

Two Concepts of *Gezerat Ha-Katuw*: A Chapter in Maimonides' Legal and Halakhic Thought

Part III: The Theological Sense

Yair Lorberbaum

In this third and final part of our study of the use of the term *gezerat ha-katuw* ("Scriptural decree") in Maimonides' *Mishneh Torah*, we shall discuss three more appearances of the term: in *Hil. Miqva'ot* 11.12; in *Hil. Teshuvah* 3.4. and in *Hil. Tefillah* 9.7. In each of these appearances, the term has a theological meaning. That is, each case indicates, at least in an offhand manner, a halakhah or commandment without rationale. Nevertheless, these usages of *gezerat ha-katuw*, at least the first two mentioned here, also bear jurisprudential, halakhic characteristics.

VII. *Gezerat ha-Katuw* in the *Mishneh Torah*: The Theological Sense

1. "It is Clear and Obvious that Impurity and Purity are *Gezerot ha-Katuw*": Allegorical Interpretations of the Commandments

Hil. Miqva'ot (Laws of Ritual Baths) 11.12 states:

* Part I of this study was published in *Diné Israel* 28 (2011):123*–61* (hereafter: 'Part I'). Part II of this study appeared in *Diné Israel* 29 (2013):101*–37* (hereafter: 'Part II'). All three parts of this study are included in a forthcoming book titled *Gezerat Ha-Katuw – Philosophy, Legal Theory, and Halakhah* (Hebrew).

- (1) It is a clear and obvious thing that [the laws of] impurity and purity are Scriptural decrees (*gezerot ha-katuv*) and are not among those things which the human mind can decide, but that they are among the statutes (*huqqim*).
- (2) Similarly, immersion [in water] from impurity is among the statutes, for impurity is not dirt or filth which can be removed by water, but rather is a Scriptural decree.
- (3) And this matter depends upon the intention of the heart, for our Sages said that one who immersed himself but did not have a presumption [of intentionality], is as if he had not immersed.
- (4) Nevertheless, there is an allusion implied by this matter: [namely,] that just as one who directs his heart to become purified, once he has immersed himself is pure even though nothing has changed in his body, so too does one who directs his heart to purify his soul from the contaminations of the soul, namely, the thoughts of evil and of improper opinions, once he has agreed in his heart to remove himself from those counsels and brought his soul within the water of knowledge, he is purified.
- (5) And it says: "And I shall sprinkle upon you pure water and you shall be pure, from all your impurities and from all your abominations I shall purify you" (Ezek 36:25). God, in his abundant mercies, shall purify us from all sin and transgression.¹

These words, which appear at the end of *Hil. Miqva'ot*, also conclude *Sefer Taharah* (The Book of Purity), the tenth of the fourteen books of Maimonides' halakhic compendium, *Mishneh Torah* or *Yad ha-Hazaqah*. In this impressive passage, with its solemn and elevated style, Maimonides relates to the entire body of law that precedes it—not only *Hil. Miqva'ot*, but the Book of Purity as a whole—in terms of what he perceives to be the ultimate purpose of human beings: namely, perfection of character and opinions, and, above all, perfection of the intellect. This is his practice at the end of several

1 The division into numbered paragraphs is my own and serves the textual analysis below. Compare my discussion here to M. Kellner, *Maimonides' Confrontation with Mysticism* (Oxford: Littman Library of Jewish Civilization, 2006), 148–51.

books of the *Mishneh Torah*, and this passage, at the end of the *Book of Purity* would seem to be particularly expressive and dramatic.² This meta-halakhic statement encompasses far more than it seems to at first glance. There is much that it conceals, or only states by implication and, as I shall contend below, Maimonides so often uses the methods of concealment and obscurity that they have come to characterize his writing on philosophical matters. This technique of writing pertains, among other things, to the equivocal idiom that interests us—*gezerat ha-katuv*—and to its counterpart, *hoq*. In what follows, I shall suggest a closer reading of this halakhah.

The passage opens with a dramatic statement: “It is a clear and obvious thing that [the laws of] impurity and purity are Scriptural decrees and are not among those things which the human mind can decide, but they are among the statutes.” It seems to me that this sentence must be read as follows: “...purity and impurity are Scriptural decrees *because* they are not among those things ... but they are among the statutes.” The phrases “Scriptural decree” and “statutes” here designate laws without any rationale or, more precisely, laws whose rationale is not known. In §2, Maimonides goes on to emphasize that which is already implied in the opening section: that not only are “purity and impurity” (as qualities of objects) not understood, but that the act of “immersion [in water] from impurity,” that is, the manner of purification, is also “among the statutes... and is a Scriptural decree.” The word “but...” (end of §2), draws a contrast between “immersion from [to remove] impurity” and the rationale (“for impurity is not...”), which is intended to refute a certain view, and supports the reading according to which “Scriptural decree” here carries a theological meaning. Even though “it is a clear and known thing,” Maimonides suggests arguments and proofs for these statements: “for impurity is not like dirt or filth ... but rather the matter depends upon the intention of the heart; therefore....” (§§2–3). This reasoning will be discussed further below.

Unlike the six occurrences of *gezerat ha-katuv* discussed thus far, whose meaning is jurisprudential, here this idiom is used—explicitly, emphatically, and on the basis of cogent argumentation—in a theological sense. Moreover, unlike the above-mentioned occurrences, each of which refers to a specific halakhah (e.g., [the rebellious] “son’ and not daughter”), in this final passage

2 Similar to the final sections of *Sefer Zera'im* (Hil. *Shemittah ve-Yovel* 13.13), *Sefer Avodah* (Hil. *Me'ilah* 8.8), and *Sefer Sho'etim* (Hil. *Melakhim* 12.4–5, which are also the final *halakhot* in the entire *Mishneh Torah*).

of *Hil. Miqva'ot* the term refers to an entire body of law—namely, the corpus of laws of purity and impurity. It is not for naught that Maimonides here uses the plural, *gezerot ha-katuv* (“Scriptural decrees”) and *ḥuqqim* (“statutes”), as if to say that each and every halakhah in the *Book of Purity* is a Scriptural decree and a statute whose rationale is unknown. If, until this point, the impression received has been that the term *gezerat ha-katuv* is only used in the *Mishneh Torah* in a jurisprudential sense, this halakhah lends it, in an intense and dramatic fashion, a theological meaning.

Notwithstanding that, the structure of this halakhah is similar to that of those discussed earlier. While Maimonides opens with the striking statement that matters of purity and impurity are *gezerat ha-katuv*, he immediately offers a rationale for them by way of “allusion” (*remez*), stating that they relate to matters which, for him, are the deepest and most basic principles. But unlike the *halakhot* discussed above, in which the jurisprudential sense of *gezerat ha-katuv* is consistent with their rationale, in the peroration of *Hil. Miqva'ot* this structure creates tension and opposition: if “impurity and purity... are not matters which the human intellect may decide”—a point which Maimonides explains and for which he even brings proof—how can they contain an “allusion,” and specifically one alluding towards rationality itself – the perfection of the intellect. In other words, if Maimonides chose to conclude *Sefer Taharah* with an allegorical–spiritual interpretation of the subject of purity and impurity as a whole, why did he take pains to emphasize that the laws found in this book as a whole are Scriptural decrees in the theological sense? Before proposing a solution to this paradox, I wish to discuss the details of this halakhah—its terminology, its language, the arguments with which it opens, and the allegorical–spiritual reason given at its end.

This halakhah is fraught with difficulties: 1. The meaning of the term *ḥoq* is, as we have noted, a halakhah whose rationale is unknown. In *Guide of the Perplexed*, Maimonides rejects this meaning of the term. In the wake of his assertion that “all of the *mišvot* have [known] reasons,” he reformulates the talmudic distinction between statutes (*ḥuqqim*: “whose benefit is not understood among the multitude”) and laws (*mishpaṭim*: “whose benefit is clear even to the multitude”). It is only according to the popular meaning of the word that statutes are equivalent to decrees without rationale. For the enlightened person, the statutes, like the laws, have a reason and a purpose.³ The distinction between the two, according to Maimonides, is

3 *Guide* 3.26 (Schwartz ed., 512).

neither theological nor epistemological but rather socio-political. A similar difficulty arises in relation to the theological meaning of *gezerat ha-katuv*, which, according to the *Guide*, is inconceivable.⁴

At the end of *Hil. Miqva'ot*, Maimonides seems to allude to this distinction between statutes and laws. In the phrase "... [they] do not speak of matters which the human intellect can determine," he seems to be referring to the average or ordinary person to whom *Mishneh Torah* is addressed, for whom the rationales of the *ḥuqqim* are indeed hidden. For him, purity and impurity are "Scriptural decrees" in the theological sense and belong to "the class of the statutes." A cautious, deliberately ambiguous formulation, one that likewise alludes to the "popular" meaning of the term *ḥuqqim*, appears in another *halakhah* in the *Yad ha-Ḥazaqah* at the end of "Laws of Trespasses," i.e., *Hil. Me'ilah* 8.8. This passage begins with a characteristic encouragement: "It is fitting that a person should contemplate the laws of our Holy Torah and know their ultimate end according to his ability." The central motif therein is that "those things for which he [i.e., the person] cannot find a rationale and whose reason or cause is unknown to him, should not be trivial or light in his eyes, and he should not dare to break through to the Lord [*yaharos la'alot el YHWH*, i.e., disregard it in an arrogant manner—an allusion to Exod 19:21]." Further on in the same passage, Maimonides distinguishes between *mishpaṭim*—i.e., "those commandments whose reason is revealed and the benefit of whose performance in this world is known," and "*ḥuqqim*—which are the commandments whose reason is not known." It clearly follows from the context that this language suggests that "their reason is not known" and that they are not "within the capability" of the average person, that is, the multitude.⁵

As is the case regarding other basic beliefs and distinctions which he presents in *Guide of the Perplexed*, in the *Mishneh Torah* Maimonides is careful not to propose explicitly the political distinction (which he draws in the *Guide*) between "laws" and "statutes." In this case, the reason for hiding

4 See Part I, 139*–49*.

5 See immediately in the continuation of this *halakhah*: "However much King David was pained by the heretics and the pagans who would challenge the *ḥuqqim*, and so long as they would pursue him with false answers which they arranged according to their limited understanding, he added greater attachment to the Torah." For a detailed discussion of this *halakhah*, see J. Stern, "On Alleged Contradictions Between *Guide of the Perplexed* and *Mishneh Torah*," *Shenaton ha-Mishpat ha-'Ivri* 14–15 (1988–89): 283–98 (Hebrew).

things is rooted in the distinction itself. If the philosophical meaning of the term “statute” indicates a commandment whose reason is hidden or concealed from the vulgar masses, then this meaning of the term must itself be concealed. In other words, according to Maimonides, the popular meaning of the term *hoq* (in the sense of a commandment for which there is no rationale) is a “necessary belief.”⁶ And indeed, as I shall demonstrate below, the theological meaning of *gezerat ha-katuv*, similar to the popular meaning of the term *hoq*, is necessary to Maimonides in his popular-halakhic works, including the end of *Hilkhot Miqva’ot*.⁷

2. The theological sense attributed by Maimonides to “Scriptural decree” at the end of *Hilkhot Miqva’ot* is surprising. Not only does this term have a jurisprudential sense in all of its other appearances in the *Mishneh Torah*, but also, in all of them he presents (or at least implies) a rationale for the “decree” in question.⁸ By contrast, the language of this halakhah creates the impression that the theological meaning is the common, widespread sense of the word, if not its exclusive one.⁹ Moreover, in *Guide* 3.38 the concept of “Scriptural decree” in the theological sense relates to “God as will” (i.e., that there is no rationale for the commandments whatsoever), whereas here it is

6 See *Guide* 3.28. There is a clear connection in the “chapters of the commandments” between the distinction *mishpaṭim-ḥuqqim* and that between “true beliefs”-“necessary beliefs.”

7 There are those who have argued that in *Hil. Me’ilah* 8.8 Maimonides covertly implies the historical reason for sacrifices. See S. Rosenberg, “Torah Exegesis in the *Guide of the Perplexed*,” *Jerusalem Studies in Jewish Thought* 1 (1981): 142–43 (Hebrew), and in his wake D. Henshke, “On the Question of the Unity of Maimonides’ Thought,” *Da’at* 37 (1996): 37–51, at 39–41 (Hebrew). It seems to me that they are imposing a greater burden on this halakhah than it contains. Even if there is some validity to their claim, everyone agrees that the socio-historical reasons are formulated in *Hil. Me’ilah* in an esoteric manner, which turns their arguments concerning the unity of Maimonides thought on its head! Compare I. Twersky, “*Hil. Me’ilah* 8.8: On Maimonides’ Rationales for the Commandments,” in his *Introduction to the Code of Maimonides (Mishneh Torah)* (Yale University Press: New Haven, 1982), 407–14.

8 This is the case in all six appearances of *gezerat ha-katuv* in the *Mishneh Torah* discussed above, as well as in *Hil. Teshuvah* 3.4 (below, §2); and in *Hil. Tefillah* 9.7 (on the sending away of the mother bird; below, §3).

9 This also follows from Maimonides’ language in *Guide* 3.38, discussed in Part I, pp. 139*–47*.

based on the version of “hidden wisdom,” according to which the reasons for the commandment are not known.¹⁰

3. As is known, in *Guide of the Perplexed* 3.47 Maimonides suggests a set of rationales for the laws of purity and impurity, explaining both its overall concept and many of its details. He argues that the various types of impurity and the manner of purification therefrom are social constructs:

We have already explained that the whole intention with regard to the Sanctuary was to affect those that came to it with a feeling of awe and of fear; as it says, “You shall fear My Sanctuary” (Lev 19:30). Now if one is continually in contact with a venerable object, the impression received from it in the soul diminishes and the feeling it provokes becomes slight. ... This being the intention, He, may He be exalted, forbade the unclean to enter the Sanctuary in spite of there being many species of uncleanness, so that one could—but for a few exceptions—scarcely find a clean individual. For even if one were preserved from touching a carcass of a beast, one might not be preserved from touching one of the eight creeping animals, which often fall into dwellings and into food and drink and upon which a man often stumbles in walking. And if one were preserved from that, one might not be preserved from contact with a menstruating woman or a woman or a man having a running issue or a leper or their bed. And if one were preserved from that, one might not be preserved from sexual intercourse with one’s wife or from nocturnal pollution. And even if one were cleansed from these kinds of uncleanness, one would not be allowed to enter the Sanctuary till after sunset. Nor was one allowed to enter the Sanctuary at night... and on that night in most cases the man in question would have intercourse with his wife or one of the other courses of uncleanness would befall him, and he would find himself on the following day in the same position as on

10 This distinction strengthens the political reading of this halakhah, in which Maimonides’ intention is, as it is for the *ḥuqqim*, that the rationale is not known to the average person. See below.

the day before. Thus all of this was a reason for keeping away from the Sanctuary and for not entering it at every moment.¹¹

According to this explanation, impure things do not possess any contaminating or dirtying characteristics, and the process of purification does not cleanse or expunge anything. According to *Guide* 3.47, *tum'ah* “is not like filth or vomit that can be washed away by water,” nor are its rules “Scriptural decrees” in the theological sense. The institution of impurity and purity here receives a functional explanation, as something that prepares the consciousness of “awe, excitement, and elevation” for the Temple. The laws of impurity and purity, both in general and in their details, are intended to build an emotional distance from the site of worship, the sanctuary of God, in order to create a sense of awe of its loftiness.¹² At the same time, matters of impurity are based on “natural” inclinations of the human heart, which is repelled by “filth and contaminating disgusting things.”¹³

- 11 *Guide* 3.47 (Pines, 593–94). See Schwartz, 625–27, and cf. *ibid.*, 3.35 (p. 553). As he does in the “chapters of the commandments” in the *Guide*, here too Maimonides includes in his explanation a socio-historical framework concerned with “taking into account that which is known and accepted” in the Sabian religion, by whose means he explains the details of these commandments.
- 12 A similar explanation of purity and impurity already appears in R. Saadya Gaon’s *Emunot ve-De’ot*, 3.2 (Kaph trans., 121). For him, impurity is likewise not a concrete reality: “And among the benefit of purity and impurity, that a person should subdue himself and his flesh, and that prayer should be precious in his eyes, after he has ceased from it several days, and that the holy things and the Temple be precious in his eyes, after he has been prevented from them for some days, and that he should turn this heart toward the fear of Heaven.” Maimonides’ functional–anthropological explanation is of course external to the halakhic viewpoint. It also differs from the relativistic socio-historical explanations, and may even contain a stronger antinomian element. A functional explanation of this type undermines the validity of the halakhah, and one ought not to be surprised why it and its like do not appear in the *Mishneh Torah*—but see below, n. 20. Maimonides may have thought that the laws of impurity lead to fear of God even on the part of one who understands their functional nature.
- 13 *Guide* 3.47 (Schwartz ed., *ibid.*; Pines, 594): “Also, all these things are disgusting—I mean a menstruating woman, a man or a woman having running issue, a leper, a corpse, a carcass of a beast, a creeping animal, and issue of semen. Accordingly, many purposes are achieved by means of these laws. One of them is to keep men away from disgusting things...” And cf. *Hil. Ma’akhalot Asurot* 17.29: “The Sages prohibited food and drink which most people find repellent, such as food and drink in which there is mixed vomit or waste matter and the like; and the Sages also prohibited one from eating and drinking in filthy utensils by which

This rationale is of course different from the “allusion” which Maimonides suggests at the end of *Sefer Ha-Taharah* regarding matters of purity and impurity. I shall discuss the roots of this difference further on. In his discussion of purity and impurity (and every other statute) in the *Guide of the Perplexed*, there is no sense of the hesitation or reservation (“they are *gezerot ha-katuv*... and they belong to the class of *ḥuqqim*) which appears at the beginning of the final halakhah in *Hilkhot Miqva’ot*, before he offers an “allusion” (*remez*) explaining them.

4. The difficulty in the beginning of the final halakhah in *Sefer Taharah* is not only that it is inconsistent with the reasons given for the same subject in the *Guide*. There are also certain difficulties or inconsistencies in its internal logic. From the language used by Maimonides in this halakhah, it would seem to follow that “purity and impurity are Scriptural decrees” in the theological sense, and that “immersion [in water] to remove impurity” is “among the statutes” because “impurity is not dirt or filth, which can be washed away in water” (§2). Impurity (of a dead body, a menstruant, various reptiles, etc.) is not a state of things in the world, “a matter of fact.” Thus, the means of purification therefrom (i.e., by means of immersion) is not intended to bring about any concrete change therein. In this way, Maimonides rejects a realistic–physiological approach to purity and impurity and the laws pertaining to them.¹⁴ The basis for this claim is, of course, the Aristotelian world-view in which Maimonides was steeped. According to Aristotelian physics, purity and impurity are not ontological categories, they are not entities, nor are they accidents which occur to bodies. However, Maimonides wishes to prove his assertion that impurity is not like “dirt or filth that can be washed away in water” from the halakhah itself. He finds it implied in the law that purity depends upon the “intention of the heart” (§3)—that is, if a person immerses without the intention of purifying him/herself from the particular impurity (“he did not have a presumption”) he is not purified

a person’s soul is disgusted, such as those used in the toilet or the glass vessels of barbers by which they remove blood, and the like.” Cf. §30.

14 On realistic approaches to purity and impurity in the Bible and in rabbinic literature, see V. Noam, “Do Indeed ‘The Dead Not Cause Impurity’: On the Idea of Impurity in Tannaitic Literature,” *Tarbiz* 78 (2009): 162–63 (Hebrew). Regarding Maimonides, compare M. Kellner, “Maimonides on the Nature of Ritual Purity and Impurity,” *Da’at* 50–52 (2003): 1–30 (Hebrew); Y. Lorberbaum, “Halakhic Realism,” *Shenaton Ha-Mishpat Ha-‘Ivri* 29 (2012–13): 61–130 (Hebrew).

("it is as if he had not immersed").¹⁵ As if to say according to the halakhah, it is not the water of the *miqveh* which purifies but rather the intention at the moment of immersion. In other words, given that proper intention at the time of immersion is a precondition of purification, purity is not a change which occurs within bodies, but rather is concerned (only) with the state of consciousness. But even if one is convinced by this proof,¹⁶ a certain difficulty arises: the assertion that purity and impurity are not actual states of objects in the world does not necessarily imply that they are *huqqim* bereft of rationale and "Scriptural decrees" in the theological sense. These halakhot may have rationales of a different type, such as those offered by Maimonides himself in the *Guide of the Perplexed*. It would appear that the rhetoric of this argument is intended to close the door, at least in the *Mishneh Torah*, against the possibility of giving this group of halakhot socio-historical reasons or explaining them as social constructs, such as those found in the *Guide*.

For the reader with a certain familiarity with the *Guide of the Perplexed* and with Maimonides' manner of argumentation, all of these difficulties—the contradictions regarding the terms *hoq* and *gezerat ha-katuv*, regarding matters of purity and impurity, and the "fallacy" in this passage—are all clearly evident. All these emerge from the negation built into the structure of this halakhah between the beginning—in which purity and impurity are lacking in any known rationale—and the concluding section ("nevertheless, there is an allusion in this matter"). Everything in this halakhah is deliberate and carefully calculated. It would appear that what we have here, more than a

- 15 See *m. Hag.* 2.6; *b. Hag.* 18b–19a. The interpretation of the Hebrew הוּזַק (here translated as "there is a presumption") as referring to the person's intention in immersion in water is also found in Rashi ad loc. (הוּזַק—language of intention). However, this term bears a different meaning in the Mishnah. See Y. Furstenberg, "Eating in Purity During the Tannaitic Period: Tractate *Toharot* and Its Historical and Cultural Contexts" (Ph.D. diss., Hebrew University of Jerusalem, 2011), 236–40 (Hebrew).
- 16 It is doubtful whether this perception of Maimonides is convincing. Intention in immersion is not a sufficient condition for purification but only a necessary condition. Does it necessarily follow from the requirement of intention that purity is not something real or concrete? In other words, it does not follow, from the fact that there are procedural requirements rooted in intention, that this is the nature of all the components of the process of purification in talmudic law. Cf. Noam, "Do the Dead," and see especially Lorberbaum, "Halakhic Realism," and the discussion therein regarding "realism of intentions" (*mens rea*), 106–15.

theoretical claim, is rhetoric. This is a “philosophical sermon,” combining ideological–educational goals with jurisprudential ones.

The rhetorical nature of this halakhah is already evident in its opening words: “It is a clear and known thing that purity and impurity are Scriptural decrees.” Why is it in fact a “known and clear thing” to the average person, or even to the “multitude of the rabbis”? Maimonides’ argument here may be based upon a well-known midrashic passage in *Pesiqta de-Rav Kahana* (§4—*Parah Adummah*) which ascribes to Rabban Yoḥanan ben Zakkai the claim “It is not the dead who causes impurity, nor water which purifies, but rather the decree of the Holy One blessed be He. The Holy One blessed be He said: ‘I have engraved a statute, I have instituted a decree, and you are not allowed to violate My decrees. ‘This is the statute of the Torah’ (Num 19:2).”¹⁷ It is nevertheless clear that Maimonides here opposes widespread folk and rabbinic beliefs in which purity and impurity are perceived as physical entities within the world. These beliefs incorporate a worldview based on a mythical–magical set of laws, or, as he says in the Introduction to the *Guide*, “an ignoramus among the multitude of the Rabbanites ... would find nothing difficult in them (the external meaning of *Midrashim*), inasmuch as a rash fool, devoid of any knowledge of the nature of being, does not find impossibilities hard to accept.”¹⁸ To the average reader of the *Mishneh Torah*, including those learned in halakhah, the assertion that “impurity... is not filth that may be washed away in water” is far from being clear or obvious. It is in fact clear that one of Maimonides’ ideological–educational goals at the beginning of this passage is to uproot widespread magical–mythical perceptions regarding the nature of purity and impurity. It is preferable in his eyes that these be perceived by the average person as Scriptural decrees lacking in reason—a view that is itself regarded by him as incorrect and an “illness of the soul”—than to see them as “filth and vomit that may be washed away in water.” Indeed, as we have seen above, this rhetoric (“It is a well-known thing...”) is used by Maimonides whenever he presents an approach that is opposed to widely accepted opinion. The irony is that

17 Mandelbaum ed., 74.

18 Pines, p. 10, Schwartz, p. 14. On Maimonides’ attitude towards the worldview of the Sages, see Y. Lorberbaum, “Changes in Maimonides’ Attitude Towards Rabbinic Midrash,” *Tarbiz* 78 (2009): 81–122 (Hebrew); idem, “‘Incline your Ear and Hear the Words of the Sages and Turn your Heart to My Opinion’—Criticism of Aggadah in the *Guide of the Perplexed*,” *Tarbiz* 78 (2009): 203–30 (Hebrew); and cf. Kellner, *Maimonides’ Confrontation with Mysticism*.

Maimonides himself immediately expresses reservations and contradicts this “clear and known thing” by means of the “hint” in the act of immersion from impurity that he reveals to the reader.

But immediately following the proof he invokes from the law—“If he immersed and did not have a presumption”—and the emphasis, again, that “rather, it is a Scriptural decree”—Maimonides performs a sharp turn, writing: “Nevertheless there is an allusion in this matter: just as one who directs his heart to become purified...” (§4). This wording refers to two things: (1) It refers to the primary claim made at the beginning of the halakhah, “It is a clear and obvious thing that purity and impurity are Scriptural decrees...”—as if to say that, even though purity and impurity “are not matters which the human intellect can decide,” nevertheless, they contain an “allusion”—specifically, one relating to man’s ultimate purpose to “bring his soul into the waters of knowledge.” (2) It also refers to the halakhah relating to the matter of intention during immersion: whereas the preceding section (prior to the requirement of intention) implied that immersion does not change anything in the body, and hence “immersion from impurity” is a “Scriptural decree” in the theological sense, here the mental component in the laws of immersion serves as a springboard for an allegorical–spiritual analogy relating to all matters of purity and impurity. For “just as one who directs his heart to become pure, once he has immersed himself he is pure... so does one who directs his heart to purify his heart from the impurity of the spirit, which are thoughts of iniquity... become pure.”¹⁹

The passage as a whole is a kind of declaration that, notwithstanding the preceding statements and their supporting proofs, the laws of purity and impurity *do* have a rationale. These laws, by means of the halakhah requiring intention, “allude” to and direct us to the “real” purity and impurity—namely, impurity of the soul (“bad opinions”) and the purity of mind (i.e., removing oneself “from those counsels”). Maimonides here suggests an analogy: “Just as one who directs his heart to become purified, once he immersed himself he is pure... so does one who directs his heart to purify his soul from impurities of the soul... is pure.” Moreover, by emphasizing that this is so “even though nothing has been changed or renewed in his body” (a phrase that is incorporated in this analogy), a certain syllogism *a minoris ad majus* is implicit: If the “impure” body is purified by means of the water, all the more so is the heart purified by means of its agreement “to remove itself from those

19 On water as a symbol for wisdom, see, e.g., *Guide* 1.30.

counsels” and immersion “in the waters of knowledge.” Even though these things are not stated explicitly, it would seem that Maimonides’ intention here is that immersion in the waters of the *miqveh* so as to purify oneself from “impurities of the body” will arouse a person (by means of the intention of immersion) to purify himself from the real, “tangible” impurities, namely, the “impurities of the soul.”²⁰

In support of this sublime allegory, Maimonides cites the familiar words of the prophet Ezekiel: “And I shall sprinkle upon you pure water, and you shall be pure; from all your impurities and from all your abominations I will purify you” (Ezek 36:25). The “literal” meaning of this verse is, in his view, allegorical: the pure waters that God pours upon us are an “allusion” and metaphor for the intellectual abundance that is “poured” upon him (i.e., knowledge of God), that purifies him from the idols and from impurity, which are the “evil views.”²¹

20 It is interesting to compare the final halakhah in *Hil. Miqva'ot* with *Hil. Tum'at Okhlin* 16.12: “Even though it is permitted to eat impure foods and to drink impure drinks, the pious men of old would even eat their mundane food in a state of purity and would avoid all kinds of impurity their entire lives, and they were known as *perushim* (separate ones); and this matter is one of extra holiness and the way of piety, that a person should be separate and distinct from the rest of the people, and should not touch them nor eat and drink with them, for separateness leads to purity of the body from evil acts, and purity of the body leads to purity of the soul from negative opinions, and purity of the soul causes one to resemble the Divine Presence, as is said: ‘And you shall sanctify yourself, and you shall be holy, for I the Lord am He who sanctifies you’ (Lev 20:7).” As in *Hil. Miqva'ot* and in *Guide* 3.47, here too *tum'ah* does not entail any “contaminating” element. Unlike *Hil. Miqva'ot*, in this passage there is no allegorical interpretation but rather a statement of a chain of cause and effect: “Separateness leads to purity of the body from evil acts,” etc. (=“to purify his soul from the impurities of the soul, which are the thoughts of evildoing”), whose ultimate purpose is similar: “the holiness of the soul from negative opinions” and imitation of the Divine Presence, which in Maimonides is understood as knowledge of God, that is, intellectual perfection (“the waters of knowledge”). As in *Guide* 3.47, in *Hil. Tum'at Okhlin* purity serves a social function (known, at least, to those on an elevated level): it is a means of social separation of the “elevated” (*Perushim*) from the “rest of the people” (“the multitude”). However, the language used here is “religious”—educational and not “scientific—distancing,” as in *Guide* 3.47.

21 Compare Rabbi Akiva’s homily at *m. Yoma* 8.9 [7] on the same verse. “Happy are you, O Israel! Before whom do you purify yourselves? And who purifies you? Your father who is in Heaven, as is said: ‘And I shall pour upon you pure

The term *remez* in Maimonides does not indicate an incorrect or superfluous rationale, nor is it merely a non-binding “homily for the moment.”²² Rather, by means of the term “allusion” or “hint” (*remez*), Maimonides wishes to suggest an idea expressed in an allegorical fashion, usually by means of exegesis of a verse or in some other manner, by way of *mashal* (allegory) or *hidah* (riddle). The word *remez* is a translation of the Arabic term *asharah*, one that appears extensively in the *Guide*, where it refers to an image or allegory used to explain deep philosophical matters, particularly in the area of physics and metaphysics.²³ The same holds true for a number of its appearances in the *Mishneh Torah*, such as its appearance at the end of *Sefer*

waters and you shall be pure’ (Ezek 36:25).” And see also the immediately following homily: “And it says: ‘The *miqveh* [lit.: “hope”] of Israel is the Lord’ (Jer 17:3). Just as the *miqveh* purifies the impure, so does the Holy One blessed be He purify Israel.”

- 22 Thus Y. Levinger, “On the Rationale for Naziritism in the *Guide of the Perplexed*,” *Bar-Ilan Annual Studies* 4–5 (1967): 299–305 (Hebrew), and many similar ones like him.
- 23 See, e.g., *Guide* 1.32, 33, 54, and see S. Klein-Braslavy, *King Solomon and Metaphysical Esotericism According to Maimonides* (Jerusalem: Magnes Press, 1997), 70–71 (Hebrew). In *Guide of the Perplexed* 3.5 (Schwartz, 437; Pines, 426): “There is also a difference of opinion among the Sages (*b. Hag. 13a*) about whether it is permissible for it to be alluded to in any way through teaching—I mean to say through the transmission of the chapter headings—or whether it is not permissible in any way that an allusion be made to this third apprehension, though it be only through the chapter headings; but he who is a wise man will understand in virtue of his own intelligence.” And cf. in the Introduction to his *Mishnah Commentary* (ed. Kapah, 36): “Rather, one alludes to them [the matters of the Works of the Chariot] in books [i.e., in writing], through concealed hints [*asharat khafih*]. And when God removes the mask from the thirsty hearts who are pleasing to Him, after he has prepared himself with wisdom, he will understand from them according to his level of knowledge.” Maimonides here follows such Arabic philosophies as Alfarabi and Avicenna. Avicenna, for example, writes: “There is nothing wrong in that the words [of the legislator–prophet] include allegories and allusions [*ramuz veasha’rah*] which call to those who are prepared for such by their nature to examine philosophical speculations” (*Shafa* 433, 11–12; according to Klein-Braslavy, *King Solomon*, 25, and see there for further bibliography). I will add further that the *asharah* is intended at times to “hide” certain ideas, for substantive and/or socio-political reasons. And cf. Y. Lorberbaum, “‘As if the Sages and the Knowledgeable were Drawn After this Matter by the Divine Will’: On the Understanding of the Parable in *Guide of the Perplexed*,” *Tarbiz* 71 (2002): 84–132 (Hebrew).

Taharah.²⁴ I shall comment further that, in a number of *halakhot* in *Mishneh Torah*, Maimonides uses the term *remez* to indicate a halakhic midrash using analogy or allegory. In those cases, he emphasizes that that which is learned by means of “allusion” does not have the status of “the law of Torah,” and that the halakhah derived therefrom is only “from the words of the Scribes” [i.e., of rabbinic provenance].²⁵

The allegory proposed by Maimonides at the end of *The Book of Purity* to explain the matters of purity and impurity in their entirety is sharp and dramatic. It stands out dramatically in contrast to the “earthly,” non-allegorical reasons which he offers for the other “Scriptural decrees” in the *Mishneh Torah* and, as I shall argue below, thereby exacerbates the jurisprudential problem raised by the rationales for the commandments.

Before I elaborate on this matter, which lies at the very heart of our subject, I wish to comment that, in the *Guide of the Perplexed*, whose focus is the metaphorical interpretation of the “books of prophecy,” Maimonides refrains from allegorical interpretation of the commandments. In the In-

- 24 See, e.g., *Hil. Yesodei ha-Torah* 1.10: “What did Moses our Teacher seek to apprehend when he said, ‘Show me please Your glory’ (Exod 33:18)? He sought to know the truth of the existence of the Holy One blessed be He ... And He, may He be blessed, answered that it is beyond the capability of the mind of a living human being, who is composed of body and soul, to apprehend fully the truth of this matter, and He, may He be blessed, made known to him ... until he apprehended of the truth of His existence that matter by which the Holy One blessed be He is distinct in His knowledge from all other existent things ... And Scripture alluded to this matter by saying: ‘And you shall see My back, but you shall not see my face’ (ibid., v. 23).” And cf. *ibid.*, 2.5: “And in what are the forms distinct from one another, for they are not bodies. For they are not equivalent in their existence, but each one is below the level of its fellow ... And this is what Solomon alluded to in his wisdom by saying: “for the high official is watched by a higher, and there are yet higher ones over them” (Eccl 5:8); and cf. *Hil. Talmud Torah* 3.12.
- 25 See, e.g., *Hil. She’ar Avot ha-Tum’ah* 6.1: “The impurity of idolatry is of rabbinic provenance, and it is alluded to in the Torah, as it says: ‘Remove the strange gods which are among you, and purify yourselves and change your garments’ (Gen 35:2). And there are four major categories of impurity therein... and the impurity of them all is rabbinic”; and cf. *ibid.*, 12.7; *Hil. Avel* 5.7. The statement that inference by way of allusion does not enjoy the standing of Torah law is consistent with his view that halakhot learned by way of *midrash* [i.e., using the hermeneutical rules by which the Torah is expounded—e.g., *qal va-homer*, *binyan av*, *gezerah shavah*] are not “from the Torah” but are “rabbinic.” See M. Halbertal, “Maimonides’ *Sefer ha-Mitzvot*: The Architecture of the Halakhah and Its Exegetical Theory,” *Tarbiz* 59 (1990): 457–80 (Hebrew).

roduction to the *Guide*, which is devoted entirely to the subject of parable and allegory, he states clearly: “I do not think that anyone possessing an unimpaired capacity imagines that *the words of the Torah* referred to here that one contrives to understand through understanding the meaning of parables are ordinances concerning the building of tabernacles [*sukkah*], the *lulav*, and the law of four trustees [*shomrim*]. Rather what this text has in view here is, without any doubt, the understanding of obscure matters.”²⁶ And indeed, in the twenty-five “chapters of the *commandments*” in Part III of the *Guide*, Maimonides refrains from proposing an allegorical interpretation of them, but instead offers explanations rooted in the socio-historical context of the manners of pagan worship and rituals in the ancient Near East.²⁷

Not so in his “great work,” the *Mishneh Torah*, in which Maimonides explains commandments and *halakhot* by means of parable and allegory.²⁸ This is the case, as mentioned, in the concluding *halakhot* in several books of the *Yad ha-Hazaqah*, where Maimonides rises above the halakhic details and, using language that tends toward the sublime, offers allegorical–spiritual rationales for the blocs of halakhah which he has just finished organizing and summarizing. In the *Mishneh Torah* Maimonides generally refrains from socio-historical explanations.²⁹ Due to their relativism and antinomian nature, these explanations, and their underlying methodology, need in his opinion to be concealed from the average reader (“the multitude”). Many think that the difference between the rationales for the commandments

26 Pines, p. 11, Schwartz, 16. And see Y. Lorberbaum, “Parables and Commandments—Between the *Mishneh Torah* and the *Guide of the Perplexed*” (Hebrew) (in preparation).

27 *Guide* 3.28 (Schwartz, pp. 518–20).

28 Maimonides comments on the need for allegorical exegesis of the commandments in his “Introduction to *Pereq Heleq*” (see *Haqdamot*, 133; and cf. the English translation in I. Twersky, *A Maimonides Reader* (New York: Behrman House, 1972), 401–23, at 407).

29 But see, for example, the matter of shaving the beard in *Hil. Avodat Kokhavim u-Mazzalot* 11.7, and below in the Afterword. For further examples see Twersky, *Introduction*, 430. But compare, e.g., on the subject of shaving the beard in *Hil. Avodat Kokhavim* 11.7. For further examples see Twersky, *Maimonides Reader*, 389 n. 81 and 226 n. 80. Many commentators and researchers have noted the inconsistency and even opposition between the reasons given for the commandments in the *Guide* and those in *Mishneh Torah*. See J. B. Soloveitchik, *The Halakhic Mind: An Essay on Jewish Tradition and Modern Thought* (New York: Seth Press, 1986), 91–99; and Twersky, *Maimonides Reader*.

given in the *Mishneh Torah* and those in the *Guide of the Perplexed* is rooted in the difference of literary genre and aim of each work. Whereas the *Mishneh Torah* is a halakhic work addressed to the broad public whose purpose is educational (“spiritual–ethical”), the *Guide of the Perplexed* is a philosophical (“scientific”) work that addresses the philosophical few.³⁰

This theory is correct (in a trivial sense), but only partially so. It explains why, in the *Mishneh Torah*, Maimonides refrains from offering socio-historical reasons for the commandments, but does not explain why, in the *Guide*, he rejects their explanation in an allegorical manner. After all, in the *Guide* he sees interpretation by way of parable as a scientific explanation and as the primary (and possibly only) tool for understanding the deep matters in the prophecies.³¹ Elsewhere, I have shown that the reason why, in the *Guide*, Maimonides rejects the allegorical explanation of the commandments, is rooted in his unique approach in this work towards the nature of allegorical interpretation. The incisive passage in the Introduction to the *Guide*, rejecting allegorical interpretation of the commandments, appears as an aside in the course of a discussion concerning the relationship between the external, “literal” (Arabic: *zaher*) level of the parable, and its “inner” contents (Arabic: *baten*), and regarding the nature of *peshat* as such.³² According to Maimonides, allegorical exegesis uproots the external–literal, irrational sense of the Scriptural text and replaces it with “inner” philosophical meaning. This is the answer to the perplexity of the “initiated” reader addressed by the *Guide of the Perplexed*. The philosophical exegesis not only uncovers the “inner,” theoretical meaning of the words of the prophets, but also nullifies their irrational, “literal” meaning. Unlike the Muslim exegetes of the *Quran* (such as Algazli) before him, or Christian allegorists (such as Aquinas) after him, who preserved the “external,” philological–historical level of meaning of their

30 Twersky, *Introduction*, 430–32.

31 I. Heinemann, “Scientific Allegorization During the Jewish Middle Ages,” in *Studies in Jewish Thought; An Anthology of German Jewish Scholarship*, ed. A. Josppe (Detroit: Wayne State University Press, 1981), 247–69; Lorberbaum, “Parables and Commandments.”

32 This comment appears between two midrashic parables from *Song of Songs Rabbah*, between the “Parable of the Well,” which explains that the function of the literal meaning of the parable is merely to direct one’s attention toward the inner level of meaning, and the “Parable of the Pearl,” which emphasizes that the external level of meaning of the parables “is naught” (“it is only worth a penny”). Cf. Lorberbaum, “Parables and Commandments.”

sacred texts, to which they merely added an inner-spiritual significance,³³ Maimonides sees exegesis through parable as a “scientific”—philological form of interpretation, which reconstructs the “intention of the author.” The result of this dramatic exegetical move is, of course, the uprooting of the external level of meaning as such. Allegorical interpretation in the *Guide of the Perplexed* is thus “allegory that uproots literal meaning.” It is not for naught that Maimonides writes in the Introduction to the *Guide* that allegorical interpretation of the commandments would not occur to any person “possessing an unimpaired (intellectual) capacity.” If this method of interpretation were to be implemented regarding the commandments, they would lose their practical (*peshaṭ*) meaning in favor of a spiritual and abstract meaning. Interpretation of the laws by way of parable and riddle would remove their concrete fixity as instructions for action. His close adherence to a socio-historical interpretation in the “chapters of the *commandments*” in the third part of the *Guide* is rooted, among other things, in this approach.³⁴

The *Mishneh Torah* is not a philosophical work, nor is it concerned with exegesis of the words of the prophets by way of riddle or allegory. In his halakhic work, Maimonides is not obligated to the above radical theoretical position regarding “allegory uprooting literal meaning.” The allegories found therein regarding the interpretation of the commandments, such as the final halakhah in *Sefer Taharah*, are of the type that I have described elsewhere as “allegory on top of the literal meaning.”³⁵ They are not concerned with uprooting the “external” meaning of the verses or commandments, but rather with adding an additional level of meaning—ethical, intellectual and spiritual—and all in order to add a dimension of depth to the “literal” or “simple” level of practical, primary meaning, which is left intact.³⁶

33 Y. Schwartz, “The Maimonidean Hermeneutic and the Scholastic Tradition,” *Da’at* 50–52 (2003): 153–82 (Hebrew); and see Philo, *On Abraham (De Migratione Abrahami)*; Loeb Library ed., 183–85), who notes the difference between two meanings of allegory.

34 For a detailed discussion, see Lorberbaum, “Parables and Commandments.”

35 For a detailed discussion of the distinction between “allegory uprooting *peshaṭ*” and “allegory on the back of *peshaṭ*,” see Y. Lorberbaum, “Golden Apples in Settings of Silver—Maimonides on Philosophical Parables and Law: Chapter 3: ‘The Perfected Parable’— the Political-Philosophical Parable” (Hebrew) (in preparation); idem, “Parables and Commandments.”

36 At the same time, in *Hil. Yesodei ha-Torah* Maimonides proposes an allegorical interpretation of the words of the prophets which uproots the simple literal

The free interpretation used by Maimonides in the final halakhah of *Hil. Miqva'ot* is characterized by allegorical interpretation "on top of the *peshaṭ*." The allegorical analogy made in this halakhah hangs by a thread: not only is the requirement of intention during immersion in water a marginal detail in the laws of purity and impurity, but the halakhic intention required relates specifically to the "physical" impurity from which the immersee wishes to be purified. Such intention has no real connection to intention to separate oneself "from thoughts of iniquity" and to "immerse oneself in the waters of knowledge." But even though its exegetical basis is tenuous, the allegorization of the laws of purity and impurity at the end of *Hil. Miqva'ot* serves Maimonides' spiritual-religious aims well in his halakhic compendium. It is easy to understand why he concludes *Sefer Taharah* on this note of elevated spirituality.³⁷

However, the interpretation of the commandments by way of parable and riddle, even when it is "on top of the *peshaṭ*," has its own innate drawbacks. Even allegorical interpretation that is not intended to uproot the straightforward, practical meaning of the commandments but aims merely to add a spiritual dimension to them subjects them to a certain danger. As in the examples discussed earlier, here too the fear exists that the reason given for the halakhot will be incorporated within the halakhic discourse. However, as I noted above, the real danger in allegorical interpretation is far more serious. Because of its "spirituality," it is likely to totally uproot the concrete nature of the halakhah: that is, the laws of purity and impurity are likely to be interpreted purely according to their "spirit" and not according to their "carnal wording," their literal sense. Because of its general nature, interpretation based upon allegory may change, or "reshape" not only a particular, isolated halakhic rule, but an entire body of halakhah.³⁸ In the final

meaning. See, for example, the reference above in note 24. In addition to the fact that this only applies to a limited number of allegories, *Mishneh Torah*, as opposed to the *Guide*, does not establish the approach that the parable uproots literal meaning.

37 For an additional example, see *Hil. Shemittah ve-Yovel* 13.13, which is the end of *Sefer Zera'im*; and cf. Lorberbaum, "Parables and Commandments." To the reading I suggested here to the last halakhah of *Hil. Miqva'ot*, comp. Soloveitchik, *Halakhic Mind*, 96.

38 On the danger entailed in allegorization of the commandments, see G. G. Scholem, *Major Trends in Jewish Mysticism* (New York: Schocken, 1961), 27; idem, "The Meaning of the Torah in Jewish Mysticism," in *On the Kabbalah and*

analysis, if true impurity is not a function of external–physical factors, such as a dead body, menstruation, or certain kinds of reptiles (“impurity is not filth or dirt...”), but rather consists of “impurities of the soul” (“which are the thoughts of iniquity and bad opinions”), and if the “real” immersion is not in the waters of the *miqveh* (which do not change anything in “the body”), but rather in the “waters of knowledge”—what remains of the concrete laws of purity and impurity?³⁹

Maimonides was well aware of the dangers entailed in such spiritual allegorization, even if it was “on top of the literal meaning,” as witnessed by his strong remarks in the *Guide of the Perplexed* cited above.⁴⁰ This danger dictates the structure of this halakhah as a whole, particularly of its opening section. The halakhah begins with a dramatic, but carefully calculated declaration, in which Maimonides repeatedly warns that matters of purity and impurity as a whole are “Scriptural decrees” and “among the statutes,” and even invokes proofs of this (from both physics and halakhah). The term “Scriptural decree” functions in this halakhah in the same way as it does in the halakhot discussed earlier. Here, too, it is intended to indicate to the reader that the laws of purity and impurity are to be implemented in the literal sense, as written, and not according to their rationale or “spirit,” and here, as well, the term *gezerat ha-katuv* is intended to serve as a kind of limitation of the reason that follows thereafter, so that it may not influence or affect the halakhah. This is as if to say that the “allusion” implied in the demand for intention (“if he immersed and did not have presumption” etc.) is an extra–halakhic demand that lacks force and has no practical application.⁴¹

Its Symbolism, trans. R. Manheim (New York: Schocken, 1969), 32–86; and in his wake I. Tishby, *Netivei Emunah u-Minut* (Jerusalem: Magnes Press, 1964), 11–22; and cf. F. Talmage, “Apples of Gold: The Inner Meaning of Sacred Texts in Medieval Judaism,” in *Jewish Spirituality: From the Bible through the Middle Ages*, ed. A. Green (New York: Crossroad, 1986), 313–55, at 342.

- 39 Maimonides’ language is cautious and merely establishes an analogy. Nevertheless, it does have a certain subversive potential.
- 40 Different from Maimonides were, for example, the authors of the *Hagahot Maimoniot* in Provence, such as Kokhavi, who offered numerous allegorical rationales for the commandments. See M. Halbertal, *Between Torah and Wisdom: Rabbi Menahem ha-Meiri and the Maimonidean Halakhists in Provence* (Jerusalem: Magnes Press, 2000), 189–204 (Hebrew).
- 41 It should be noted that Maimonides was not the first one to offer an ethical interpretation of the laws of impurity and purity and that their concern was purity of the soul. He was preceded, as is well known, by Philo, *Laws* 1.259–69;

But when the reason given is allegorical, it does not suffice to invoke *gezerat ha-katuv* in the jurisprudential sense, unlike its use is in a case such as that of “a [rebellious] son and not a daughter,” whose rationale is specific and concrete (“the daughter is not drawn after eating...”). In the invocation of Scriptural decree in the case of purity and impurity, the reason is general and abstract. Because of the power of this rationale and its dangers, Maimonides reinforces the “Scriptural decree” by ascribing to it a theological meaning and attaching to it the term *huqqim*, while ignoring the “popular” meaning attributed to this term in the *Guide*. This is as if to say that the basis for the halakhic instruction to read the laws of purity and impurity in a literal manner is not only jurisprudential but also, and primarily, theological—that the rationales for the laws of impurity and the laws of immersion are unknown, and therefore we can do naught but to implement them as “Scriptural decree,” in a specific and literal way.⁴²

3.205–9, and cf. *Letter of Aristeas*, 142–69. For a survey of commentators who followed this approach, in both ancient and modern times, see V. Noam, *From Qumran to the Rabbinic Revolution: Conceptions of Impurity* (Jerusalem: Magnes, 2010), 34–36 (Hebrew). On the tension between “spiritual” rationales and halakhah, see the discussion in Maimonides’ “Ordinance Regarding the Observance of the Laws of Immersion,” in *Iggerot ha-Rambam*, ed. Shilat (Jerusalem: Ma’aliyot, 1995), I. 175–85, Appendix II (Hebrew). For the background of the decree, see A. Grossman, *Pious and Rebellious: Jewish Women in Medieval Europe* (Waltham: University of New England Press, 2004), 185–87.

- 42 It may be that the opening sentence in the final halakhah of *Hil. Miqva’ot* is not to be read in the usual way but as I proposed above: “That the impurities and purities are *gezerot ha-katuv*... because they are not among/of those things...” Rather, perhaps it ought to be read as follows: “That impurity and purity are Scriptural decrees” in the jurisprudential sense—that is, that one ought to apply these halakhot in a literal manner and not according to their rationale, as these are not known (“they are not of those things which man’s mind can determine, but they are among the category of the *huqqim*”). So too regarding its sequel on the matter of immersion: because it has no rationale (i.e., “impurity is not like filth or vomit which may be washed away in water”), it must of necessity be a Scriptural decree in the jurisprudential sense, that is to say, a halakhah which must be applied literally. What transforms the subject of impurity and purity into halakhot without rationale is the term *huqqim* and not the term *gezerat ha-katuv*, which only indicates that they are to be interpreted and applied in a literal matter. Nevertheless, even according to this reading, this language also has a certain ambivalent or dual meaning, which is evidently deliberate. This proposal does not change the basic line of thought proposed above.

Having established the laws of purity and impurity as *gezerot ha-katuv* in the theological sense, Maimonides is able to perform a sharp turn (“Nevertheless...”) and to suggest an “allusion” that is lacking in halakhic force,⁴³ without fearing that the allegorical–spiritual rationale will undermine their halakhic or practical force.⁴⁴

Maimonides’ rhetoric in the final halakhah of *Sefer Ṭaharah*—the “fallacies,” the means of concealment and distraction used therein, including the theological use of *gezerat ha-katuv* and *ḥoq*—thus serves as a “solution” to the tension between his tendency towards philosophical rationalism, on the one hand, and his (conservative) tendency towards legal–halakhic formalism, on the other.

2. “Even though the Sounding of the Ram’s Horn on Rosh Hashanah is a Scriptural Decree, it Also Contains an Allusion”: Providence and Heavenly Judgment

In *Hil. Teshuvah* (the Laws of Repentance) 3.4, we read:

Even though the sounding of the ram’s horn on Rosh Hashanah is a Scriptural decree, it also contains an allusion,⁴⁵ as if to say: ‘Awaken, O sleepers, from your slumbers, and those who are in deep slumber arouse from your torpor; search out your deeds, and return in repentance, and remember your Creator.’ This refers to those who forget the truth in the vanity of transient things, and pass all their years in futility and emptiness which will not help nor save them. Look to your souls and improve your ways and paths, and let each one of you abandon his evil path and his thoughts that are not good...

43 In this context, I should mention that, according to Maimonides, halakhic midrash by way of “allusion” has no halakhic standing. See above, n. 25.

44 Compare Stern, “On Alleged Contradictions,” 295, and H. Rappaport, “On the Reason for the Commandment of Shofar and the Sense of the Term *Gezerat ha-Katuv* in *Mishneh Torah*,” *Or ha-Mizrah* 51:1–2 (2006): 78–101, at 95 (Hebrew).

45 See *Madda ve-Ahavah*, facsimile edition of MS. Oxford–Huntington 80 and appendices, brought to press with an introduction and notes by Sh. Z. Havlin (Makor: Jerusalem, 1997). In several versions of the *Mishneh Torah* the reading here is *רמו יש ביה* or *רמו יש לה* (i.e., in the feminine conjunctive). Cf. *Sefer ha-Madda*, ed. Frankel, in the appendix of “Collected Variant Readings,” 5.

In this halakhah, too, the use of the term *gezerat ha-katuv* is unique to Maimonides in that it does not appear in relation to the commandment of blowing the shofar in any of the relevant texts in the talmudic literature.⁴⁶ Thus, the use of “Scriptural decree” in this halakhah elicits some surprise.

In terms of language and syntax, the term *gezerat ha-katuv* in this passage has a theological meaning. The opening sentence of this halakhah establishes a certain contrast (“Even though...”) between the blowing of the shofar on Rosh Hashanah and the term “Scriptural decree”—that is, between it being a halakhah without any (known) rationale and its “allusion”—that is, its suggested purpose. The rationale offered for the commandment in this halakhah, which is formulated as a sermon or admonition, is preceded in Maimonides by a qualifying comment that it is a Scriptural decree, without any reason.

A similar kind of rhetoric is found in the last halakhah in *Hil. Miqva’ot* (11.12) which we discussed above. There too, Maimonides begins with a declaration: “It is a clear and obvious thing that the laws of impurity and purity are Scriptural decrees...” But further along in the halakhah he performs a sharp turnabout: “Nevertheless, there is an allusion implied in this matter...” and goes on to elaborate their rationale and purpose. The structural–linguistic parallel between these two halakhot suggests that the rhetoric of *gezerat ha-katuv* in *Hil. Teshuvah* 3.4 is of the same kind as that found at the end of *Hil. Miqva’ot*.

46 Compare *b. Rosh Hashanah* 16a–b (“R. Yiṣḥaq said: Why does one blow [the shofar] on Rosh Hashanah? Why does one blow?—Because the All-Merciful said to blow...”). The reading in the Bavli is a reworking of a source whose original evidently read as follows: “Why does one blow [the shofar] on Rosh Hashanah? In order to confuse Satan (the Adversary).” The Babylonian Talmud incorporated therein the language: “Why does one blow—Because the All-Merciful said to blow,” etc., evidently based on the view that one ought not to seek rationales for the commandments of the Torah. The paraphrase in *Sefer Halakhot Gedolot, Hil. Rosh Hashanah* (ed. Hildesheimer, Part I: 306) is important for our purposes here: “R. Yiṣḥaq said: Why does one blow [the shofar] on Rosh Hashanah? For what reason? Because it is a Scriptural decree. Rather, for what reason does one blast and warble... In order to confuse Satan”). However, it is doubtful to me whether those were the sources of Maimonides in this halakhah. Regarding the version in *Sefer Halakhot Gedolot*, see A. Shweike, “Studies in *Sefer Halakhot Gedolot: Text and Editing*” (Ph.D. diss., Hebrew University of Jerusalem, 2008) (Hebrew).

There is nevertheless a difference between these halakhot. Whereas in *Hil. Miqva'ot* (before he suggests that it contains an “allusion”), Maimonides emphasizes that impurity and purity “are not among those things which the human mind can decide, but ... they are among the statutes (*ḥuqqim*),” adding a justification for this statement (“for impurity is not dirt or filth which can be removed by water... but this matter depends upon the intention of the heart...”), in *Hil. Teshuvah* he is brief and succinct. He does not explain his statement that the blowing of the shofar is a Scriptural decree without rationale, but immediately discusses the “allusion” implied therein: a call to repentance.

Indeed, the statement that “blowing of the shofar on Rosh Hashanah is a Scriptural decree” is rather surprising. Unlike the case of purity and impurity, the commandment to blow the shofar does not fall under the rubric of *ḥuqqim*. No one ever suggested that its reason is hidden. On the contrary, the talmudic sources suggest a large number of reasons for it (see below). Moreover, in the *Guide of the Perplexed* 3.43, Maimonides offers reasons for “those commandments included in the Book of Times.” At the beginning of the chapter he comments that “the reason for all of them... are explained in Scripture,” for which reason he only explains them in brief. Further on in the chapter he writes: “New Year lasts similarly for one day. For it is a day of repentance in which the attention of the people is called to their negligence. Therefore the shofar is blown on it, as we have explained in *Mishneh Torah*.”⁴⁷ He thus presents, in succinct form, the same reason as that offered in *Hil. Teshuvah*, referring to the more elaborate discussion in the *Yad ha-Ḥazaqah*. In his philosophical work, there is no suggestion of the reservation expressed in the *Yad* to the effect that the blowing of shofar on Rosh Hashanah is a “Scriptural decree” without rationale.⁴⁸

47 Schwartz ed., 597; Pines, 571. On the subject of “one day,” see *ibid.*, n. 22.

48 This is also the case regarding the rationales for impurity and purity in *Guide of the Perplexed*. However, there, as will be remembered, the reasons are different from those in *Mishneh Torah*. Regarding the shofar, see *Sefer ha-Miṣvot*, positive *miṣvah* §137: “That He commanded us to blow the shofar on the tenth day of Tishrei of this year [i.e., the jubilee year–YL] and to declare freedom to servants in all our lands, and that the Hebrew servant may go free without redemption-money on this day... For the jubilee is equivalent to Rosh Hashanah regarding shofar-blowing and the blessings... But it is however known that this blowing on the jubilee year is to publicize the liberation, and it is a kind of declaration, as it says, “and you shall declare freedom” (Lev 25:10). And its matter is not like that of blowing shofar on Rosh Hashanah, which is a remembrance before the Lord, while this

Both because of the clarity of the commandment (in Jewish tradition and writings) and because of his principled position regarding the rationales for the commandments (including the rationales for the *huqqim*), Maimonides' claim that the blowing of the shofar on Rosh Hashanah is a "Scriptural decree" in the theological sense cannot be read literally.⁴⁹ As in the case of impurity and purity at the end of *Hil. Miqva'ot*, here too, the term *gezerat ha-katuv* serves a rhetorical function whose nature may be inferred from the context of chapter three of *Hil. Teshuvah*.⁵⁰

The first three halakhot of *Hil. Teshuvah* are not laws in the narrow and precise meaning of the term.⁵¹ Rather, these halakhot present a detailed picture of the divine reckoning and judgment which every person undergoes before the "Heavenly Court" every day, or of the Laws of [Divine] Providence that govern him and determine his destiny constantly. "Each and every human being," Maimonides begins, "has merits and transgressions," and he goes on to develop three basic categorizations: the *Ṣaddiq*, the righteous man, "whose

is to free the slaves, as we have explained." Regarding "remembrance before the Lord," see the wording in Lev 23:24 ("On the seventh month, on the first day of the month, you shall have a day of cessation, a remembrance of horn-blowing, a holy convocation"). The language of Scripture quoted in Positive Commandment §137 does not mean that the purpose of blowing the shofar on Rosh Hashanah is to awaken the memory of Israel in the upper spheres. Rather, its concern is to distinguish between it and the blowing on the jubilee year. Compare Rappaport, "On the Reason," 87–88.

49 Compare Rappaport, *ibid.*, 95. Stern ("On Alleged Contradictions," 292–93) thinks that, by means of the term *gezerat ha-katuv*, Maimonides sought in *Mishneh Torah* to conceal the socio-historical reason for the shofar which was based, in his opinion, upon the words of Aristotle, cited in *Guide of the Perplexed* 3.43 (*ibid.*; Pines, 572). However, the quotation from Aristotle in that chapter ("The ancient sacrifices and gatherings used to take place after the harvesting of the fruit. They were, as it were, offerings given because of leisure."—*Ethics*, Book VIII, 9, 1160a, 25–28) and Maimonides' words further on in that same chapter ("For this too is one of the pivots of the Law") do not at all pertain to the Festival of Rosh Hashanah and its mitzvot, but rather to the Festival of Sukkot and the ingathering of fruits. Likewise, the above words of Maimonides do not relate to the quotation from Aristotle but to the subject of "merits of the fathers" (see *ibid.*).

50 Comp. Soloveitchik, *Halakhic Mind*, 94–95. Soloveitchik understands the term *gezerat ha-katuv* here, and everywhere, as a rule with no reason.

51 Likewise in the second part of the chapter, which deals with various categories of sinners ("sectarians," "heretics," "those that deny the Torah," "rebels," etc.). See below, n. 56.

merits are greater than his transgressions"; the *Rasha*, the evildoer, "whose transgressions are greater than his merits"; and the *Beinoni*, the intermediate person, who is "half and half." These categories are not only applicable, in his opinion, to the individual: "So too, a state, if its inhabitants' merits are greater than their transgressions, is considered righteous; and if their transgressions are greater, they are evil; and so too the entire world" (§1).

Halakhah §2 begins with a dramatic statement: "A person whose transgressions are greater than his merits dies immediately in his wickedness ... And so too a state whose transgressions are greater is immediately annihilated ... and so too the entire world, if its transgressions were greater than its merits, it is immediately destroyed, as is said, 'And the Lord saw that man's evil was great upon the earth' [Gen 6:5]." ⁵² Maimonides portrays a moral order to the world, run by a causality [analogous to that of] natural law. But this frightening order is not susceptible to prediction or prophecy for it is concealed from the human eye. "This reckoning," he emphasizes, "is not according to the number of merits and transgressions, but rather according to their magnitude. There are merits which correspond to several transgressions... and there is a transgression which may outweigh several merits." Hence: "These things are not measured except according to the mind of the God of knowledge, and He is the one who knows how to balance the merits against the transgressions." Maimonides obscures these "calculations of the End," hinting to the reader that he has no way of clarifying the state of his account and cannot know under what category he falls. As he is unable to anticipate the results of these Heavenly procedures to which he is subject every day, he should not be complacent regarding his own good deeds, on the one hand, but neither may he develop a fatalistic disposition because of his failures ("wickedness"), on the other. This "veil of cloud" creates constant doubt, which should stimulate him to repent and return to God.⁵³ If, at the

52 Maimonides brings biblical support for these statements. As stated, in these halakhot he reworks various rabbinic sayings: *b. Rosh Hashanah* 16b; *t. Sanh.* 13.3 (ed. Zuckerman, 434); *b. Qidd.* 40b; *t. Qidd.* 1.13–14 (ed. Lieberman, 281). For a discussion of chapter three of *Hil. Teshuvah*, see A. Kadari, *Iyyuney Teshuvah: Halakhah, Thought and Educational Philosophy in Maimonides' Laws of Repentance* (Beer-Sheva: Ben-Gurion University Press, 2010), 86–89 (Hebrew), where he discusses, among other things, the relation between Maimonides' words and his talmudic sources.

53 See Kadari, *Iyyuney Teshuvah*, 90–91. This ambiguity also prevents a person from "utilizing" the excess virtues he has accumulated in order to sin for his own

beginning of the halakhah, one seems to be speaking of impersonal laws of Providence, here Maimonides speaks of “the God of knowledge,” who alone weighs “merits against transgressions.”

But despite a certain vagueness in §2, the description of the rules of the Heavenly reckoning continues into §3: “Whoever regrets the commandments which he did and regrets his merits... and says in his heart, ‘What benefit have I enjoyed from their performance,’ has lost them all, and none of his merits are remembered.” Unlike a human court, which only relates to actions, the Heavenly tribunal examines man’s innermost being, attributing to these “regrets” a dramatic weight, far greater than that attributed to the acts themselves. This comment is a block to any sinful disposition, far more so than to the sin itself.⁵⁴

The account of the manner of weighing transgressions and merits in the Heavenly court continues and is even reinforced further along in the chapter. In §5, he states: “At the time that one weighs a person’s transgressions against his merits, one does not take into account that transgression which he performed initially, nor the second, but only from the third one on...” This lengthy and circuitous halakhah, whose details are not of interest to us in this context, is based upon talmudic sayings which Maimonides uses in his own distinctive way throughout this chapter and in many other places.⁵⁵ Here, the hour when they weigh [his deeds] is every day. Further along in this halakhah, Maimonides distinguishes between the “individual” and the “community” and between “intermediate” people and “the wicked” and,

pleasure. These notes also play a further, secondary purpose. They imply an answer to a certain called-for skepticism: If in fact the evil person did not die immediately in his wickedness (and likewise regarding a state of the entire world), does this not limit somewhat the calculation of the end, which Maimonides himself criticizes elsewhere? See, for example, *Hil. Melakhim* 12.2 and the *Epistle on Resurrection* (ed. Shilat, 363–64).

54 Compare *b. Yoma* 29a: “Thoughts of transgression are more difficult than transgression”; and cf. *Guide* 3.9 (ed. Schwartz, 445).

55 As in Rabad’s gloss ad loc.: “This is a confused matter, that he confused the matters with one another, imagining in his mind that they are identical, but they are very strange and distinct from one another.” And cf. *b. Yoma* 86b; *b. Rosh Hashanah* 16b.

in the end, refers to the ultimate reward, when he explains who (and under what conditions) enjoys “a portion in the World to Come.”⁵⁶

Let us return to §3. If thus far in chapter three, Maimonides discusses the procedures conducted in the Heavenly Court every day of the year (or the ethical laws of nature which operate constantly), he now turns to discuss the special “procedures” unique to the Days of Awe: “Just as one measures a person’s merits and his transgressions at the time of his death” (i.e., every day?), “so too every year the transgressions of every one of the inhabitants of the world is measured against their merits on the festival day of Rosh Hashanah. One who is found to be righteous is sealed for life; one who is found to be wicked is sealed for death; and the [judgment of] one who is in-between is suspended until the Day of Atonement. If he repented, he is sealed for life; if not, he is sealed for death.” The precise relation between the Heavenly procedures conducted every day of the year (or at the time of a person’s death) and those unique to the Ten Days of Repentance is not clear. In any event, Maimonides here integrates them with one another. Thus, while there are certain days of the year that are set aside for *teshuvah*, for him it is primarily a daily effort.

It is difficult to exaggerate the contrast between the detailed description of the Heavenly procedures and the laws of Providence depicted in *Hil. Teshuvah* chapter three, and the chapters of Providence in the *Guide of the Perplexed*. The former is based on an anthropomorphic conception of God, a notion of Special Providence and of a Divine policy of recompense and particularly of punishment, which operate with the precise (albeit hidden) causality of natural law, an apocalyptic end to the world (at least as a possibility), and a non-linear perception of time that distinguishes the Days of Awe from other days. How remote this mythic understanding of Providence

56 The concluding section of 3.5 bridges between the first part of the chapter and its second part, which is concerned with various categories of sinners (“sectarians, heretics, deniers of the Torah... rebels, those that cause the multitude to sin”), all of which “have no portion in the World to Come.” This theological category is a halakhic-political technique used by Maimonides in order to indicate their severity and to determine who is “inside” and who is “outside.” However, chapter three has a “happy ending,” which returns to the initial subject and transforms the entire chapter into a single intellectual unit. The final halakhah (§14) concludes: “Regarding what is it said that none of these have a portion in the World to Come? When he died unrepentant. But if he repented of his wickedness and [then] died, and he is repentant, he receives [a portion in] the World to Come, for there is nothing that can stand in the way of *teshuvah*.”

is from that expressed in the *Guide of the Perplexed* 3.17–18 and 51! Thus: “Divine providence is consequent upon the divine overflow... everyone with whom something of this overflow is united, will be reached by providence to the extent to which he is reached by the intellect” (3.17; Pines: 471, 474). “Accordingly, divine providence does not watch in an equal manner over all the individuals of the human species, but providence is graded as their human perfection is graded... As for the ignorant and disobedient, their state is despicable proportionately to their lack of this overflow, and they have been relegated to the rank of individuals of all other species of animals: ‘He is like the beasts that speak not’ [Ps 49:13]” (3.18; Pines: 475)—who, according to Maimonides, are not subject to particular providence at all. “We have already made it clear to you that that intellect which overflowed from Him, may He be exalted, towards us is the bond between us and Him” (3.51; Pines: 621). For our purposes here, there is no need to delve deeply into Maimonides’ understanding of Providence in the *Guide*, which is also alluded to in the “Laws of Fundamentals of the Torah.”⁵⁷ Let it suffice to say even according to a moderate interpretation thereof, it is impossible to reconcile it with the picture painted in *Hil. Teshuvah* chapter three.⁵⁸

Chapter 3.1–5 of *Hil. Teshuvah* is a folk sermon, intended to create a sense of urgency on the part of the average reader—a feeling of an immediate and proximate threat to his life—so as to stimulate him to repent. This sermon arouses the following train of thought on the part of the innocent reader: “Since there is no way of knowing the situation of my Heavenly account, I may be on the verge of destruction. As I am still alive, I am evidently not a total evildoer (who “dies immediately in his wickedness”), hence, I may assume

57 This view is alluded to in *Hil. Yesodei ha-Torah* 2.8: “And all these forms live and acknowledge the Creator, and know him with an exceedingly great knowledge, each form according to its level and greatness... But none of them know the Creator as he knows Himself.” And further on, in §9: “All existent things apart from the Creator... all exist by virtue of His true existence. And because He knows Himself and recognizes his greatness and glory and true existence, He knows everything and there is nothing hidden from Him.” But I cannot elaborate upon this point.

58 Not for naught does Maimonides comment at the end of *Guide* 3.18: “Consider this chapter as it ought to be considered; for through it all the fundamental principles of the Law will become safe for you and conformable for you to speculative philosophic opinions; disgraceful views will be abolished; and the form of providence, as it is, will become clear to you” (Pines, 476).

that I am at least “in-between.” In that case I can still save myself. Therefore, I must engage in repentance with all my strength, now, immediately!”⁵⁹

Chapter 3 of *Hil. Teshuvah* would seem to be a detailed embodiment of the folk understanding of providence as a “necessary belief” (“noble myth/lie”), of the sort mentioned by Maimonides in *Guide* 3.28: “In the same way the Law also makes a call to adopt certain beliefs, belief in which is necessary for the sake of political welfare. Such, for instance, is our belief that He, may He be exalted, is violently angry with those who disobey Him and that it is therefore necessary to fear Him and to dread Him and to take care not to disobey” (Pines, 512).⁶⁰

Let us return to our chapter. Halakhah §4 acts as a sequel to the previous halakhah, and is the focal point of chapter three as a whole (or at least of its first part). The halakhah opens, as will be remembered, with a statement that interests us: “Even though the blowing of the shofar on Rosh Hashanah is a scriptural decree...,” which is merely intended as an introduction and a qualification to the “allusion” contained therein: “That is to say: Wake up, yea that sleep, from your slumbers, and those in deep slumber from your torpor;

59 See Kadari, *Iyyuney Teshuvah*, 93–94. The genre to which this chapter belongs is that of the “folk sermon,” whose purpose is to create an impression and to motivate people to action. *Hil. Teshuvah*, chapter three, is not a clear-cut and carefully considered halakhic discussion, nor is it a well-ordered and systematic theological discussion. It is a categorical error to draw precise conclusions or to ask and answer questions of this text. Thus, for example, there is no point in asking how it can be, if a person dies immediately because of his wickedness, that the wicked are judged on Rosh Hashanah—compare the Rabad’s gloss ad loc.—or, if an evil state is “immediately destroyed,” how does it help for an individual to perform good deeds, since it is quite probable that he will die because of the evildoers in the state in which he lives? Nor is this chapter conducive to an esoteric reading that would uncover an underlying philosophical level (compare Kadari, op cit.). At the same time, as is his way in the theoretical portions of his “popular” writings, even in this “folk sermon” Maimonides chooses his words carefully and refrains from gross anthropomorphism, presenting an impersonal picture of the laws of providence. And primarily, unlike the rabbinic myth regarding the shofar, which attributes to its blowing magical–theurgic functions, the function of the myth built here by Maimonides is to advance ethical perfection and social order.

60 The popular understanding of transgression and punishment in chapter three of *Hil. Teshuvah* differs from the philosophical approach, in which punishment is not a response to transgression but is the act of transgression itself. See, e.g., *Guide* 1.2.

Examine your deeds and turn in repentance; Remember your Creator... And abandon, each one of you his evil path, and his thoughts which are not good." If the discussion thus far has focused on the theological dimension—the details of the Heavenly judgment and the rendering of accounts—in this halakhah, Maimonides derives its practical consequences which, as we have said, are the purpose of this chapter/sermon as a whole: the call to man (i.e., the reader) to “wake up” and to “turn in repentance.” It is not Maimonides who is awakening the reader, but rather the shofar that is calling to him.

I noted earlier that Maimonides uses the term “allusion” to indicate a subject or verse which is a parable or metaphor containing an inner level of meaning to be interpreted in an allegorical manner.⁶¹ The allusion involved in the blowing of the shofar is complex. The actual sound arouses people from “the vanities of time” and motivates them to repent. However, in order for it to be pregnant with this rich significance (and not sound like ordinary noise), the shofar, or its sound, must serve as a symbol. It would appear that, according to the language of this halakhah, the “allusion” is rooted in the shofar itself (the Hebrew, רמז יש בו, implies a masculine predicate to the pronoun, referring to the shofar and not to the act of blowing, which would be in the feminine), from which we derive the significance of the shofar and its power to awaken. Moreover, the word כלומר (“as if to say”) is an abbreviated form of כאילו לומר or כמו לומר, which in medieval and modern Hebrew generally has the meaning of “that is,” i.e., an additional explanation, clarification, or explication of the matter. However, in the rabbinic lexicon the term has the meaning of “as if [or: like] to declare.” The Sages use the term *kelomar* in order to interpret certain public acts, generally non-verbal ones, and to explain the idea implicit therein.⁶² While Maimonides makes extensive use of כלומר in the sense of “that is to say,” it seems clear from the wording of this halakhah that it is used here in the rabbinic sense: “to declare,” “to make known.”⁶³

61 Comp. Soloveitchik, *Halakhic Mind*, 95.

62 See, for example, *m. Sanh.* 6.6: “That is to say, for what reason is it suspended?...”; *m. Naz.* 2.1; and see E. Cohen, “On the Early Meanings of the Word *K'lomar*,” *Mileat 2* (1984): 185–200 (Hebrew); Y. Lorberbaum, *In God's Image: Myth, Theology and Law in Classical Judaism* (Cambridge: Cambridge University Press, 2015), 152–53.

63 See *Hil. Sanhedrin* 13.6, where Maimonides alters the wording of *m. Sanh.* 6.6: “And the relatives [of the person executed] come and ask after the welfare of the witnesses and the welfare of the judges.... As if to say: We have naught against you in our hearts, for you judged a true judgment.” Instead, he reads:

The shofar blast is “as if to say,” i.e., “to declare”: “Wake, you sleepers, and rouse, those in deep torpor... Search out your deeds and turn in repentance.” The shofar as a symbol is thus, according to Maimonides, preparation for repentance, and its sounding on Rosh Hashanah awakens to it.⁶⁴

The reason offered by Maimonides for the blowing of the shofar, in both *Hil. Teshuvah* and in the *Guide*, is ethical–educational. It is directed toward man, and anticipates the future.⁶⁵ Its meaning and rationale is dramatically different from the mythical, quasi–theurgic reasons found in midrashic and talmudic literature, according to which the shofar blasts are directed towards God or to heavenly forces: “The Holy One blessed be He said: Blow before Me on a ram’s horn, so that I may remember the Binding of Isaac son of Abraham, and I shall consider it for you as if you bound yourselves before Me ... and He forgives them.”⁶⁶ “Once Israel take their shofars and blow, immediately ‘The Lord [ascends] with the sound of the shofar’ (Ps 47:6).” The Holy One blessed be He then “rises from the Throne of Judgment and sits upon the Throne of Mercy, and is filled with compassion for them, and changes the Attribute of Judgment to the Attribute of Mercy.”⁶⁷ “Why do they blow and warble when they are seated, and blow and warble when they are standing? In order to confuse Satan.”⁶⁸ As in *Hil. Miqva’ot*, here too the rationale proposed by Maimonides for the commandant of shofar is markedly different from those propounded by the Sages.

However, the shofar’s power to awaken the “sleepers” and those that “forget the truth in the vanity of times” is rooted in the myth which he builds throughout the course of this entire chapter. The “truth” here (among other things) is fear of the Day of Judgment and, more than that, the danger of death which constantly hovers over evildoers. Indeed, immediately after proposing his “allusion” for the shofar, Maimonides continues, in the second half of 3.4:

“The relatives come and ask after the welfare of the witnesses and the welfare of the judges, to make known that they have naught against them in their hearts, for they judged a true judgment.”

64 In terms of style, we have here a kind of oxymoron—the “allusion” is a prominent declaration.

65 See Twersky, *Introduction*, 471.

66 *b. Rosh Hashanah* 16a; *Gen. Rab.* (ed. Vilna), *Vayyera*, 56.

67 *Lev. Rab.* (ed. Margalio, 675), *Emor*, 29.

68 *b. Rosh Hashanah* 16a. But cf. *Lev. Rab.* (ed. Margalio, 678), *Emor*, 29.6, which is closer to the reason propounded by Maimonides.

Therefore, every person should see himself throughout the year as if he is half meritorious and half culpable; similarly, the entire world as if it is half meritorious and half culpable. If he committed a single sin, he has tilted himself and the entire world towards the side of culpability and caused its destruction; if he performed a single commandment, he has tilted himself and the entire world towards the side of merit, and caused himself and them delivery and salvation, as is said, "The righteous is the foundation of the world" [Prov 10:25]. This one who was righteous decides the entire world towards the side of virtue and saved it.

The phrase "therefore" returns us to 3.1–3 and to the "Heavenly reckoning" detailed therein. The line of thought alluded to in the previous halakhah is made explicit here, and the responsibility imposed upon the reader is now for the entire world. If, at the end of §3 and the beginning of §4, Maimonides focused on Rosh Hashanah and Yom Kippur, here he returns to the subject of repentance throughout the course of the year. It would seem that, for him, the "days of judgment" during the Days of Awe are primarily a catalyst for creating a continuous motion toward repentance.⁶⁹ The shofar on Rosh Hashanah is thus not only a symbol calling for repentance at the beginning of the year but also serves as an "allusion" and allegory for repentance "on all the days of the year."

Let us now return to the idiom *gezerat ha-katuv* at the beginning of §4. Why does Maimonides use it to circumscribe the rationale for the commandment of blowing the shofar? What goal is this meant to serve? Here, too, the term *gezerat ha-katuv* seems to be intended to limit the halakhic force of the "allusion." As in many other halakhot from the *Mishneh Torah* discussed above, and like its parallel in *Hil. Miqva'ot*, the meaning of the assertion that "the blowing of the shofar on Rosh Hashanah is a Scriptural decree" is that the laws of shofar are to be applied in a literal and specific manner. One might think that, in the final analysis, given that the purpose of the shofar is to awaken people to repentance, it might be possible to realize this through other, equally effective means - for example, by means of a passionate, inspiring sermon

69 At the end of 3.4, Maimonides returns to the subject of the "ten days of repentance" ("and because of this matter, the whole house of Israel is accustomed..."); however, in §5 he continues to interpret the "Heavenly procedure" during all the days of the year.

such as this very one: "Awake, you sleepers, from your slumbers; and you who are in deep sleep, shake off your torpor; Examine your deeds and turn in repentance..." In this case it is easy to see how the symbol (the metaphor) may be replaced by that which is symbolized (the referent of the metaphor) without any difficulty. The shofar, as a means of awakening people and as a symbol, can be replaced by other means and symbols, no less effective or impressive. The statement, "The blowing of shofar on Rosh Hashanah is a Scriptural decree" is intended to prevent just that.

According to this reading, "Scriptural decree" in *Hil. Teshuvah* 3.4 has a jurisprudential meaning. However, as in *Hil. Miqva'ot*, here too, both the language and the context indicate that Maimonides also ascribes it a theological meaning. The relation between the term *gezerat ha-katuv* and the rationale for shofar is also indicated by the fact that this term appears specifically in *Hil. Teshuvah*, corresponding to the rationale for the shofar, and not in *Hil. Shofar*, where Maimonides enumerates and elaborates the actual laws of the shofar, without mentioning their rationale. As we have seen, in *Hil. Teshuvah* the reason for blowing the shofar comes in the middle of a popular sermon, which presents a mythic picture of Heavenly providence, whose purpose is to motivate the (average) reader to repent. It would thus seem that the phrase, "even though the blowing of the shofar on Rosh Hashanah is a Scriptural decree..." is intended to create a certain distance between the practical performance of the commandment and the mythic picture within which it is embedded. This is a kind of rhetoric intended to qualify the reasoning given for the shofar, and thereby also to restrict the force of the sermon in *Hil. Teshuvah* ch. 3 as a whole. Maimonides hints to the average reader that, notwithstanding the details of the proceedings in the Heavenly court, the ways of Divine Providence are fundamentally a "Scriptural decree" unknown to human beings. As in the case of its counterpart in *Hil. Miqva'ot*, Maimonides seems to have felt that the allegorical reason for the commandment of shofar, and the myth within which it is embedded, are far reaching, to the point that it is proper to modify it somewhat by means of the theological meaning of the term "Scriptural decree."

3. “These Commandments [Sending Away the Mother Bird and the Like] are Scriptural Decrees and Not [Expressions of] Compassion”: Negative Theology and Contemplative Prayer

In *Hil. Tefillah* 9.7, Maimonides writes:

One who says in his petitionary prayers, “May He who shows mercy to the bird’s nest not to take the mother with its chicks or not to slaughter it [i.e., the mother animal] and its young on the same day, have mercy upon us,” and the like, is silenced, because these commandments are Scriptural decrees and are not [expressions of] compassion. For were they based upon compassion, the Torah would not allow us to slaughter [animals] at all.

The wording of this halakhah implies that the commandment of sending away the mother bird (Deut 22:6-7) and that against slaughtering an animal and its young on the same day (Lev 22:28), and other similar commandments, are Scriptural decrees, *gezerot ha-katuv*, without any rationale.⁷⁰ What sets these commandments apart from the other Scriptural decrees mentioned in the *Mishneh Torah*, and particularly from those in *Hil. Miqva’ot* and *Hil. Teshuvah* discussed earlier, is that Maimonides does not offer, either by implication or even with a certain reservation, any explanation or rationale for them. Moreover, he explicitly negates the “natural” reason that many people attribute to them.⁷¹

He wrote something similar in his youth, in his *Mishnah Commentary*. Commenting on the phrase in *m. Megillah* 4.7—“One who says... ‘Your compassion extends to the bird’s nest’... is silenced,” he states: “Because that which is said, ‘You shall not take the mother with its young’ is not because of pity from God, but rather is a Scriptural decree.”⁷² The wording he chooses for his commentary to the parallel in *m. Berakhot* 5.3 is slightly different:

70 Those commandments which are described as “and the like” refer, for example, to the law of improper slaughtering of animals, the prohibition against stabbing [as a method of slaughtering], and the prohibition against the limb of the living; see *Guide* 3.48 (ed. Schwartz, 635).

71 Compare Part II, section vi.5, in the discussion of *Hil. Eduf* 7.15.

72 Kapah ed., 238.

The matter of their saying, “Your mercies extend to the bird’s nest” is that he says: Just as you had mercy on the bird’s nest and said, “You shall not take the mother bird with its young,” so may You have mercy on us. One who says thus is to be silenced, because he says that the reason for this commandment is because of the Holy One blessed be He’s compassion on the bird, but it is not so. For if it were by way of compassion, he would not have permitted the slaughter of animals altogether, but rather it is a received commandment (*shim’it*) for which there is no rationale.”⁷³

In his *Mishnah Commentary*, the commandment of sending away the mother bird is described as *gezerat ha-katuv*, “a received commandment for which there is no rationale.” In *Hil. Tefillah* (the Laws of Prayer), he incorporates various phrases from his commentary on both of these *mishnayot*.

In *Hil. Tefillah* 9.7 (and in the *Mishnah Commentary*, at *Megillah* and *Berakhot*), the use of the phrase “Scriptural decree” is based upon a talmudic source. The amoraim R. Yossi bar Abin and R. Yosef bar Zevida disagree regarding the mishnaic phrase, “One who says ‘Your mercies extend to the bird’s nest’ is silenced.” “One says: Because he brings about jealousy among the works of Creation; and one says: Because he makes the qualities of the Holy One blessed be He compassion, and they are none other than decrees” (*b. Ber.* 33b). For the term *gezerot*, used by R. Yossi bar Zevida, Maimonides substitutes the phrase *gezerat ha-katuv*.⁷⁴ He applies this phrase to the prohibition against slaughtering a mother and its young on the same day, adding: “If it were because of compassion, He would not have permitted slaughter [of animals] at all.”

However, in *Guide of the Perplexed* 3.48, Maimonides suggests a reason for these commandments, of precisely the sort that he rejects in his *Mishnah Commentary* and in the *Mishneh Torah*:

73 Ibid., 42.

74 See *Kesef Mishneh* ad loc. Maimonides’ interpretation is not necessary. The opinion of R. Yossi bar Zevida may be interpreted in a number of ways. See, e.g., H. Albeck, ed., *Shishah Sidrei Mishnah* (Jerusalem-Tel Aviv: Devir, 1989), *Seder Qodashim, Tosafot ve-hashlamot*, 403–4, who thinks that his intention is that it is forbidden to make the rationales for the *mišvot* the main thing, as if one fulfills the *mišvot* because of their rationales, whereas in fact they are none other than decrees. Cf. Nahmanides’ commentary to Deut 22:6.

It is likewise forbidden to slaughter it and its young on the same day, this being a precautionary measure in order to avoid slaughtering the young animal in front of its mother. For in these cases animals feel very great pain, there being no difference regarding this pain between man and the other animals. For the love and tenderness of a mother for her child is not consequent upon reason, but upon the activity of the imaginative faculty, which is found in most animals just as it is found in man. This law applies in particular to ox and lamb, because these are the domestic animals that we are allowed to eat and that in most cases it is usual to eat; in their case, the mother can be differentiated from her young.

This is also the reason for the commandment to let [the mother] go from the nest. For in general the eggs over which the bird has sat and the young that need their mother are not fit to be eaten. If then the mother is let go and escapes of her own accord, she will not be pained by seeing that the young are taken away. In most cases this will lead to people leaving everything alone, for what may be taken is in most cases not fit to be eaten. If the Law takes into consideration these pains of the soul in the case of beast and birds, what will be the case with regard to individuals of the human species as a whole? You must not allege as an objection against me the dictum of [the Sages], may their memory be blessed: "He who says: Thy mercy extendeth to young birds," and so on. For this is one of the two opinions mentioned by us—I mean the opinion of those who think that there is no reason for the Law except only the will [of God]—but as for us, we follow only the second opinion.⁷⁵

The explanation offered here for the commandment of sending away the mother bird and for the prohibition of taking an animal and its young is the Torah's consideration of the pain of all living creatures.⁷⁶ Maimonides emphasizes that the feeling of (emotional) pain is not rooted in the intellect but rather in the imaginative faculty, which exists among animals and birds

75 Schwartz ed., 635–36; Pines, 599–600.

76 One must distinguish between this argument and Maimonides' approach that there is no individual providence regarding animals.

(as well as in humans). Regarding sending away the mother bird, he adds that because “in most cases” the chicks or the eggs are not fit to be eaten, the commandment to send away the mother bird will cause one to leave them alone and not send away the mother.

The two comments at the end of this passage, which are not essential for explaining the rationales of these commandments as such, suggest that the contradiction is deliberate. The comment that these commandments teach us (by means of a syllogism from minor to major) the tendency of the Torah to take account of the sufferings of “individuals of the human species as a whole,” is the exact opposite of what is written in *Hil. Tefillah*, which says that one who says this is to be silenced. Moreover, in *Guide* 3.49 Maimonides mentions, although not explicitly, the words of Rabbi Yossi bar Zevida in *Bavli Berakhot*, which he accepted in *Hil. Tefillah*, in order to state that they are based on an improper approach which holds that the commandments are based on the Divine will alone, in arbitrary fashion. That is to say they are decrees without any rationale, in direct contrast to the discussion in *The Guide*, which is based on the recognition that the commandments follow the Divine wisdom, the Divine intellect, and that all of them have known reasons.⁷⁷ This comment is particularly significant, for in the chapters dealing with the reasons for the commandments, he relates but little to talmudic sources. Maimonides’ declared purpose in these chapters is to provide rationales for the laws of the Torah, and not for talmudic halakhah.⁷⁸ Might there be some sort of hint here to the “superior” reader that, in terms of philosophical reflection, his words in the *Mishneh Torah* (and in the *Mishnah Commentary*) stating that these commandments are “Scriptural decrees without rationale” do not stand the test of close examination?

77 *Guide* 3.26; and see above, Chapter 2, a(1)-(2).

78 See, for example, *Guide* 3.41 (Schwartz ed., 578). On the significance of this declaration, see Y. Lorberbaum, “Maimonides on Aggadah, Halakhah and ‘Divine Law,’” *Diné Israel* 26–27 (2009–10): 258–64 (Hebrew). Regarding the matter of sending away the mother bird, Maimonides likewise deviates in the *Guide* from talmudic law. Whereas in the *Guide* sending away the mother bird is a conditional command, as the purpose of the Torah is to “bring about that he well leave everything,” according to talmudic halakhah (and in the *Mishneh Torah*), it is a “negative commandment attached to a positive one,” meaning “that one is required to perform the positive *mišvah* therein, and if he did not perform it he is subject to corporal punishment” (*Hil. Sheḥiṭah* 13.2). It is thus a “total imperative.”

The reason given by Maimonides in the *Guide of the Perplexed* for the commandments of sending away the mother bird and the like is almost self-evident, and is one that is suggested (with emphases on different details) by many commentators.⁷⁹ Indeed, these commandments do not fall under the rubric of *ḥuqqim*, but rather under that of *mishpatim*, the rational laws, whose reason is “revealed, and the benefits of whose performance in this world is known.” Both because of their “natural” reason, and his own principled position regarding the rationale for the commandments—which, as we said, he emphasizes again in 3.48—it is difficult to imagine that Maimonides thought the commandment of sending away the mother bird and other similar commandments were *gezerat ha-katuv* wholly lacking in reason.⁸⁰

As in *Hil. Miqva'ot* and *Hil. Teshuvah*, the solution to this contradiction is rooted in the rhetoric of the *Mishneh Torah*, and not between the lines of the *Guide of the Perplexed*. The relevant question is this: what purpose is served by the claim made in *Hil. Tefillah* that the command of sending away the mother bird (and suchlike commandments) “is not compassion” but rather a “Scriptural decree” in the theological sense?

The contradiction between *Hil. Tefillah* (and the *Mishnah Commentary*) and *Guide* 3.48 with regard to the commandment of sending away the mother bird (and other similar commandments) has been much discussed by exegetes and scholars. The solutions offered are all based on the assumption that in the *Mishneh Torah*, Maimonides wished to conceal the reasons for these commandments from the multitude.⁸¹ These solutions, none of which relate to the context in *Hil. Tefillah*, are unconvincing. Moses Narboni (d. ca. 1368) thinks that the *Guide* reflects Maimonides’ true opinion, and that therefore: “One who said in his petitionary prayers, ‘He who has compassion on the birds

79 See the interpretations of Ibn Ezra, Rashbam, and the extensive and well-known comments of Nahmanides on Deut 22:6–7 (where he summarizes Maimonides’ words in the *Guide*).

80 Regarding his rhetorical claim “for if it were because of compassion, he would not allow us to perform slaughter at all,” Maimonides implies an answer in chapter 48: “The commandment concerning the slaughter of animals is necessary. For the natural food of man consists... and of the flesh of animals... No physician is ignorant of this. Now since the necessity to have good food requires that animals be killed, the aim was to kill them in the easiest manner, and it was forbidden to torment them through killing them in a reprehensible manner ...” (Pines, 599; Schwartz ed., 635), and see Nahmanides, ad loc.

81 Compare Rappaport, “On the Reason,” 92, but cf. there, n. 51.

nest... is not silenced,'" without offering any explanation for Maimonides' position in *Mishneh Torah*. His argument, as we shall see below, is not necessary. Ya'akov Levinger thinks that the contradiction involving the sending away of the mother bird is one of several contradictions relating to the rationales for the commandments between the *Mishneh Torah* and the *Guide of the Perplexed*. Another contradiction, concerning the subject of the Nazirite, appears further along in Chapter 48. In Levinger's opinion, these contradictions are deliberate and are intended to hide from the masses the rationales of the commandments in general. From the final section of *Sefer ha-Miṣvot* Levinger concludes that, in Maimonides' view, knowledge of the rationales for the commandments is liable to detract from their observance among the multitude.⁸² It is difficult to accept this view since, in the *Mishneh Torah*, on more than one occasion, Maimonides provides reasons for many commandments in order to emphasize their importance.⁸³ Joseph Stern notes that in the *Guide* Maimonides explains the commandment of sending the mother bird away "as a precaution and as a means." In his opinion, these halakhic categories characterize, according to Maimonides, rabbinic "legislation." This view would hold that Maimonides attempts to hide from the multitude the fact that "already in the Torah there are such restrictions as those that were instituted by the Sages." Thus, his explanation of the commandment of sending away the mother bird creates "a difficulty in creating a clear demarcation between the Oral Torah and the Written Torah, notwithstanding Maimonides' wish to create a separation of this type." According to Stern, in order to defend the eternity of the Torah in the eyes of the multitude, "Maimonides sought to hide the rationale for the commandment of sending away the mother bird and referred to it with the term *gezerat ha-katuv*."⁸⁴ But even this rather serpentine and roundabout explanation (if I have understood it correctly) is not convincing. First of all, it is doubtful whether Maimonides describes the commandment of sending away the mother bird in the *Guide of the Perplexed* simply as a "fence" or

82 Y. Levinger, "Rationale for Naziritism," 299–305; idem, *Maimonides' Way of Halakhic Thinking* (Jerusalem: Magnes Press, 1965), 135–36 (Hebrew).

83 See above, Chapter 2.1.

84 Stern, "On Alleged Contradictions," 297–98. Unlike Levinger (and many others), Stern thinks that there is no "dualism" in Maimonides' writings but rather a "complementary relationship" (ibid., 285). But even his solution is based upon the distinction between an elite, who read the *Guide of the Perplexed*, which expresses Maimonides' "true" opinions, and the "multitude," addressed by the *Mishneh Torah*, in which Maimonides uses rhetoric for educational–political purposes.

precaution. Unlike the precautions and fences of the rabbis, which relate to the commandments of the Torah, these commandments contain both the “core” value and the precautionary restriction. Second, from whence does he know that, according to Maimonides, the distinction between the Written Torah and the Oral Torah is based upon this category? Moreover, his argument that, in Maimonides’ view, if the multitude were to know that the Torah contains commandments that are on the order of restrictions and fences its eternity would be damaged in their eyes has no basis, and is surprising in itself. Third, if Maimonides were to refrain in the *Mishneh Torah* from stating that the commandment of sending away the mother bird is a Scriptural edict without rationale, but were instead to say that it is based on “compassion,” how would this reveal the details of his “dangerous” interpretation of this commandment in the *Guide of the Perplexed*?

Here, too, the context is revealing and clarifies the true meaning. Reading halakhah §7 within the flow of Chapter 9 will bring us toward a solution.⁸⁵ First of all, it is important to note that the halakhic subject that engages the attention of the tanna in *Mishnah Berakhot*, as well as that of the amoraim in the *Bavli*—and in their wake Maimonides in *Hil. Tefillah* 9.7 (as well as in his *Mishnah Commentary*)—is not the commandment of sending away the mother bird per se, but rather “One who says in his petitionary prayers, ‘May He who had compassion on the bird’s nest...’” etc. In other words, the subject is, in fact, the act of saying that “because these commandments are Scriptural decrees and are not compassion...” Maimonides explains (in the wake of R. Yossi bar Zevida) why one “silences” someone who utters such a petition. In his explanation of this “narrow” halakhic and practical detail of prayer, Maimonides comments, almost as an aside and in the wake of the rabbis, on the “rationales” for this commandment. Moreover, the assertion that the commandment of sending away the mother bird or not slaughtering an animal and its young on the same day are “Scriptural decrees” and

85 This direction was followed by several traditional exegetes, albeit with different emphases and within a different conceptual framework. See *Tosafot Yom Tov* at *m. Ber.* 5.3, who comments on *Hil. Tefillah* (“And its reason [is given] specifically in relation to prayer... which is not the case in speaking by way of homily or simple meaning, and likewise in the Talmud...”); and cf. R. Eleazar Segal (ed. M. Brody, 1831) in his work *Yad la-Melekh* on *Mishneh Torah, Hil. Tefillah*, ad loc. (cited from the Bar-Ilan Responsa project).

“are not compassion” never appears anywhere in his comments on these commandments in themselves.⁸⁶

Chapter nine of *Hil. Tefillah* (Laws of Prayer) deals with the “order of public prayer”—that is, the manner in which the Prayer Leader stands within the congregation, the gestures and sections of prayer that are read, what he says and how they respond. Halakhot §§1-8 deal with the Morning Service (*Shaharit*):

In the morning all the people are seated, and the Leader (*Shaliah Shibbur*) goes down before the Reader’s Desk, and he stands in the midst of the people and begins [by] reciting *Qaddish*... [Thereafter] he says *Barekhu*... and goes over *Shema*... until he recites the blessing of *Ga’al Yisra’el* (“He who redeems Israel”). (§1)

This is followed by the silent reading of the *Amidah* (§2), the Reader’s Repetition (“to discharge the duty of those who have not prayed”) (§3), including *Qedushah*, *Modim*, and their laws, including, in the wake of the above-mentioned mishnah in *Berakhot*: “Whoever says *Modim*, *Modim* (“We thank you, we thank you”) is silenced” (§4).

And after he [i.e., the Leader] has completed the entire prayer, he sits, and falls on his face, and leans over somewhat, he and the entire congregation, and they recite petitions, and he falls, and sits, and lifts up his face, he and the rest of the people, and recites some petitions aloud while seated. (§5)

Upon the conclusion of these petitionary prayers, “The Prayer Leader alone [stands] and says *Qaddish* a second time... and he says ‘And He is merciful’ (*Ve-hu rahum*), etc., ‘A Psalm of David’ [Ps 145], etc., and he stands and they sit and they read with him... and he completes the *Qedushah*... and he

86 The commandment of sending away the mother bird is interpreted in Maimonides’ *Commentary on the Mishnah*, *Hullin*, ch. 12 and is also formulated in *Sefer ha-Miṣvot*, *Aseh* §148, and its laws are summarized in *Hil. Sheḥitah*, ch. 13. The prohibition of not slaughtering a mother animal and its child on the same day is interpreted in *Commentary on the Mishnah*, *Hullin*, ch. 5; is formulated in *Sefer ha-Miṣvot*, *Lav* §101; and its laws summarized in *Hil. Sheḥitah*, ch. 12. In all these sources there is no mention of the claim that these are “Scriptural decrees” and/or that “they are not compassion.” Simultaneously, Maimonides did not take the trouble in these halakhic chapters to explain their rationales, perhaps because they are self-evident.

recites the *Qedushah* again in Aramaic translation... so that the people might understand" (ibid.).⁸⁷ After the conclusion of the Order of *Qedushah*, "He [the Prayer Leader] recites words of petitions and verses of compassion," and again "recites *Qaddish*, and all the people answer in their way, and they leave" (§6). This is the order of Morning Prayer. Its sections are fixed and well formulated, with the exception of the petitionary sections. Within the rubric of the fixed prayer, the petitionary prayers (*tahanunim*) are a section of personal prayer in which the worshipper is given the opportunity for personal expression, to relate to his own needs and troubles. This is a unique section within all of the fixed prayers.

The sections of petitions within the statutory prayer (and the personal petitionary prayers, *tefillat nedavah* or "voluntary prayer") troubled the Sages. They felt that the personal prayers might detract from the dignity of the prayer, that they might reflect improper theological views or might include unsuitable requests, or generally "that they would make God a stepping board for their tongues."⁸⁸ This section of the prayer particularly troubled Maimonides. In §7, he protests against inappropriate petitionary prayers. In this, he went even further than the Talmud.⁸⁹ In *Hil. Tefillah* 3.7 he speaks not only of the commandment of sending away the mother bird but also of the prohibition of not slaughtering a mother and its young together (which is not mentioned in the talmudic sources), and all commandments "of like kind." If the commandments as a whole "are not compassion," what are they? It would appear that, according to this halakhah, there is some fault involved in calling upon God's compassion in prayer.

87 Regarding these chapters of prayer, see there.

88 Various kinds of inappropriate personal prayer are reflected in the different interpretations given by the amoraim to *m. Ber.* 5.3 ("He who says, 'To the bird's nest...'"). See *b. Ber.* 33b: "R. Yossi bar Abin and R. Yossi bar Zevida; one said: Because he causes jealousy among the works of creation; the other said: Because he makes the qualities of the Holy One blessed be He to be compassion, and they are none other than decrees." And cf. *y. Ber.* 5.3 (9c): "R. Yiṣṣḥaq in the name of R. Simon: As if he is protesting against the qualities of the Holy One blessed be He; Your mercies extend to the bird's nest, but to that person [i.e., the object of the prayer] they do not extend? R. Yossi in the name of R. Simon: As if he places a limit on the qualities of the Holy One blessed be He: Your mercies reach as far as the bird's nest [implying: and not further?]."

89 On the petitions as personal prayer in the talmudic sources, see Y. Heinemann, *Prayer in the Period of the Tanna'im and Amora'im* (Jerusalem: Magnes, 1964), 118 (Hebrew).

A similar tendency regarding prayer follows from the continuation of §7:

Similarly, he should not multiply the titles used to address God, saying “the Great, the Mighty, the Awesome, the Powerful, the Courageous, the Valiant God,” for it is beyond human capability to exhaust all of His praises. Rather, he should say that which Moses our Master, peace upon him, said [and no more].

This halakhah, which is based on a saying of Rabbi Ḥaninah in *b. Berakhot* (ibid.), rejects (“he is to be silenced”) the multiplicity of “titles” [of God] in prayer. These are to be limited to those terms which Moses used in the Torah. This halakhah is represented as the direct continuation of the prohibition against calling upon God’s compassion in the *tahanunim*. Maimonides follows in the wake of the *sugya* in *Berakhot*, which juxtaposes these halakhot with one another.

It would appear that in §7, Maimonides attempts to formulate a “lean,” contemplative form of prayer, suitable to an impersonal, abstract, transcendent conception of God. Such prayer is sparing in its use of terms of titles and adjectives describing God, and even more so in uttering petitions and requests.

In *Guide of the Perplexed* 1.59, in the framework of his discussion of the doctrine of negative attributes, Maimonides elaborates on the nature of the ideal prayer. The basis of this approach is the recognition that mortal man is unable to apprehend God:

... It is not possible, except through negation, to achieve an apprehension of that which is in our power to apprehend and that, on the other hand, negation does not give knowledge in any respect of the true reality of the thing with regard to which the particular matter in question has been negated. (Pines, 139)

Hence the “way of negation” is superfluous. Therefore,

The most apt phrase concerning this subject is the dictum occurring in the Psalms, “Silence is praise to Thee” [Ps 65:2], which interpreted signifies: silence with regard to You is praise... For of whatever we say intending to magnify and exalt, on the one hand we find that it can have some application to Him, may He be exalted, and on the other we perceive in it some deficiency. Accordingly, silence and limiting oneself to the apprehensions of the intellect are more appropriate—just as the perfect ones have enjoined when they said: “Commune

with your own heart upon your bed, and be still. *Selah*" (Ps 4:5). (Pines, 140)

These things lead in turn to a lengthy and dramatic discussion of the subject of prayer, whose focus is the above-mentioned talmudic source:

You also know their famous dictum—would that all dicta were like it.... They have said: Someone who came into the presence of Rabbi Hanina said [in prayer]: "God the Great, the Valiant, the Terrible, the Mighty, the Strong, the Tremendous, the Powerful. Thereupon he said to him: Have you finished all the praises of your Master? Even as regards the first three epithets [used by you] we could not have uttered them if Moses our Master had not pronounced them in the Law and if the men of the Great Synagogue had not [subsequently] come and established [their use] in prayer. And you come and say all this. What does this resemble? It is as if a mortal king who had millions of gold pieces were praised for possessing silver. Would this not be an offense to him?" [*b. Ber. 33b*] Here ends the dictum of this perfect one. (Pines, 140)

Maimonides goes on to elaborate:

Consider in the first place his reluctance and unwillingness to multiply the affirmative attributes. Consider also that he has stated clearly that if we were left only to our intellects we should never have mentioned these attributes or stated a thing appertaining to them. Yet the necessity to address men in such terms as would make him achieve some representation—in accordance with the dictum of the Sages: "The Torah speaks in the language of the sons of man"—obliged resort to predicating of God their own perfections when speaking to them. It must then be our purpose to draw a line at using these expressions and not to apply them to Him except only when reading the Torah. However, as the men of the Great Synagogue, who were prophets, appeared in their turn and inserted the mention of these attributes in the prayer, it is our purpose to pronounce only these attributes when saying our prayers. According to the spirit, this dictum makes it clear that, as it happened, two unnecessary obligations determined our naming these

attributes in our prayers: one of them is that they occur in the Torah, and the other is that the prophets in question used them in the prayer they composed. Accordingly, we should not have mentioned these attributes at all but for the first necessary obligation; and but for the second necessity, we should not have taken them out of their context and should not have had recourse to them in our prayers. As you continue to consider the attributes, it will become clear to you from this statement that we are not permitted in our prayers to use and to cite all the attributes ascribed to God in the books of the prophets. For [Rabbi Ḥanina] not only says: “If Moses our Master had not pronounced them, we could not have uttered them,” but poses a second condition: “And if the men of the Great Synagogue had not (subsequently) come and established [their use] in prayer”—whereupon we are permitted to use them in our prayers. (Pines, 140–41)

According to Maimonides, the highest kind of prayer is contemplative silence. This is what is required according to the intellect. Only because of the halakhic decree, which relies upon social-political “necessity” (i.e., the weakness of the “multitude”), does one recite in prayer (and in reading the Torah) three adjectives describing God. One draws a line at using these expressions—that is, one is to refrain in prayer (or in any other context) from using other attributes or “terms attributed to God in the words of the prophets.” Further on in this chapter, Maimonides sharply criticizes the liturgical poets, preachers and worshipers who make extended use of attributes and names of God:

Thus what we do is not like what is done by the truly ignorant who spoke at great length and spent great efforts on prayers that they composed and on sermons that they compiled and through which they, in their opinion, came nearer to God. In these prayers and sermons they predicate of God qualificative attributions that, if predicated of a human individual, would designate a deficiency in him. For they do not understand those sublime notions that are too strange for the intellects of the vulgar and accordingly took God, may He be magnified and glorified, for an object of study for their tongues; they predicated attributes of Him and addressed Him in all the terms that they

thought permitted and expatiated at such length in this way that in their thoughts they made him move on account of an affection. ... This kind of license is frequently taken by poets and preachers or such as think that what they speak is poetry, so that the utterances of some of them constitute an actual denial of faith, while other utterances contain such rubbish and such perverse imaginings as to make men laugh when they hear them, on account of the nature of these utterances, and to make them weep when they consider that these utterances are applied to God, may He be magnified and glorified... It also behooves you to consider and say that in view of the fact that speaking ill and defamation are acts of great disobedience, how much all the more so is the loosening of the tongue with regard to God, may He be exalted, and the predicating of Him qualificative attributions above which He is exalted. But I shall not say that this is an act of disobedience, but rather that it constitutes unintended obloquy and vituperation on the part of the multitude who listen to these utterances and on the part of the ignoramus who pronounces them. ... Accordingly, if you are one who has regard for the honor of his Creator, you ought not to listen in any way to these utterances, let alone give expression to them and still less make up others like them. ... and ought not to go beyond that which has been inserted in the prayers and benedictions by the men of the Great Synagogue. For this is sufficient from the point of view of necessity; in fact, as Rabbi Ḥanina said, it is amply sufficient.⁹⁰ (Pines 141–42)

Just as in the matter of belief in corporealization or anthropomorphism and the unity of God, Maimonides' position on the matter of prayer in the *Guide* is rooted in his philosophical positions. It is clear to him that his approach to the ideal prayer is opposed to the generally accepted viewpoint and practice. Moreover, his words concerning this matter imply a certain criticism even of halakhically established prayer. It is not for naught that Maimonides presents his view, even in the *Guide of the Perplexed*, as exegesis of Rabbi Ḥanina's statement in the Talmud, even noting that there are few

90 Cf. *Guide* 3.32: "... Your service shall be in thought alone, without any action at all" (Schwartz, 533).

similar to it.⁹¹ This approach, which he elaborates extensively and dramatically in *Guide* 1.49, is presented more briefly and in somewhat modified fashion in the *Mishneh Torah*. In *Hil. Tefillah* 9.7, Maimonides quotes one sentence from Rabbi Ḥanina's statement ("and they should not multiply adjectives"), explains it by alluding to the doctrine of negative attributes ("that a human being does not have the capability," etc.), and concludes by citing the source of the "decree" concerning the matter of prayer ("he only says that which Moses said"). Notwithstanding the deep connection between his negation of the folk belief in corporealization and his approach regarding contemplative prayer, in the *Mishneh Torah* his approach to the belief of corporealization differs from that which he applies to prayer. Whereas in the matter of portraying God ("faith"), his approach is "all or nothing," here, he describes prayer as a matter of different degrees. According to what he writes in *Hil. Teshuvah*, one who believes that "He is a body and has an image" is a "sectarian (*min*)."⁹² However, with regard to anthropomorphic language in prayer, in *Hil. Tefillah* Maimonides adheres to the traditional format and text of prayer. In a few halakhot, he merely objects to new petitions and "terms" for God.⁹³

- 91 On this comment see Y. Lorberbaum, "Incline Your Ear and Hearken to the Words of the Sages and Turn Your Heart to My Opinion": Critique of Aggadah in *Guide of the Perplexed*," *Tarbiz* 78 (2009): 203–30, at 205. The question as to whether or not Rav Ḥanina's statement is based upon the negative theology which Maimonides attributes to him is not our concern here. See *ibid.*, n. 9.
- 92 *Hil. Teshuvah* 3.7, and see the famous gloss of Rabad of Posquières, ad loc.
- 93 The most sublime prayer, according to Maimonides, is not verbal (halakhic) prayer but rather contemplative prayer. However, as Yaakov [Gerald] Blidstein commented, one is not speaking here of negation, but of levels. According to Maimonides, even the person who has attained the level of contemplative prayer is obligated to engage in verbal-institutional prayer. See Blidstein, *Prayer in Maimonides' Halakhic Teaching* (Jerusalem: Mosad Bialik, 1994), 14–15 (Hebrew). At the same time, within verbal-halakhic prayer, according to Maimonides, there is extensive room for [personal] requests and praise. See, e.g., his *Mishnah Commentary at m. Ber. 4.2* ("Every request is called prayer"). He begins *Hil. Tefillah* (1.2–3) with the statement: "The obligation of this *mišvah* is thus: that a person should petition and pray every day, and relate the praise of the Holy One blessed be He, and thereafter he should request his needs through beseeching and supplication... If he is accustomed to doing so he should multiply his petitions and requests." Blidstein comments that, despite the emphasis in normative prayer on the element of petition and request of one's needs (as also in *Hil. Tefillah* in *Mishneh Torah*), Maimonides thinks that praise is preferable, as it is "more suitable to the superior status of contemplative prayer, which by its very nature is close to

The beginning of this move is in §3, where Maimonides, in the wake of the Talmud, silences those who ask for compassion in the *taḥanunim*. The names of God used in these prayers injure God's honor no less than do those terms used to praise Him. Both are likely to be "absolute heresy" or "foolishness and spoiled imagination." However, in the *Mishneh Torah*, Maimonides is unable to articulate his approach regarding prayer as contemplative silence and his critique of the wide-spread practices of prayer that implies certain reservations regarding the established form of prayer. In order to advance this approach in *Hil. Tefillah*, he adopts the view of Rabbi Yossi bar Zevida in *Bavli Berakhot* (against that of R. Yossi bar Abin), which he reformulates as a "Scriptural decree" without any rationale. "Scriptural decree" in the theological sense is a useful form of rhetoric by which to indicate the sublimity and loftiness of God against the lowliness of man. Following from the above analysis, the term *gezerat ha-katuv* without rationale was a popular metaphor used by Maimonides for negative theology. This term is the parallel, in the realm of commandments and halakhah, that is, in the realm of popular worship, to the philosophical approach regarding the impossibility of apprehending the power and majesty of God. The same reasons for which "Scriptural edict" in the theological sense is a conceptually meaningless idiom are those which make it a successful form of rhetoric by which to draw verbal-halakhic prayer in the direction of the contemplative prayer. *Gezerat ha-katuv*, the notion of Scriptural decree without rationale, is thus a tool used by Maimonides to purify traditional-institutionalized prayer of those petitions and names of God which are defective (or at least some of them), in one way or another, and to bring this form of prayer closer to the "ideal prayer," in which man stands in silence before the sublime and hidden God. As opposed to the exegetical and research approaches discussed above, the contradictions related to the sending away of the mother bird and similar commandments have nothing to do with Maimonides' desire to conceal their reason. There is nothing here to conceal. Contradiction is simply the "price" which he must pay in order to advocate, in the *Mishneh Torah*, prayer without euphemisms or "titles" for God.

praise" (ibid., 29). Concerning this matter see also E. Benor, *Worship of the Heart: A Study of Maimonides' Philosophy of Religion* (Albany: SUNY Press, 1995).

VIII. Conclusion

All three appearances of the term “Scriptural decree” in the *Mishneh Torah*, which we have discussed in this section, have a theological meaning. Namely, in all of three cases, the term refers to a halakhah or commandment that has no rationale. As we have said, its appearance in the meta-halakhic passage in *Hil. Miqva’ot* 11.12 stands out in particular, but its appearances in *Hil. Teshuvah* 3.7 and in *Hil. Tefillah* 9.7 likewise bear an emphatically theological meaning.

As in most appearances of the term “Scriptural edict” in the jurisprudential sense, so too its appearances in the theological sense are also original to Maimonides. Not a single one of these halakhot is presented in the Talmud as a “Scriptural edict” lacking in rationale. Moreover, just as the reasons presented by Maimonides for *gezerat ha-katuw* in the jurisprudential sense are new, so too are those “allusions” which he gives for these *halakhot* which are *gezerat ha-katuw* in the theological sense. Such is the case regarding the allegorical reason he offers for matters of purity and impurity. Such is the case for the reason he gives for blowing the shofar on Rosh Hashanah (which admittedly does have a certain midrashic source). And such is also the case regarding the manner in which he explains the rationale for silencing one who says in his petitionary prayers “Your compassion extends to the bird’s nest.” While it is true that Maimonides does rely on a talmudic source (the view of R. Yossi bar Zevida), he lends it an interpretation that goes far beyond its original meaning.

In the above discussion, I have attempted to demonstrate that in all these halakhot the term “Scriptural edict” is a rhetorical device. The concluding halakhah of *Hil. Miqva’ot* (and of *Sefer Taharah*) is among the rare meta-halakhic passages in the *Mishneh Torah*, in which Maimonides formulates, using solemn and elevated language, a philosophical approach to a major and central halakhic institution. “Scriptural edict” serves as a key term in this halakhah, which also relates, as will be remembered, to the “folk” meaning of the term *hoq*. This language is intended to free the subject of purity and impurity from its “physical”-magical understanding, and to facilitate an allegorical interpretation of its laws. In *Hil. Teshuvah*, the term “Scriptural edict” is intended to moderate the picture of the “Heavenly procedures” which Maimonides depicts in order to motivate people to repentance, whereas in *Hil. Tefillah* it serves as a kind of “popular” metaphor for the hiddenness of

the Divinity, in order to bring verbal–institutionalized prayer closer in line with contemplative prayer.

These halakhot, when read in an innocent fashion, are the most explicit and earliest expression of the theological meaning of the term *gezerat ha-katuv*.⁹⁴ To the best of my knowledge, nowhere in the talmudic or Geonic literature is there such a clear and dramatic formulation of the notion of “Scriptural edict” as a halakhah without any (known) reason or rationale.⁹⁵ It would appear that the theological meaning given to the term “Scriptural edict” in these laws, particularly where it appears at the end of *Hil. Miqva’ot*, established the meaning of this term among the classical commentators on Maimonides and among many of the halakhic authorities in subsequent generations. Moreover, it would appear that the impression left by these halakhot in the *Mishneh Torah* on the “learned,” and on halakhic discourse from the end of the Middle Ages onward, contributed to obscuring its original jurisprudential meaning, to the point of its being forgotten.⁹⁶

94 As will be remembered, also in *Guide* 3.31 (and in the *Epistle to the Sages of Provence*), Maimonides ascribed a theological meaning to “Scriptural decree.” However, for a critique thereof and to note that this view is without basis, see above, Chapter 2 (b).

95 The formulation in *Hil. Miqva’ot* 11.12, is explicit, clear, and dramatic far beyond that which is found in the *beraita* in Sanhedrin regarding the matter of “the [rebellious] son, and not the daughter,” discussed above, Chapter 3.6.

96 According to the traditional interpretation of the term *gezerat ha-katuv*, as interpreted and implied by the traditional Maimonidean commentators, almost all of its appearances in the *Yad* and in other writings always carry a theological meaning. According to this approach, Maimonides thinks that those *halakhot* which are “Scriptural decrees” are beyond human understanding. The “allusions” and reasons which he proposes for them in the *Mishneh Torah* are only within the framework of his advice at the end of *Hil. Me’ilah*: “It is fitting that a person contemplate the laws of the Torah and know their final ends *in accord with his ability*” (8.8). In point of fact, these homilies are no more than “non-obligatory homilies,” a kind of “*aggadot* for the moment.” This interpretation gives an “innocent” reading of the halakhot discussed in this section, particularly the final halakhah in *Hil. Miqva’ot*; it either ignores the *Guide of the Perplexed* or derives from the view that this philosophic work does not reflect Maimonides’ true position and is merely an answer to the confused “heretics” or even for the “masses”! In any event, according to this approach the *Guide* is of secondary importance to his “binding” halakhic writings, and particularly to the *Mishneh Torah*. This view regarding the rationales for the mitzvot in the *Guide* was summarized by R. Yom Tov Ashbili (Riṭb”a) in his words in defense of Maimonides: “And it is my opinion that the Teacher, the *Moreh*, of blessed

There is a certain irony in the fact that these halakhot, written by the greatest of the rationalists in Jewish tradition, who never tired of preaching the rationality of the commandments and the importance of reflecting upon their reasons, contributed not only to the misunderstanding of the use of the term *gezerat ha-katuv* in the *Mishneh Torah*, and evidently also in talmudic literature,⁹⁷ but also strengthened the view that the halakhah is fundamentally a system of laws whose reasons are hidden and “transcendent.” But from the socio-political viewpoint of Maimonides, who in fact portrayed such a viewpoint as a “sickness of the soul,” there is no irony in this whatsoever.

memory, in this reason (i.e., regarding the sacrifices—YL) and in many other reasons which he wrote for the *mišvot*, was not because he believes that this is the primary reason for these *mišvot*, but rather that he wished to give them some sort of rationale, so that even the multitude would know how to answer regarding them to the heretic in a somewhat intellectual fashion.”—R. Yom Tov Ashbili (Riṭb”a), *Sefer ha-Zikkaron*, ed. Kalman Kahane (Jerusalem: Mosad Ha-Rav Kook 1983), 74. The *apiqoris* (heretic) here also refers to skepticism regarding the *mišvot*, which may be found in the heart of the average Jew. Further on, Ashbili testifies that (according to Maimonides), “the reason for the sacrifices is very, very deep, who can fathom it” (ibid.). On the widespread nature of this view regarding Maimonides’ rationales for the commandments in the *Guide* among rabbinic circles through modern times, see the words of the editor, ibid., 18–24 and n. 5. Ashbili’s words contradict Maimonides’ intention, if only because it is impossible that the *Guide of the Perplexed* was intended to provide the “masses” with answers to the arguments of the heretics. For a more moderate formulation of this interpretation, see Henshke, “On the Question of the Unity,” 43 n. 23. In a similar direction see also S. Ettinger, *Evidence in Hebrew Law* (Jerusalem: Hebrew University and Nevo Press, 2011), 153–58 (Hebrew).

97 The impression made by these halakhot also “contributed” to the failure to understand the appearances of the term *gezerat ha-melekh* (“royal decree”) and *gezerat ha-katuv* in talmudic literature. See, for example, s.v. *gezerat ha-katuv* in the *Encyclopaedia Talmudica*; and cf. Part I; Y. Lorberbaum, “*Gezerat Melekh* (Decree of King) and *Gezerat Ha-Katuv* (Decree of Scripture) in Talmudic Literature,” *Tarbiz* 82 (2014): 5–42 (Hebrew).