Book of Judith*, and only appears in a few of the later versions. It also does not appear in the version of the story in *Kol Bo*, which simply states that the Greek leader desired her, a plot element found in all versions from the Apocrypha on.[48] However, the decree on virgin brides is found in other midrashic works related to Ḥanukkah.[49] For example, *Midrash le-Ḥanukkah* (version 3) tells how the daughter of the High Priest Matityahu, named as Ḥannah later in the story, inspired her brothers, led by Judah, to kill the Greek leader rather than having her sleep with him

42. A reference to the two *levivot* that Tamar prepared for Amnon (II Sam. 13:6,8,10). See Weingarten, "Food, Sex, and Redemption," 104.
43. Dubarle, *Judith*, 148, *midrash* 8; Habermann, *Ḥadashim Gam Yeshanim*, 45.
44. Susan Weingarten, "Appendix to Chapter 6: *Megillat Yehudit* (the Scroll of Judith)," in Kevin Brine et al., *The Sword of Judith*, 110; Habermann, *Ḥadashim Gam Yeshanim*, 46.
45. Dubarle, *Judith*, 93; Simons, "Eating Cheese and *Levivot* on Hanukkah," 60; Weingarten, "Food, Sex, and Redemption," 100. See also Catherine Donnely, ed., *The Oxford Companion to Cheese* (Oxford: Oxford University Press, 2016), 68.
46. Weingarten, "Food, Sex, and Redemption," 100.
47. Habermann, *Ḥaddashim Gam Yeshanim*, 43.
48. Simons, "Eating Cheese and *Levivot* on Ḥanukkah," 61.
49. See the overview in *HaMa'ayan*, 28.

on her wedding night.[50] Another version of *Midrash le-Ḥanukkah* does not give the bride's name at all, but identifies her father as the High Priest Yoḥanan and her brother as Judah. The story then segues into a second story, a version of the Judith narrative,[51] something found in other versions as well with certain variations.[52] This is the closest connection we have between Yoḥanan and Judith in a single narrative,[53] and even here it is in a place where two distinct narratives were strung together.

It is possible that a version of *Midrash le-Ḥanukkah* that we do not currently have further conflates the two episodes, inserting the name Judith as the name of the bride, the daughter of the High Priest Yoḥanan, in the first part of the story.[54] Conflation of narrative elements from similar stories is not unusual in ancient literature.[55] Even so, the cheese element only appears in *Megillat Yehudit* and not in *Midrash le-Ḥanukkah*.

In order for all elements noted by Ran to be included—the decree on brides, the cheese, and the daughter of Yoḥanan—the most probable assumption is that there was another version of the story that he had that is lost to us today. This holds true for *Kol Bo* as well, since there is

50. Adolph Jellinek, *Beit ha-Midrash* (Vienna, 1878), 6: 2; Eisenstein, *Oẓar Midrashim*, vol. 1, p. 190 (as *Midrash Maʿaseh Ḥanukkah*). The story also appears in *Megillat Taʿanit* (regarding Elul 17), but there the bride is not named; she is identified only as the daughter of the High Priest Matityahu. Note that a version of the Judith story brought by Rokeaḥ, the heroine is called Hannah. See Moshe and Yehudah Hershler (eds.), *Perushei Siddur ha-Tefillah la-Rokeaḥ*, vol. 2, *siman* 141, pp. 717-18; Leiter, *Mamlekhet Kohanim*, 418.

51. Jellinek, *Beit ha-Midrash* 6: 133-34. In this version, there is no mention of cheese or milk given by Judith to the Greek general.

52. Deborah Levine Gera, "Shorter Medieval Hebrew Tales of Judith," in *The Sword of Judith*, ed. Kevin Brine e. al., 87-88; Leiter, *Mamlekhet Kohanim* 371. See, for example, Hershler, "*Maʿaseh Yehudit*," 165, where the bride is not named and is identified as "a daughter of the Hasmoneans," and Judah comes to her aid, although he is not her brother.

53. Tuvia Friend, *Moʿadim le-Simḥah* (Jerusalem: Otzar HaPoskim, 2000), 2: 286-87.

54. Simons, "Eating Cheese and *Levivot* on Hanukkah," 61. Azariah de Rossi, *Meʾor Enayim* (Vilna, 1865), vol. 2, p. 159, suggests that once the special days in *Megillat Taʿanit* were cancelled, all of the miraculous salvations from the Greek period were commemorated on Ḥanukkah, leading to a possible conflation of what were completely different events—the Judith story and the story about the bride who was the daughter of the High Priest. R. Yaakov Emden takes this idea further and proposes that there was a conflation of the Judith episode from Assyrian times with events from the Greek period; see *Mor u-Keẓiʿah*, ed. Avraham Bombach (Jerusalem: Machon Yerushalayim, 1996), *Oraḥ Ḥayyim* 670, p. 520.

55. See, for example, Frank Docken, *Herod as a Composite Character in Luke-Acts* (Tubingen, Germany: Mohr Siebeck, 2014), 70.

currently no known version that includes both cheese and the daughter of Yoḥanan.[56]

The conflated narrative became more widespread after the advent of printing. For example, it can be found in the book *Ḥanukkat ha-Bayit* by R. Shaul ben David (c.1570 – c.1641), first published in 1616.[57] He mentions Judith in a few places, and putting the references together, we see that he understood that Judith was the sister of Judah the Maccabee, who as a bride refused to sleep first with the Greek leader and instead cut off his head, inspiring her brother to wage war against the Greeks,[58] and that she gave the Greek leader cheese.[59]

This is the version of the story familiar to many today through its inclusion in *Mishnah Berurah*.[60] All the elements from Ran are included there, even those not mentioned by Rema:

> Judith was the daughter of Yoḥanan the High Priest, and there was a decree that every engaged woman must first sleep with the governor, and she gave cheese to the leader of the enemy to get him [to drink wine, and so make him] drunk and cut off his head, and they all fled.

In this way, Ran's version of the story of Judith became the most familiar to contemporary Jews, even though it does not match any early versions of the Judith story that we have in our possession today.

Acknowledgments

I thank the anonymous referees, David Shatz, and Meira Mintz for their comments.

56. Leiter, *Mamlekhet Kohanim*, 374.
57. Very little biographical data is known about him. See the introduction to the new edition of his work *Tal Orot ha-Kadmon*, ed. Menachem Adler (Jerusalem: 1996), 8-9.
58. Hershler, *Ḥanukkat ha-Bayit*, 79, 85.
59. Ibid., 94.
60. *Mishnah Berurah* 670:10.

WILLIAM GEWIRTZ

The Halakhic Definition of Night and the Principles of Astronomy

It is generally assumed that Shabbat begins with sunset on Friday night and concludes with the appearance of stars (meeting certain criteria) on Saturday night. This assumption is particularly significant when studying the statements attributed to great halakhic authorities who were also recognized for their expertise in astronomy; their statements must be considered in light of astronomical observations and knowledge already established in their time. In this article, we will analyze statements of two such figures, Shemuel (*Shabbat* 35a) and Rambam (*Hilkhot Kiddush Ha-Ḥodesh* 2:8-9).

The central question that we will address relates to the transition point between day and night, which almost all *rishonim* assume takes place at or close to the end of the *bein ha-shemashot* period.[1] Is the appearance of stars the *definition* of the transition point between day and night or simply an *indication* that the requisite darkness exists, such that *ḥashekhah* (darkness) is the actual definition of nightfall? I am inclined to the latter view, but as we will see, this point cannot be proven conclusively.

1. See R. Ḥaim Benish, *Ha-Zemannim ba-Halakhah* (Bnai Brak, 5756/1995), vol. 2, chapter 20, 355-56, for a list of the overwhelming number of *rishonim* who maintain that Shabbat ends either at the end of or remarkably close to the end of *bein ha-shemashot*.

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Darkness or Stars

Sunset, *sheki'at ha-ḥammah*, is typically assumed to mark the end of the day. This is followed by the period of *bein ha-shemashot*, which is treated as a period of doubt. Nightfall, and the beginning of the next day, follows thereafter. The *Geonim* assume that the *bein ha-shemashot* period begins at or within a quarter hour of sunset, whereas Rabbenu Tam assumes the *bein ha-shemashot* period begins almost an hour after sunset.[2]

There are two possible indicators of nightfall in the halakhic literature, the appearance of stars (*zeit ha-kokhavim*) and darkness (*ḥashekhah*), but the former is generally accepted as the conclusive indication.

Darkness, characterized by the darkening of the sky and the horizon, is central to the discussion of the *mishnah* in *Shabbat*, and *ḥashekhah* is the term used almost exclusively in early Tannaitic literature. The appearance of the sky and the horizon correlate precisely to the degree of darkness. The fact that three medium stars as a descriptor for the end of Shabbat is first recorded after the Tannaitic period is one of the more compelling arguments in favor of darkness being the defining criterion.[3] Indeed, this position has several proponents.[4] Further support for this view comes from the language of the *Yerushalmi* (*Berakhot* 1b), which uses the phrase "*siman la-davar*," "a sign (or indication) for the matter," when discussing the appearance of stars.

Nevertheless, most commentators consider the appearance of three medium stars as the defining criterion. As the Vilna Gaon observes, darkness and the appearance of the horizon might be used as indicators instead of stars either on a cloudy day, when stars are not visible, or because the definition of a medium star (as opposed to a large one) is difficult for the average person to ascertain.[5] Some note that Neḥemiah

2. *Tosafot, Shabbat*, 35a, s.v. *terei tiltei mil.*

3. *See Ha-Zemannim Ba-Halakhah*, ch. 63.

4. See *Meiri*, *Shabbat* 34, and a short excerpt from the period of the *Geonim* quoted in the appendix to *Ha-Zemannim Ba-Halakhah*, vol. 2.

5. It is ironic that the Gaon considers the definition of a medium star as clearer for the average person than the appearance of the sky/horizon. This is based, of course, on his view and that of the *Geonim* regarding the definition of the end of the day, as opposed to that of Rabbenu Tam. I have found that on a clear night with an unobstructed view of both the eastern and western horizon, the sugya's description of the horizon and the darkening of the sky at the end of the *bein ha-shemashot* period is rather intuitive, according to the view of the *Geonim*. On a clear night around the period of *bein ha-shemashot*, if one were to fly due north at a moderate altitude or stand on-deck at sea or in a tall building with an unobstructed view of both the eastern and western horizon, he would have a vantage point that helps to visualize and clarify the sugya. Indeed, I strongly recommend this.

4:15 describes the working day as beginning at *alot ha-shaḥar* and ending at *ẓeit ha-kokhavim*, explicitly mentioning stars, and argue that this provides a halakhic definition for both the daytime period and the end of a day. Additional support for stars as the basis for definition is provided by the *sugya* in the *Yerushalmi*, which revolves almost exclusively around stars.

From a scientific perspective (and as already observed in the era of the *Geonim*[6]), however, the appearance of stars is clearly a consequence of darkness; in order for stars of a certain magnitude and distance from earth to be visible, the degree of darkness must reach a specific point. At the same time, however, just because it is dark enough to see stars of a certain magnitude and distance from earth does not mean that they *will* be visible. At a minimum, the part of the earth from which the observation is occurring must be facing in the proper direction for a specific star to be visible. Furthermore, we might see a star situated in the eastern sky earlier than a closer star of greater magnitude situated towards the west, where illumination from the setting sun still hinders its visibility.

Note that around the fall and spring equinox, the sun appears over the equator, and we would therefore expect Shabbat to begin and end at (nearly) the identical time on those two days. Certainly, regardless of how one measures darkness, it is equivalently dark everywhere any number of minutes after sunset at those two times. However, in Jerusalem and other parts of the Middle East, despite an identical level of darkness, stars are seen later in the fall than in the spring. To argue that this is problematic, however, is entirely circular. If the appearance of three stars defines the end of Shabbat, then the fact that that happens later one day than on another day that we deem to be equivalent clearly depends on our basis for deciding when dates are equivalent. That said, it is still a bit bothersome to maintain stars as defining, particularly since the appearance of the horizon does not suffer from this anomalous detail and equates precisely to gradations of darkness.

Although there are several inferences favoring darkness as the determining factor in marking the end of the day, none is definitive.[7] Among the most compelling is the *gemara*'s recommendation (*Shabbat*

6. See citations from the *Geonim* in the addendum to *Ha-Zemannim Ba-Halakhah,* vol. 2.

7. A unique argument offered by R. Elḥanan Wasserman in the second entry in *Kovez̟ Shi'urim,* 9, notes that stars were only created on the fourth day of creation, such that darkness must have been the sole determining factor previously.

118b) that we adopt the practice of the people of Teveryah (Tiberias) when starting Shabbat and that of the people of Ẓippori (Sepphoris) regarding its end—in other words, we should begin Shabbat early and end it late. Perhaps due to necessity, residents of Teveryah—whose view of the western sky is obstructed by mountains, such that they are unable to see the setting sun—started Shabbat early. Ẓippori, which is 30 kilometers to the west of Teveryah, is unique in that at its highest point, it provides an unrestricted view of both the east and the west. But if the people of Ẓippori were looking for stars in order to determine the end of Shabbat, why would they see three stars later because of their altitude? There is no reason to suppose that atmospheric conditions at a higher altitude would delay the visibility of three stars. Thus, I suspect that they were looking at the sky, and given their elevation, when they looked to the east, the apex of the sky might have taken slightly longer to appear dark than what they observed in the eastern most portion of the sky, the point slightly below the horizon—the definition/indication of a day's end in the opinion of R. Yehudah, whose view is accepted as *halakhah* by the *gemara* (*Shabbat* 35a) with respect to *Shabbat*. In addition, the western sky would have appeared more illuminated from their elevation than it would be for one observing from sea level.

This does not constitute undeniable proof that darkness is defining, as one might still argue, albeit with considerable difficulty, that due to their altitude and the fact that they saw more illumination in the western sky, the people of Ẓippori were hesitant to end Shabbat despite the appearance of three stars, which is actually the defining factor.

The Talmud (*Shabbat* 34b) utilizes the descriptive terms *ḥashekhah*, *hikhsif ha-taḥton, hiskhsif ha-elyon ve-hishveh la-taḥton* (darkness; the bottom part of the sky has darkened; the top part of the sky has darkened to the level of the bottom part of the sky, i.e., the horizon). Based on basic astronomy and spherical trigonometry, these concepts have been reformulated in terms of depression angles, which quantify how far below the horizon the sun has descended and provide an accurate measurement of the level of illumination from the sun or, equivalently, the level of darkness.[8] The use of depression angles as a precise formalization of the degree of darkness has become the preferred way for websites and location-specific calendars to define the end of

8. A relatively complete description of depression angles is included in my article, "A Categorization of Errors Encountered in the Study of *Zemannim*," in *Ḥakirah* 26 (2019): 91-121.

Shabbat and almost all other *zemannim* related to the twilight periods of both dawn and nightfall.

Small, Medium, and Large Stars

Despite some divergent views, we assume that all stars are categorized by the *gemara* as medium or small stars. The *gemara* (*Shabbat* 35b) defines a large star as one that is occasionally visible prior to sunset. Those heavenly bodies, referred to as "*kokhavei lekhet*," moving stars, are actually planets—such as Venus, Mars, and Jupiter—which can occasionally be seen prior to sunset. What we refer to as stars today can **never** be seen before sunset. As Prof. Leo Levi notes, in order to be visible prior to sunset, a star would have to be approximately 2,500 times brighter than an average small star; only planets satisfy that characteristic.[9] Thus, what the *gemara* refers to as "large stars" are assumed to be planets, the "stars of the sun." Indeed, with the exception of the planets, very few stars appear sufficiently bright to be visible even prior to 15 minutes after sunset.[10] In the Middle East, two stars, Sirius and Canopus, which respectively appear 1,100 and 600 times brighter than a small star, are potentially visible that early, but only during certain periods of the year.

However, despite the *gemara*'s statement that large stars are visible during the day, this does not necessarily imply that a large star is defined exclusively by its visibility prior to sunset. It is still (remotely) possible that the two largest stars, Sirius and Canopus, are considered large stars, as their illumination was judged closer to that of a planet than to that of the other medium stars. Although this possibility is unlikely, it cannot be dismissed out-of-hand. However, were Sirius and Canopus classified as large stars, the inter-arrival rate of the remaining medium stars would be very rapid, something that is incompatible with Shemuel's statement concerning the appearance of one, two, and three stars, as will be clarified further below.

This may provide another intuitive argument for using stars, as opposed to darkness, as the defining element. The *Yerushalmi* (*Berakhot* 1b) questions why we require the appearance of three stars to mark the end of Shabbat; the appearance of stars signifying the end of a day ought to require the smallest plurality, only two stars. If stars are defining, this

9. Leo Levi, *Halakhic Times* (Jerusalem; Rubin Mass Ltd., 1967).
10. Our concern is with how stars *appear*, not how bright they are in reality. A distant star that is very bright might appear to us to be less bright due to its distance.

question makes sense, as does the somewhat unsatisfactory answer (that the first star is not counted because it can or does appear during the day, although after sunset).[11] If, however, we were to assume that darkness is the defining factor and that Sirus and Canopus are classified as medium stars, there is an obvious answer to the *Yerushalmi*'s question—one that is not suggested by the *Yerushalmi*. Two stars are visible well before the end of Shabbat dur-ing the time of year that Sirius and Canopus are both visible in the Middle East (part of the spring). Thus, it is only after a third substantially less visible star appears that the requisite level of darkness has been achieved. The implication of the *Yerushalmi*'s question and answer is therefore that the appearance of stars is the determinant.

In the Middle East, approximately one dozen stars of between 75 and 250 times the illumination of a small star are visible by about 30 minutes after sunset. Once three stars are visible, many more stars become visible shortly thereafter. Thus, three stars always appear within a relatively well-defined interval, closely linked to the level of darkness. However, the appearance of both the first and second star exhibit significant seasonal variation.

It is instructive to examine the actual appearance of stars that Prof. Levi records for Jerusalem. The three times listed in each cell of the table correspond to how difficult it is to see a star. The shortest time noted is how long after sunset an expert, knowing exactly where to look, can locate a star, the intermediate time noted is when a star can be seen with great difficulty, and the third time noted is when a careful observer can see a star. The time when stars become visible to a casual observer is even later.

Prof. Levi's Table

Equinox	Fourth Star	Third Star	Second Star	First Star
Spring	16-18-21	15-18-21	14-16-19	6-9-12
Summer	22-26-29	21-25-28	16-18-21	13-16-18
Fall	23-26-28	19-23-26	17-20-23	12-14-17
Winter	21-25-28	18-22-26	17-20-23	17-20-22

11. See Prof. Levi's table. If Sirius and Canopus were considered large stars, which we deem unlikely, then I have heard nothing more compelling than the answer that the *Yerushalmi* provides. It is notable that it is the *Yerushalmi* that uses the phrase *siman la-davar*, which would seem to imply that stars are merely an indication, as opposed to a definition. In the *Bavli*, in contrast, stars appear only in an isolated statement at the end of the *sugya* in *Shabbat*.

Prof. Levi argued strongly that darkness, measured by depression angles, is the defining factor, and he therefore adjusted the times in the table to their equivalents at the time of the spring and fall equinoxes. Since, in the winter, three stars are visible to a careful observer 28 minutes after sunset, when the sun is 6.5 degrees below the horizon, the time given in the table is not 28 minutes, but rather the number of minutes after sunset at the spring equinox when the sun is 6.5 degrees below the horizon—which translates into 26 minutes in the chart.

The chart demonstrates the great variability in the time at which the first star appears. Given Prof. Levi's normalization to the spring/fall equinox, the variation by season is further (slightly) understated.

One, Two, and Three Stars

Given this background, we can now proceed to a detailed analysis of R. Yehudah's citation of Shemuel's pithy statement: "One star—daytime, two stars—*bein ha-shemashot*, and three stars—night" (*Shabbat* 35a).[12]

After recording this view, the *gemara* cites the opinion of R. Yosei bar Adin that the stars in question are neither large stars that appear in the day (i.e. planets) nor small stars that only appear significantly after sunset, but rather medium stars that appear around what the *gemara* refers to as *ẓeit ha-kokhavim*.

How might Shemuel's statement be reconciled with the previous discussion of the positions R. Yehudah, R. Yosei, and R. Neḥemiah in

12. Prepositions have been omitted in order not to bias the semantics. It is notable that the *Yerushalmi* records this and similar statements from multiple sources in conjunction with a variety of viewpoints. I will not address how one might interpret this statement in the *Yerushalmi*; it might support alternative positions and interpretations.

Interpreting the *sugya* in *Shabbat* 34a-35a in accordance with opinion of Rabbenu Tam regarding the onset of *bein ha-shemashot* is challenging, in particular with regard to the disagreement between Abbayei and Rava, who dispute whether one must look to the eastern and/or western horizon to determine when sunset has occurred. According to the opinion of Rabbenu Tam, Abbayei and Rava were looking towards the eastern and western horizons at the beginning or during the *bein ha-shemashot* period, at least 50 minutes after sunset. However, looking to the east provides no information at that time, as the eastern sky has been dark and completely unchanged to the naked eye for at least 15 minutes. Only observation of the western sky would still be relevant at that point.

For the *Geonim*, however, the impact of the setting sun—which defines both the beginning of the *bein ha-shemashot* period as well as *ḥashekhah*—occurs in the east, but the cause of the increasingly reduced illumination is the sun's setting in the west, and we can therefore understand the reasoning for looking in either direction. Particularly on a cloudy day, the eastern sky may not be clearly visible, while the level of illumination is apparent despite cloud cover in the western sky.

the *gemara* and the argument of Rabbah and R. Yosef about the precise position of R. Yehudah? R. Ḥaim Benish points out that this statement reads better if the appearance of three stars is merely an indicator of nightfall.[13] The first phrase, "one star—day," cannot be providing a definition of daytime; the appearance of one star is merely an indication that it is (or may still be) day. Similarly, R. Benish argues that the statement would make more sense if we read "three stars—night" as meaning that three stars are *indicative* that night has begun, rather than that the appearance of three star*s defines* the point of transition between day and night.

Although it cannot yet be proven, I would argue further that the language is yet more uniform if all three phrases, including the second, are read only as indicators. Shemuel is teaching us that: (1) The appearance of one star need not indicate that the period of *bein ha-shemashot* has begun, as one star may appear when it is still considered halakhically the previous day; (2) the appearance of two stars always indicates that the period of *bein ha-shemashot* has already begun; and (3) the appearance of three stars indicates that the transition to the next day has (already) occurred.

One might suggest that R. Yosei bar Adin's assertion that Shemuel's statement is referring to medium stars applies only to the third part (or second and third parts) of the text. Under this interpretation, Shemuel's statement concerning one star refers not only to medium stars but to large stars or planets, which are visible before sunset. According to this interpretation, the statement is informing us that the appearance of a planet before sunset does not indicate that the *bein ha-shemashot* period has begun. I consider this interpretation implausible, as it is strained to argue that the first part and the third part of Shemuel's statement refer to different types of stars. Moreover, such an assertion would hardly be necessary, as the *gemara* makes no suggestion of the *bein ha-shemashot* period beginning before sunset.[14]

Shemuel's statement must further be reconciled with an independent definition of the length of *bein ha-shemashot.* The *gemara* (*Shabbat* 34b) records a three-way dispute among the *Tanna'im* regarding the length of the *bein ha-shemashot* period. R. Yosei maintains that it lasts but an instant, *ke-heref ayin*. R. Neḥemiah maintains that it lasts

13. Ḥaim Benish, *Ha-Zemannim ba-Halakhah* (Bnai Brak, 1995), vol. 2, chapter. 48, section 5, p. 498.

14. We are setting aside the isolated opinion of R. Eliezer mi-Metz, who asserts that the *bein ha-shemashot* period begins before sunset. That view is difficult to reconcile with Shemuel's statement in any case.

the length of time that it takes to walk a ½ *mil*. The view of R. Yehudah is cited differently by two of his students: R. Yosef maintains that R. Yehudah held that *bein ha-shemashot* lasts the time it takes to walk ⅔ *mil*, whereas Rabbah maintains that R. Yehudah held that it lasts the time it take to walk ¾ *mil*. The view of R. Neḥemiah is not considered to be authoritative, such that there are three possibilities regarding the length of *bein ha-shemashot*: *ke-heref ayin*, ⅔ *mil*, and ¾ *mil*.

Let us consider how to interpret Shemuel's statement examining alternative positions in five areas. Were the alternatives in these five areas logically independent (which they are not), there would be 72 options:

I. Are Sirius and Canopus large or medium stars? (Two options)

II. Shemuel is

- consistent only with the opinion of R. Yosei (*ke-heref ayin*)
- consistent only with R. Yosef's interpretation of R. Yehudah (⅔ *mil*)
- consistent with Rabbah's interpretation of R. Yehudah as well (¾ *mil*) (Three options)

III. Are stars or darkness defining? (Two options)

IV. Does "one star—day" mean that

- up until the time of one star appearing it *is* daytime, or
- even though one star has appeared, it *may* still be daytime? (Two options)

V. Does "two stars—*bein ha-shemashot*" mean

- the appearance of two stars defines the beginning of the *bein ha-shemashot* period,
- the appearance of two stars indicates that the period of *bein ha-shemashot* has already begun, or
- we are to treat the appearance of two stars as the beginning of the period of *bein ha-shemashot*, but perhaps only as a *harḥakah*. (Three options)

Multiplying the options associated with each area (2x3x2x2x3) yields 72 possible combinations. Fortunately, some alternatives are inter-dependent, reducing the number of options to at most 28. (There may be even fewer, but I do not think so.)

Looking first at questions I and II, we can exclude the possibility of reconciling the *sugya* with the opinion of R. Yehudah while also assert-

ing that Sirius and Canopus are large stars.[15] The only stars potentially visible before R. Yehudah's *bein ha-shemashot* interval (the time needed to walk either ⅔ or ¾ *mil* prior to *ḥashekhah*) are Sirius and Canopus. Given R. Yosei bar Adin's assertion that Shemuel is referring to medium size stars, Shemuel's statement that "one star—day" forces the assumption that according to R. Yehudah, Sirius (and certainly a less bright Canopus) is a medium star.

Thus, questions I and II yield only four (not six) independent alternatives:[16]

1. Sirius and Canopus are large stars, and Shemuel's statement is consistent only with the opinion of R. Yosei.

2. Sirius and Canopus are medium stars, and Shemuel's statement is consistent only with the opinion of R. Yosei.

3. Sirius and Canopus are medium stars, and Shemuel's statement can be interpreted consistently with R. Yosef's interpretation of R. Yehudah (but not that of Rabbah).

4. Sirius and Canopus are medium stars, and Shemuel's statement can be interpreted consistently with both Rabbah's and R. Yosef's interpretations of R. Yehudah.

Similarly, removing dependencies from questions III–V are completely covered by the following 7 (not 12) independent alternatives:

1. Darkness is defining, and the period of *bein ha-shemashot* begins before the second star and after the first star.

2. Darkness is defining, and we treat the appearance of a second star as the beginning of the *bein ha-shemashot* period, perhaps only as a *harḥakah*.

3. Darkness is defining, and the period of *bein ha-shemashot* can on occasion begin even before the first star.

4. Stars are defining for both night and the period of *bein ha-shemashot*.

5. Stars are defining for night only, and the period of *bein ha-shemashot* always begins before the second and after the first star.

15. Again, I am assuming that the first star is not a planet, as that would be uninformative.

16. Note that each of the listed alternatives in this section and the rest are independent, and none of the 72 options is excluded by this reduced set.

6. Stars are defining for night only, and we treat the appearance of a second star as the beginning of the period of *bein ha-shemashot*, perhaps only as a *harḥakah*.

7. Stars are defining for night only, and the period of *bein ha-shemashot* can begin even before the first star.

Commentators who maintain that three stars *define* the end of the day often consider as well that two stars *define* the beginning of the *bein ha-shemashot* period (alternative 4 above), although they could theoretically also consider/adopt alternatives 5, 6, or 7.

Shemuel's Statement and the Length of *Bein ha-Shemashot*

As noted above, one possibility is to align Shemuel's statement with the opinion of R. Yosei, who maintains that *bein ha-shemashot* lasts *ke-heref ayin*. Based on some texts, instead of the R. Yosei commenting on Shemuel's statement being identified with R. Yosei bar Adin (an *amora* clarifying the statement of Shemuel), the entire statement is assumed to follow only the opinion of the *tanna* R. Yosei. If the appearance of the second star *defines* the beginning of the period of *bein ha-shemashot*, as is often assumed, then the two to three minute interval between the second and third star is indeed much more consistent with *ke-heref ayin* than the time needed to walk either ⅔ or ¾ *mil*. Nonetheless, 2 to 3 minutes is hardly *ke-heref ayin* as normally interpreted. Thus, according to R. Yosei, we would likely have to interpret "two stars—*bein ha-shemashot*, three stars—night" as a *harḥakah*. In other words, two stars begin the period of *bein ha-shemashot*, and it ends very shortly thereafter; the third star merely provides confirmation that the transition to the next day has occurred.[17]

However, all of this is rather forced. Regardless of how we might interpret "two stars—*bein ha-shemashot*," Shemuel appears to be working with a defined interval for *bein ha-shemashot*, while R. Yosei is not. More critically, aligning Shemuel only with R. Yosei after the *gemara* clearly decides in favor of R. Yehudah with respect to Shabbat would be unusual. Nevertheless, despite these arguments, which make this position dubious at best, aligning Shemuel's assertion only with R. Yosei has several adherents. This (far-fetched) position would leave most of the

17. This is consistent with a view in the Yerushalmi *Berakhot* 2a that R. Yosei's *ke-heref ayin* occurs within the interval of R. Neḥemiah. This opinion does not appear in the Bavli and does not have any support from *rishonim*.

alternatives outlined unresolved, allowing for several options: Sirius and Canopus may be either medium or large stars, and either darkness or stars may be defining. However, according to this view, it is highly likely that "two stars—*bein ha-shemashot*" is only a *harḥakah.*[18]

Going forward, we will set aside the possibility of aligning Shemuel only with R. Yosei, as it appears to be highly improbable. However, before investigating alignment with Rabbah and R. Yosef's interpretations of the opinion of R. Yehudah, we will first look at the 7 alternatives associated with options III - V.

Examining the spring and winter periods in Prof. Levi's chart, the meaning of "one star—day" requires further clarification. Note that the first star appears in the winter slightly after three stars appear in the spring. Of course, if stars are the defining factor, such an occurrence, though anomalous, is not problematic. However, if stars are merely an indicator and darkness is defining, this phenomenon requires explanation. One possibility is that this statement of Shemuel follows only R. Yosei; there is thus no *bein ha-shemashot* period, and the discrepancy is rationalized as being too slight, perhaps the result of some change in the visibility of stars between the time of the *gemara* and now (an alternative abandoned previously). If, however, we assume that the statement of Shemuel must be aligned with some view of R. Yehudah and therefore one must assume a measurable *bein ha-shemashot* period (during at least some seasons of the year) of 12 to 18 minutes, we can reach the definitive conclusion that "one star—day" means it *may* still be the previous day if only one star is visible. While one star can on occasion be visible prior to the period of *bein ha-shemashot*, as occurs in the spring, the first star that appears in the winter occurs well after the start of R. Yehudah's period of *bein ha-shemashot.* The inverse—"If a star is not visible, the period of *bein ha-shemashot* has not begun"—is thus incorrect.

We can conclude that according to R. Yehudah: 1) One star may be visible after sunset but before the onset of *bein ha-shemashot* during a period that is still considered part of the previous day; and 2) Sirius and Canopus are medium stars.

Prof. Levi's table further constrains the options: R. Yehudah's interval of *bein ha-shemashot* (according to either Rabbah or R. Yosef) *must* extend back prior to the appearance of a second star. The longest

18. There are multiple opinions about when R. Yosei's precise point of *ḥashekhah* occurs; each would give Shemuel slightly varied semantics.

interval between the second and third star is significantly less than even the shortest potential interval for *bein ha-shemashot*, the time needed to walk ⅔ of a *mil*. Thus, two stars cannot *define* the beginning of the *bein ha-shemashot* period. The *bein ha-shemashot* period begins either during the interval between the first and second star or, particularly during the winter, even prior to the appearance of the first star, options that do not appear to have been widely considered. Thus, alternatives 1, 4, and 5 can be dismissed**.** Alternatives 2 and 6 are still remotely possible, but only if one assumes that in the spring two stars are visible before the beginning of the *bein ha-shemashot* period.[19] Under those options, we treat two stars as the beginning of the period of *bein ha-shemashot*, but only as a *harḥakah.*

Thus, while we cannot conclude whether stars or darkness is defining, we can further conclude (excluding the unlikely possibility of alternatives 2 and 6) that according the opinion of R. Yehudah: 3) "Two stars—*bein ha-shemashot*" indicates that once two stars appear, the period of *bein ha-shemashot* has *already* begun.

With a clear understanding of Shemuel's statement and unable to resolve whether stars or darkness is defining, only one issue remains open: Is Shemuel consistent with the interpretations of both Rabbah and R. Yosef of R. Yehudah's opinion, or is he consistent only with R. Yosef's interpretation?

One view aligns Shemuel with the view of R. Yosef.[20] This viewpoint assumes that Shemuel's statement cannot be aligned with the view of Rabbah, given the widely accepted assumption that according to Rabbah, the period of *bein ha-shemashot* begins precisely at sunset. As noted above, it is forced to argue that Shemuel's "one star" is a "moving star" or a planet that is visible even before sunset, and that possibility is therefore disregarded.[21]

There is an additional difficulty with accepting Rabbah's period of *bein ha-shemashot*, which begins at sunset. There has been considerable

19. This would require accepting two unlikely assumptions: 1) *Bein ha-shemashot* begins after the second star is visible only by an expert, 14 minutes after sunset; and 2) The appearance of the second star to an expert is included in what Shemuel's statement intended. Most would be troubled by the first assumption and assume Shemuel requires more general visibility.

20. See Rashba's commentary.

21. There is also no suggestion to align the statement with R. Neḥemiah, since his opinion is not normative. It is notable that if we interpret Shemuel's statement such that the interval of *bein ha-shemashot* begins between the first and second star, Prof. Levi's chart shows remarkable consistency with a time to walk ½ of a *mil*, except in the winter, when the first star appears late and the other stars appear in relatively rapid succession. Nevertheless, this alternative is not considered.

effort to align the appearance of three stars within the time it takes to walk ¾ of a *mil* if the beginning of the *bein ha-shemashot* period coincides precisely with sunset.[22] The only solution proposed is to assume that the time needed to walk ¾ of a *mil* applies only around the time of the spring equinox, and then to make yet further assumptions to rationalize so short an interval.[23] Even if the time needed to walk ¾ of a *mil* is a bit under 17 minutes (¾ of 22.5 minutes=16.85 minutes), three stars can rarely be seen so soon after sunset and then only with great difficulty, by experts (perhaps aided by telescopes), and in a pristine environment absent urban sources of light, such as the Judean desert. According to the *Shulḥan Arukh*'s definition of a *mil* as 18 minutes, ¾ of a *mil* is 13.5 minutes, and it is entirely implausible to see stars that soon after sunset.[24]

Due to these difficulties, some align Shemuel's statement only with the interpretation of R. Yosef, who begins the period of *bein ha-shemashot* "*palga de-danka*" (the time to walk ½ of ⅙ of a *mil*, meaning 1/12 of a *mil*) after Rabbah. However, Prof. Levi's table demonstrates that this approach is entirely untenable. If Rabbah's interval begins precisely at sunset, then R. Yosef's interval begins only 1.5-2 minutes later, significantly before the earliest time an expert can see a star—6 minutes after sunset. This observation would rule out R. Yosef as well, leaving Shemuel's statement inconsistent with either interpretation of R. Yehudah.

A Possible Resolution

The inability to align Shemuel with either interpretation of R. Yehudah's normative opinion, in addition to the strong predisposition against aligning Shemuel only with the opinion of R. Yosei, motivates a careful

22. R. Benish, *Ha-Zemannim ba-Halakhah*, volume 2, chapter 41, p. 373, and R. Mordechai Willig, *Am Mordechai al Massekhet Berakhot* (New York: Michael Scharf Publication Trust of Yeshiva University, 1992), chapter 2, among many others, struggle with this question.

23. I believe this interpretation originated with the Vilna Gaon (OH 261). The alternative proposed below, delaying the start of *bein ha-shemashot* by some small number of minutes after sunset, would remove the basis for the question. It is also consistent with R. Meir Posen, *Or Me'ir* (London, 1973), where he distinguishes between the positions of the Gaon and the *geonim*.

24. It is possible that there has been some worsening of atmospheric conditions, perhaps the result of pollution, which slightly decreases visibility. Dr. Irwin Goldblatt, a chemist, verified this as a possibility. Although I have no basis to determine how accurate this might be, it is difficult to imagine that it is consequential.

re-examination of the entire *sugya* to develop a different alternative to define the beginning of the period of *bein ha-shemashot* according to R. Yehudah.

The *gemara* in *Pesaḥim* (94a) equates the time needed to walk 40 *milin* to the period of the entire day. It must therefore assume an average day around either the spring or the fall equinox. In the Middle East, during a winter day of approximately 10 hours or a summer day of approximately 14 hours, the distance covered in one day would vary significantly. Unlike the *gemara* in *Pesaḥim*, however, which can only apply to a 12-hour daytime period, the *gemara* in *Shabbat* (34b), as we saw earlier, defines the end of Shabbat using terms like *ḥashekhah*, *hikhsif ha-elyon ve-hishveh la-taḥton*, and the appearance of three stars, all of which apply uniformly throughout the year.[25] What possible value could there be (especially in an era before clocks) in introducing a time-based approximation that is a lower-bound, season dependent, and rarely applicable, and then only under idealized conditions? In what context would such information be useful?

Accordingly, I propose that the time needed to walk ¾ of a *mil* should be interpreted very differently than normally assumed.

First, the time needed to walk ¾ of a *mil* is not counting forward from sunset, but rather counting back from the point at which the period of *bein ha-shemashot* ends. This is consistent with the primary focus of the *gemara*, which is to determine the beginning of the *bein ha-shemashot* period on Friday evening. The end of the period of *bein ha-shemashot* is apparently known (or nearly known); the beginning of the period of *bein ha-shemashot* on Friday night is what is being debated.

Second, the time needed to walk ¾ of a *mil* is an upper-bound, not a lower-bound, on the length of the *bein ha-shemashot* period that occurs near the summer solstice.[26]

25. The uniform applicability of these definitions/indications is evident in locations near the equator (such as Singapore and Caracas); I also observed it at a location at sea approximately 62 degrees north of the equator. Note as well that the *gemara* in *Pesaḥim* 94a applies to the *average* length of a day, which occurs around both the spring and fall equinox. However, the days referred to in *Shabbat* 34b would be a *minimum*, as opposed to an average**,** and the appearance of three stars, within the time needed to walk ¾ of a *mil* after sunset, occurs only in the spring and not the fall. While neither of these two differences is itself convincing, both lend further support to the approach developed below.

26. A more extensive set of reasons and support for this approach is provided in an article I published on the Seforim blog, https://seforimblog.com/2019/10/the-gaons-impact-on-the-interpretation-of-both-primary-sugyot-in-Zemannim/.

There are multiple alternatives for the beginning of the *bein ha-shemashot* period that can address some or all these issues, but all require that we relax the assumption that sunset is the precise beginning of the *bein ha-shemashot* period. If the beginning of the period of *bein ha-shemashot* according to Rabbah is prior to six minutes after sunset, then his position remains inconsistent with that of Shemuel. However, if Rabbah's period of *bein ha-shemashot* begins after 4 minutes, Shemuel is at least (minimally) consistent with R. Yosef. Finally, to make the time needed to walk ¾ *mil* an upper-bound, it is likely that the period of *bein ha-shemashot* begins between 8 and 15 minutes after sunset. If one knew the point of *ḥashekhah*, then a maximum interval would inform us of how early one would potentially have to observe the beginning of the *bein ha-shemashot* period. Thus, in the summer, when days end later, a requisite level of darkness that triggers the beginning of the period of *bein ha-shemashot* is reached approximately at the time needed to walk ¾ *mil* before the end of the day.[27] During other seasons of the year, the length of the period of *bein ha-shemashot* is (slightly) shorter. If one could not otherwise approximate the beginning of the period of *bein ha-shemashot*, then using the maximum provides a conservative approximation.[28]

Following any of these approaches, the reading of Shemuel according to either R. Yosef or both Rabbah and R. Yosef is entirely informative and should be read assuming:

1. Sirius and Canopus are *medium* stars.
2. Regardless of whether three stars define or are merely indicative of the end of Shabbat, *neither one nor two stars can be defining*.
3. One medium star can appear in the daytime prior to the period of *bein ha-shemashot*, but can also occur well after the beginning of the period of *bein ha-shemashot*, as occurs in the winter season.
4. The appearance of two stars always signifies that the period of *bein ha-shemashot* has *already* begun.[29]

27. Restating Prof. Levi's chart to remove the normalization to the spring equinox, and assuming Shabbat ends in the summer approximately 26-29 minutes after sunset, the period of *bein ha-shemashot* begins approximately between 8-15 minutes after sunset. The period between two depression angles that might define the period of *bein ha-shemashot* is longest in the summer. This critical fact is not widely recognized or understood.
28. The broad range regarding the beginning of the period of *bein ha-shemashot* (approximately 5-15 minutes after sunset) accommodates multiple points at which Shabbat may end (19-29 minutes), coupled with multiple assumed times to walk ¾ of a *mil* (13.5-18 minutes).
29. There is still a remote possibility that this may only be a *harḥakah*, as discussed above.

Shemuel's statement is both informative and insightful, telling us that:

> 5. Sirius may appear prior to the start of the period of *bein ha-shemashot*.
>
> 6. However, if two stars are seen, immediately assume that the period of *bein ha-shemashot* has begun.[30]

Interpreting Rabbah as beginning the period of *bein ha-shemashot* after sunset is certainly not consistent with current practice. However, according to Rabbenu Tam and his followers, as codified by *Shulḥan Arukh*, R. Yehudah was assumed to be referring to a second sunset defined by a level of disappearing illumination from the sun, occurring approximately one hour after what is typically called sunset (i.e., the first sunset). While the approach to the statement of Shemuel that we have outlined is novel, it posits similar semantics for the term *mi-she-tishka ha-ḥammah* to that asserted by Rabbenu Tam and his followers, even according to the view of the *Geonim*. The only change is that the point of nightfall is brought forward appreciably from Rabbenu Tam's 72 or 90 minutes after sunset to only about 20 to 30 minutes after sunset, in accordance with the view of the *Geonim*. In other respects, we read this text of the *gemara* similarly to most commentators who followed Rabbenu Tam and assumed that *mi-she-tishka ha-ḥammah* does not refer to sunset proper.

To summarize the logical and textual advantages of this approach:

- Shemuel's statement completely aligns with the position of R. Yehudah.
- Every part of Shemuel's assertion is entirely informative.
- The *sugya*'s primary focus is the beginning of the period of *bein ha-shemashot*, as opposed to its end. The *gemara* assumes that the end to the period of *bein ha-shemashot* is known; each of the disputants are addressing when the period of *bein ha-shemashot* begins on Friday night. If the time needed to walk ¾ of a *mil* were meant to be added to the time of sunset, it would be addressing the end of the period of *bein ha-shemashot*, as opposed to its beginning.
- The otherwise significant issue of ever seeing stars as early as at the time needed to walk ¾ of a *mil* after sunset is entirely moot.

Relative to the five alternatives for interpreting Shemuel, consistent with the above reading of the text and assuming the observations of

30. These conclusions still leave open the question of whether stars or darkness are defining, although I have a strong personal bias for darkness being defining.

Prof. Levi, we can conclude:

> 1. Sirius and Canopus are medium stars; were they considered large stars, given the length of the period of *bein ha-shemashot*, no medium star would ever be visible before *bein ha-shemashot*.
>
> 2. Shemuel is consistent with both Rabbah's and R. Yosef's interpretations of R. Yehudah; the attempt to align Shemuel with R. Yosef while assuming Rabbah's start to the period of *bein ha-shemashot* is sunset proper is invalid.
>
> 3. We cannot conclude definitively whether stars or darkness is defining.
>
> 4. "One star—daytime" means that up until the time of one star appearing, it *may* still be daytime; in the winter, for example, no stars appear before the period of *bein ha-shemashot* begins.
>
> 5. "Two stars—*bein ha-shemashot*" means that the appearance of two stars indicates that the period of *bein ha-shemashot* has (almost always) already begun.[31]

Rambam in *Kiddush Ha-Ḥodesh*

Based on this approach, we can also address Rambam's anomalous statement in *Kiddush ha-Ḥodesh* (2:8-9), which has long eluded explanation. However, as will become clear, this explanation is premised on the assumption that Rambam treated darkness, and not the appearance of stars, as defining.

In *Hilkhot Kiddush Ha-Ḥodesh* (2:8), Rambam states categorically that if, after examining witnesses on the 30th of the month, the court does not declare the 30th day Rosh Ḥodesh before *ḥashekhah*, they can no longer do so:

> The formal sanctification of the new moon is proclaimed only when the

31. The reason for hedging with the phrase "almost always," as well as including the remote possibility mentioned in n.27 of "two stars—*bein ha-shemashot*" being only a *harḥakah*, is R. Kapach's opinion of Rambam's view, which places the beginning of the period of *bein ha-shemashot* at 15 minutes after sunset. Under that scenario, two stars may be seen by an expert who knows precisely where to look (slightly) before the beginning of the period of *bein ha-shemashot* in the spring. I prefer to discount visibility by an expert and read the statement without caveats. Furthermore, R. Kapach's opinion is among the most extreme; a broad consensus brings the beginning of the period of *bein ha-shemashot* a few minutes closer to sunset.

> new moon has been observed in its proper time; and this must be done at daytime. If it was done at night, the sanctification is not valid. And even if the court and all of Israel saw it, but the court didn't say, "[It is] sanctified," until it became dark (*ad she-ḥashkhah*) on the night of the thirty-first; or they investigated the witnesses and the court didn't manage to say, "[It is] sanctified," until it became dark on the night of the thirty-first—they don't sanctify it; and the month will be intercalated, and Rosh Ḥodesh will only be on the thirty-first—even though it was seen on the night of the thirtieth.

Evidently, Rambam considers *ḥashekhah* to be the point after which a court cannot declare Rosh Ḥodesh because a court is restricted from functioning at night.

Under ordinary circumstances, if witnesses see the new moon during the night after the 29th day of the month, they testify in court the next day, and the *beit din* then declares the 30th day to be the first day of the next month. In *halakhah* 9, Rambam discusses an instance in which the members of the court themselves see the new moon on the day prior to the beginning of the month, on the evening of the 29th day, close to the onset of the 30th day:

> [In a case in which] the court itself saw it at the end of the twenty-ninth day: If a star of the night of the thirtieth still has not emerged—the court says, "[It is] sanctified, [it is] sanctified," as it is still [and it can only be set by day]. But if they saw it on the night of the thirtieth, after two stars emerged—we sit two judges on the morrow with one of them [the three judges from the original court]; and the two [others from the original court] testify before the three, and the three sanctify it.

In this *halakhah*, the Rambam discusses two possible scenarios: 1) The court observes the moon *before* the appearance of the first star;[32] or 2) The court observes the moon *after* the appearance of two stars.

In the former case, the court can immediately declare Rosh Ḥodesh; in the latter case, Rambam suggests that the court wait until the following morning. (Rambam's language would seem to be suggesting recommended practice, as opposed to issuing a strict ruling, but that point is debatable.) Since a court is restricted from functioning at night, the court cannot declare Rosh Ḥodesh except during the daytime period, and after two stars have appeared, time for such a declaration is ostensibly lacking.

Rambam's formulation raises numerous questions. First, why does Rambam need to create all this new language? Given the previous

32. Attempts to adjust the text to address some of the problems we will discuss do not appear to be supportable and are not addressed.

halakhah, Rambam could simply have said that if *beit din* can declare Rosh Ḥodesh on the eve prior to the 30th before *ḥashekhah*, they should proceed, and if not, they should wait for the following day. Second, why does Rambam mention only the period *before* the emergence of one star and the period *after* the emergence of two stars, omitting any mention of the period between the first and second star? Finally, why does Rambam not allow a declaration of Rosh Ḥodesh after the emergence of two stars until (close to the time that) a third star is visible?

Parallel to the issues raised above, we must also consider Rambam's opinion on other issues:

- Are Sirius and Canopus included in Rambam's formulation of the stars appearing after sunset prior to the beginning of the 30th day?
- Are stars or darkness defining?
- Are the restrictions on a *beit din* operating at night different for the declaration of Rosh Ḥodesh than they are for monetary or capital cases?
- Does the period of *bein ha-shemashot* limit the time of a *beit din*'s deliberation in general, and particularly for the declaration of Rosh Ḥodesh*?* Perhaps vis-à-vis *beit din*, we follow the opinion of R. Yosei, such that there is no *bein ha-shemashot* period at all?

It is essential to compare these *halakhot* to Rambam's formulation in *Hilkhot Shabbat* 5:3-4:

> . . . If it is doubtful whether darkness (*ḥashekhah*) has already fallen and the Shabbat has begun or if it has not begun, the [Shabbat] lights may not be lit.
>
> The period from sunset (*mi-she-tishka ha-ḥamah*) until the time when three stars of medium size become visible is called *bein ha-shemashot*. . . . And these stars are not the large ones that are visible during the day and not the small ones that are only visible at night, but rather the medium ones. And from when three of these medium stars become visible, it is surely night with no doubt.

The last three words—"with no doubt"—clarify Rambam's position definitively. If the appearance of three stars defined the end of the day, then the phrase is superfluous. If three stars define the end of the day, it is unnecessary to tell us the day has ended without doubt; *by definition the day has already ended*. However, if, as we prefer, darkness is defining,

then Rambam is stating that one can, *without any doubt*, rely on seeing three stars. What we would have liked to demonstrate for Shemuel and could not is clearly the position of Rambam.

Within the context of the *halakhot* in *Hilkhot Kiddush Ha-Ḥodesh*, the term *bein ha-shemashot* does not appear at all. It is clear from *halakhah* 8 that *beit din* can operate until *ḥashekhah*, even into the period of *bein ha-shemashot*.[33] *Halakhah* 9 is simply an application of *halakhah* 8 expressed in terms that are more practical, parallel to the two *halakhot* in *Hilkhot Shabbat*. But unlike *Hilkhot Shabbat*, which involves the notion of *bein ha-shemashot*, in *Hilkhot Kiddush Ha-Ḥodesh*, Rambam is operating around a single point of *ḥashekhah*.

Given Rambam's position that darkness is defining, *halakhah* 9 is easily understood. Had Rambam consider stars as defining, the complexity of *halakhah* 9 could have been avoided and simply stated in terms of whether *beit din* has time for a declaration of Rosh Ḥodesh prior to a third star appearing. Given that Rambam considers darkness defining, Rambam omitted stars completely from *halakhah* 9. Furthermore, we know that the level of darkness that defines the transition point between days, *hikhsif ha-elyon ve-hishveh le-taḥton*, must always occur before the appearance of the third star.[34]

Having established this principle, *halakhah* 9 reads as follows:

- Until one star appears, it is always the case that *beit din* has time to declare Rosh Ḥodesh.[35]

33. A period of *safek ḥashekhah* need not be raised, as *beit din* can be trusted to decide if the point of *ḥashekhah* has been reached and how to act in the case of any uncertainty.

34. See the various observations recorded by R. Tukitzinsky in *Bein ha-Shemashot* (Jerusalem: n.p., 1929), chapter 2. It is notable that in *Hilkhot Terumot* 7:2, Rambam mentions three characterizations of nightfall in the course of a single *halakhah*: 1) Time: The estimated duration of the interval of *bein ha-shemashot* is approximately twenty minutes. 2) *Ḥashekhah*: Rambam considers a required level of darkness the defining point of transition between days. 3) The appearance of three stars provides an indication that the point of transition has occurred. Although some editions of *Mishneh Torah* omit the phrase about approximately ⅓ of an hour, all include the latter two characterizations. However, it is noteworthy that commentators struggling to deal with Rambam in *Kiddush Ha-Ḥodesh* 2:8-9 do not raise the possibility of *ḥashekhah* being defining and stars merely being an indicator to explain the otherwise difficult *halakhah*.

35. Examining Prof. Levi's table, one can question Rambam's position, given that in the winter season there could be only one minute between visibility of the first and third stars in the case of an expert who knows exactly where to look. Note, however, that Rambam carefully wrote "*before* one star appears," which lessens the problem slightly.

- Once one star appears and until a second star appears, the amount of time until *ḥashekhah* varies based on the season of the year, and *beit din* must judge whether enough time exists for a formal declaration. If Sirius and Canopus were not considered medium stars, there would never be enough time for a formal declaration.

- Once a second star appears, Rambam suggests/advises/rules that *beit din* adjourn and declare Rosh Ḥodesh the following day.[36] This reflects common sense, since nothing is lost by delaying to the following day. The same day is declared as Rosh Ḥodesh in any event, and *beit din* avoids the possibility of a declaration made outside the requisite time, after the point of *ḥashekhah*.

Since neither *halakhah* in *Kiddush ha-Ḥodesh* operates with a period of *bein ha-shemashot*, no implication can be drawn as to when Rambam begins the period of *bein ha-shemashot*. Independent of these *halakhot*, R. Kapach argues based on multiple sources that the period of *bein ha-shemashot* starts a few minutes after sunset.[37] Although Rambam writes in *Hilkhot Shabbat* 5:4 that the period after sunset is "*ha-nikra bein ha-shemashot*," "called *bein ha-shemashot*," R. Kapach would argue that although in practice we begin Shabbat at sunset, the precise onset of the period of *bein ha-shemashot* occurs several minutes later. Accordingly, Rambam likely also read *mi-she-tishka* as distinct from sunset proper, with semantics like those of Rabbenu Tam, despite the fact that he undoubtedly disagreed with Rabbenu Tam regarding the end of Shabbat, instead following a view closely aligned with that of the *Geonim*.[38]

It is also possible Rambam did not consider the unlikely possibility that a court would have an expert observer knowing exactly where to look.

36. Rambam's position in the summer is again questionable, given that the amount of time after the second star appears and until a third star appears is approximately five minutes in the summer. Presumably, Rambam either avoided the additional complexity this might engender or worried about a delayed sighting of the second star coupled with a fortuitous early sighting of the third star.

37. In multiple places in his extensive commentary on Rambam, including *Hilkhot Shabbat, Hilkhot Kiddush ha-Ḥodesh* and *Hilkhot Terumot*, R. Kapach suggests that Rambam begins the period of *bein ha-shemashot* 15 minutes after sunset, as defined both by R. Avraham ben Ha-Rambam and by current usage. This and other aspects of Rambam's approach are beyond the scope of this article.

38. Some commentators on Shabbat (5:4) assume that if Rambam did not start the period of *bein ha-shemashot* at sunset, he must agree with Rabbenu Tam. This implication is hardly conclusive, and given our approach (and more importantly that of R. Kapach), aligning Rambam with Rabbenu Tam is entirely implausible.

Conclusion

The analysis presented makes the statements of both Shemuel and Rambam insightful, while addressing the numerous questions that have been raised. We can conclude that:

- Both Shemuel and Rambam considered Sirius and Canopus medium, as opposed to large, stars.
- While we would have preferred to say that both Shemuel and Rambam considered darkness versus the appearance of stars defining, we have evidence only with respect to Rambam's view.

Those observations in conjunction with several others, provide several new insights:

1. The beginning of the *bein ha-shemashot* period is several minutes after sunset even according to the opinion of the *Geonim*.
2. The period to walk ¾ of a *mil* is:
   a. an upper versus lower bound on the length of the *bein ha-shemashot* period,
   b. a maximum, occurring in the summer, and
   c. calculated counting back from an assumedly known point of *ḥashekhah*, as opposed to counting forward from the beginning of *bein ha-shemashot*.
3. In both *Hilkhot Shabbat* and *Kiddush ha-Ḥodesh*, Rambam formulates the *halakhah* in terms of *ḥashekhah* in the first *halakhah* and then gives practical advice in the second. Rambam's view that considers *ḥashekhah* as definitional and stars as merely indicative, is supported not just by the text, but also by science already recorded at the time of the Geonim.[39]
4. With respect to a *beit din*, there is no need for a period of *bein ha-shemashot*.

As already mentioned, my purpose is not to suggest changes to standard practice. What does follow is that treating sunset proper as the start of the *bein ha-shemashot* period may be recommended practice, as opposed to strict *halakhah*. As such, a *posek* might choose to use the hypotheses developed in deciding cases involving various extenuating circumstances.

Acknowledgment: I thank Meira Mintz for her excellent editorial work.

39. See n. 4 above.

GUIDE TO TRANSLITERATION STYLE

Letters of the Hebrew Alphabet

א transliterated as ’, but only when it begins a syllable other than the first. (Examples: *nevi’im;* but: *adam*.) In the case of common transliterations like *yisrael* and *geulah*, you may omit the ’.

בּ *b*

ב *v*

ג *g*

ד *d*

ה *h* (including at the end of a word) (*asah*, *modeh*)

ו (when a consonant) *v*

ז *z*

ח *ḥ*

ט *t*

י *y*

כּ *k*

כ *kh*

ל *l*

מ *m*

נ *n*

ס *s*

ע transliterated as ‘ , but only when it begins a syllable other than the first. (Examples: *eved*; but *pa‘am*)

פּ *p*

פ *f*

צ *ẓ*

ק *k*

ר *r*

שׁ *sh*

שׂ *s*

תּ *t*

ת *t*

Double the letter for *dagesh ḥazak*, except ש.

Vowels

שוא נע	*e (berit)*
שוא נח	not transliterated *(mashpil)*
קמץ גדול	*a (parah)*
קמץ קטן	*o (ḥokhmah)*
פתח	*a (ammi)*
סגול	*e (regel)*
חיריק (מלא and חסר)	*i (binah, simḥah)*
קבוץ, שורוק	*u (suru)*
צירה with י	*ei (beit, yesodei)*
צירה without י	*e (shem, esh)*
חולם חסר, חולם מלא	*o (sod, poh)*

Proper Names

The above rules must be used for proper names when you are transliterating them from Hebrew. Otherwise, you may follow an individual's own spelling of the name .

Prefixes

• Insert a hyphen after each prefix. To aid the reader in recognizing the main word, the word after the prefix generally should be spelled with its original *dagesh kal* and *sheva na*, even if in Hebrew the *dagesh* drops out after that prefix and the *sheva* is generally regarded as a *sheva naḥ*. Examples: *ke-bakkarat, u-bikkashtem, ki-ketavam ve-ki-zemannam, beneikhem u-benoteikhem*. But: *lefi zeh*, *lifneikhem*, since these are not pure prefixes.

• After a prefix, do not double the letter to indicate *dagesh ḥazak*. Example: in *ha-Torah*, *ha-banim, va-tomeru* the t, b, and t respectively are not doubled.

• Words like מיהודה ,וירושלים should be transliterated as *mi-Yehudah* and *vi-Yerushalayim*, despite the fact that the י is silent.

• In words that are capitalized, generally keep the prefix lower case and the main word upper case. Examples: *u-Mosheh, Ḥiddushei ha-Ramban*. Do capitalize a prefix to the *first* word in a book, journal or article title. There are exceptions to the above, e.g., Hashem, or when the term appears frequently in the article.

Italics

Words in languages other than English should be italicized. Italics need not be used for transliterated words within quotation marks, or for Hebrew and other foreign words that have become part of English.

FORMAT OF REFERENCES

Short references to Tanakh, Talmud and Midrash normally should appear in parentheses in the text.

Tanakh: Ex. 1:2 (no italics)

Mishnah: *Kinnim* 3:2

Talmud Bavli: *Sanhedrin* 74a

Talmud Yerushalmi: *Yerushalmi Bikkurim* 1:3; or *J. T. Bikkurim* 1:3. If a page citation is added, it should refer to the Venice edition.

Tosefta: *Tosefta Terumot* 7:20

Midrashim: *Gen. Rabbah* 44:1

Zohar: *Zohar*, *Emor* 91b

Biblical commentaries: Rashi, Gen. 1:4. Use "ad loc." when appropriate (no italics): e. g., Gen. 1:4 and Rashi, ad loc. If the commentator has more than one comment on the verse, add: s.v. _____ .

Talmudic commentaries: *Tosafot*, *Avodah Zarah* 17a, s.v. *ve-al*

Codes: Maimonides, *Mishneh Torah, Hilkhot Avodah Zarah* 11:16; *Shulḥan Arukh*, *Yoreh De'ah* 179:1. Commentaries to codes: *Kesef Mishneh, Mishneh Torah, Hilkhot Sanhedrin* 6:5. If more than one comment is found in the location cited, add: s.v. _____ . If comments are numbered, you may cite the number rather than the *dibbur ha-maṭḥil.*

Responsa: Make clear whether you are citing the responsum number or the page number. Example: Responsa *Iggerot Mosheh, Ḥoshen Mishpat* 2:#174. When you need to cite a specific page: *Iggerot Mosheh, Ḥoshen Mishpat* 2:#174, p. 127.

Citations to classic works should refer to the book's divisions, e.g.: Moses Maimonides, *Guide of the Perplexed* I:54 (or 1:54).

In the above cases, when necessary—for example, if you are relying on a text as it is printed only in certain editions, or if you want to highlight a passage—indicate the edition and page number.

Authored book: Aaron Levine, *Economics & Jewish Law: Halakhic Perspectives* (Hoboken, NJ and New York, NY: Ktav, 1987), 78. For translated works, it is preferable to include the translator's name by writing "trans.____" after the title, separated by a comma.

Edited book (when cited as a whole; when an individual article is cited, use the format under "Article in edited book"): Shalom Carmy (ed.), *Jewish Perspectives on the Experience of Suffering* (Northvale, NJ: Jason Aronson, 1999). If there is more than one editor: use (eds.) instead of (ed.).

Article in edited book: Moshe Halevi Spero, "Metapsychological Dimensions of Religious Suffering: Common Ground Between Halakhic Judaism and Psychoanalysis," in *Jewish Perspectives on the Experience of Suffering*, ed. Shalom Carmy (Northvale, NJ: Jason Aronson, 1999), 213-76. Here use "(ed.)," not "(eds.)," even if there is more than one editor. When you are citing an individual page, after the comma give the number only of that page.

English article in a periodical: Jacob J. Schacter, "Facing the Truths of History," *The Torah u-Madda Journal* 8(1998-1999): 200-73. When you are citing an individual page, after the colon give the number only of that page. Capitalize words in article titles even if the journal does not (as in the case of medical journals). If a journal publishes several issues per volume number but numbers all pages of the volume sequentially (e. g. issue 2 begins with page 146), it is not necessary to supply the issue number. If each issue starts from page 1, give the issue number after the volume number, separated by a comma.

Article in a collection of essays by a single author: Gershom Scholem, "Toward An Understanding of the Messianic Idea in Judaism," in Scholem, *The Messianic Idea in Judaism And Other Essays on Jewish Spirituality* (New York: Schocken, 1971), 1-36.

Hebrew articles: Same format as for English articles. Use either a transliterated title or a translated title followed by: (Hebrew).

Book review: Isaac Chavel, review of Moshe Koppel, *Meta-Halakhah, The Torah u-Madda Journal* 8(1998-1999): 318-26. If you are citing a review essay whose title does not contain the name of the book under review, after the information on the essay write: [review of _____].

Internet citation: website address, as specific as possible.

References to a work you cited previously: Do not use "op. cit." Refer to the earlier work by the author's name and (if you have cited more than one work by the author) a short title. When you have many endnotes, indicating the note number of the earlier citation will help the reader locate it. Use Ibid. as appropriate.