LEHRHAUS
Over Shabbat
Bamidbar

Vol. 7, Issue 31 • 28 Iyar 5783 / May 19, 2023

Mi-Simhah Le-Yagon, Mi-Yom Tov Le-Eivel: The Changing Meaning of *Sefirat Ha-Omer*

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Introduction

The period of *Sefirat Ha-omer* is often thought of as one full of limitations and prohibitions. Beyond *Shulhan Arukh's* restrictions of refraining from weddings and haircuts,[1] contemporary guides to the *halakhot* of *Sefirah* include advice such as: "It is also customary to minimize joyous activities, which include dancing, playing musical instruments, or listening to music."[2] Given this mainstream custom and perspective, it is unsurprising that *Sefirah* is often thought of as one of the saddest and most restrictive periods on the Jewish calendar, surpassed only by the Three Weeks and Tishah be-Av.

But given the heavy significance to the period, it is surprising that, unlike the mourning before Tishah be-Av, there is no obvious root for our mourning or sadness during *Sefirah* in the Talmud.[3] If this custom isn't talmudic, where does it come from?

The Rebbe Akiva Story: Communal Mourning

In fact, the most popular explanation for the origin of this custom does find its roots in the Talmud. *Yevamot* 62b records:

> They said by way of example that Rabbi Akiva had 12,000 pairs of students in an area of land that stretched from Gevat to Antipatris in Judea, and they all died in one period of time, because they did not treat each other with respect… With regard to the 12,000 pairs of Rabbi Akiva's students, the Gemara adds: It is taught that all of them died in the period from Passover until Shavuot.[4]

The talmudic account of the death of R. Akiva's

[1] *Shulhan Arukh, Orah Hayim* 493:1-2.

[2] https://oukosher.org/halacha-yomis/basic-customary-restrictions-sefira-period/

[3] See *Taanit* 29b.

[4] Translation courtesy of Sefaria.

students does in fact mention the auspicious period between Pesach and Shavuot as the time period when the tragedy took place. However, not in *Yevamot*, nor anywhere else across ancient rabbinic sources, is there any mention of mourning or any restrictions during the period between Pesach and Shavuot.

Indeed, the earliest recorded mention of a custom of mourning during this period is from the time of the Ge'onim, hundreds of years after the story of R. Akiva's students was first recorded. Rav Natronai Ga'on was asked the following question:

> And regarding your question, why don't we betroth or marry between Pesach and Atzeret (Shavuot) – is it because of an actual prohibition or not?[5]

It is important to note just how strange the content of this question is, as far as responsa regularly go. The questioner is not asking if they are permitted or prohibited to perform a certain act. Rather, they are observing that there is already a pre-existing custom – not to get married between Pesach and Shavuot – and the questioner is merely asking about the origin, and thereby the authority, of the custom. Neither the question nor the answer seems to be concerned with changing or dictating a practice as much as it is concerned with explaining an already occurring practice.

R. Natronai Ga'on answers:

> You should know that this does not stem from a prohibition but from a mourning custom, for so said our Sages: "Rabbi Akiva had 12,000 pairs of disciples, and they all died between Pesach and Atzeret because they didn't treat each other with respect," and they further taught "and they all died a cruel death from diphtheria" (*Yevamot* 62b). And from that time forward the Rishonim (early sages) had the custom not to marry on these days…

It may seem like R. Natronai Ga'on's answer settles the matter and ends the mystery of our *Sefirah* practice's origins, as the Ga'on invokes the story of R. Akiva's students. Thus, R. Natronai – our earliest source of the practice of not getting married during *Sefirah* – is also our source of this practice being related to mourning the death of R. Akiva's students. Yet, while that may be the case, as we will soon see, this early explanation was hardly considered definitive by later rabbinic authorities, in part because it is not stated anywhere in rabbinic literature. In fact, many other rabbinic explanations were given across the centuries following R.

[5] *Otzar HaGe'onim*, *Yevamo*t, 141. Trans. by David Golinkin. I owe much credit to Rabbi Golinkin and his article for laying out many of the sources in this article so clearly. My analysis of these sources and novel conclusion would have been impossible without first reading his article.

Natronai, indicating that the matter of *Sefirah*'s origins was considered far from settled.

Other Reasons to Mourn

While later authorities all seem to echo R. Natronai Ga'on's sentiment that the restrictions around *Sefirah* are expressions of mourning or sobriety, they offer numerous creative reasons for the season of solemnity.

For example, Abudraham, in the 14th century, gives us an explanation for our *Sefirah* practice that appeals to the biblical depiction of *Sefirah*, and thus would pre-date even R. Akiva and his students. Biblically,[6] *Sefirat Ha-omer* is tied to the harvest season, as the grain harvest kicks off with the barley harvest on Pesach and concludes with the wheat harvest as well as the offering of *bikkurim,* first fruits, on Shavuot.

Given the economic significance of this period, as the harvest was effectively the main source of wealth collection for a primarily agrarian society, Abudraham explains that the customs of *Sefirah* developed to respect the seriousness of the season. Since people were stressed about their forthcoming grain-based paychecks, we limit our displays of frivolity and public celebration.[7]

As proof, Abudraham references the Mishnah in *Rosh Ha-Shanah* which says:

> At four times of the year the world is judged: On Passover, judgment is passed concerning grain; on Shavuot, concerning fruits that grow on a tree…[8]

As the Mishnah indicates, this is a serious moment of economic judgment, comparable to Rosh Ha-Shanah and the High Holiday season. Thus, we can understand how the practice could develop to respect that seriousness with reduced frivolity. That said, within Abudraham's answer, it is curious that these practices of limiting public happiness would only develop during the season of Pesach to Shavuot, and not be paralleled in the public customs relating to the High Holidays.

While Abudraham may present one of the most grounded explanations for our solemnity during this period, a century earlier, Tzidkiyah Ha-Rofei, in his *Shibolei Ha-Leket*, presents one of the strangest explanations in our tradition. He writes, in the name of his brother Binyamin, referencing *Seder Olam Rabbah*:

> Rabbi Akiva says there that the sentence of the wicked in Gehinnom (Hell) is twelve months, but Rabbi Yohanan ben Nuri says that the sentence of the wicked in Gehinnom is from Pesach until Atzeret. Therefore, we mourn during

[6] Leviticus 23:15-16

[7] Abudraham, *Tefillot HaPesah* (Jerusalem, 1959), p. 241.

[8] *Rosh Ha-Shanah* 1:2. Trans. courtesy of Sefaria.

> *Sefirah*, between Pesach and Shavuot, for the wicked who are suffering in Gehinnom.[9]

In other words, *Shibolei Ha-Leket* links the practice of refraining from marriage during *Sefirah* to a rabbinic position that states that the period between Pesach and Shavuot is when the damned are forced to suffer in Hell. Out of respect for their suffering, we limit our happiness.

While this explanation is already strange enough in its own right, it becomes even less convincing when considered in the broader context. As the *Shibolei Ha-Leket* was living in 13th century Rome, he was surely exposed to the Roman, and later Catholic, tradition of Lemuralia. The rites of Lemuralia took place during the month following Easter, and were meant to excise tortured souls who escaped Hell to wander the earth. Out of respect and fear for these suffering souls from Hell, the practice developed to not get married during the month following Easter, leading to superstitious, and later, religious guidance against marrying in May or during Lent.[10] Given this context, the *Shibolei Ha-Leket*'s unusual explanation for our communal attitude of solemnity may reflect some of the popular practices and attitudes of his time, albeit while tying them to rabbinic sources.

Whether biblical or mystical, what we are left with is an open question as to the origin of our *Sefirah* practice. We see that there are a number of reasons given for our sadness, ranging from mourning to seasonal stressors. But why is this such an unlegislated question? How could it be that the reason for *Sefirah* observances was left unsettled by tradition, while the practice itself proliferated? And why has R. Natronai's explanation about the death of R. Akiva's students been so universally accepted as the explanation for this custom?

The Historical Role of Mourning

With regard to the latter question, I think it is obvious why the story of R. Akiva's students' death has retained more relevance than any of the other explanations we've seen so far. While we may no longer feel the financial stress of the harvest season, and we may not be surrounded by a Roman Catholic society that swears off May marriage, Jews across the ages continue to experience and re-live communal loss and mourning.

The continuing Jewish experience of communal suffering and tragedy during the Spring and Summer months gave the *Sefirah* period a particularly logical quality as a time for communal mourning. Tur records this continually evolving meaning of the *Sefirah* mourning practice as practical *halakhah*:

> There is what to say that, while the primary custom is to stop mourning after Lag Ba-Omer, as that is when the students of R. Akiva stopped dying, nonetheless we continue to

[9] *Shibolei Ha-Leket*, Seder Pesah 235. Trans. courtesy of Golinkin, *ibid*.

[10] Golinkin, *ibid*.

> practice partial mourning, because of the German Crusades of 1096 that took place between Pesach and Shavuot, as is explicated in the liturgy.[11]

Similarly, later generations continued to add their own tragedies to the list of reasons to mourn during *Sefirah*, as tragedies from the Spanish Inquisition, to the Chmelnitsky Massacres, to the Holocaust, continued to befall the Jewish people.

Yet, while all of this may explain the contemporary popularity and resonance of the death of R. Akiva's students as a reason to mourn, it continues to leave unaddressed the historical origin of these practices. As we noted from the unusual question posed to R. Natronai, it seems that the practice existed for longer than the Jewish community had a settled reason for doing so. But how could that be? How could we lose the reason for a practice within the tradition? And what was the original tradition?

The Original Tradition: Hol Ha-Mo'eid

Throughout this article, we have been careful to distinguish between the custom to refrain from getting married and cutting one's hair, and the generalized collection of customs implied by Jewish mourning practices. As we noted, the earliest source of communal restriction during *Sefirah* – the letter of R. Natronai – merely asks why we refrain from getting married during this period, but does not mention a prevailing custom of mourning or sadness. Similarly, *Shulhan Arukh* codifies the core, and seemingly earliest, practices of *Sefirah* as being a restriction against getting married and getting a haircut, but not as being a generalized custom to mourn.

This distinction becomes even clearer when one looks at *Shulhan Arukh*. There, in addition to refraining from marriage and haircuts, *Shulhan Arukh* adds one more element as part of the core *Sefirah* tradition, when he writes that "women have the custom not to do work[12] from Pesach until Shavuot, from sunset onwards."[13] While *Shulhan Arukh* limits this custom of curtailing work during *Sefirah* to women, the earlier source he is drawing from is actually more broad. In the early 14th century, Rabbeinu Yeruham writes that there is a general custom to not work after sunset, without specifying that this custom is limited to women.[14]

Whether it applies only to women or everyone, this element of the *Sefirah* practice seems out of sync with the idea of mourning. We don't prohibit a mourner from doing work once the initial *shivah* period is over. And it is hard to argue that our mourning during *Sefirah* should be modeled after *shivah*, given the many other differences between

[11] *Tur*, Orah Hayim 493.

[12] Throughout this article, we will use "work" to refer to the halakhic concept of *melachah*, skilled labor that is prohibited on Shabbat and Yom Tov.

[13] *Shulhan Arukh*, Orah Hayim 493:4. Trans. by Sefaria.

[14] Rabbeinu Yeruham, *Toldot Adam Ve-Chavah* 5:4.

the intensity of *shivah* practices and the generally accepted *Sefirah practices*. So why should *Sefirah* necessitate a reduction of any sort of work? Rabbeinu Yeruham tries to address that oddity, and explains:

> There's a *minhag* not to do work after sunset during *Sefirah*. And this custom is because the students of R. Akiva died of diptheria between Pesach and Shavuot because they did not respect each other; they buried [the deceased] after sunset, and the nation did not work.[15]

While this explanation is certainly creative – and illustrates Rabbeinu Yeruham's attempt to fit all of these practices into the box of "mourning" – it hardly seems the most intuitive or compelling, and it is far from widely sourced or cited as an explanation for the custom.

But what if, instead of trying to force this custom of limiting our work into the halakhic box of "mourning practices," its lack of conformity forces us to rethink the model of mourning itself. While a prohibition against work seems surprisingly out of place for the *halakhot* of mourning, there is in fact another area of *halakhah* where it is much more common: the laws of holidays.

Ramban, commenting on the Torah's description of the *Sefirat Ha-omer* period, writes:

> And on Pesach, it is commanded to have seven days with a holy day before and after it... and you count from it 49 days, seven weeks, as per the way of the world, and the 50th day is holy like the eighth day of a festival. And those 49 days in between are like Hol Ha-mo'eid between the first and last days of the holiday... Therefore, our rabbis called Shavuot "Atzeret," for it is like an eighth -day festival which the Torah calls Atzeret.[16]

According to Ramban, far from establishing the days of *Sefirah* as tragic days of national mourning, *Sefirah* was originally considered a joyous period for the Jewish people. As we mentioned above, the grain harvest was bookended by the holidays of Pesach and Shavuot. Based on this, Ramban suggests that this entire season was one of celebration of the harvest, beginning with Pesach and ending with Shavuot, with the days of *Sefirah* in between being like days of Hol Ha-mo'eid for the extended harvest holiday.

Ramban suggests an understanding of *Sefirat Ha-omer* that is rooted in the Jewish people's agrarian roots and Temple-based service, and, as such, may seem foreign or counterintuitive to us today.

[15] *Ibid.*

[16] *Ramban Al Ha-Torah*, VaYikra 23:15-16. Trans. my own.

Materially, the harvest season was one of the most important of the year, as we noted above in Abudraham's explanation of the high-stress nature of this time period. While it may have been true that it was stressful, Ramban suggests that it was also celebratory and joyous, as people finally were able to enjoy the fruits of their work.

This perspective on *Sefirah* as a period of celebration and joy over the harvest – like days of Hol Ha-mo'eid – fits better as a model to explain the prevailing *Sefirah* customs codified in *halakhah*.[17] We mentioned that the earliest and most consistent practice of *Sefirah* is that of refraining from hosting weddings during this period. In fact, a restriction against weddings is also characteristic of the celebration of Hol Ha-mo'eid. The Mishnah (*Mo'eid Katan* 8a) records, "One may not marry a woman on the intermediate days of a festival."[18] While the exact reason for the restriction is debated in the Gemara, everyone agrees that it is inappropriate to get married on Hol Ha-mo'eid. Similarly, *Mo'eid Katan* 13b tells us that one should not get a haircut on Hol Ha-mo'eid – another one of the *Sefirah* restrictions mentioned early on and codified by *Shulhan Arukh*.

Finally, and perhaps most obviously, *Sefirah* being a period akin to Hol Ha-mo'eid serves as a much better explanation for the practice first mentioned by Rabbeinu Yeruham, and codified by *Shulhan Arukh*, of reducing our work during this period. It goes without saying that there are various restrictions on one's ability to do work on Hol Ha-mo'eid, as much of *Mo'eid Katan* is dedicated to said restrictions, and *Hagigah* 18a seems to indicate a possibility that work might even be forbidden *mi-de'oraita* during Hol Ha-mo'eid. In fact, this explanation is so compelling that Rav Yaakov Emden explains *Shulhan Arukh*'s prohibition of work as being based on the original roots of *Sefirah* as a Hol Ha-mo'eid, even while he still sees the rest of the *Sefirah* practices as being about mourning.[19]

Thus, instead of struggling to understand how these customs can be a part of mourning R. Akiva's students, we can perfectly explain this set of practices as a natural extension of an ancient custom of observing *Sefirah* as a joyous period of Hol Ha-mo'eid, as indicated by Ramban.

What Happened?

That being the case, we can also perhaps address our initial observation about the peculiarity of the question posed to R. Natronai Ga'on. While it seems strange for a practice to persist without a reason, and for a traditional explanation of communal

[17] For a contemporary rabbi with similar halakhic conclusions, see Rabbi Yitzchak Twersky, https://realtorah.com/podcast/sefirah/

[18] Trans. courtesy of Sefaria.

[19] *Mor U-Ketzi'a*, Orah Hayim 493:4. R' Emden also offers an explanation as to why this original prohibition of work – one which should have included even work done during the day – would be limited to either nighttime or to a prohibition exclusively for women. R' Emden posits that since the very celebratory nature of the season was due to the harvest, it would have been particularly self-defeating to limit people's ability to do work and harvest their crops, so instead, the prohibition against work was limited to the night, when people were not harvesting their crops.

custom to be lost, we can now begin to understand it better. The custom was a natural outgrowth of the joy felt around the harvest season and the associated Temple rituals. But as the Jewish people were exiled, and they lost both their farmland and their Temple, the natural feeling of excitement for the harvest stopped being relevant, and the original cause for celebration was lost. By the time of the Ge'onim, people were left wondering why we even had these practices in the first place.

Thus, both ironically and fittingly, without the Temple, the practice of observing *Sefirat Ha-omer* as a minor holiday – a Hol Ha-mo'eid for the joy the Jewish people felt during the harvest – was flipped into a custom of mourning for a period of loss. The original joy no longer resonated or made sense, and while it may not have been intentional, the tragedy of that loss organically produced a sense of mourning that was all too fitting for the experience of Jews across history.

If what I'm suggesting is true, it may not be surprising that the Talmud Bavli, a product of the Jewish people's exile, would not be familiar with this celebratory harvest custom, and thus, left out this tradition altogether. That said, while the Bavli is silent on the topic, the Yerushalmi – with its closer connection to the agrarian traditions surrounding the land of Israel – may, indeed, have a glimpse of this original ancient custom preserved in it.

In the fourth chapter of *Pesahim*, the Mishnah records that some places had a custom not to do work on Erev Pesach. Commenting on that custom, the Yerushalmi explains that the reason for it was that, in the time of the Temple, when the Pesach sacrifice was still offered, there was a prohibition against doing work on that day. And not only the one bringing the offering, but all involved in the process were prohibited from doing work, as an agent and partner in the sacrifice. The Gemara then goes on to explain that not only did that apply to the *korban* Pesach, but it applied to anyone involved in bringing any offering to the Temple. As proof, it quotes a statement that even someone donating wood to be burnt on the *mizbei'ah* is prohibited from fasting and working, as it is a holiday for them.

Immediately after establishing this principle that days on which one is involved in Temple offerings are considered personal minor holidays with a prohibition of work, the Gemara continues:

> Rabbi Jonah said, "These daily sacrifices are the offerings of all of Israel. Could all of Israel ascend to Jerusalem? Is it not written, '*Three times a year all your males shall be seen*?' If all of Israel would sit there and do nothing, is it not written, '*You shall harvest your grain*?' Who would harvest their grain? But the early prophets instituted 24 watches; from each watch there were [*Kohanim*, Levites, and Israelites] present in Jerusalem… – the

> *Kohanim* for service, the Levites for the podium, and the Israelites as proof that they were the agents for all of Israel.[20]

The Yerushalmi immediately transitions into a statement by R. Yonah about all of the Jewish people participating in the harvesting of the grain that was brought as part of the *omer* process. The Gemara emphasizes that there were twenty-four watches and 24,000 people, and that all of the Jewish people, *Kohanim*, *Levi'im*, and *Yisraelim*, were represented and participatory in the process of harvesting and preparing the grain for the *omer* offering. In other words, immediately after establishing the rule that anyone involved in a Temple offering is considered to have a personal holiday and is prohibited from doing work on that day, the Yerushalmi teaches that all of the Jewish people were considered to be involved in the preparation of the grain offerings, and emphasizes that they all had a role in its harvest.

Interestingly, the Gemara emphasizes that this body of harvesters that represented the Jewish people was made up of 24,000 Jews – an auspicious number when one remembers that the Gemara in *Yevamot* tells us that R. Akiva lost 24,000 students during the period of *Sefirah*. One is left wondering if maybe the original *gemara* about R. Akiva's students is itself referencing the loss of the *omer*-harvesting process.

Either way, though, we are left with not just a historical explanation for the shift in *Sefirah* observance from holidays to days of mourning, but a halakhic one. The initial sense of celebration and Hol Ha-mo'eid, as Ramban spells out historically, and as the Yerushalmi in *Pesahim* describes halakhically, stemmed from the Jewish people's participation in the harvest and the associated harvest sacrifices. Without the Temple and a harvest rite, the original celebration of the harvest was no longer relevant, and the Hol Ha-mo'eid status of *Sefirah* as a minor holiday had fallen away to the sands of time.

Conclusion

What we are left with is a complicated *Sefirah* tradition, giving us reason to both celebrate and mourn, as we remember the breadth of experience and day-to-day life the tradition is designed to encapsulate, and as we additionally mourn the pieces of tradition that we have lost to the tragedies of Jewish history. But while the original Temple service surrounding the harvest, and the halakhic justification for the initial customs of *Sefirah,* may no longer be relevant, and the associated celebration and excitement surrounding the harvest and its sacrifices may no longer be a part of our lived Jewish experience, we would be remiss if we were to wholly give up this original tradition.

The religious experience that Ramban describes surrounding the harvest was an opportunity for the Jewish people to directly tie the most materially important parts of their year, and the most personally accomplished feats of their labor, to gratitude to God. Requiring the joy of the harvest to be translated into a harvest ritual would be like

[20] Yerushalmi *Pesahim* 4:1, trans. Sefaria.

requiring every paycheck and tax filing to begin with a recognition of God's role in our lives. While the material circumstances have left us Temple-less, and while working corporatized office jobs may be out of our hands, all of us should capitalize on the opportunity with which *Sefirat Ha-omer* presents us, to reflect upon our financial fortunes, and the role God plays, even in our feelings of accomplishment and pride over our own material successes.

A Call for Order: Maimonides and the Mishnah

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With *Daf Yomi* having started *Massekhet Gittin*, many students will be examining the question as to why *Gittin*, the section of the Talmud dealing with divorce law, comes before *Kiddushin*, the section dealing with marriage; we would expect *Kiddushin* to come first, since marriage must obviously precede divorce. Many have either quipped, or answered genuinely, by invoking the talmudic principle that 'God creates the cure before the disease' and thus divorce law, which can serve as the basis of the cure for an unsuccessful marriage, comes first.[1] Whether this is said as a somewhat inappropriate joke that belittles the pain that can accompany divorce, or is suggested more honestly as a reflection of the fact that perhaps unlike in other religious traditions, a couple needn't be trapped in a bad marriage according to Jewish law because the Torah sanctions and even requires divorce in some scenarios, it is not really a satisfying answer to the question regarding the order of the tractates of the Mishnah/Talmud. Other answers to this particular question, which some may find more satisfying, have been suggested.[2]

If we take a step back, however, we can ponder if this is really a valid question in the first place. Put differently, does the order of the *massekhtot* really matter such that we should be concerned that something seems out of place? There is certainly no logical reason to believe that one is supposed to learn the *massekhtot* in a particular order, be it the way they are traditionally arranged, or in any other order, nor, we might add, was there ever an agreed upon order in which one is supposed to study Mishnah/Talmud, at least before the advent of *Daf Yomi*. While the Talmud itself does occasionally comment on the juxtaposition of one *massekhta* to another, it is not clear that the provided explanation impacts our understanding of the overall order (more on that below). As is well known, while built around the Mishnah, the Talmud certainly did not feel itself bound to the topics or themes contained therein, and often diverged and digressed independent of it.[3]

[1] See *Megillah* 13b.

[2] See *Tosefot Yom Tov* to Gittin 1:1.

[3] It must be pointed out that alternate orders of the tractates exist in other traditions and manuscripts. See J. N. Epstein, *Introduction to the Mishnaic Text* (Heb.), (Jerusalem, Israel), 980-1000, who carefully surveys the evidence for varied orders

This question is seemingly addressed by the Talmud itself, which states "*ein seder la-Mishnah,"* – "there is no order to the Mishnah," – meaning, as the Gemara clarifies, that there is no order of two different *massekhtot,* though within any given *massekhta* there is a *seder* to the presentation of the subjects.[4] The *Iggeret Rav Sherira Ga'on*, an early medieval letter which charts the history of the Oral Law, understood this to mean simply that there is no formal order to the *massekhtot,* and we do not really know which was taught first.[5] The *mishnayot* in most *massekhtot* require knowledge from elsewhere to understand the material contained therein, and learning the *mishnayot* in order does not necessarily alleviate that problem. In fact, the very first *mishnah*, *Berakhot* 1:1, asks what time the evening *Keri'at Shema* may be recited, and answers that the earliest time is the same time that the *kohanim* may resume eating their *terumah* (after having purified themselves from a ritual impurity). The specifics as to when the *kohanim* may in fact continue to eat their *terumah* are discussed elsewhere, and the student of this first *mishnah* is required to either have studied that section – out of order – or to have a commentary explain those specifics, to be able to understand the reference here.[6] Studying the *massekhtot* in order, whatever order that is, thus does not necessarily facilitate easier comprehension, which may mean that questions or problems relating to the order are not really so outstanding.[7] To put the point differently, the question of why *Gittin* appears before *Kiddushin* is relevant only to someone studying the *massekhtot* in a specific order like followers of the *Daf Yomi*. Nobody would ask an individual or a *yeshiva* choosing to learn *Massekhet Gittin* one year why they weren't starting with *Kiddushin* instead.[8]

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of the *massekhtot* among different communities and rabbinic authorities. As he notes, even the order of the six *sedarim* is not agreed upon in early rabbinic texts. While our order (mentioned in the Bavli) is *Zera'im, Mo'eid, Nashim, Nezikin, Kodashim,* and *Tahorot*, other texts have the order as *Nashim, Zera'im, Tahorot, Mo'eid, Kodashim,* and *Nezikin*. The question of the order of the *sedarim* would seem to have even less of a ramification. In any event, this article will focus on the order of the *massekhtot* as accepted nowadays and attested to in most traditional sources, but will note exceptions where relevant.

[4] See *Bava Kamma* 102a and *Avodah Zarah* 7a.

[5] Me'iri (*Beit Ha-Bechirah* to *Nazir* 2b) likewise writes that the order may be *derekh mikreh,* happenstance, and that students learn what their heart desires without concern for the order. Also see *Tosefot Rabbeinu Peretz* there. Despite their remarks, Rav Sherira Gaon and Me'iri still tried to offer a rationale for the order of some of the *massekhtot*.

[6] Interestingly, an early commentary on the Gemara called *Sefer Ha-Maftei'ach*, authored by R. Nissim b. Jacob of Kairouan, was written to address this very problem. As the author notes, the passages of the Talmud are interwoven, with one often relying on another, and his work strives to provide the necessary background material to enable one to proceed through the Talmud.

[7] There are places in the Talmud where we are told that a given m*ishnah* is actually based on a lesson from an earlier one. See, for example, *Taanit* 2a. But the fact that the Talmud points this out suggests that it was not a given that the earlier one had already been studied, and that it is no longer necessary to study the earlier teaching to understand the current topic.

[8] We might add that traditional Talmud study does not necessarily give precedence to an early chapter over a later one in a given *massekhta*. In many y*eshivot*, students typically learn a particular chapter from a *massekhta* and do not necessarily start from the beginning. While material later in a *massekhta* can often build on material presented earlier, this is not always the case. Indeed, there are some *massekhtot* in

This is not to say, however, that there is no organizing principle behind the order of the *massekhtot* at all, or that such a structure is without merit. The order may be useful as a convention for memorization, for locating a given *massekhta* and being able to identify its place among others, or for some other practical reason. Additionally, some *Rishonim* contended with the few places where the Talmud itself noted the placement and juxtaposition of a given *massekhta* or *massekhtot* (e.g., *Sotah*, *Nazir,* and *Shevuot*), by admitting that some tractates were indeed placed specifically and intentionally, yet still maintained that most were not, as expressed by the Talmud's statement *ein seder la-Mishnah.*[9]

So, while we may prefer that the *massekhtot* of *Rosh Ha-Shanah*, *Yoma*, and *Sukkah*, for example, appear consecutively, in accordance with the order of the holidays on our calendar which they discuss,[10] we can acknowledge that our ordering convention may have been based on other factors, and that since ultimately the order does not really matter, the issue should not really bother us.[11] Our initial question as to why *Gittin* precedes *Kiddushin*, then, may be interesting to ponder, but it is not necessarily one that requires a sophisticated answer, as conventions in general can have different reasons behind them, such as ease of access, memorization, and the like.

A number of other medieval rabbinic figures, however, had a more limited view of *ein seder la-Mishnah*, instead claiming that it only refers to the way the *massekhtot* were originally taught, but certainly they were organized at a later date into the order we have now. As proof, they cite the very same Talmudic passages dismissed above as exceptions by those who denied that there was a reason-based order. In this latter camp's view, the concept of *ein seder la-Mishnah* is a pedagogical one, stating the idea that the correct understanding of one *massekhta* is not contingent upon a statement from another. However, from a literary point of view, there is certainly a reason for the order of the *massekhtot*, and thus the question as to the reasoning for the placement of *Gittin* before *Kiddushin* remains a valid one.[12]

While one can find scattered comments among proponents of this second approach to explain the placement of individual *massekhtot*, the most prominent and well-known authority, and the only

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which the order of the chapters actually differs among different commentaries, but again, the order does not necessarily affect understanding.

[9] See Ramban, Rashba, and Ritva to *Shevuot* 2b for further discussion.

[10] Indeed, the Vilna Shas printing placed these *massekhtot* in the order in which they appear on the calendar, and many sets of Talmud remain organized in this way. However, this is not the order of the Mishnah, nor is it the order followed by the Daf Yomi program.

[11] It is worth pointing out that similar questions have been raised about the ordering of the books of the Bible. Different ordering systems exist within varied Jewish and Christian traditions, based on factors such as chronology, level of holiness, genre, and others. This topic has received much scholarly attention, but is somewhat beyond the scope of the present study.

[12] See *Tosafot* to *Bava Kamma* 102a, s.v. *ein*, to *Bava Metzi'a* 2a, s.v. *shnayim*, and to *Bava Batra* 2a, s.v. *hashutafin*, and the discussion in the *Rishonim* cited above.

one to systematically clarify the placement of each and every *massekhta*, is Maimonides. In his *Introduction to the Commentary on the Mishnah*, Maimonides explains the sequence of the six *sedarim* (orders) of the Mishnah as well as the individual *massekhtot* within them. He argues for a well-reasoned and organized flow of the *massekhtot* based both on verses in the Torah and logic, which dictated to the redactors of the Mishnah precisely how everything should be laid out.

When it comes to the third order, *Seder Nashim* (where *Gittin* and *Kiddushin* are found), Maimonides first explains that it opens with *Yevamot*, the *massekhta* dealing with levirate marriage, instead of *Ketubot*, the *massekhta* which deals more broadly with marriage contracts (a seemingly questionable decision when we consider that a marriage contract must have been established before a levirate marriage would even be relevant), because marriage in general is voluntary while a levirate marriage can be forced, as the *beit din* instructs the brother of the deceased childless husband to either marry the widow or release her. Maimonides then writes, "And starting with matters that are compelled before [discussing] matters that are not compelled is correct and fitting." As many have noted, this reasoning is far from straightforward, especially in light of the cases in the Talmud where marriage (and divorce) can be compelled, but it serves as an example of Maimonides's commitment to finding an underlying reason for the placement.

At the end of his discussion of *Seder Nashim*, Maimonides addresses our initial question – why is *Gittin* before *Kiddushin* – head on. Having explained why *Ketubot* comes right after *Yevamot*, since they both discuss the subject of sexual union, he acknowledges that *Kiddushin* should still have preceded *Gittin*. He answers that the order is following the sequence of the verses in the Torah (Deut. 24:2) which describe a situation in which a woman who is divorced and then marries another man (and the subsequent prohibition for the original husband to take his ex-wife back after she had been married to another man), and in which divorce is discussed before marriage. He notes that the Talmud specifically derives laws from this particular sequence, invoking the Talmudic phrase "Entering (marriage) is compared to leaving (divorce),"[13] which demonstrates that these verses and their order are halakhically significant. Once again, later commentaries have questioned this reasoning on multiple fronts, but what concerns us here is that Maimonides unquestionably sees a clear intentionality and logic to the placement of the *massekhtot*.[14]

[13] *Kiddushin* 5a.

[14] As some have noted, the verse which precedes the one cited by the Talmud, Deut. 24:1, opens with "*Ki yikah ish ishah…*," "When a man takes a woman," which is referring to marriage (and, we might add, is a primary source for the *mitzvah* of *kiddushin*). It is only in the next verse that divorce precedes marriage; the Torah thus clearly places marriage before divorce, which somewhat undermines Maimonides's argument. Presumably, Maimonides is picking up on the language of the Gemara, not the sequence of the verses, but his argument is certainly not as strong as it may seem. For an analysis of this and many other issues in the *Introduction,* as well as citations to the various commentators who have addressed them, see the version of the commentary edited and

Now, some readers may be aware of a simple and straightforward answer to the question with which we started. *Gittin* comes before *Kiddushin* because the *massekhtot* are organized within each *seder* according to the number of chapters contained in each given *massekhta*, starting with those that have more and moving sequentially to those with less. Thus, the order of *Seder Nashim* is: *Yevamot* (16 chapters), *Ketubot* (13), *Nedarim* (11), *Nazir* (9), *Sotah* (9), *Gittin* (9), *Kiddushin* (4). *Yevamot* leads off *Seder Nashim* because it has the most chapters, and *Gittin* comes before *Kiddushin* because it has more chapters. This idea was first noted (at least in print) by Abraham Geiger (1810-1874), a German rabbi and scholar, and an important figure in the *Wissenschaft des Judentums*.[15] This solution was well received, and one can still hear it invoked in both popular and religious settings. One can still question why an order based on chapter quantity was chosen (as mentioned above, perhaps it was easier to arrange on a shelf?), but it does not seem to necessarily be worth searching for any other underlying reasons.

We are thus left with a question regarding all those who sought to find logic in the placement of the *massekhtot*. Why did they go to the trouble when there was a seemingly more obvious solution? It does not seem probable that the chapter order is a coincidence. This question is particularly acute regarding Maimonides, who not only was comprehensive in his explanations, but also had to rely on reasoning that was far from intuitive, as noted above. It seems unlikely that he was not aware of the chapter lengths, as he goes out of his way to record how many chapters appear in the Mishnah altogether, and one would have expected him to notice this obvious sequence within the orders.[16]

To answer this question, it must first be noted that the organizational principle of "most chapters to least chapters" does not hold completely true across the board. In *Seder Nezikin*, the first three *massekhtot*, *Bava Kamma*, *Bava Metzia*, and *Bava Batra*, have 10 chapters each, and are followed by *Sanhedrin* (11), *Makkot* (3), *Shevuot* (8), *Eiduyot* (8), *Avodah Zarah* (5), *Avot* (5), and *Horayot* (3); this *seder* is therefore apparently not solely organized based on the number of chapters in each *massekhta*. This problem can be solved, though, by citing the Talmudic statement that the first three *massekhtot* originally constituted one single larger *massekhta*, known as *Nezikin*, which thus consisted of 30 chapters and therefore was fit to start the *seder*.[17] Furthermore, many have argued that *Makkot* is actually part of *Sanhedrin*, as is indeed

annotated by Ezriel Wolodarksy (Jerusalem, 2018) which includes helpful footnotes and insights..

[15] See citations and discussion in Chanan Gafni, *Conceptions of the Oral Law in Modern Jewish Scholarship* (Heb)., (Jerusalem, 2019), 216-218. Gafni also quotes contemporary scholars who either embraced or rejected Geiger's theory.

[16] Maimonides's own interest in chapter breakdown can be demonstrated by the fact that he included precisely one thousand chapters in the *Mishneh Torah*, surely no coincidence, and a further sign of Maimonides's exactitude. See Marc Shapiro, *Studies in Maimonides and his Interpreters,* (Chicago, 2008).

[17] Ri Migash actually understood the Talmud to mean that all of *Seder Nezikin* originally constituted one *massekhta*. See citation in Ramban to *Shevuot* 2b and his rejection of this explanation.

implied by the Gemara's first comment there after the *mishnah*; this would negate the issue of *Makkot* preceding *Shevuot* despite being shorter, and the seder can now be said to be arranged according to the quantity of the *massekhta's* chapters. However, while the first three *massekhtot* are almost universally viewed as one, Maimonides (among others) specifically disagrees with those who place *Makkot* as part of *Sanhedrin* and not as a separate *massekhta*.[18] In this arrangement, then, the *massekhtot* in *Nezikin* are not arranged completely in the order of most chapters to least.[19]

In *Seder Zera'im*, the matter is even more complicated. The order is arranged as follows: *Berakhot* (9), *Pei'ah* (8), *Demai* (7), *Kilayim* (9), *Shevi'it* (10), *Terumot* (11), *Ma'aseir* (5), *Ma'aser Sheini* (5), *Hallah* (4), *Orlah* (3), and *Bikkurim* (4). This arrangement of the *massekhtot* is very clearly not based on chapter length, and there do not appear to be any good solutions to this problem.[20] Maimonides may well have been aware that many of the orders are indeed organized according to the quantity of chapters in its *massekhtot*, but he saw enough exceptions to keep him from concluding that this was the primary reasoning behind the placement. Additionally, there is a further issue which the quantity of the chapters' organizational structure does not deal with, i.e., the question of where to place the *massekhtot* that have the exact same number of chapters. In *Seder Mo'eid*, for example, the order of the *massekhtot* based upon the number of chapters is as follows: *Shabbat* (24), *Eiruvin* (10), *Pesahim* (10), *Shekalim* (8), *Yoma* (8), *Sukkah* (5), *Beitzah* (5), *Rosh Ha-Shanah* (4) *Ta'anit* (4), *Megillah* (4), *Mo'eid Katan* (3), and *Hagigah* (3). As we can see, after *Shabbat*, every *massekhta i*s tied with (at least) one other regarding chapter length. In *Seder Nashim*, *Nazir*, *Sotah*, and *Gittin* each have five chapters, making their order difficult to

[18] This is made clear by Maimonides's tally of the *massekhtot* in *Nezikin* as eight, and his overall tally of the *massekhtot* as sixty-one; both of those numbers work only if one counts *Sanhedrin* and *Makkot* as distinct *massekhtot*.

[19] It should be noted here that while *Massekhet Avot* is usually printed as having six chapters, thus making it longer than *Avodah Zarah* which precedes it and only has five chapters, this is because the sixth chapter of *Avot* is really a collection of talmudic passages that were added on at a much later point, and is not included by Maimonides or other medieval authorities as an actual part of the *massekhta*; hence our identification above of *Avot* containing 5 chapters. Additionally, while the order of *Seder Kodashim* would seem to work according to the quantity of chapters system, there is one small issue. In most standard editions, *Massekhet Tamid* includes seven chapters, which would make it longer than *Keritot* and *Me'ilah* which precede it and have six chapters each. However, Maimonides, in accordance with other medieval traditions, only has six chapters in *Tamid*, thereby avoiding the problem. Medieval and later authorities who had seven chapters would have further reason to question the order of chapters theory, a point that Geiger himself noted.

[20] Independent of Maimonides, various explanations have been given for this discrepancy. See R. Reuven Margoliyot's *Yesod Ha-Mishnah Va-Arichatah*, where he suggests that *Seder Zera'im* was a later addition as a separate order, its contents having initially been spread throughout other orders, with *Berakhot* in *Mo'eid*, *Pei'ah* in *Nezikin*, and others throughout *Kodashim* and *Tahorot*. This is an intriguing but ultimately unprovable thesis. See Epstein, *Introduction*, 985-988, who attempts a more systematic explanation but ultimately acknowledges that every system has exceptions for one reason or another.

determine, and there are "ties" in the other orders as well.[21] Relying upon an organizational structure based solely on the quantity of chapters would obviously not explain these cases.[22] Between the exceptions and the ties, Maimonides (and others who believed the placement of the *massekhtot* to be logic-based) may have come to the conclusion that there must be a better explanation for the placement of each *massekhta* within a specific *seder*, one that utilizes better reasoning than simple chapter length.

There may be one more piece to analyzing this question, at least as concerns Maimonides. Many students are surprised when they first discover that the *massekhtot* are seemingly organized based on the number of their chapters. It seems like a somewhat crude (and intellectually unsatisfying) system, and does not really express what we think of as a modern organizational arrangement. We would certainly never expect a library to organize books based on how many chapters or pages they contain or a teacher to assign texts to read in the order of their respective length. Lest anyone suggest that it would be anachronistic to expect Maimonides to come up with such an idea, it must be pointed out that there is another important book, albeit from a different faith, that is also (more or less) organized based on chapter length: the Quran, the holy scripture of Islam. After the first introductory chapter, the chapters that follow are not arranged in the chronological order of revelation or any other chronology. The only easily discernible organizational system is that the chapters are arranged roughly in order of their length, with chapters containing more verses preceding those with fewer verses. Many traditional Muslims believe that the chapter order was set by the prophet Muhammad, and subsequent attempts to reorganize the chapters according to chronology or another system were often met with resistance.[23]

Maimonides certainly had some knowledge about the content of the Quran. Besides the fact that he spent much time living in Muslim lands, he references verses from the Quran in his *Epistle to Yemen,* written as advice and inspiration to the Jewish community that was suffering there. Perhaps Maimonides was also aware of the Quran's organizational structure which appeared to be random and not based on any logic perceivable to outsiders. Indeed, in coming up with his ordering

[21] It is worth noting that Maimonides's arrangement actually has *Gittin* before *Sotah*, while the standard order has the reverse.

[22] Epstein (see above) notes these "ties," and adds that most of the diversity in *massekhta* order among different authorities is within *massekhtot* with the same number of chapters. While he sees this as a proof to the theory, one could also see it as a problem, as it acknowledges a certain amount of arbitrariness in the system, something which many find difficult to accept.

[23] See Neal Robinson, *Discovering the Qur'an: A Contemporary Approach to a Veiled Text*, (Washington DC, 2003), 256-270. Robinson notes earlier scholars who noted the similarity between the Mishnah and the Quran in this respect, but disagrees, arguing that the distinctions in genre and style are too great to consider a comparison seriously. He also dismisses scholars who have compared this organization style to that of early Islamic poetry. More fruitful, he argues, is a comparison to the Pauline epistles of the New Testament which, with a few exceptions which Robinson explains away, are also in order of most chapters to fewest. See Robinson at length for other attempts to explain and arrange the chapters of the Quran. My thanks to Dr. Ari Gordon for his help with this reference.

principles, he may even have been motivated to show that the organized structure of the Mishnah was not based on such a simple convention.

Aside from the possible connection to the Quran, why was Maimonides so set on finding internal reasoning in the ordering system of the Mishnah? Presumably, his concern rested on his understanding of the circumstances which led to the recording and redaction of the Oral Law to begin with. In the beginning of the *Introduction to the Commentary on the Mishnah,* Maimonides explains that R. Yehudah Ha-Nasi, "the holy prince" who organized the Mishnah, received the tradition from the elders before him, as part of a chain going back to Moses on Mount Sinai. R. Yehudah Ha-Nasi is described as wise, eloquent, and wealthy, and as having gathered all the statements of the great rabbis, recording and turning them into a great legal code. It would not make sense for such a momentous work, which was divided into precise *sedarim* and then subdivided into fixed *massekhtot*, to be lacking in coherence in terms of the order of those *massekhtot*. We can further suggest that this may have been especially important to Maimonides in light of his comments in the introduction to his *Mishneh Torah*, where he states that R. Yehudah Ha-Nasi wrote down the Mishnah in order to prevent it from being forgotten, as material presented in a logical order is presumably easier to remember.

To be sure, Maimonides did not think that the order of the Mishnah was perfect or exclusively correct. He specifically chose to organize his own *Mishneh Torah* following an order which he thought was better suited for study, as opposed to the order of the original Mishnah. We might note in this context that in his Book of Women's Law (*Nashim*) there, the laws of marriage indeed precede the laws of divorce (and levirate marriage), which is certainly more intuitive, however logical or Torah-based the order of the Mishnah was. This is not to say that Maimonides saw the Mishnah's order as flawed, but perhaps he saw how his code, which was different than that of the Mishnah, could be organized differently and more effectively in terms of the goals he was pursuing.[24]

Additionally, Maimonides, among other rabbinic authorities, went to great lengths to prove the authenticity and reliability of the Mishnah as the source for authoritative law going back to Sinai. This claim had to be defended against Karaites, Muslims, and later Christians, who denied it with different motivations and reasons. A seemingly haphazard and inconsistent organization system would simply not do. Maimonides firmly believed that just as the Written Law was given by God to man in a clearly intentional and discernible order, the same had to be true for the Oral Law as organized and recorded by R. Yehudah Ha-Nasi and other rabbis.

[24] See further below and Isidore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)*, (New Haven, 1980), 238-245, where he elaborates on the significance of Maimonides diverging from the Mishnah's order.

In this vein, it is worth noting that in addition to the comments of Maimonides regarding the Mishnah cited above, we find another programmatic statement of his that demonstrates what may have been at stake here. In a letter to R. Phineas ben Meshullam, a judge in Alexandria who had criticized the *Mishneh Torah*, Maimonides explained the difference between the Mishnah as a *hibbur,* a monolithic code, and the Talmud as a *peirush*, a discursive commentary.[25] It is clear from Maimonides's statement that he saw his own Mishneh Torah, a thorough and well-organized code, to be a *hibbur* and modeled after the Mishnah.[26] If the Mishnah set the standard for what a code of Jewish Law should look like, it could not have a haphazard or crude organization system, which is perhaps why Maimonides rejected the descending order of chapters theory.[27]

For those dissatisfied with Maimonides's explanation, we may look at the order of the *massekhtot* in *Nashim* and conclude that *Gittin* comes before *Kiddushin* because it indeed has more chapters. But does that negate the possibility that the order has a deeper wisdom behind it? Students of the Torah are certainly aware that biblical verses, rabbinic passages, etc., can have multiple explanations that are far from mutually exclusive. The idea behind Maimonides's argument, namely that the Mishnah seeks to reflect the idea and sequence contained within the Written Torah upon which it is based and from which all its laws come, can certainly be accepted. Ultimately, whether one believes this idea can be used to compellingly explain the Mishnah's order as Maimonides contended, may depend on to what extent one is bothered by the question in the first place.

This article was originally published on May 2nd 2023

Behind Every Revelation Lurks an Interpretation: Revisiting The Revelation at Sinai

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In January, Lehrhaus published Marc B. Shapiro's review essay on *The Revelation at Sinai: What Does "Torah from Heaven" Mean?*, edited by Yoram Hazony, Gil Student, and Alex Sztuden. Shapiro's brief reference to reservations regarding my view of revelation that appear in Yoram Hazony's contribution to this anthology prompted me to look

[25] See citation, translation, and analysis in Isidore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)*, (New Haven, 1980), 30-37.

[26] Similar statements can be found in his introduction to Sefer Ha-Mitzvot. See Isidore Twersky, "Some Non-Halakhic Aspects of the Mishneh Torah," *Jewish and Medieval and Renaissance Studies,* ed. Alexander Altmann, (Cambridge, MA), 106-111.

[27] See Menahem Kahana, "The arrangement of the Orders of the Mishnah," *Tarbitz 76 1-2,* (2007), 29-40, who discusses several of the ideas mentioned in this paper, although he does not focus on Maimonides. He notes that a clear editorial hand was involved in the formation of the Mishnah's structure into 6 orders and 60 tractates, numbers that may have been decided upon before all the material had even been collected and organized. Perhaps a similar argument could be made regarding the order of the tractates themselves.

up Hazony's words directly.[1] Having done so, I believe that both the few footnotes in Hazony's original essay[2] and Shapiro's passing mention do not adequately reflect my position. I therefore welcome the opportunity to elaborate, in hopes of enriching discussion of this topic and its theological ramifications.

Hazony's major concern in his essay is to preserve equation of the belief in "Torah from Heaven" with the biblical description of its revelation to Moses at Sinai. This concern, as he understands it, is "not only because of issues of historicity – the assumption that a Jewish view of the world must be anchored in the belief that what is described in the book of Exodus, say, took place in history."[3] More importantly, it is because any other understanding of "Torah from Heaven" forfeits, in his opinion, the rich contribution that various elements in the Exodus account offer to an overall theology of the scope and limits of the human-divine encounter. For this reason, Hazony seeks to stem a growing tendency of Orthodox circles affected by the contentions of academia to accept suggestions that the Torah attributed to Moses was in actual fact a collective work assembled over time, via the contributions of many generations of anonymous scribes.

Hazony rejects theories of protracted multiple authorship as highly implausible in their own right, arguing that no literary or philosophical work could have maintained coherence when subjected to such an editorial process.[4] Over and above this, however, Hazony's main objection to the findings of biblical source theory relates to new theories of "unfolding revelation" which some of the more traditionally inclined biblical scholars have been induced to develop in their wake. According to Hazony, such theories necessarily lose sight of the many important philosophical and theological lessons that close reading of events at Mount Sinai yields when taken at face value.

Starting out with the assumption that "the biblical text is a form of *instructional narrative,* and that it employs a variety of literary devices (such as type contrasts, recurring language, and metaphor) to broach and discuss positions on philosophical and theological subjects,"[5] Hazony devotes the major part of his essay to a close and sensitive reading of principal elements in the Exodus account of the giving of the Torah in order to glean from them important theological lessons. Central to these is the unique status of Moses as prophet. Other key elements refer to the relationship between Moses' vision and differing levels of knowledge achieved by

[1] See Yoram Hazony, "Torah from Heaven: Moses and Sinai in Exodus," in *The Revelation at Sinai: What Does "Torah from Heaven" Mean?* eds. Yoram Hazony, Gil Student, and Alex Sztuden (Ktav, 2021), pp. 3-76. I thank Hazony for his gracious and prompt response to my request for the original.

[2] Hazony, p. 66, n. 140; pp. 68-69, n. 144, 145.

[3] Hazony, p. 4.

[4] Hazony, p. 66, but as Shapiro perceptively notes, this objection "is somewhat begging the question, as many academic scholars will challenge the assumption that the Torah is indeed a coherent work, as from their perspective there are inconsistencies throughout that can only be explained by a long editorial process."

[5] Hazony, p. 5.

the elders and the people, the necessity of Moses to ascend to the top of Mount Sinai and God to descend from heaven in order to deliver the message, the fact that the tablets of stone were created twice (one set produced entirely by God that did not survive, and another set carved by Moses which did), and more. Hazony concedes that there is room for debate regarding the precise meanings that he personally gleans from various details of the biblical account.[6] Nevertheless, he seeks to preserve the sacrosanct status of such details as essential elements of one unified and consistent story, precisely because of their critical importance in conveying the power and limits of human understanding and other important messages of theological concern.

The bone I have to pick with both Hazony and Shapiro is their estimation of where my own take on the matter fits into this debate. Shapiro (quite possibly due to space restrictions when reviewing an entire anthology rather than one contribution) does not get into details at all, and attributes to me quite simply "a notion of progressive revelation in which the Torah was revealed over time." Hazony, by contrast, does allude to some distinction between my gradualist understanding and other versions of the same, acknowledging an "evident concern" on my part for the integrity of Orthodox Jewish belief, and care "not to challenge the centrality of Moses and Sinai directly."[7] Nevertheless, he too does not get into the nitty gritty of these differences or explain why he nevertheless still finds my version[8] wanting.

In order to get down to these specifics and flesh out the possible merits of a third option that mediates between Hazony's static understanding of "Torah from Heaven" and the approach of "unfolding revelation" which he opposes, let me first state that the view of revelation that I support involves two distinct moves that are not necessarily connected, and vary significantly in terms of their comportment with conventional notions of religious belief.

The first move, which I have dubbed "cumulativism," rests - in brief – on three assumptions:

(a) an infinite eternal message cannot be relayed to finite minds in one shot. Therefore, God's ultimate message to man cannot be exhausted by a one-time revelation.

(b) God does not communicate via vocal chords, but rather through the mouthpiece of history. New sociopolitical and cultural contexts and the novel rabbinic interpretations provoked in their wake trigger the evolution of human understanding, thus

[6] Hazony, p. 7.

[7] Hazony, p. 68, n. 145.

[8] Which, as Hazony sums it up (p. 66, n. 140) is a view "which argues that 'God's revelation [is] communicated in a gradual manner,' continuing to unfold in history until finally it reaches its 'ideal meaning.'"

of necessity expanding the meaning of His message. If any particular idea or social structure takes root in, and informs the life of Jews committed to the Torah, this can be taken as a sign of its Divine provenance.[9]

(c) Although successive hearings of the Torah may *appear* to contradict the original message of Moses at Sinai, that message is never replaced. It always remains as the rock-bottom cultural-linguistic filter through which new "hearings" are understood. Thus, it is the potential *meaning,* rather than *wording*, of the Torah attributed to the original revelation at Sinai that is constantly being unfolded, via the changing cultural contexts to which it is exposed. Even when changing circumstances appear to turn the import of the original message delivered to Moses on its head, the wording of the revelation at Sinai always remains for the cumulativist the primary cultural-linguistic filter through which any new deviations are heard and understood.

Thus, for example, are God's words to Eve "And he shall rule over you" (Genesis 3:16) to be taken as a normative prescription for all time, a recipe for marital bliss, or - much as God's words to Adam ("By the sweat of your brow shall you get bread" - Genesis 3:18) an escapable curse and evil to be overcome? Much depends on the context in which these words are read. The same applies to differing views regarding the Torah's prescribed attitude toward sinners or members of rival faiths, the permissibility of slavery, and countless other stances that have evolved over time. The more prevalent a new interpretation becomes as greater numbers of committed Jews relate their practice to its particular reading, the more "obvious" its implications. But while cumulativists affected by traditional notions of divine intervention in human affairs will tend to perceive shifts accruing to previous understandings as heaven-sent responses to their developing spiritual sensibilities, the text attributed to Moses will always remain for them the initial and indispensable reference point and sounding board for any new reading.

Precisely because of the weight I attach to this third assumption, the decision to define my view of revelation as "cumulative," rather than "successive," "progressive," or "continuous" was made quite deliberately. Indeed, it was a direct reflection of my concern to distance this approach from other prevailing views of unfolding revelation that – in their open-endedness – might diminish the foundational status and primacy of the revelation at Sinai, which traditional Orthodoxy and Hazony himself are intent on preserving. Thus, Hazony's estimation that views of revelation typified by source theorists such as Benjamin Sommer are indebted to my theology[10] actually puts the cart before the horse.

Moreover, given my insistence on the unique status of the Mosaic revelation at Sinai, the cause for Hazony's ultimate dismissal of this aspect of my position, declaring that "in the end there is no way

[9] Obviously, the very decision as to whom are to be counted amongst the committed, and therefore legitimate, interpreters of Torah may also be a matter of debate, often determined likewise by the retroactive decree of history.

[10] Hazony, p. 68, n. 145.

to reconcile Ross's unfolding revelation with the biblical rabbinic theology of *Torah from heaven,* in which Moses and Sinai are regarded as fundamental"[11] is far from obvious. After all, even Jewish traditionalists following Maimonides and his interest to protect the supremacy and inviolability of Mosaic law from the upheaval of further claims to prophetic inspiration, have never denied the possibility of discovering new meanings in the text. Their difference with the cumulativists is simply their preference to attribute recognition of the text's manifold interpretive possibilities solely to the work of the scholars of every generation, who can and do uncover more of its original meaning without the benefit of divine intervention. Thus, contrary to Hazony's opinion, my preference for describing new ideas as "revealed" rather than "uncovered," no less than earlier manifestations of this trend in the Talmud and in the tradition of the Tosafists and their followers, does not rest on differences of opinion regarding the centrality of Moses and Sinai,[12] but rather on alternative religious sensibilities regarding the manner in which God interacts with the world, which - in Hassidic writing and the thought of R. Kook - are extended even further to notions regarding the spiritual significance of history and the development of the human spirit.[13]

Given these considerations, I suspect that the chief trigger for Hazony's dismissal of my understanding was a fringe benefit that I attach to cumulativism (amongst a few others): i.e., that this approach "even allows for the liberty of conceiving of the Torah of Moses in terms of a revelation that occurred over a period of time, via a process that is totally consonant with the findings of biblical criticism and archaeological discoveries (to the extent that these are scientifically verifiable and convincing)."[14] If so, I believe that the weight Hazony attaches to this linkage on my part is inordinate and misplaced, for the truth is that while both Hazony and Sommer view contemporary biblical scholarship as a force to be reckoned with, and either accepted or rejected when formulating a theology of revelation, I view the conclusions of academia as largely irrelevant in this context. While I personally might be more prepared in principle than Hazony to entertain the notion that the composition of the Torah as we know it was not a one-time affair, I am by no means a biblical scholar and my rendition of cumulativism does not hinge on any suppositions regarding the number of anonymous scribes involved. It does, however, rest on a need to acknowledge equally troubling evidence of time and culture-bound imprints on the Mosaic text, such as obviously dated standards of morality, pervasive male bias, or inaccurate accounts of science and history, which to my mind support the simple common-sensical understanding that any revelation, even that attributed to Moses, is inevitably colored by its surrounding cultural context.

[11] Hazony, p. 69, n. 145.

[12] Hazony, p. 68, n. 144.

[13] For amplification on the relative merits of what I term "interpretive" versus "historic" cumulativism , see Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (London/Hanover: Brandeis University Press/University Press of New England, 2021), pp. 221-224.

[14] Ross, ibid, p. 223 – incompletely quoted by Hazony, p. 68, n. 145.

While Hazony does not address such difficulties directly, some of these shortcomings could arguably be resolved by the significance that he attaches to the fact that according to the biblical narrative even Moses does not reach heaven but only the summit of the mountain, and to the disparity between the first tablets fashioned by God at that point and the second tablets inscribed by Moses at its base.[15] Ultimately, however, even when understood metaphorically and not literally, Hazony's rendition of the biblical narrative does not address deeper theological difficulties arising from the very notion of divine-human communication through language, which is ultimately a uniquely human mode of expression. Once we have abandoned Aristotelian notions of physics and metaphysics, any view of divine speech is a form of anthropomorphism that even Maimonidean concepts of the prophet rising up to the orbit of influence of Pure Form via the Active Intellect are no longer capable of resolving.

This leads me to the second, far less traditional, element in my view of revelation,[16] which I daresay is the true source of Hazony's rejection of cumulativism, despite the fact that the two aspects are, in principle, entirely separable. Let me explain:

In the past, most religious believers understood traditional formulations of religious belief as simple statements of fact. This meant that if literal meanings are problematic, we must either reject them, qualify them, or bring logical argument and empiric evidence in order to resolve any difficulties they raise. Over the past century, however, a significant number of religious philosophers have turned away from the by-now overworked attempts of modernism to defend religion's portrayal of reality on an empiric level. Instead, such efforts can be typified by a new focus upon the significance of religious language, and what religious truth claims mean to the believer in the context of a religious way of life.[17]

Applying this trend to the topic in hand, when an Orthodox Jew says, "I believe in Torah from Heaven," her primary concern in most cases is not to discuss facts or establish history but to create a picture of reality on an entirely different plane, one

[15] See, for example, Hazony, pp. 47 -48, where he states: "We tend to think of the Torah as being 'from God,' and so it is. But the Torah is at the same time 'for man.' The shaping of the law in accordance with man's nature is evident in every verse of the Torah… And since it is concerning men that the Torah speaks, we must recognize that the law is concerned with things that are always – even when the people are willing and able to heed God's teaching – far from ideality or perfection."

[16] Although I find significant steps in this direction in the thought of R. Kook – see Tamar Ross, "The Cognitive Value of Religious Truth Claims: Rabbi A.I. Kook and Postmodernism," in *Hazon Nahum: Jubilee Volume in Honor of Norman Lamm* (New York: Yeshiva University Press 1997), pp. 479-527; republished in *Religious Truth: Towards a Jewish Theology of Religions*, ed. Alon Goshen-Gottstein (London: Littman Library of Jewish Civilization, 2020).

[17] Much of this trend has been influenced by the thought of the Austrian-born philosopher Ludwig Wittgenstein. For further details regarding his contribution to the understanding of religious language, see Ross, *Expanding the Palace of Torah,* pp. 193-197; idem, "Orthodoxy and the Challenge of Biblical Criticism: Some Reflections on the Importance of Asking the Right Question"; idem, "Orthodoxy and the Challenge of Biblical Criticism," (TheTorah.com), particularly the Excursus, pp. 59-62.

that will regulate her entire life and may bring her to take risks or make sacrifices that she would never dream of for the sake of other opinions that she knows to be far better grounded from a scientific point of view. This is because belief in the divine origins of Torah serves as the primary basis for a way of life and worldview to which she is inextricably bound in a multitude of ways by personal conviction, passion, and practical considerations.

Does this new understanding of the function of religious statements mean that she regards the divine origin of Torah as less valid than scientific beliefs? No. But because the two statements are of a different nature, the evidence for each is different. What we normally think of as evidence in a scientific context is quite irrelevant for substantiating a religious belief.

Thus, for example, even if we were able to locate the original Mount Sinai, find fragments of the first tablets broken by Moses, and read a parchment diary by an Israelite who witnessed and documented the event of revelation first-hand, none of this would change what the believer means by saying that the Torah is divine. The purpose of this assertion is to affirm the ultimate meaning and value of a way of life and worldview. Because of its different aim, the scientific basis for this assertion might be exceedingly flimsy evidence or non-existent. The considerations brought to bear in determining the validity of such religious statements is taken from *within* the religious framework itself. Validity must be formulated in terms of the context from which a statement derives its meaning.

By the same token, even the argument between cumulativists (such as myself) who prefer to view new interpretations as a never-ending striving to reconstruct the infinite divine message of a pre-verbal primordial Torah by constantly stretching the meaning of the primary but time-bound revelation at Sinai, and those who (like Hazony) choose to regard such innovations as reconstructions of a one-time and perfect Sinaitic revelation complete in and of itself, is not an argument that can be determined objectively. A more accurate response to these differing preferences in rhetoric and mythic vocabulary would be to regard them as expressions of differing spiritual sensibilities and of differing opinions regarding which theological approach can best express and maintain faith and loyalty to a Jewish way of life that grants us some intimation of Ultimate Being, the object of all religious belief.

While this new view of religious language overturns the necessary linkage that Hazony posits between historicity (i.e., "the assumption that a Jewish view of the world must be anchored in the belief that what is described in the book of Exodus, say, actually took place in history"[18]) and the philosophical or theological lessons that the Exodus account might offer, I personally have little difficulty in accepting the messages that Hazony gleans from the biblical account of revelation and assessing them on their own merits. As a matter of

[18] Hazony, p. 4.

fact, I found Hazony's list of the principal elements of the Exodus account of the giving of the Torah, and many of his suggestive proposals as to what these elements are meant to contribute to an overall theology of Torah from Heaven, quite masterly and inspiring. But despite the fact that some of the messages that he finds in the text are debatable, and possibly a function of his own pre-dispositions,[19] Hazony, apparently following the Maimonidean tradition, seems to believe that the ultimate objective he shares with his readers is to uncover the one and only original intent of the Torah from Heaven that was given to Moses from the start. I, by contrast, approach the biblical account of Moses and Sinai differently, acknowledging that even when maintaining formal fealty to this narrative, and relating to it as the rock-bottom base of my religious worldview, its precise import for the community of believers is inevitably open to revision, in light of the fluctuating contexts in which it is read.

More importantly, while I have no idea regarding the extent to which ancient traditions equated myth with history, Hazony appears to be invested in the notion that the biblical account, however symbolic, amounts to some faithful expression of "the facts of the matter." This confidence on his part does not sit well with the refusal of recent streams of modern philosophy (with which I sympathize) to equate empirically observable statements that are liable to verification or falsification with metaphysical truth claims, which – more or less by definition- are not given to empirical testing. Such refusal does not necessitate rejection of metaphysics altogether. But it does lead to skepticism regarding the ability of any human being to fully grasp this realm of being and transmit it in words.[20]

Given these qualifications, my cumulativism is a relatively naturalist view of Torah from Heaven that stands midway between premodern notions of human-divine relations that Hazony seeks to preserve, and rival views of unfolding revelation as articulated by traditionally inclined academicians such as Sommer. Unlike the academicians, my view seeks to preserve commitment to the biblical account of Torah from Heaven and its concomitant assumption of the primacy of the Mosaic epiphany as it stands. Unlike Hazony, however, this commitment does not rest on inherent and undeniably God-given properties embedded in the

[19] Compare, for example, Hazony's understanding of the inverse relationship between the pursuit of pleasure and the ability to gain knowledge of God, as indicated by comparison between Moses' abstention from food and drink for 40 days and the eating and drinking of the people of Israel when celebrating at the feet of the golden calf (pp. 38-41) and R. Kook's view of abstention from the physical as a weakness of prophecy, as exemplified by the disparity between Moses' knowledge of God, who still required abstention from the strongest physical pull of sexual relations in order to see God clearly, and that of Adam, who was able to see the earthly particularities from one end of the world to the other without obstructing his vision of the whole – see R. Kook, *Orot ha-Kodesh* I (Jerusalem, 1985), p. 291.

[20] For Jewish sources for this way thinking, see: Tamar Ross, "Knowledge and Reality in Modern Kabbala", in *Paradigms and Perspectives on Value and Reality*, eds. Richard Vulich and Chandana Chakrabarti (Cambridge: Cambridge Scholars Press, 2014), pp. 121-129. Recent advances in neuroscience, astrophysics, cosmology, and space-time research, in a somewhat different manner, reinforce the sense that we as humans have barely begun to scratch the surface of potential modes of existence and consciousness beyond the range of our immediate experience.

biblical text that simply bang us over the head, compelling us to accept them as such. Such commitment rests, rather, on my willingness as an individual believer, and on the willingness of the Jewish people at large, to formally accept this text as such, and to view it as the fundamental narrative from which all other beliefs and practices of Judaism are derived.[21] And that willingness itself is an interpretive act, based on prior cultural experience and conditioning.

Paradoxically, one might even claim that it is precisely the endless ability of Torah-committed Jews to discover (or eke out) fresh and relevant meaning from the ancient hallowed words, rather than the finality of their message, that reinforces such willingness and its accompanying religious convictions for each generation anew. Thus, just as Darwinism compelled religious believers to revisit the biblical account of the origin of man, and view it in mythic terms bearing moral rather than factual implications,[22] so too might some traditionally inclined academicians be forgiven for their inclination to view the findings of source theory itself as a heaven-sent opportunity to discover new and immensely enriching insights suitable for our times. Indeed, some of the most interesting and sensitive readings of the Bible being produced lately are ones that themselves are infused with the findings of biblical scholarship.[23]

Taken on their own, I might not have taken the trouble to spell out my objections to Hazony and Shapiro's renditions of my position. But aside from setting the record straight, an added motivation is my conviction that the widespread assumption of Modern Orthodoxy that embracing *Torah u-Madda* mandates equation of religious belief – such as Torah from Heaven – with the "facts of the matter" (along with the eclectic grab-bag of ad hoc apologetics that this assumption has engendered), has outlived its usefulness. In a postmodern age, which blurs sharp divisions between human predispositions and concepts of God, and acknowledges the role of subjectivity and multiple interests (descriptive, aesthetic, pragmatic, imaginative, and spiritual) in all formulations of truth, this approach needs to be replaced by an understanding that science and religion are not two players vying in the same ball-park in their respective attempts to capture ultimate Truth. Amongst other virtues, such understanding will afford us with a fresh appreciation of the role of human agency in the formulation of metaphysical truth claims and their place in the religious way of life.

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[21] See R. Kook, *Eder ha-Yakar* (Jerusalem, 1985), p. 39 on the importance of national acceptance not only of the oral law, but even of the written.

[22] See R. Kook, *Iggerot Ha-Reayah* I (Jerusalem, 1985), p. 163-164.

[23] Some samples may be viewed on TheTorah.com. See also James Kugel, *The Great Poems of the Bible: A Reader's Companion with New Translations* (New York, 2018); idem, *The Great Shift: Encountering God in Biblical Times* (Boston, 2017), even though Kugel himself regards biblical scholarship, despite its truth, as irrelevant to the practice of reading the bible *as Torah*. My thanks to Elliot Sacks for directing me to this reference.

What's Divine about Divine Revelation?

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Professor Tamar Ross is one of today's great Jewish thinkers, whose innovative work on theology and philosophy have had a wide-ranging impact on many Jewish educators and thought leaders. I have personally benefited tremendously from her writing and am grateful to have been given the opportunity to engage with her work so directly.[1] In a recent *Lehrhaus* essay responding to Professor Marc B. Shapiro and Yoram Hazony, Professor Ross sought to clarify her influential, yet frequently misunderstood, theology of revelation.[2]

Ross' view of revelation involves making "two distinct moves that are not necessarily connected."

The first relies on the following three assumptions:

1. "An infinite eternal message cannot be relayed to finite minds in one shot."
2. "God does not communicate via vocal chords, but rather through the mouthpiece of history."
3. "Although successive hearings of the Torah may *appear* to contradict the original message of Moses at Sinai, that message is never replaced" (emphasis in original).

The second move that Ross makes is reframing what it means to be a religious believer. For Ross, belief should not be viewed as "simple statements of fact" that must either be empirically defended, qualified, or rejected when faced with challenges. Rather, focus should be placed on "what religious truth claims mean to the believer in the context of a religious way of life."[3] As she clarifies elsewhere,[4] religious truth for Ross primarily "refers to my deepest choices, loyalties, and commitments" rather than an objective description of reality. Embracing such a notion of truth leads to the religious believer painting a mental image that "will regulate her entire life and may bring her to take risks or make sacrifices that she would never dream of for the sake of other opinions that she knows to be far better

[1] One of my first introductions to Orthodox Jewish Feminism was excerpts from Professor Ross' *Expanding the Palace of Torah* and one of the first responses to biblical criticism to sway me was by Professor Ross. Though I am in a different spiritual place now than I was then, it is very possible that I would have left Orthodoxy behind without her writings. As such, I am profoundly grateful to her willingness to confront challenges head on in creative ways.

[2] All quotations, unless stated otherwise, are from Ross' article.

[3] This, at least in part, stems from Ross' sympathy with philosophical schools of thought that reject equating "empirically observable statements that are liable to verification or falsification with metaphysical truth claims, which – more or less by definition- are not given to empirical testing."

[4] Realism and Constructivism: A Correspondence between Professors Yehuda Gellman and Tamar Ross - APJ (theapj.com)

grounded from a scientific point of view."

Both moves seemingly place Ross' theology outside of mainstream North American Orthodoxy, according to standards agreed upon by both the centrist Rabbinical Council of America and the more liberal Yeshivat Chovevei Torah.[5] While Ross' first move comes with a "fringe benefit" of being able to withstand the threat of biblical criticism by untangling divine revelation from a particular historical moment,[6] it also rejects the traditional interpretation of Torah from Heaven by acknowledging

> troubling evidence of time and culture-bound imprints on the Mosaic text, such as obviously dated standards of morality, pervasive male bias, or inaccurate accounts of science and history, which to my mind support the simple common-sensical understanding that any revelation, even that attributed to Moses, is inevitably colored by its surrounding cultural context.

Responding to a spread of similar views, the Rabbinical Council of America resolved that a position which asserts that the Torah "was written by several authors who, in their ignorance, regularly provided erroneous information and generated genuine, irreconcilable contradictions" is "unequivocally contrary to the faith requirements of historic Judaism."[7] While the RCA's resolution primarily addresses proponents of source criticism, a position which Ross does much to distance herself from, their focus on human authors displaying all-too human fallibility which shows throughout the text can equally be applied to Ross' theology as quoted above. Yeshivat Chovevei Torah also resolved that "belief in *Torah MiSinai*… as understood by the Torah-committed community throughout the ages, is non-negotiable."[8] Furthermore, their Talmud Chair, Rabbi Ysoscher Katz, is on record saying that Rabbi Dr. Zev Farber's position of revelation as a "human channeling of the divine rather than divine dictation to a human recorder" and the Torah's text reflecting "the respective understandings of different prophets channeling the divine message in their own way"[9] is that of "an *apikores*."[10] Given Professor Ross's own

[5] It is very possible that Israel differs significantly in what views are generally acceptable. On this question, see Professor Adam Ferziger's 2019 article "Fluidity and Bifurcation: Critical Biblical Scholarship and Orthodox Judaism in Israel and North America," *Modern Judaism* 39:3 (October 2019): 233-270. If her views are accepted in Israel, it is very possible that they will come to be accepted in North America as well, given how much diaspora Modern Orthodoxy is influenced by their Israeli *Dati Leumi* counterpart.

[6] This benefit, which she devoted an entire series of articles to unpacking, seems to be the main contributor to Orthodox criticism of her position. Her second move seems to be largely ignored by the North American rabbinate, possibly due to its largely "a-theological" and pragmatic nature. (Orthodoxy and the Challenge of Biblical Criticism (thetorah.com))

[7] RCA Statement on Torah Min HaShamayim – Rabbinical Council of America (rabbis.org)

[8] https://yctorah.org/news/yeshivat-chovevei-torahs-position-on-torah-misinai-and-partnership-minyanim/

[9] Avraham Avinu is My Father: Part 4 - TheTorah.com

[10] Open Orthodox Opens Up On Its Beliefs - Halacha Headlines

descriptions of her position, it is not a stretch to assume that these criticisms would apply to her views as well

These proclamations came about because positions like Farber's and Ross' are significantly at odds with a plain understanding of the Torah as a divine document. The Talmud (*B. Sanhedrin* 99a) writes that if someone says that even one verse of the Torah was written by Moshe Rabbeinu of his own accord (*mipi atzmo*) they have rejected its divinity and Maimonides codifies this (*Misneh Torah Hilkhot Teshuvah* 3:8).[11] Even readings that take into account the many manuscript variations that have come to light, acknowledging that it "must not be taken literally [to imply] that all the letters of the present Torah are the exact letters given to Moshe Rabbeinu," make clear that the core idea is that Moshe "had no input of any kind but functioned only as the mouthpiece of the Almighty."[12]

Rabbi Dr. Joshua Berman has noted that the Rambam's halakhic formulation is "that one must believe that all of the Torah is from heaven"[13] and does not make any claims about the possibility of additional prophets being involved. However, the mechanics of the Torah's divinity must still be explored. Dr. Daniel Rynhold, dean of Yeshiva University's Revel Graduate School, notes that even if one accepts that the Maimonidean "incorporeal God does not speak… not because He chooses not to, but because He is not the type of being that speaks" and that Maimonides' view of prophecy "does not require an interventionist type of God at all," divine communication in some real sense is still possible. Indeed, he writes that "God is most certainly responsible for prophecy, just not in the simplistic manner that we might have assumed" and that "Moses did indeed receive an objective form of divine communication from God, without God having to do anything other than what God always does… eternally emanate all truths of which he is the source."[14] This is so because God being infinitely beyond human comprehension need not preclude God from also having a real message for humanity

[11] Of course, there are numerous sources within the traditional canon that complicate this picture. The approach presented above, though, is the one which is taken for granted in North American Orthodox circles.

[12] Maimonides #8 - Divinity of the Torah - Aish.com

[13] Joshua Berman, *Ani Maamin: Biblical Criticism, Historical Truth, and the Thirteen Principles of Faith* (Maggid, 2020), 240.

[14] Daniel Rynhold, "Maimonides' Theology," in *The Cambridge Companion to Jewish Theology* ed., Steven Kepnes (Cambridge University Press, 2020), 118.
Such prophecy is still objective because, according to Maimonides, "if you have passed the intellectual threshold for human perfection, you will, as a result have the capacity for prophecy through your ability to see clearly the consequences of particular courses of action given your almost perfect knowledge of the laws of nature, both natural and human." This is so because the Maimonidean conception of prophecy is one that is "not a supernatural endowment that God bestows on the chosen few. It is rather an intellectual achievement attained naturally by those individuals who are able to reach the necessary and exalted intellectual level, and one that is founded on prior moral and physical perfection." (117). Moses, being the most perfectly developed human to ever live, would then be able to tap into the divine emanations better than anyone who ever lived before him or would live after him, to the point where it could be called true divine communication.

to receive.

Additionally, Professor Samuel Fleischacker of the University of Illinois-Chicago, writes that even those who renounce the idea of God literally speaking to Moses still ought to accept a model of verbal revelation in which

> God encounters us, first and foremost, *in* language—not just, and not primarily, wordlessly. The aspects of language that are beyond our control can of course be explained naturalistically. Social scientists can and do put forward plausible explanations of the emotional, sociological, and historical factors about language that prevent individual speakers from fully mastering what they say. But it is perfectly reasonable for a religious believer to take these factors of language as, in addition, ways by which God shapes our world and destiny: vessels or vehicles through which God works. If God shapes nature and history, as the Jewish tradition believes, then God also shapes language. And if God can be present in trees and waterfalls and horses, then God can also be present in language: God can speak.[15]

As such, "if one believes that the universe is structured by a personal force or being, which can reasonably be thought of as supremely good and as loving us, then one can expect that force or being to structure our language as well as everything else... Believers in a personal God should therefore be able to encounter that God in language. And Jewish believers should be able to encounter God in the language of the Torah."[16] Fleishacker's position differs from Ross' by providing a mechanism through which the words of the Torah can *literally* be understood as communicated from God as opposed to being filtered through many layers of metaphor.

While Fleischacker notes that many "wordless encounter theologies" (like Ross's) are advantageous in that they fit neatly with modern scholarly approaches to the Bible and allow for radical halakhic change, they are actually "neither necessary nor sufficient for either of these projects"[17] since verbal revelation can be defended *even* under critical assumptions and Halakhah can be a binding system regardless of one's theology. Rather, wordless encounter theologies generally seem to be employed as an excuse to lessen the sense of authority that Torah possesses. Louis Jacobs, for example, wrote that "it is undeniable that a clear

[15] Samuel Fleischacker, "A Defense of Verbal Revelation," in ibid, 444.

[16] Ibid, 445-446.

[17] Ibid, 429.

recognition of the human development of [Torah and *mitzvot*] is bound to produce a somewhat weaker sense of allegiance to the minutiae of Jewish law"[18] and that "one is entitled—I would say duty-bound—to be selective in determining which practices are binding."[19] This trend is apparently the case regardless of the significant amount of traditional sources that Ross skillfully marshals to support her position.[20] Exploring Ross' second move will hopefully shed light onto why this is the case.

Ross' second move, that she herself describes as the "far less traditional" element of her theology, results in a "relatively naturalist view of Torah from Heaven" which

> does not rest on inherent and undeniably God-given properties embedded in the biblical text that simply bang us over the head, compelling us to accept them as such. Such commitment rests, rather, on my willingness as an individual believer, and on the willingness of the Jewish people at large, to formally accept this text as such, and to view it as the fundamental narrative from which all other beliefs and practices of Judaism are derived.

Treating empirical observation and metaphysical claims as non-overlapping magisteria has much precedent. As Stephen Jay Gould poetically put it, "science gets the age of rocks, and religion the rock of ages; science studies how the heavens go, religion how to go to heaven."[21] Similarly, Rabbi Jonathan Sacks *Ztz"l* wrote that "science is the search for explanation" while "religion is the search for meaning."[22] Replacing facticity with instrumentalism in an extreme way, though, can be quite dangerous. While religion is certainly multifarious, providing numerous practical benefits in addition to whatever else believers obtain from observance, it should also correspond to observable reality in a meaningful way. Otherwise, religious identification becomes like any hobby that a person may invest themselves in one day and drop the next. Ross even seems to acknowledge that religious belief involves embracing a perspective that "may" lead to making sacrifices and taking on observance for it, but seemingly does not have to do so. This violates Jerome (Yehuda) Gellman's "Satisfaction Criterion" for an acceptable existential stance

[18] Louis Jacobs, *Beyond Reasonable Doubt* (Littman Library, 2004), 52.

[19] Ibid, 240.

[20] Given the amount of traditional sources that Ross uses in support of her position, it is hard to weigh in on its fundamental validity. What I hope to have demonstrated is only that the position is rejected by the mainstream North American Orthodox establishments and that it is not philosophically necessary to maintain such a view of revelation even if one otherwise shares Ross' assumptions.

[21] Stephen Jay Gould, *Rocks of Ages: Science and Religion in the Fullness of Life* (New York: Random House Publishing, 1999), 10.

[22] Jonathan Sacks, *The Great Partnership: Science, Religion, and the Search for Meaning* (New York: Schocken Books, 2011), 37.

towards traditional Judaism, which requires leaving one "with a good religious reason to make great personal sacrifices for the sake of his or her Judaism and to teach one's children (and others, when relevant) to make similar sacrifices."[23]

In her correspondence with Gellman, Ross goes even farther, clarifying that "talking about God as orchestrating history, or even about God Himself in the manner established in the monotheistic tradition, is to my mind a mythic way of relating to the totality of what is, in a manner that gives life meaning from a human point of view."[24] She also writes that "God is not a person or an object that exercises agency on the world from without" and that "the meaning and significance of the belief in revelation, divine accommodation, and all religious doctrine making metaphysical claims, is best understood in light of its function in the life of the believer" rather than as factual truth claims.[25] If this is so, then it is fundamentally impossible to reach an "ultimate commitment" to Judaism, defined by Gellman as attempting to "live to the standards proposed by there being an ultimate, existent truth, or mode of being, in relation to which an ultimate good can be attained."[26] Without an objective standard, Judaism ceases to function as an all-encompassing lifestyle and instead becomes a menu from which to select particular behaviors at particular times or to discard as one pleases.

Ross' understanding of religious truth in this way is heavily based on her reading of Rabbi Abraham Isaac Kook, who wrote that "in relation to the highest divine truth, there is no difference between formulated religion and heresy. Both do not yield the truth, because whatever positive assertion one makes is a step removed from the truth of the divine."[27] In her understanding, "although every explanation of the ultimate reality misses the mark, all sincere explanations and formulations are valid components of its infinite character, and should be graded hierarchically based on their instrumentalist value."[28]

This general understanding of Rav Kook's view is in fact corroborated by Rynhold[29], who wrote that

[23] Jerome Gellman, *This was from God: A Contemporary Theology of Torah and History* (Academic Studies Press, 2016), 13.

[24] This does not necessarily contradict the second assumption of Ross' first move, since that articulation itself can be assumed to be a mythic mode of communication rather than a literal description of how God communicates.

[25] Tamar Ross, "Divine Hiddenness and Human Input: The Potential Contribution of a Postmodern View of Revelation to Yitz Greenberg's Holocaust Theology," in *Yitz Greenberg and Modern Orthodoxy: The Road Not Taken*, eds. Adam S. Ferziger, Miri Freud-Kandel, and Steven Bayme (Brookline, MA: Academic Studies Press, 2019), 126-127.

[26] Gellman, *This was from God*, 14.

[27] *Orot Ha-Emunah*, 23-24. Translated by Prof. Ross.

[28] Tamar Ross, "The Cognitive Value of Religious Truth-Statements: Rabbi A.I. Kook and Postmodernism," in *Hazon Nahum: Studies in Jewish Law, Thought, and History Presented to Dr. Norman Lamm on the Occasion of His Seventieth Birthday*, eds. Yaakov Elman and Jeffrey S. Gurock (Yeshiva University Press, 1997), 525.

[29] This general understanding of Rav Kook seems to be the academic consensus, even amongst Orthodox scholars. For more articulations of his theology and how it was practically applied, see *Rabbi Abraham Isaac Kook and Jewish*

> what remains important and distinctive with regard to Rav Kook, therefore, is that there is an absolute truth "embodied," so to speak, in the infinite unity that is God. But as humans, we cannot fully gain that ultimate divine perspective, at least not so long as we remain human. Our understanding will always remain partial. As such, even when we are convinced by the truth of our particular perspective, we still need to respect other views - not merely for the pragmatic reason that we are currently powerless to do otherwise, but because there is an extent to which they are similarly expressions of an underlying reality. There is truth contained within the opposing views, and it is imperative that we engage with them in order to uncover that truth and improve our grasp of our own truths.[30]

However, Dr. Rynhold also noted that "while it might be true that in the realm of abstract theoretical truths all views are partial, we cannot and do not live in a manner that reflects this… Rather, we find ourselves convinced by a particular view of matters that we do not deem to be simply one among many that we could equally choose to act upon."[31] Indeed, "this view need not - and for Rav Kook, must not - undermine one's fundamental and non-negotiable commitment to mitzvot and the beliefs that underlie them. When you get to the most fundamental assertions regarding beliefs about one's way of life, you will always get to rock-bottom principles about which people will have substantive disagreements."[32]

Rynhold's understanding of Rav Kook maintains that we find ourselves in a world that we can only understand from a particular perspective, thereby necessitating a practical acceptance of principles that exclude certain options even if on a theoretical level those alternatives remain valid. Ross, on the other hand, maintains an understanding in which the theoretical truth of all options having validity ought to render all of religion an endeavor guided by a combination of multiple subjective interests ("descriptive, aesthetic, pragmatic, imaginative, and spiritual").[33] This is perfectly in line with Ross'

Spirituality, eds. Lawrence J. Kaplan and David Shatz (NYU Press, 1994).

[30] Daniel Rynhold, "Unity, Plurality, and Human Limits: Secularism in the Thought of Rav Kook," in *Torah and Western Thought: Intellectual Portraits of Orthodoxy and Modernity*, eds. Meir Y. Soloveichik, Stuart W. Halpern, and Shlomo Zuckier (Maggid, 2015), 33-34.

[31] Ibid, 32.

[32] Ibid, 35.

[33] This disagreement may reflect a sort of hasidic-misnagdic divide in understanding the nature of reality and how we ought to view it. Ross herself examines this divide in her piece "Rav Kook: A This-Worldly Mystic," in *Cambridge Companion to Jewish Theology* (cited above), writing that Rav Shneur Zalman of Liady believed that "although the light of the Ein Sof fills all worlds so that nothing is void of God's presence, the very delineation of our world (in contradistinction to God) renders the derivative ray of light which sustains it as qualitatively different from its monolithic source. Precisely for this reason, the supreme religious goal is

proclamation that "the widespread assumption of Modern Orthodoxy that embracing *Torah u-Madda* mandates equation of religious belief – such as Torah from Heaven – with the "facts of the matter" (along with the eclectic grab-bag of ad hoc apologetics that this assumption has engendered), has outlived its usefulness." It is also, though, reminiscent of the reality that Conservative Rabbi Elliot Cosgrove recently observed in which "*mitzvot* are volitional lifestyle choices, not commanded deeds" and "the difference between Reform, Conservative, and Modern Orthodox Jews is a difference of degree and not of kind."[34] Is this a reality that Orthodox Judaism should look at as an ideal? Is it one in which God-awareness permeates everything or is it rendered so diffuse as to mean nothing at all? In the spirit of Professor Ross, that determination is left in the reader's capable hands.[35]

to pierce our illusory sense of separate existence and merge—to whatever extent possible—with God's undifferentiated unity." On the other hand, Rav Chaim of Volozhin contended that "although God's aura (originating in His primordial Torah) appears to us as a ray of descending gradations so that its final and lowest point is so far removed from its source that it appears qualitatively different, ontologically our world and God's remain one and the same. Hence, there is no reason to strive for dramatic shifts of consciousness on the earthly plane." (192)

[34] A Choosing People — Sources Journal

[35] One may argue that this is itself an instrumentalist argument, rejecting Ross' position on the basis of being unable to guarantee halakhic commitment rather than evaluating its metaphysical merits. If religious belief ought to be measured by such standards, though, this should be a fair line of argument.