

Learning

By: ASHER BENZION BUCHMAN

The Minority Position

In his essay “‘Truth’ and Authorial Intent in the Study of Torah” in the current volume of *Hakirah*, Dr. Shapiro covers a lot of ground. In fact, although he does not make note of it, he presents two different approaches in divergence from authorial intent. Although he says he does not wish to relate the discussion to literary theory since the study of Torah is so different, in fact the first part of the essay fits well with the literary concept that later authors creatively misread earlier works.¹ More specifically, it is in line with “progressive” judicial theory that allows for the loose interpretation of a constitution, thus lending itself to the imposition of the viewpoint of the judges onto the text. The second approach is that Divine guidance directs the writings of important Jewish authors so that their written words do not always reflect their own intent, and it is by the written words alone that subsequent scholars should be guided to establish halachah. The two approaches might be viewed as antithetical to each other, as the former is rooted in the idea that subsequent scholars can use texts loosely to impose their own ideas, while the second approach elevates the text over the intent of the original author but gives no special license to the student of the text.

There are those, of course, who adhere to these two viewpoints in learning and even in establishing halachah. However, the traditional rationalist will take exception to both approaches. The latter group has a mystical attitude towards halachah. As Dr. Shapiro notes, the most commonly quoted source for this position is the great Gaon Rav Yonasan

¹ Harold Bloom in his *The Anxiety of Influence* uses the term “misprision” to denote willful misreading in order to advance one’s own ideas and uses rabbinic exegesis as the model for his theory.

Rabbi Asher Benzion Buchman, a *musmach* of RIETS, is the author of *Encountering the Creator: Divine Providence and Prayer in the Works of Rambam* (Targum, 2004) and *Rambam and Redemption* (Targum, 2005). He is the editor-in-chief of *Hakirah*.

Eibenschutz,² who adhered to a mystical philosophy. The former group reflects a modern view that the knowledge of truth grows with the progress of science and the advancement of ideas, and while they will usually not say so openly, some of the adherents of this group believe that modern man knows better than Chazal themselves how the Torah should be interpreted.³

Dr. Shapiro says he can find no *risbon* to support the latter mystical approach, and in fact he brings no *risbon* to support the former approach either. These two attitudes, I believe, create impediments to the understanding of Torah; thus, it is important to explain what the traditional, proper approach to learning is.

One Truth

Dr. Shapiro quotes Rav Kook as saying the “progressive” approach is against that of Rambam and he refers to a quote from the introduction to *Moreh Nevuchim* as his probable source. More likely he was thinking of a passage a few paragraphs later in his instructions to readers.

“Do not read superficially, lest you do me an injury, and derive no benefit for yourself. You must study thoroughly and read continually; for you will then find the solution of those important problems of religion, which are a source of anxiety to all intelligent men. I adjure any reader of my book, in the name of the Most High, not to add any explanation even to a single word: nor to explain to another any portion of it except such passages as have been fully treated of by previous theological authorities: he must not teach others anything that he has learnt from my work alone, and that has not been hitherto discussed by any of our authorities. The reader must, moreover, beware of raising objections to any of my statements, because it is very probable that he may understand my words to mean the exact opposite to what I intended to say. He will injure me, while I endeavored to benefit him. He will requite me evil for good.⁴

² Although unlikely to have been a Shabbatean, his mystical views made him vulnerable to the accusation.

³ Dr. Shapiro borrows from the latter mystical approach to enhance the former approach by making Rav Yosef Karo’s *Maggid* a major player there.

⁴ Rambam says this with regard to the abstract and sensitive material of the *Moreh*, so he is probably less restrictive of his students of *Mishneh Torah*, but the same principle of seeking his true intent is transferable to all his works.

Indeed, in my essay “Tradition! Tradition?” that appeared in the same volume as Dr. Shapiro’s pledge to write his article on “ahistorical” interpretation⁵ I demonstrated how completely against Rambam’s thought such a position runs. Perhaps Rav Kook was thinking not about a few lines in the *Moreh Nevuchim*, but Rambam’s entire approach.⁶ Rambam explains that there is absolute truth and only one proper position on any issue. Authorial intent of HKB”H was transmitted to Moshe Rabbeinu and it contained all the raw material for resolving every issue. As the Talmud explains and Rambam elaborates on, only the decline in learning in the generation after Hillel and Shammai generated *machlokes*.⁷ Rambam is adamant about there being absolute truth that can be resolved in the debate amongst the *chachamim* when Torah is studied at its highest level.⁸ He is adamant, as well, that when precedent has been followed due to past mistakes, it must be uprooted and replaced with the true intent of Chazal and the Torah.⁹

***Machlokes* Is Error**

With *galus* and the dispersion of Israel and its *chachamim*, there was a need to preserve the learning of the *chachamim* by reducing it to writing. Rambam in *Moreh Nevuchim* explains the tragedy of this necessity: “עת לעשות — לה' הפרו תורתך — In a time of need for the sake of G-d they annulled Your Torah,” and how the inadequacy of interpreting texts led to the conditions that existed already in his day, of many Torahs.¹⁰ Nevertheless, his *Mishneh Torah* is a preservation, as best as possible, of the conclusions of Chazal that existed at the time of *Siyum HaShas*. Rambam tells us that in his early writings he was misled by the works of the Geonim and thus made errors, and throughout his lifetime he corrected his mistakes.¹¹ He writes¹² of how the *mesorah* in philosophy had been disrupted and he re-

⁵ See *Hakirah* 8, pp. 181–221. Readers are referred to that essay for a comprehensive presentation of Rambam’s position on absolute truth. Note also that in *Hakirah* 8, Dr. Shapiro described his future essay as explaining the meaning of “ahistorical.”

⁶ Rav Sherira Gaon has a similar position in his *Iggeres*.

⁷ *Hakdamah to Peirush HaMishnah*; see also *Hilchos Mamrim* 1:3.

⁸ *Ibid.*, based on the simple reading of TB *Sanhedrin* 88b.

⁹ *Igros HaRambam*, Sheilat ed., pp. 278–279.

¹⁰ See *Moreh Nevuchim* 1:71.

¹¹ *Igros HaRambam*, Sheilat ed., pp. 305, 647.

¹² *Moreh Nevuchim* 1:71.

constructs it from the few kernels passed down by Chazal in their Aggadata and with the help of the Greek philosophers (“Accept the truth from one who says it, *קבל האמת ממי שאמרו*”). When something is *אמת* we can rest assured that this was part of our original *mesorah*.¹³ In reconstructing the *mesorah* of halachah he relies on finding the best texts¹⁴ and doing the thorough *iyun* in studying the Talmud that he says he was negligent in during his youth—rather than relying on the interpretations of earlier commentaries.¹⁵

Since no authoritative *beis din* has been possible since the close of the Talmudic era, those conclusions of the Gemara codified in *Mishneh Torah* are binding halachah. These conclusions are not necessarily the truth but are, nevertheless, binding halachah. Rambam was not infallible and could have made mistakes and he sometimes corrected earlier mistakes of his own. That they are not necessarily the truth, even if Rambam has accurately codified all the Gemara’s conclusions, is proven by the fact that one *beis din* can overturn another *beis din* and from the Torah’s principle of *פר העלם דבר של צבור*¹⁶. *Beis din* is not perfect and mistakes can be made by Chazal as well.

The attitude that emerges from Rav Yonasan Eibenschutz’s approach, when taken to the extreme, causes its adherents to see no problem in what Chazal attributed to *הפרו תורתך לה' עת לעשות לה' הפרו תורתך* and to see a kind of infallibility in the texts that have been accepted by Israel. But the Vilna Gaon did not have this attitude and did not accord special status to the *Shulchan Aruch*.¹⁷ He was even willing to overturn the definition of day and night,¹⁸ which impacts upon a multitude of halachos including the definition of Shabbos. The Briskers do their best to follow the halachos of Rambam when they differ (*lebachmir*) from the *Shulchan Aruch*. Rationality and the principles of halachah established by Chazal call for this approach.¹⁹ The

¹³ See end of chapter 17 in *Hilchos Kiddush HaChodesh* and the beginning of his introduction to *Avos*.

¹⁴ See *Hilchos Malveh v'Loveh* 15:2; *Hilchos Ishus* 11:13.

¹⁵ See also his introduction to *Sefer HaMitzvos* where he explains how many had been misled by the counts of the mitzvos of the Geonim.

¹⁶ *Vayikra* 4:13–21.

¹⁷ The authority of the *Shulchan Aruch* is taken for granted by most. The Chida notes a tradition he heard, of two hundred rabbanim who accepted the *Shulchan Aruch* as halachah. See *Choshen Mishpat* 25:29. See my *Hakirah* 8 essay, pp. 218–219, where I discuss this.

¹⁸ *Beur HaGra, Orach Chaim* 261:2.

¹⁹ See *Hakirah* 8, “Tradition! Tradition?” where I demonstrate this and the issue is discussed at much greater length.

Shulchan Aruch does not bind *Bnei Yisrael* to follow its conclusions, and in all ages there has been diversion from various laws recorded there. Rav Yosef Karo wrote in a *teshuvah* at one point that one should always follow Rambam.²⁰

רוח הקדש

To support the approach of infallibility of the text, the concept of רוח הקדש is sometimes referred to by halachic authorities. Since (as Dr. Shapiro discusses to justify this approach and I will expand upon later) רוח הקדש היא לא בשמים היא, “The Torah is not in Heaven,” the presence of רוח הקדש in halachic writings can hardly be used to claim that G-d directed one to write the truth in halachah. As Rambam writes,²¹ if one would claim that G-d told him that “the *din* [in a certain issue] is thus, or the halachah is like this person,” he is guilty of the death penalty.

Of the division between halachah and prophecy, Rav Soloveitchik expressed the matter as follows:

Rebbi in *Seder Ha-Mishnayot* never mentioned G-d’s name, only *Shamayim*, Heaven. Angels are not mentioned. The *Mishnah* was written in the most concrete and pragmatic method the human mind has ever devised. Sometimes we feel that Halakhah had a sense of fear and shame in treating transcendental topics and actually exercised and imposed self-restraint. Halakhah deals only with reality, plants, death, disease, agronomy, force, classification of species, economic and political life, etc. Its subject matter is completely identifiable with social and physical science. Halakhah never paid attention to dreams or to the decisions of prophets. No person who claims contact with the transcendental can be allowed to solve a Halakhic problem, which is a purely human affair. Interference with Halakhah by a

²⁰ See *Avkat Rochel* 32: “The Rambam is the greatest of all *poskim* (legal authorities), and all the communities of Eretz Yisrael and the Arab-controlled lands and the West practice according to his word, and accepted him upon themselves as their Rav... why try to force them to move away from him?” See also *Beis Yosef, Orach Chaim* 3:79:

ונכון ליהרהר כדברי הרמב"ם שהוא עמוד ההוראה.

I make the case for this approach in the *Hakirah* 8 essay.

²¹ In *Hilchos Yesodei HaTorah* (9:3) and in the introduction to *Peirush HaMishnah*.

prophet [qua prophet] is punishable by death. The human mind decides Halakhic problems. The Halakhic experience is logical, rational and finite, and the method of Halakhah is based on logical principles.²²

Indeed we can say that one attains to רוח הקדש, to feeling the palpable presence that sharpens one's insight,²³ and when we apply it to writing Torah with רוח הקדש we only mean that there was *siyata diShmaya* (the help of G-d) in breaking through to understanding what is difficult.²⁴ Chazal tell us חכם עדיף מנביא, "The scholar is greater than a prophet" (TB *Bava Basra* 12a), and it is with wisdom, חכמה, that Torah is learned.²⁵ Some of those who quote Rav Yonasan Eibschutz probably do not mean anything more than I am saying and even on his part it may be at least partially a poetic flourish. Of the oft-quoted statement by Raavad²⁶ that רוח הקדש appeared in his *beis midrash*, Rav Moshe ibn Haviv comments "it is a *guzmah*," exaggeration.²⁷ Certainly, the concept that authors are moved by G-d to write a language that is the truth which differs from their own understanding should be anathema to us philosophically.²⁸ Moreover, it defies

²² See "Lectures of Rabbi Dr. Joseph B. Soloveitchik: The Relationship between Halakhah, Aggadah and Kabbalah" in this volume, pp. 19-82.

²³ See *Moreh Nevuchim* 2:45 where Rambam defines it as a steppingstone to prophecy. "A person feels something has come over him." It is this element, not the accompanying insight of David and Shlomo, that rabbis speak of when they refer to רוח הקדש.

²⁴ See *Hilchos Teshuvah*, *perek* 6:5 on *siyata diShmaya*. "טוב וישר, ומה הוא זה שאמר דויד "טוב וישר, וילמד ענווים, במשפט; וילמד ענווים, דרכו" (תהילים כה, ט). זה ששלח להם נביאים מודיעים להם דרכי ה', ומחזירין אותן בתשובה. ועוד שנתן בהם כוח ללמוד ולהבין, שמידה זו בכל אדם, שכל זמן שהוא נמשך בדרכי החכמה והצדק, מתאוה להן ורודף אותן. והוא שאמרו חכמים בא ליטהר, מסייעין אותו--כלומר ימצא עצמו נעזר על הדבר

²⁵ In fact, it is difficult to reconcile the place of *Neviim* and *Kesuvim* in the learning of Torah. דברי תורה מדברי קבלה לא ילפינן. and thus *pesukim* can be used in halachic matters only as a *gilui milchah*. Their realm is in חכמת אלקית in יהיה in אנכי ולא יהיה, in the area where the mind is directed to seek, bounded by the halachah of לא. It would seem that David's statement of עלי השכיל which guided him in the measurements related to the Beis HaMikdash, is not halachah, but aesthetic sense. Thus Rambam says (*Hilchos Beis HaBechirah* 1:4 and introduction to *Peirush HaMishnah*) it is 'ראוי' to use these measurements, but they are not halachah, just aesthetic guidance. *Nach* gives insight into halachos of the Torah after *chochmah* establishes *halachah*. I hope to write about this more extensively in an upcoming essay.

²⁶ Most notably in his *basagab* to *Hilchos Lulav* 8:5.

²⁷ See *Kappos Temarim* to TB *Succah* 32b.

²⁸ Indeed, Rav Yehudah HaLevi in the *Kuzari* (3:41) does merge the wisdom of the *chachamim* with prophecy, but still the mechanism is via their insight. Moreover,

logic—is it the first language the Rambam or Beis Yosef wrote or the latter that they changed their mind to but did not make its way to the printed text.

Never-Ending Pursuit of the Knowledge of G-d

The Mishnah in *Ediyos* (1:5–6) explains why dissenting positions are preserved in the Mishnah—so that we should know these positions were rejected lest we find people following them in some quarters, and so that they can be reconstructed as halachah if the position wins acceptance by the majority.²⁹ The Gemara relates the give-and-take of argumentation regarding these laws—*shakla v'taria*—and thereby illustrates fundamental ideas that were disputed. This gives us insight into the basis for the conclusions which is necessary for understanding Torah at its highest level, and also will allow for the future *batei din* that will arise in the era of Mashiach to continue from where Chazal left off in their pursuit of ultimate truth. Our desire for the Mashiach is so that we can study Torah without distraction and be devoted entirely to this pursuit of truth.

In that era, there will be neither famine nor war, envy or competition, for good will flow in abundance and all the delights will be freely available as dust. The occupation of the entire world will be solely to know G-d. Therefore, the Jews will be great sages and know the hidden matters, grasping the knowledge of their Creator according to the full extent of human potential, as Isaiah 11:9 states: “The world will be filled with the knowledge of G-d as the waters cover the ocean bed.” (*Hilchos Melachim* 12:5)³⁰

The pursuit of knowledge of G-d is the pursuit of truth ואין לאחר ואמת כאמתו, “And there is to nothing else truth like His truth” (*Hilchos Yesodei HaTorah* 1:4). Truth is not only one of G-d’s *middos*, it is His signature.³¹

Acknowledging Human Frailty

he limits it to the age of the Beis Din HaGadol. *She'eilos U'Teshuvos Min HaShamayim* would indeed represent a viewpoint that takes this further. Raavad’s comment of experiencing *Ruach HaKodesh* in his insight and *psak* is found in statements of others as well and Rav Reuven Margolies collects most, if not all of them in his introduction to *She'eilos U'Teshuvos Min HaShamayim*. We will refer to this concept later in the text.

²⁹ *Ediyos* 1:5–6. Rambam in *Peirush HaMishnah* actually implies that to follow the minority, the overturning *beis din* must be גדול ממנו מחכמה ומנין but in *Mishneh Torah* (*Hilchos Mamrim* 2:1) he does not require these conditions.

³⁰ See also *Hilchos Teshuvah*, chapter 8.

³¹ See TB *Shabbos* 55b.

The famous story of *Tanur shel Achinai* (TB BM 59b), that is taken by some to downgrade the importance of truth, has a sequel. It finds Rav Gamliel in danger of drowning at sea for deciding against Rav Eliezer, and he must justify his decision with his purpose, **שלא ירבה מחלוקת בישראל**, “so division not increase in Israel.” As the Chinuch and Ran (*Derashab* 7) explain, although there is damage in following the wrong opinion, there would be greater damage caused by one following his own belief once the majority has taken one position. The Chinuch refers to the *Sifrei* on the verse **לא תסור מן הדבר אשר יגידו לך ימין ושמאל**, “Do not diverge to the left or right from the word that is related to you,” and expresses it this way:

אפילו יאמרו לך על ימין שהוא שמאל ועל שמאל שהוא ימין לא תסור ממצותם, כלומר שאפילו יהיו הם טועים בדבר אחד מן הדברים אין ראוי לנו לחלוק עליהם אבל נעשה כטעותם, **וטוב לסבול טעות אחד ויהיו הכל מסורים תחת דעתם הטוב תמיד.**

Even if they tell you that the right is the left and the left is the right do not diverge from their commandments, meaning even if they are mistaken on a particular issue, it is not proper for us to break with them but rather follow their mistake, and it is better to bear with one mistake and thus be under their good judgment constantly. (*Mitzvah* 496)

The Ran elsewhere specifically asks how it is possible that following a mistake will not cause harm to the soul, since all commands have specific reasons behind them. He answers as follows:

כי ראוי לסבול אותו {הפסד} מצד רוב התקון הנמשך תמיד, ואי אפשר לתקן יותר מזה... ואני סובר עוד שאי אפשר שימשך ממה שיכריעו הסנהדרין הפסד בנפש כלל, גם כי יאכלו דבר האיסור ושיאמרו בו שהוא מותר לפי שהתקון אשר ימשך בנפש מצד ההכרעה למצות החכמים הוא הדבר היותר אהוב אצלו, כאמרו הנה שמוע מזבח טוב, ותקון ההוא יסיר הרוע אשר הוא מעותד להתילד בנפש מצד אכילת הדבר האסור ההוא³²

It is proper to bear this loss in exchange for the large benefit that will be accrued constantly, and we cannot perfect things better than this. I also believe that there will not emerge from the decision of the Sanhedrin any loss at all, even if one eats something forbidden thinking it is permitted, because the good that will come to the soul from following the words of the *chachamim* is more beloved by Him, as it says, “Obeying [is more] than a good sacrifice.” And this good

³² וכיוצא בדבר זה בעצמו יקרה הגוף, כי המאכל המזיק כשיאכלהו האוכל על דעת שמועיל אליו הנה מחשבתו תפעל באוכל ההוא ויסור ממנו הזיקו אם לא שיהיה מופלג.

will remove the evil that will be produced by eating this forbidden thing. (*Derashah* 11)

Rambam does not address the question but makes the general statement (*Moreh Nevuchim* 3:34) that whereas all mitzvos are to instill perfection in the person, it is possible that for certain individuals a certain mitzvah is counterproductive, but nevertheless mitzvos are designed for the majority. This principle serves to answer the difficulty raised by the Chinnuch and Ran as well and aligns with their opinion.

Rav Nissim Gaon (TB *Berachos* 19) actually did not accept the idea that the *chachamim* were wrong and interprets the signs that Rav Eliezer had brought as being non-miraculous and unconvincing and explains away the *bas kol* as well.³³ Without addressing this Gemara, *Kuzari* (3:41) in fact claims that with *רוח הקודש* Chazal will always be right. It is probably this opinion that was adopted and supplemented by the Rav Yonasan Eibschutz school and applied to the *Shulchan Aruch* and other accepted works. The *Kuzari* is a minority opinion to start with and applying it past *Beis Din HaGadol* is not supported by any *rishon*. In any event, these opinions as well do not allow for multiple truths.

Rav Eliezer was defeated and became isolated from the others, apparently placed in *nidui* because of his vehement opposition to his colleagues (TB *BM* *ibid.*), but the Talmud follows his life until its end. Rav Eliezer's *talmidim* are excoriated for not coming to learn from him and are condemned to premature deaths, that of Rabbi Akiva to be the most violent. To abandon him is death. Rav Eliezer spends his last days answering questions of *tumas keilim* and ends his life with the word *tabar*. In this manner the Talmud signals that his position will someday be vindicated and accepted, and, as with Eliyahu HaNavi, his *talmid* declares upon his demise *Avi avi, rechev Yisrael u'parashav* (TB *Sanhedrin* 68a). Rav Eliezer is described (*Avos* 2:8) as a *בור סיד שאינו מאבד טפה*, “a sealed pit that loses not a drop,” who, if placed on one side of the scale, would outweigh all the other *chachamim* placed on the other side. He had a position that reflected all the wisdom of the *mesorah*, but he could not transmit to the others the depth of his grasp of this issue. But his optimistic vision and teaching of his final word *tabar* will extend into the future and will be adapted in *Yemos HaMashiach*.³⁴

³³ This is also one of the opinions voiced by *Tosafos*, *Yevamos* 14a.

³⁴ R' Shmuel Reiser suggested that the tradition quoted in the name of the Arizal that in the future the halachah will be like Beis Shammai illustrates that since *מהדדי טפי*, therefore they understood the real truth and in a world advanced in *דעת*, their opinion will be the majority. Later in this essay we will deal with R'

The Path to the Truth

The statement of Chazal “אלו ואלו דברי אלקים חיים,” “these and these are the words of the living G-d” (TB *Erubin* 13b), is taken as a basis for contending there are multiple truths. The Ritva (ibid.),³⁵ commenting on this, seems to suggest this idea in the name of *Rabbanei Tzarfus* but adds that in *chochmas hakabbalah* the issue is deeper.³⁶ The Gemara says this of Beis Shammai and Beis Hillel and then goes on to state the halachah is like Beis Hillel.³⁷ Still, the simple rendering of the Gemara—and as we must interpret according to Rambam and the other *rishonim* quoted above, is that indeed the rejected positions in the Talmud are assumed to be wrong, but they have merit and we gain clarity into the correct position by understanding why the rejected arguments fall short—and, as noted above, therefore Chazal preserved them—for indeed they may be proven the ultimate truth.³⁸ Chazal tell us that to be eligible for the Sanhedrin one must be able to present convincing arguments³⁹ for being able to say why a *sberetz* is *tabor*.⁴⁰ These reasons are דברי אלקים חיים but not G-d’s signature. They are valid insights that must be understood, but they are not halachah. They are not truth.

Chazal also apply אלו ואלו in *aggadata* (TB *Gittin* 6b) on what was the reason the man sent away the concubine of Givah. Was it over a fly in his

Elazar ben Arach who is identified as *oker harim*, who, according to one opinion, would outweigh all the scholars even with Rav Eliezer on the other side of the scale.

³⁵ שאלו רבני צרפת ז"ל, איך יתכן שיהיו שניהם דברי אלקים חיים, וזה אוסר וזה מתיר? ותירצו, שכשעלה משה רבינו למרום לקבל תורה, הראו לו על כל דבר ארבעים ותשע פנים לאיסור וארבעים ותשע פנים להיתר, ושאל משה את הקדוש ברוך הוא על זה, היאך יש לפסוק להלכה, השיב לו, שיהיה זה מסור ביד חכמי ישראל שבכל דור ודור, ותהיה הכרעת ההלכה כמותם. וסיים הריטב"א, ונכון הוא לפי הדרש, ובדרך האמת יש טעם סוד בדבר.

³⁶ I believe this Ritva is rooted in the Ramban in *Sefer HaMitzvos* on comparing לא קדוש החדש to תסור.

³⁷ The use of *bas kol* for this determination is a problem raised already by Tosafos and, as Rav Margolies details, the term is widely used and means different things in different places. Rambam, in a *teshuvah*, considers it just the process of the world. In *Moreh* he makes clear that it is an experience that is not prophecy, akin to what Hagar could have experienced in understanding G-d’s will.

³⁸ The Gemara is speaking from its own vantage point; it is unsure of the ultimate truth.

³⁹ Elucidating the Chazal that Ritva refers to about 49 arguments for *heter* and 49 for *issur*.

⁴⁰ TB *Sanhedrin* 17b. TB *Erubin* 13b refers to an unnamed *talmid* who had 150 arguments for doing so.

food or over a hair? How could both be historically correct? But in *aggadata* they were not arguing about a historical fact but conceptually about what was the root cause at the heart of the dissension that led to the tragic war between the tribes. This is something of lasting importance—and while in *aggadata* there is no final decision on halachah⁴¹—eventually here, too, we will seek a final insight, the truth.

Chiddush

The Talmud (TB *Menachos* 29b) tells us that Moshe Rabbeinu attended a *shiur* by Rabbi Akiva that he could not follow and was only comforted when Rabbi Akiva finally concluded that his ultimate source was הלכה למשה מסיני, a tradition from Moshe. A friend of mine had a meeting with the Rav to discuss theological doubts he was dealing with, and he asked him about this *aggadata*. The Rav replied, “All right, we don’t understand all of *aggadata*.”⁴² Nevertheless, the meaning of this *aggadata* is not that difficult. This statement should be studied in conjunction with another *maamar Chazal*,⁴³ כל מה שתלמיד ותיק עתיד להורות כבר נתנו למשה בסיני, “that all that a diligent student will introduce was already given at Sinai.” Dr. Shapiro promotes a belief that *chiddushim* in every generation are new concepts, not what was latent in the Torah of predecessors, and produces hearsay evidence from contemporaries to claim that even some leading Briskers share this view. Chazal are explicit that all of Torah is latent in the Torah handed down to Moshe. This is the meaning of Rambam’s assertion that all *machlokes* is due to error and there is only one truth.

All that Rabbi Akiva had taught was latent in Moshe’s Torah and that is why he ends his *shiur* with הלכה למשה מסיני. Ramban, in fact,⁴⁴ brings this *aggadata* to prove that all apparent *chiddushim* were given to Moshe at Sinai. That Moshe could not follow the *shiur* is a more complex issue—and the Rav did not want to get into it with a *talmid*.⁴⁵ Firstly, Moshe received the Torah as scribe (8th of the *ikkarei emunah*) so it is, in fact, possible that he did not understand all that the Torah contained. Indeed, the authorial intent is that of G-d, not of Moshe. Moreover, Chazal are here

⁴¹ See *Peirush HaMishnah, Sanhedrin* 10:3.

⁴² Apparently, the answer was not sufficient. My friend went on to get a PhD from JTS and eventually became a professor there.

⁴³ See *Talmud Yerushalmi, Peah* 2:4, *Shemos Rabbah, Va’eira* 10:1: See also TB *Berachos* 5a.

⁴⁴ In his introduction to his *Peirush* on the Torah.

⁴⁵ Nevertheless, it seems necessary to respond, as we see the danger in not doing so from the case of my friend. Also, fools rush in where angels fear to tread.

reflecting into the nature of knowledge and methodology of derivation of principles and the concept of *כפטיש יפוצץ סלע*, the dense principles of Torah split into many parts.

We have a concept of a *לאו שבכללות*, a statement in the Torah that is understood by Chazal to include multiple prohibitions. Take *לא תאכלו על הדם*,⁴⁶ which literally refers to a practice of *avodah zarah* of eating over blood, and Rambam explains it this way in the *Moreh*.⁴⁷ Yet, while it is counted as one mitzvah in *Taryag*,⁴⁸ it includes other prohibitions (for which there are no *malkos*), such as *dayanim* eating on the day of an execution, eating from a slaughtered animal before it dies, eating before Shacharis, and forbidding the gluttonous eating of the *ben sorer u'moreh*. Moshe received and taught the fundamental concept with a deep understanding that led to the inclusion of all these cases but it was left to the Tannaim to flesh out the concept and apply it to all these cases.⁴⁹ The details of derivation and application were those of the rabbis, but the underlying principle as well as the fundamental laws of derivation⁵⁰ was that of Moshe. Chazal speak of the thousands of mitzvos that were lost in the days of *aveilus* over Moshe.⁵¹ Rambam explains that these were laws Moshe had derived on his own. Even these laws can theoretically be overturned by subsequent courts.⁵² Moshe as *rosh beis din* was not the owner of absolute truth.⁵³

The Mishnah

Rambam explains (*hakedamah to Mishneh Torah*) that Rabbi created a text consisting of an organized body of laws and ideas that was to be distributed to the students and was to serve as the basis for his lectures. Before him, Torah was apparently taught based on the *Mikra* and this style of learning was preserved in the *Mechilta*, *Sifra* and *Sifri*. The Mishnah cannot be fully understood on its own, but all the principles of the law are there

⁴⁶ See ninth *shoresh* in Rambam's *Sefer HaMitzvos*.

⁴⁷ See *Moreh Nevuchim* 3:46.

⁴⁸ See *Law* 195 on *ben sorer u'moreh* in the *Sefer HaMitzvos*.

⁴⁹ הניחו מקום להתגדר בו. See *TB Chulin* 6b.

⁵⁰ המדות שהתורה נדרשת בהם.

⁵¹ See *TB Temurah* 16 and *Sefer HaMitzvos*, *shoresh* 2. Laws that are derived are *divrei sofrim* and subject to *machlokes*. Chazal say Othniel ben Knaz recovered the lost laws with *palpulo*. This may imply a variant on the analysis of Moshe Rabbeinu and akin to that of Rabbi Akiva. See *Zohar Rokeach* on *Shoresh* 2.

⁵² See *Or Samei'ach*, beginning of *Hilchos Mamrim*.

⁵³ We will return to the concept of *chiddush* later in this essay in discussing Brisk.

in an organized fashion. Its structure is a conceptual one and the choice of what is written and what was left to be explained is difficult to ascertain. The target audience is advanced scholars.⁵⁴ Every Mishnah represents a distinct concept. It begins with *Zera'im*, man in his relationship to the earth, and ends with *Tabaros*, man preparing his soul to meet its Maker.⁵⁵ Rambam explains⁵⁶ that *Tabaros* is a ladder leading to *Kuach HaKodesh* and the students of Rabbi were being trained step by step to attain to prophecy.

The Mishnah is a structure that encompasses the entire Torah, and is inclusive of those divergent opinions that help us delve more deeply into this underlying structure, and with this knowledge scholars will in the time of Mashiach continue to debate⁵⁷ and, eventually, perhaps create a modified version of our Mishnah. One aspect of Chazal's assessment "*talmud Torah k'negged kulam*"⁵⁸ is that the absorption of knowledge is the goal of the mitzvos.⁵⁹ Rambam explains that the highest attainment of man is *shleimus hanefesh*—perfection of the soul/mind—and the mastery of all these *dei'os* brings one to fulfill the all-encompassing mitzvah of *Anochi, Yedias HaShem*.⁶⁰

Mishneh Torah

Mishneh Torah, as well, is a structure that encompasses the entire Torah but is based solely on the conclusions of Chazal. Moreover, Rambam wrote it for beginners as well as for advanced scholars and composed a much more detailed composition than the Mishnah, beginning with the *Yesodei HaTorah* and ending with *Yemos HaMashiach*. All of Israel is here trained on how to bring Mashiach and even how to be *Melech HaMashiach*.⁶¹

⁵⁴ Though a large part of *Mishnah Shabbos* deals with *botzaab*, it never tells me what a *reshus harabbim* and *reshus hayachid* are.

⁵⁵ See *Hakirah* 18, "הסדר של ספרי משנה תורה" where I explain the order of the six *sidrei Mishnah* as well as that of *Mishneh Torah*.

⁵⁶ *Hakdamah* to *Peirush HaMishnah Tabaros*.

⁵⁷ Guided by the Talmud. See section "Never-Ending Pursuit of the Knowledge of G-d."

⁵⁸ Peah 1:1 and *Peirush HaMishnah* *ibid*.

⁵⁹ See *Peirush HaMishnah*, *Menachos* 13:11, that the study of the laws of sacrifices takes the place of this *avodah*.

⁶⁰ See *Moreh Nevuchim* part 3, chapter 27, and the Introduction to the *Peirush HaMishnah*, Kappach Edition, pp. 22–23. See also the introduction to *Avos*, chapters 2 and 7.

⁶¹ See *Hakirah* 18, "הסדר של ספרי משנה תורה"; also, *Hakirah* 9, "*Mishneh Torah: Science and Art*."

Like Rebbi in his Mishnah, the goal was not to present a reference book for *halachah l'maaseh* but to faithfully record all the details of the Torah in a conceptual manner. Rambam's level of abstraction of these principles called for a change of organization from that of the Mishnah. Rebbi's level of abstraction was not accessible even to his *talmidim* until he had lectured on them. Rambam presented a work that can be understood by *talmidim* even a thousand years after it was written.⁶²

In addition, *Mishneh Torah* directs people on how to live on a daily basis. *Shleimus HaGuf*, perfection of body, is the second aspect of *kol haTorah kulah*. One's character and actions must also be perfected. Rambam explains that Talmud Torah *k'negged kulam* means that in the performance of all actions, the level of one's understanding of the mitzvah impacts the level of his performance.⁶³ *Mishneh Torah* guides every person in *Shleimus HaGuf* and *Shleimus HaNefesh*. *Tabaros* precedes *Hilchos Nezikin and Mishpatim*. In going out into the business world, one must prepare himself with *kodshim* and *tabaros*, acquiring an emotional and intellectual base dedicated to spirituality.

I have written elsewhere⁶⁴ about something obvious to most *talmidei chachamim*: the conceptual structure of *Mishneh Torah* as a whole, its chapters, and its individual halachos. An example demonstrating how Rambam was not interested in writing a halachah *sefer* to be used for reference is how he categorizes the law of building a bathroom. It may not be built between east and west because of the mitzvah of *mora mikdash* and it is cataloged in *Hilchos Beis HaBechirah* (7:9).

Authorial Intent in *Mishneh Torah*

A major point that needs to be emphasized is that *Mishneh Torah* is not a work of *chiddush*. Rambam is merely cataloging and arranging all the decisions of Chazal and his goal is not to add anything. Because some things are not clear, even to him, he writes an occasional *yeraeh li* and occasionally endorses or argues with the position of the Geonim. But 99% of *Mishneh Torah* is just codification.

What Rambam adds, that we would call *chiddush*, is the organization, by which he implies the conceptualization underlying *kol haTorah kulah*.

⁶² See *Teshuvah*, Sheilat edition, p. 302, where he says that only *Mishneh Torah* will remain. The Gemara also was written in a way to be accessible forever, but it did not create the conceptual structure of *kol haTorah kulah*.

⁶³ *Peirush HaMishnah*, *Peah* 1:1.

⁶⁴ See *Hakirab* 18, "הסדר של ספרי משנה תורה"; also, *Hakirab* 9, "Mishneh Torah Science and Art"; also, *Hakirab* 26, "A Halachah in *Mishneh Torah*."

Without Rambam, we are in danger of losing the forest for the trees. And it is because Rambam presents us with the forest, that he has become the focal point for analysis of *Shas* by our greatest scholars—from Raavad and Ramban through Rav Chaim Brisker.⁶⁵ The upshot of this fact is that if someone reconciles a *shverrer Rambam*, and explains the *lomdus* behind his words, that explanation could be true Torah even if it is not the Rambam's intent. Rashi and *Tosafos* may explain that two Gemaras are apparently in disagreement with each other or are talking about different cases because conceptually they are incompatible, and yet Rambam will *paskeen* both Gemaras. Rambam may have a simple technical explanation or even a different *girsab* in the Gemara that led him to codify both Gemaras; nevertheless, an exposition by Rav Meir Simchah or Rav Chaim on the implications of codifying both Gemaras can be the true authorial intent. In *Mishneh Torah*, the authorial intent in recording these halachos is the authorial intent of Chazal, which in turn is the authorial intent of HKB"Y.⁶⁶ Whether Rambam intended to imply this *lomdus* cannot be certain in all cases.

Rav Chaim Brisker

Rav Chaim Brisker walked in the footsteps of Rebbi and Rambam. Dr. Shapiro quotes Rav Aharon Lichtenstein saying that Rav Chaim's purpose in his *chibbur* was “not to reconcile contradictions in Maimonides, but to reveal the light of Torah that shines between the lines of every *sugyah* and clarifies its deepest foundations.” Indeed, Rav Chaim gave his *shiurim* on Gemara and in his *chibbur* he discusses the *sugyos* and at times the minority opinions as well, and this is what Rav Lichtenstein is referring to. Dr. Shapiro explains Rav Chaim's goal pretty well in an earlier essay that he refers us to:

R. Hayyim and his colleagues/students believed that even though there were novel elements in their approach, through their interpretations they were able to reveal what was latent in the sources. This is the meaning of R. Hayyim's comment, as transmitted by R. Elhanan Wasserman, that it is not our role to create *hiddushim*, for this was the task of the *rishonim*. Our duty is merely to understand the words of the *rishonim*. R. Hayyim's approach postulates that in order for us to properly understand both Talmud and *rishonim*, we

⁶⁵ The former challenged his structure, and the latter absorbed it.

⁶⁶ At least for *dinei baTorah* and *divrei sofrim*. If that is the case even for *takanos* could be debated.

must study in a fashion which causes everything to appear in a new light, even though, in truth, our insights are not “*biddushim*.” Rather, what we are stating is simply the obvious and plain meaning of the texts, the “removal of the veil from upon the halachah.”⁶⁷

This last phrase, “removal of the veil from upon the halachah,” is taken from the Rav’s *hesped* of his uncle, the Brisker Rav (*B’sod haYachid v’Hayachad*, p. 131). In this *hesped*, he explains what Rav Chaim did: “*neveilah* and *treifah*, *shtarei kinyan* and *shibud*, *melech* and *koben gadol* and *olas re’iyah* were removed from the practical daily realm, from the physical, and placed into the ideal, where the pure halachic understanding reigns—a reign without borders and within these, issues are contained within an intellectual architectural structure that expands one’s vision and captivates his soul... Halachah is not a collection of laws, but a [function of] a method, an approach that creates a noetic unity, a fully organized structure.”

The structure the Rav defines, is the same one that Rambam built in *Mishneh Torah*. What Rambam implied by how he organized and structured *Mishneh Torah* is fundamentally the same structure that Rav Chaim directed his students to unveil. There is even a deeper structure, that of Rebbi’s Mishnah, that the Amoraim predominantly concentrated on and Rav Chaim extended his work into comprehending that structure as well. Working through the insights of the *rishonim*, Brisk seeks to uncover the structure that Chazal understood and based on which the details of the halachah were argued.

These structures are timeless. The structure of halachah “is the world of ideal... penetrating to the depths and then rising up to the heavens. This Torah is not bound by even the changes of time and situations. Into the same halachah delved R’ Akiva, R’ Yehoshua b. Chananiah and Shmuel HaKatan, Abaye and Rava, Rashi and Rambam, R’ Yosef Karo and Rama, the Gaon of Vilna and R’ Akiva Eiger, the Ktzos and the Nesivos, R’ Chaim Brisker and his sons, my father and uncle, ז”ל” (ibid.) Chazal spent long hours, not deciphering the words of a text, as much of our time is spent, but delving into deep waters of thought, analyzing everything from exactly what the meaning of a deed is to how the emanation of *tumah* from a dead body should spread.⁶⁸ Rambam, Rashi, Ramban and the *Baalei Tosafos*, after fully mastering the texts, connected back to the

⁶⁷ *Tradition*, Spring 1997 vol. 31.3, “The Brisker Method Reconsidered.” This understanding precludes Dr. Shapiro’s interpretation of Rav Lichtenstein, that the *chibbur* was merely a springboard for his own analysis of *Sbas*. He looked to Rambam and other *rishonim* for clarifying the *sugyos*.

⁶⁸ Not something physical, but something spiritual that dwells in the human psyche.

analysis of Chazal, and Rav Chaim sought to express it in a modern idiom—with a language that was sometimes of his own making, but quickly adopted by his students.

The Rav emphasizes the eternity of these structures and postulates. The basic structure of Rav Chaim is that of Rambam and that of Chazal. Many, who do not understand Brisk, similarly do not understand the depth of the words of Chazal. They see much of halachah as the product of ancient minds, with outdated views tinged with racism and misogyny. In their view, halachah has to be manipulated by those who understand the basic morality that the Torah has brought to the world, but recognize Chazal's limitations and fallibility and are able to right the wrongs: "Where there is a rabbinic will there is a halachic way."

To Rav Chaim and his followers, the principles of halachah are akin to scientific and mathematical concepts. "Rav Chaim, who was graced with a blessed halachic intuition, brought out the conceptual quality into the field of halachah. He built a world of ideas and revealed the pure halachic constructs. If we can fathom slightly the quality of the conceptual and mathematical insight into nature produced by the fathers of classical and modern physics from the days of Galileo and Newton until our day, we can understand also the quality that Rav Chaim brought to halachah which is comparable in some way to the approach of the sciences to the real world."

Learning

Indeed, Rav Chaim was a great innovator, *mehadesh*, but the *chiddush* of Rav Chaim was that of R' Eliezer HaGadol. He was the **בור סיד שאינו** **מאבד טפה**, "a sealed pit that loses not a drop" (*Avos* 2:8).⁶⁹ By paying attention to every detail and recognizing every nuance, he grasps exactly what Chazal have said and then he enters into their mindset and understands their reasoning. The goal in learning is to think as they did and reconstruct the structures that they built. We come to the *beis midrash* to **learn** the Torah—not impose our own ideas onto the Torah texts.⁷⁰

⁶⁹ The best Brisker joke explains the methodology. The question is *Azoi?* (could this be possible?) and the answer is *Azoi!* (exactly, that is how things work.) He enters into the mindset of Chazal.

⁷⁰ The era of *oker harim* in which R' Elazar ben Arach excelled passed with the *siyum haShas*. It shall *iy"H* appear again with the reestablishment of the Sanhedrin, and the battles left off at the time of *siyum haShas* will reemerge when all *Chachmei Yisrael* will gather as one unified group... (with proper *girsaos*, etc.). See "Tradition! Tradition?" in *Hakirah* 8.

Dr. Shapiro quotes Rav Lichtenstein as saying we can't say all our explanations accurately reflect what went on in the mind of the Rambam. Indeed, there is no exact translation from one language to another and no person can accurately reflect exactly the thinking of another. The influence of all our interactions affects how we think of things and how we express ourselves. In *Hakirah* 8,⁷¹ Dr. Shapiro quoted from a student's transcript of the Rav himself making this point, saying, "Mankind is changeable in its cognitive adventures... and if I give an interpretation to Maimonides, it does not necessarily mean that Maimonides meant **just that**. If measured by halachic standards it is correct, that suffices." The question is, Does the explanation reflect the halachah as Rambam meant it, and this includes the extrapolations of halachos that Rambam would have *paskened*?

Chazal expressed their conceptualizations primarily by telling us what the halachah is in every case, how we must act. The language of action contains a commonality that transcends the language of expression. This is how we pass on knowledge to the next generations that will speak in a new idiom. The conceptualization flows from this structure of halachos. That is why Chazal commonly deal with cases that seem almost impossible.⁷² The goal is to give understanding into the concepts behind the mitzvah. A new case may force us to dig deeper to better define the structure. This is what Chazal explained to us in saying *הניחו מקום להתגדר בו*, "Room was left to make one prominent." (TB *Chulin* 7a)

The Reasons

As the explanations that Chazal give for their conclusions are usually stated tersely, technical reasons based on analysis of the *Mikra*, or missing altogether, the student is driven to ask why?⁷³ Ultimately the grasp of the details of the laws of the Talmud depends on the understanding of the

⁷¹ Reply to Rabbi Asher Benzion Buchman.

⁷² The halachic requirements imposed on a *ben sorer u'moreh* is the classic example, but the Talmud is full of examples.

⁷³ See Rav Moshe Lichtenstein's "What? Hath Brisk Wrought: The Brisker Derech Revisited" (The Torah u-Madda Journal, 2000) where he critiques those Briskers who do not ask "why." In the Brisk circles that I am familiar with, "why" is always an essential element of the discussion. From the "what" that is derived by mathematical-like reasoning, one goes to the "why," to explain the facts we have been given. There may be several possible explanations for "why" and thus the author of a particular *chiddush* may not extend his article to deal with the "why," but most scholars will have an opinion as to what the logical explanation for the halachah is or will be weighing several possibilities.

concepts behind the individual mitzvos.⁷⁴ With regard to this, Rambam elaborates at the end of *Sefer Korbanos*.

Although all the statutes of the Torah are decrees, as we explained in the conclusion of *Hilchos Me'ilah*, it is fit to meditate upon them and wherever it is possible to provide a reason, one should provide a reason. The sages of the early generations said that King Solomon understood most of the rationales for all the statutes of the Torah. It appears to me that the verse (Leviticus 27:10): "It and the animal to which its holiness will be transferred shall be consecrated" shares a similar motivating rationale as the verse (ibid.: 15): "If the one who consecrates it shall redeem his house, he shall add a fifth of the money of the redemption valuation to it." The principle behind these laws is that the Torah descended to the bottom of a person's thoughts and the scope of his evil inclination. For human nature tends to increase his property and attach importance to his money. Even though he made a vow or consecrated something, it is possible that he will reconsider, change his mind, and redeem it for less than its worth. Hence, the Torah states: "If he redeems it for himself, he must add a fifth." Similarly, if he consecrated an animal in a manner that its physical person becomes consecrated, he might reconsider. In this instance, since he cannot redeem it, he will exchange it for a lesser one. If he was given permission to exchange an inferior animal for a superior one, he will exchange a superior one for an inferior one and claim that it was superior. Therefore, the Torah removed that option, forbidding all exchanges and penalized him that if he made an exchange, "It and the animal to which its holiness will be transferred shall be consecrated."

All these ordinances are to subjugate one's evil inclination and improve one's character. Similarly, most of the Torah's laws are nothing other than "counsels given from distance" from "He Who is of great counsel" to improve one's character and make one's conduct upright. And so it is written Proverbs 22:20–21: "Behold, I have written for you in the Torah prominent matters, to inform you of the veracity of the words of truth, so that you will respond truthfully to those who send to you." (*Hilchos Temurah* 4:13)

Firstly, Rambam tells us that although we must accept dictates of the law without question, still it is proper to delve into the reasons behind them. Although Rambam gives reasons for mitzvos in *Moreh Nevuchim* (3:), this is just the tip of the iceberg. Here, Rambam first gives a practical

⁷⁴ See *Moreh Nevuchim* 3:28 where Rambam explains that even though it may be difficult to see the reasons, they are always a function of *shleimus haguf* and *shleimus hanefesh*.

reason for why, when one tries to transfer the *kedushah* from an animal to another, both animals remain holy. Human nature is to see things in a way that benefits oneself financially, and as a prevention from trading a better animal for a worse, the Torah took this preventative step.

But then Rambam goes deeper. He adds “all these types of laws are to curb one’s inclinations and to correct our *dei’os* [our thinking and our character traits].” It is not primarily that we fear that *bekadesh* will be cheated, but rather we are concerned with one having his character and mind corrupted. Then Rambam explains that the purpose of most of the Torah’s laws is to straighten our actions and our thinking and Rambam uses the phrase (from *Yirmiyahu*) *עצות מרחוק מגדול העצה*, i.e., how the mitzvos operate and accomplish this is a matter of great depth, not in an obvious fashion. In *Mishneh Torah* and especially in *Moreh Nevuchim*,⁷⁵ Rambam explains that many laws are related to the practices of idol worshippers that we must distance ourselves from, but a deeper understanding can be gained by understanding the reasons that drew people to worship in this fashion. Delving into this is part of *talmud Torah*. Psychological and philosophical insight should advance our understanding of halachah.

As we said earlier, Chazal gave us the principles that Rambam codified and built into a structure, and these principles and this structure are what Brisk seeks to uncover. I believe that insight into the concepts behind this structure was not completed even by Chazal. This is the work that is meant to continue in our day and to come to broad fruition in *Yemos Ha-Mashiach*. What is day and night on the North Pole, when do I keep Shabbos? When do I *daven* Shacharis in Outer Space, or do I? All this is somewhere in the Torah, defined long ago by Chazal and waiting for someone to uncover the answer by providing the reasons behind the mitzvos we perform daily. The answer may lie in an understanding of the nature of time.⁷⁶ The Talmud is packed with principles that seem irrelevant, but Chazal were only interested in the principles—the structure that G-d created first and used as a model for the creation of the universe. The goal of fully unpacking these principles still lies before us.

Rambam concludes his closing essay in *hilchos temurah* with the source for what he says in a *pasuk* in *Mishlei* (22:20). --שלישים⁷⁷ לך, הלא כתבתי לך, במועצות ודעת. להודיעך--קושט, אמרי אמת; להשיב אמרים אמת, לשולחך. Tannach was given to us that we may learn the truth and respond with the

⁷⁵ See *Moreh Nevuchim* 3:29. See also the long list of mitzvos that Rambam places at the beginning of *Hilchos Avodah Zarah*.

⁷⁶ Perhaps it lies within *maaseh bereishis* that interlocks with science.

⁷⁷ I believe שלישים means “repeatedly” and Chazal applied it to Torah, *Neviim*, and *Kesuvim*.

truth [that we have understood and made part of our *daas*], to the Creator who sent us on our mission in life.

The Brisker

Of course, the Rav was a Brisker. Anyone who learned under him, saw day in and day out that he was driven to understand exactly what the Gemara and *rishonim* were trying to transmit to us. We have recorded his reverence for Rav Chaim and his two sons and as part of his *hesped* he records a rule that everything must fit exactly, which explains why, after saying a beautiful *psbat* one day, he would reverse it the next because one phrase did not fit.

There is no difference between something basic and something peripheral, between a general rule and a detail, everything from the foundation to the top is important. Even if the *lamdan* is confident in the truth of his approach, in its form and figure, and though he feels that he is on the straight path and sees the light from the distance, he cannot rest if just one detail does not fit within the entire conceptual structure. Just like the mathematician cannot be quiet and cannot rest until every conceptual point finds its place within the structure and will not delude himself with vain comfort—saying that the main principles are sound and why worry about the minor issues... *kotzo shel yud* disqualifies it all. It is one law for the physical *sefer Torah* and the spiritual words of the Torah. (ibid p. 232)

The Rav did not force his own insights into Rava's words or Rambam's and interpreting an offhand comment that is hearsay to start with, is not acceptable evidence to say that he did.⁷⁸ But, of course, even accepting the line "What's the difference, was it not a good *shiur*?" as Dr. Shapiro takes it and as the Rav's son purportedly did, is no evidence to what Dr. Shapiro wants to derive. As we said earlier, in interpreting Rambam we are ultimately interpreting Chazal, and at times something could be Chazal's intent and not Rambam's. Moreover, adding a layer to Rambam's structure that was made possible by this unique structure, when it represents the halachah as Rambam saw it, is saying *psbat* in Rambam and being *mechadesh* at the same time.

Let me give an example from an article that I wrote in the last *Hakirah*.⁷⁹ I showed similarities between halachos in *tefillin* and halachos

⁷⁸ This is the evidence that Dr. Shapiro brings to show the Rav was ahistorical in his *shiurim*.

⁷⁹ See *Hakirah* 31, "Kedushas Tefillin."

of the Beis HaMikdash and brought various sources to show how Rambam viewed the source of *kedushah*. I noted how Rambam had referred to a concept of *mikdash*⁸⁰ in *hilchos tefillin* alone (not in *Sefer Avodah*) and a concept of *tefillin*⁸¹ in *hilchos Klei HaMikdash* alone. I quoted the Zohar that says that wearing *tefillin* is like entering the Beis HaMikdash but noted as well halachic elements of difference between the two experiences. My *chiddush* was that *tefillin* is a Beis HaMikdash for the inner self. I believe everything I said in the essay reflects Rambam's thinking, but I can't say that he would have made the analogy I made. My analogy, I believe, adds some insight into both *mitzvas tefillin* and *mora mikdash* and has an element of elegance and is *psbat* in Rambam, but I can't say he would have said exactly this on his own. These are the kinds of *chiddushim* of the Rav that he may imply to a questioner, that it does not matter if Rambam meant it or not, "Was it a good *shiur*?" The same goes for other Briskers. We should not make deductions from comments made off the cuff that were related by others.⁸²

I would add about the Rav, that he did not limit himself to only saying *psbat* in the *rishonim*. In his writing on the "religious experience,"⁸³ he states that although his writing is based on Rambam and other *rishonim*, he is only giving his own explanation. This is the prerogative of *gedolei Yisrael* who have thoroughly digested all the primary sources. But when the Rav diverges, he tells us that this is his own position. In some of the sources quoted by Dr. Shapiro, the authors are explicitly telling us that they realize that this is probably not the intent of the author, and thus essentially they do believe that they must explain authorial intent, only they claim the right to expound an independent position based substantially on earlier authorities.

⁸⁰ למשמש בצירץ.

⁸¹ The Kohen Gadol wears *tefillin shel rosh*.

⁸² My *chavrusa* is a nephew of Rav Moshe Soloveitchik (Zurich) and he related to me how unhappy the family was with the *sefer HaIsb Moshe* from which the quotes from Rav Moshe are taken.

⁸³ See *Worship of the Heart*, p. 1.

Nizkei Mammon 4:4

There is one final point I would like to address. Rav Chaim in his *Chibbur* explains a difficult Rambam in *Nizkei Mammon 4:4*. Dr. Shapiro notes that many have been critical of the explanation, as Rambam was asked about this halachah and told *Chachmei Lunel* that he had made a mistake in writing down the text and instructed them to change the *girsab*. Knowing this, Rav Chaim still answers this Rambam according to the errant text, following the explanation of the *Maggid Mishneh*. Going back to *Hakirah 7*,⁸⁴ where our discussion began, I noted there that Rav Kappach was certain the *Teshuvos Chachmei Lunel* were forgeries—an opinion shared by others, myself included; a blogger has now gone through the *teshuvos* to refute their attribution to Rambam.⁸⁵ In his earlier essay, Dr. Shapiro refers to other *acharonim* who disputed that individual *teshuvos* were written by Rambam and quotes the hearsay that Rav Chaim “did not like” the *Teshuvos Chachmei Lunel*. He, of course, sensed that they were not from Rambam and *shittas HaRambam* was clear to him as he explained it.

Still, when we look closely at Rav Chaim’s *beur*, we see that he did not ignore the *girsab* Rambam was purported to have endorsed. Before I elaborate, I would like to make two comments. One should look at the *Shinui Nuschaos* in the Frankel Rambam on this halachah. There are seven columns of explanations with numerous *girsas* and *beurim* of different *acharonim*. This is a unique phenomenon. The confusion over the correct *girsab* and correct *psbat* is greater here than perhaps anywhere else in *Mishneh Torah*. Secondly, a point I made earlier, understanding Rav Chaim’s *chibbur* is very difficult. The Rav himself struggled to understand the *sefer*.⁸⁶ Those who made deductions about the “ahistorical” nature of *Chiddushei Rav Chaim HaLevi* from this *beur*, apparently did not understand what Rav Chaim was saying. Rav Chaim’s *beur* was independent of the correct *girsab* and he tells us this.

The *Chachmei Lunel* were troubled by Rambam saying that if a שומר does a שמירה מעולה and the ox damages another’s property, then השומר פטור ובעלים חייבים. If an ideal שמירה was done, why should there be an

⁸⁴ “A Hagiographer’s Review of Studies in Maimonides and his Interpreters.”

⁸⁵ https://www.bhol.co.il/forums/topic.asp?whichpage=2&topic_id=1852241
In *Hakirah 8*, I showed how ludicrous it was to claim the *teshuvah* on *tefillin* was written by him.

⁸⁶ See “The Rav and Dr. Belkin,” in *Mentor of Generations: Reflections on Rabbi Joseph B. Soloveitchik* by Rabbi Zevulun Charlop where he relates that Dr. Belkin asked the Rav a long list of questions after the *sefer* first came out. Every answer was איני יודע. Only years later was he able to grasp many of the *chiddushim*.

obligation to pay? The answer given to *Chachmei Lunel* was to strike the words ובעלים חייבים. The *Maggid Mishneh* had the original *girsab* and in a few words explains that if the ox was a תם then the owner would be חייב even if a perfect *shemirah* was done. Rav Chaim takes this as a given and his starting point for his *beinur* is that we are talking about a תם. However, he goes on to mention דודאי איירי בתם because of the last line of the halachah שמרוה שמירה פחותה אם שומר חנם הוא פטור, and he claims, as most contend, that even with a שמירה פחותה a מועד should be פטור altogether.⁸⁷ I would add, that even if we are talking about a מועד as well, Rambam's statement implies that it is also talking about a תם and as long as the last line in the halachah remains ואלו ש"ש וכו' חייבין we have the sufficient starting point for Rav Chaim's *beinur*. His question was not that of *Chachmei Lunel*. His question is why Rambam uses the concept of *shomerim* being considered נכנסו תחת הבעלים, when the obligation of the *shomer* to pay is because he has caused the owner the loss of his ox or the money paid for damages.

None of Rav Chaim's important *chiddushim* in 4:4 and 4:11 are dependent on which of the *girsas* is correct, and Rav Chaim made this clear to those who follow the instructions of his sons on how to learn his *sefer*.⁸⁸



⁸⁷ The פטור בעלים would also be פטור.

⁸⁸ See the introduction to *Chiddushei Rabbeinu Chaim HaLevi*.