

Rejoinder: Reclaiming Talmudic Complexity

By: ELIYAHU KRAKOWSKI

1. Different but Overlapping Methodologies

I thank Rabbi Phillips for engaging at length with my partial review of his book. While I believe I responded to his arguments objectively, if pointedly, I agree with him that this ultimately must be left to the reader to decide. Unfortunately, it seems that he has also misunderstood much of my argument, and as a result has at times responded to a straw man.

Part A of Rabbi Phillips' response cites many sources from his book to prove that Rambam and *Tosafot* had different methodologies. But my review never contested this point; my argument, which I thought was stated clearly, is that overreliance on these methodological differences leads to a reductionist and caricatured view of both *Tosafot* and Rambam. Given the above, one can understand why it does not trouble me that Prof. Gerald Blidstein noted methodological differences between Rambam and *Tosafot*. I highlighted this article in my review precisely because of its judicious and subtle presentation of these very points. Likewise, I cited two passages from Prof. Isadore Twersky's work because his eloquent and careful formulations distilled much of my view of Rambam's often novel yet sometimes underappreciated interpretations of his sources.¹ Engagement with the works of these scholars would have enriched Phillips' book.

After quoting the sources in his book which he feels I unjustly ignored,² Phillips goes on to accuse me of "turning a blind eye" to his citations of *Kesef Mishneh*. In his words, "the reviewer could not afford to

¹ For but one example of what Prof. Blidstein refers to as "those thousands of instances where, rooted in the text, Maimonides interprets from his own perspective" and "the literally hundreds of rulings which are adapted to other, congruent rulings," see my article *האם נביא רשאי לחדש מצוה דרבנן: בירור הלכתי והשלכותיו* "האם נביא רשאי לחדש מצוה דרבנן: בירור הלכתי והשלכותיו" *בהגות הרמב"ם*, in *Hakirah*, vol. 12, pp. 31-36 (Hebrew section).

² As an aside, I am not sure what point Phillips wishes to prove from the Yad Malakhi's rule about how Rambam addresses rejected opinions in Talmudic disputes; this seems to be a mistaken conflation of explicit Talmudic disputes with

Eliyahu Krakowski is the executive editor of OU Press and a member of the *Hakirah* editorial board.

tackle head-on the cases in which the highly revered and authoritative commentary of Rabbi Yosef Karo explicitly contrasts the methodologies of Rambam and *Tosafot* and attributes their contrasting halakhic rulings to these distinct methodologies.” This could have been a winning argument had my position been that Rambam and *Tosafot* do not differ in their methodologies. However, as stated above, this was not my argument. My goal was not to shield readers from the views of *Kesef Mishneh*,³ but to demonstrate places where, in my view, overreliance on methodology resulted in misinterpretation. In addition, Phillips repeatedly suggests that my criticisms stem from my failure to read his whole book. In fact, though, I read his whole book and disagreed with it nonetheless. Since his book covers a number of discrete topics, I focused my review on one major issue, the degree of divergence between the Geonic/Maimonidean and Tosafist interpretations of the Talmud. I believe that this portion of the book constituted sufficient material for analysis.

To correct Phillips’ misconception, I will restate our dispute about the methodologies of Rambam and *Tosafot* briefly here. I maintain that while Rambam is much more willing than the Tosafists to reject one Talmudic passage in favor of another, this is not the only tool he brings to Talmudic interpretation. Rambam also often synthesizes different sources and subjects them to vigorous interpretations to bring them into accord with each other in a manner that resembles that of the Tosafists. Phillips, on the

apparently conflicting Talmudic passages. A more relevant citation would have been Yad Malakhi, Klalei ha-Talmud, no. 495, which actually articulates a principle outlined in my review:

סוגיא בדוכתא עדיפא, לא אמרינן אלא היכא דודאי פליגי תרי סוגיות אהדדי דאז נקטינן כסוגיא דבאתרא משום דסוגיא בדוכתא עדיפא אבל היכא דמצנינן למימר דלא פליגי אהדדי אלא דבחדא סוגיא סתם ולא פירש ובאידך סוגיא פירש הדבר בהדיא אז לא שייך לומר סוגיא בדוכתא עדיפא אלא אדרבה בזה נאמר ילמוד סתום מן המפורש דאפוש פלוגתא לא מפשינן, כ"כ הר"ב עיטור סופרים במקרא סופרים דף ה' א'.

Here, the Yad Malakhi does articulate the principle that a *sugya* in its place has precedence but clarifies that this rule applies only when there is an actual contradiction, not where one *sugya* explicates something clearly while another does not.

³ In my review, I highlighted a passage in which Phillips criticizes “an all-too-common tendency among those who analyze Jewish law to compile collections of rulings from across a range of traditions and eras.” I noted that this would seem to include “almost every work written on the Talmud and Jewish law since the dissemination of the *Mishneh Torah*.” Phillips maintains that my objection is only possible because of my aforementioned “blind eye” toward his citations of *Kesef Mishneh* and others. Yet the foremost example of what I had in mind is Rabbi Yosef Karo’s other major work, the *Beit Yosef*, in which the author of *Kesef Mishneh* consistently compiles rulings of Rambam alongside those of *Tosafot* and does not consider it to be a methodological violation. See *Beit Yosef* introduction.

other hand, maintains that Rambam's "strict methodology" denies him the ability to engage in such interpretive creativity. Part A of Phillips' response, which seeks to prove merely that Rambam and *Tosafot* differ, thus does not address our actual dispute.

2. R. Avraham ben ha-Rambam and Contradictions in the *Mishneh Torah*

Our more fundamental dispute is about a different question: not whether Rambam sometimes prioritizes one source over another in cases of contradiction, but whether he deliberately rules in accordance with two contradictory sources, despite their conflict. Phillips, with the support of Prof. Robert Brody, maintains that R. Avraham ben ha-Rambam was untroubled by such contradictions in his father's work, and therefore we should be likewise untroubled. It is this claim that I referred to as "shocking," and I will explain why.

R. Avraham ben ha-Rambam was asked (*Birkat Avraham*, no. 34) about a seeming contradiction in his father's work: In *Hil. Hameitz u-Matzah* (6:3), Rambam rules that one fulfills the obligation of eating matzah even without intention (*kavanah*), but in *Hil. Shofar* (2:4) Rambam rules that without *kavanah*, one does not fulfill the mizvah of *shofar*. R. Avraham demonstrates that this seeming inconsistency emerges from different passages in the Talmud itself, which is why his father rules this way, and then proceeds to explain why this apparent contradiction is not a real contradiction: For active mizvot, such as eating matzah, *kavanah* is unnecessary, but for passive mizvot, such as *shofar* which merely involves hearing, *kavanah* is required.

In his response, Phillips quotes only the first sentence below of the responsum in question, and omits the underlined sentence immediately following:

ואי קשיא לך מאי שנא שופר ומגילה משאר מצות, זו ודאי קושיא עמוקה היא,
והיא על הגמרא לא על אבא מארי זלה"ה. וכמה זמן נתקשית לי קושיא זו אחר
פטירת אבא מארי ז"ל עד דאשכחת בה טעמא.

Apparently, Phillips believes that R. Avraham's *teshuvah* should be read as if it ends with the first sentence above. Had it ended there, I would be able to understand his view that R. Avraham does not attribute importance to resolving contradictions in his father's work. However, the *teshuvah* does not end there, and therefore I am unable to understand his interpretation of this *teshuvah* altogether. Continuing even one more sentence undermines Phillips' (and Brody's) reading (which is why I under-

lined these words in my review): If R. Avraham felt that it was not Rambam's job to resolve contradictions but merely to present the contradictory conclusions of both Talmudic passages, why was he troubled by this question for such a long time? Why does he praise this as a "deep question"? Why does he imply that had his father still been alive, he would have asked him to resolve the contradiction? When R. Avraham writes that the question of contradiction falls on the Talmud itself, he means that since the contradiction arises from two Talmudic passages which must both be accepted as halakhah, it must merely be an apparent contradiction, not a real one. Thus, correctly resolving the apparent Talmudic contradiction will also clarify his father's rulings.

Phillips' view, it seems, is that since R. Avraham resolves the contradiction in Rambam only after pointing to a purported contradiction in the Talmud, we should attribute only secondary significance to the resolution, as merely "a possible rationalization which might resolve the contradiction." But this is not the case. If Phillips' (and Brody's) view is that R. Avraham's resolution to the contradiction was not intended as actual halakhah, this is contradicted by another *teshuvah* in which R. Avraham replies briefly to a questioner, without providing any Talmudic argument, and explains why *mizvot* which involve no action require *kavanah*:

המצות שאמרו אינן צריכות כוונה הן מצות שקיומן בעשיית מעשה, שגוף אותה העשייה היא המצוה, כגון אכילה וטבילה וקריאה וכיוצא בהן, אבל שופר ומגילה הואיל וגוף המצוה שמיעת הקול בעלמא היא, כי לא מכין מא קא עבד מן המצוה...⁴

Clearly, this was R. Avraham's position *le-ma'aseh*, based on his understanding of his father's view.

Phillips seems surprised that I describe his position as "shocking." Yet this is not because I have "a firmly entrenched and unassailable faith in the notion that Rambam utilized a Tosafist methodology." The idea that when two Talmudic passages contradict each other we follow the primary *sugya* is well-attested in the history of halakhah and *Mishneh Torah* interpretation.⁵ On the other hand, the view that Rambam intentionally codifies contradictory passages rejects every commentary that has ever been written to resolve contradictions in the *Mishneh Torah*, as well as common sense. For example, on the subject in question, *Kesef Mishneh* (*Hil. Shofar* 2:4) addresses the contradiction in Rambam and, rather than stating

⁴ See *Teshuvot R. Avraham b. ha-Rambam*, Freimann ed. (Jerusalem, 1937), no. 114, p. 200.

⁵ See, e.g., note 2 above; Rashba, *Bava Batra* 4b, end; *Maggid Mishneh*, *Hil. Yibbum ve-Halitza* 6:19; *Lehem Mishneh*, *Hil. Berakhot* 6:10; *Beit Yosef*, *Yoreh De'ah* 182; and Maharsham, *Ein ha-Ro'im*, p. 100, no. 21, who cites among other sources, *Sanhedrin* 34b; Ran, *Nedarim* 61b; *Beit Yosef*, *Even ha-Ezer* 134. See also R. Meir Mazuz, *Assaf ha-Mazkir*, p. 329, s.v. *sugya*.

that Rambam was comfortable living with the contradiction, offers the resolution of the Ran, who distinguishes between mizvot such as matzah which involve *hana'ah* (physical benefit), which do not require *kavanah*, and other mizvot, which do. (This is the same *Kesef Mishneh* whose authority was previously unquestionable.) *Maggid Mishneh* (ibid.) is likewise troubled by the contradiction and distinguishes in a manner similar to R. Avraham between *shofar*, in which the mizvah is passive hearing, and matzah, which involves action, although he suggests that perhaps the text of Rambam should be emended due to the contradiction. (Phillips cites the *Maggid Mishneh* in a footnote and suggests that his approach is insensitive to Rambam's methodology, without noting that the *Maggid Mishneh's* resolution is the same as R. Avraham's.) The *Sefer Mafteah* in the new Frankel edition of Rambam offers literally hundreds of citations to commentators who offer resolutions for this single contradiction in Rambam; none of them suggests that Rambam was contradicting himself because that was his methodology. Throughout the *Mishneh Torah*, there are countless examples of apparent contradictions raised by commentators with similar numbers of solutions offered in each instance; to my knowledge, and apparently to the knowledge of the advocates of this approach as well, no commentator suggested the "resolution" of Brody and Phillips—other than their problematic reading of R. Avraham's *teshuvah*. Taking one line of R. Avraham's *teshuvah* out of context does not form a solid basis for departing from 800 years of Maimonidean interpretation.⁶

Professor Brody tells us that Rambam would not have felt the need to reconcile his rulings. What would Rambam have said to someone who asked him whether mizvot other than *shofar* and matzah require *kavanah*? Are we to believe that the *Mishneh Torah* has no opinion about this basic question? Brody writes that he believes Rambam's first answer to a questioner would have been "that questions of this sort were irrelevant to his job as a *posek*." But if a work of halakhah contains contradictory rulings, then it is of no use for the basic task of *pesak halakhah* which always entails extrapolation from explicit cases to others by applying the underlying principles. If the underlying principles being applied are contradictory, the work is useless. Are we to believe that Rambam would not have known this?

In addition, if R. Avraham's methodology is being used to understand his father's, then why isn't the obvious significance R. Avraham attributed

⁶ It would be worthwhile to examine the full body of R. Avraham's defenses of his father's rulings, including his responses not only in *Birkat Avraham* but also in *Ma'aseh Nissim*. Instead of revealing that R. Avraham accepts contradictions in his father's writings, this will reveal the surprisingly complex and seemingly "modern" ideas R. Avraham uses.

to resolving the contradiction relevant? R. Avraham describes not only the long time he spent coming up with a resolution but his great satisfaction with it: טעם ברור הוא זה ודקדוק יפה למבינים וכבר גילינו אותו לכל התלמידים בבית המדרש מכמה שנים. Does this sound like R. Avraham believed this was only “a possible rationalization which might resolve the contradiction”? Brody says that he believes that “if pressed further,” Rambam “might or might not have offered a possible *sevarah* to reconcile the rulings in question.” But R. Avraham was not pressed further—he chose to address this question on his own. Is this because R. Avraham had “a firmly entrenched and unassailable faith in the notion that Rambam utilized a Tosafist methodology”? After all this, Phillips describes my understanding of this *teshuvah* as “circular” and “construing the text in order to fit his preconceived position—no matter how far-fetched.” Did we read the same *teshuvah*?⁷

3. A Self-Contradictory Methodology

A more basic problem with this approach is that it seems to be self-contradictory. If Rambam rules in accordance with the major *sugya* against the minor *sugya*, this would mean that he does *not* rule in accordance with two contradictory sources. In the words of Prof. Haym Soloveitchik quoted by Phillips, the *sugya de-shmateta* approach dictates that, “When confronted with a contradiction, one should follow the conclusions of the dominant discussion, even if other Talmudic discussions of the problem would seem to imply a different outcome.” Yet according to Brody’s and Phillips’ understanding of R. Hai Gaon and R. Avraham, the Geonic-Maimonidean approach would have us accept both contradictory sources

⁷ In other words, while it is true that R. Avraham invokes Talmudic rules to explain his father’s view, he does not stop there; he must explain why this position is not a logical contradiction. The same problem applies to Phillips’ reading of Rambam’s *teshuvah* about the requirement of *lishmah* for mezuzah parchment. In the text of his book (p. 177) Phillips quotes the first sentence of Rambam’s *teshuvah* (*Pe’er ha-Dor*, no. 18) which states that the law does not apply to mezuzah because there is no source requiring it for mezuzah. Only in a footnote does Phillips tell us that Rambam “does suggest a subsequent rationalization.” It is true that Rambam based himself on the silence of the text, but why is Rambam’s “rationalization” not equally significant? The silence of the Talmud is only invoked alongside a logical explanation for that silence. [Interestingly, *Kesef Mishneh* (*Hil. Tefillin* 1:11), after quoting Rambam’s *teshuvah*, states that the argument from silence is not compelling because the Mishnah (*Megillah* 8b) does equate mezuzah with *sefer Torah* and tefillin, and therefore the primary argument of Rambam must be his subsequent explanation, which *Kesef Mishneh* questions as well because of its lack of support in *Hazal*.]

without rejecting either. In Brody's words, "one should follow both specific rulings and not worry about reconciling them...*qal vahomer* in cases in which the gemara never suggested there was a contradiction and such a 'contradiction' was only 'discovered' by later scholars who juxtaposed different *sugyot*." Which one is it? Does the Geonic methodology require deciding contradictions in the Talmud according to the major *sugya*, or does it accept both sides of the contradiction? Phillips does not address this problem and seems to be unaware of this methodological self-contradiction inherent to his approach.

Obviously, some contradictions are real while others are only apparent, and a *posek* must be able to explain which is which. R. Hai Gaon maintains that when the Talmud invokes the word "*kashya*," this indicates that the contradiction is only an apparent one; this has nothing to do with ruling in accordance with two actually contradictory sources.⁸ Gerald Blidstein refers to the approach now advocated by Brody and Phillips as solving many problems, "much in the style of the Queen's 'Off with their heads!'" To me, what comes to mind is the Queen's response to Alice's contention that one can't believe impossible things: "When I was your age, I always did it for half-an-hour a day. Why, sometimes I've believed as many as six impossible things before breakfast."

⁸ Note that in the first instance of the word קשיא in the Talmud, in *Berakhot* 26b, R. Hai Gaon himself (cited by the Rashba and Rosh) resolves the Talmudic קשיא. One *daf* later (27b), we find R. Hai rejecting a *sugya* because of a contradiction he discovered—contrary to Brody's claim that R. Hai would not reject a *sugya* due to a contradiction. See *Ozar ha-Geonim, Berakhot, Helek ha-Teshuvot*, no. 169 (p. 63). Note as well the Arukh's version of R. Hai's principle (s.v. תיובתא, quoted by R. Yeshayah Pick Berlin in his introduction to *Kashot Meyushan*):

היכא דעלתה בקושיא לא בטלו דבריו, דאמר לא הוה ברורה להון שמועה זו לגמרי אלא לא אשתכח לה פירוקא בההיא שעתא, ותליא וקיימא, והיכא דקשיין תרוויהו אהדדי בטענה ולא מפרק קשיא, עבדינן כי הא בדוכתא וכי הא בדוכתא ולא חיישינן, אלא שכיחי בהו טעמא לפרוקינהו.

This directly contradicts Brody's interpretation of R. Hai's principle. See also Ritva, *Bava Batra* 52b:

וכתב ר"ח דכיון דלא אסיקנא לה בתיובתא לא דחינן לדשמואל משום אתקפתא בעלמא דאפשר דאית לה תירוצא ולא הוה חיישינן לה או דלא ידע לה, ושמענו משם רב מחכמי פרובינצא שהיה מפרק כל מה שעולה בתלמוד בקושיא.

This supports my explanation that the word קשיא indicates that this is merely an apparent contradiction. As the *Nahalat David* (*Berakhot* 26b) paraphrases R. Hai Gaon, כל קושיא יש לה תירוצ, See also the Rashba's formulation in *Bava Batra* 52b: כך כתב ר"ח ז"ל שקבלה מן הגאונים ז"ל דכל שעמדה בתיובתא נדחית, אבל כי קיימא בקושיא לא דחינן מימרא בקושיא, דקים להו דהכין הלכתא אלא דלא קים להו בתירוצ מאי דקשיא להו.

4. The Tosafists and Talmudic Authority

Phillips also seems offended at my questioning whether he believes the Tosafists have the authority to redefine Biblical law in contradiction to the Talmud. He tells us that the Tosafists were bound by the Talmud “in a looser way” and refers us to pp. 178-183 of his book, which he accuses me of having ignored, where he attempts to explain the Tosafists’ position on the basis of Ronald Dworkin’s legal philosophy. While I did not address this in my review because I do not consider myself well-versed in legal theory, I don’t think this passes muster to explain the position of *Tosafot*. The question is whether the Tosafists saw themselves as capable of adding a new qualification to the *de’oraita* definition of *reshut ha-rabbim*—that a *reshut ha-rabbim* must have 600,000 people—in a departure from the Gemara. In my review I wrote, “I do not think that any traditional Talmudist has ever understood this to be the position of *Tosafot* or the *rishonim* who adopt this view. Rather, these *rishonim* maintain that this was a Geonic tradition about how to understand the Talmud, even if it is not stated explicitly in the Talmud.” To clarify, I agree that critics of this position have accused it of having no basis in the Talmud. My point was that no halakhist has justified the view requiring 600,000 people by suggesting that it is acceptable to add a new requirement not found in the Talmud for the sake of “interpreting law in its best light.”⁹ Whether or not Dworkin would approve of such an innovation, I would nevertheless maintain that a legal theory which doesn’t accord with the self-understanding of any of the law’s deciders or practitioners for the last millennium is not a good legal theory.

In this vein, it is worth noting Ephraim Urbach’s apt characterization of the Tosafist enterprise:

The great intellectual effort [expended by the Tosafists] on the words of the Talmud...results from their belief that the Talmud is complete and all its words are true.... [This belief] lies at the root of the never-ending questions raised...about every statement, sentence, and word in the Gemara. These questions emerge from the assumption that the Gemara neither contains anything superfluous nor is it missing anything, and that the answers given in the Gemara are the best possible and avoid any possibility of

⁹ I also do not see how this has anything to do with interpreting the law in its best light, but I will leave that question to others.

being undermined, and that each question and problem has been addressed fully.¹⁰

Does this sound like a description of a school that conceived of Talmudic authority loosely?

It is also interesting, as I mentioned, that the view Phillips considers to be a deviation from the Talmud is in fact a Geonic tradition. In his response, Phillips maintains that while Behag may have required 600,000 for *reshut ha-rabim*, this was not the view of the Geonim, and cites Ritva (*Eiruvim* 59a) in the name of “רוב הגאונים” who reject this view. Had Phillips consulted the footnote in the Mosad HaRav Kook edition of the Ritva on these words, he would have realized his mistake:

אע"פ שעיקר דינו של רש"י הוא מדברי הגאונים, והוא בבה"ג הל' עירובין (עמ' 121), חמדה גנוזה סי' ע' ושערי תשובה סי' רט ובעיתים (עמ' 306) בשם גאון, נראה שכוונת רבנו לרמב"ן, שרבנו רגיל לכנותו "גאון".

The source for the requirement of 600,000 is a *teshuvah* of the mid-ninth century R. Sar Shalom Gaon, also brought in the *Sefer ha-Ittim* of R. Yehudah b. Barzilai of Barcelona, the twelfth-century Spanish repository of Geonic views.¹¹ When Ritva refers to “רוב הגאונים” he is not referring to the Babylonian Geonim at all but to great rabbis of other periods.¹²

¹⁰ Urbach, *Ba'alei ha-Tosafot*, p. 716, my translation. This is quoted by Uziel Fuchs in his article “*Derekh ha-Hakbra'ah*,” mentioned by Phillips, to contrast the authority the Tosafists ascribed to every word of the Gemara with the “looser” approach of the Geonim, who are willing to reject parts of the Gemara as שינויי דחיקי, etc.

¹¹ If Rambam was aware of this Geonic tradition, it would be far from his only rejection of Geonic views. See *Iggerot ha-Rambam*, Shilat ed., p. 305, quoted and translated by R. Benzion Buchman, “Tradition! Tradition? Rambam and the Mesorah,” *Hakirah*, vol. 8, p. 192. For an enumeration of 36 places in his commentary on the Mishnah where Rambam changed his mind because he abandoned Geonic positions, see R. Aharon Adler, *Al Kanfei Neshtarim* (Mikhlelet Herzog, 2023), pp. 91-138.

¹² One clarification: in my review, I cited Haym Soloveitchik's explanation for the Tosafists' defense of common practice, as well as other sources which reflect this position. This was not related to the issue of *reshut ha-rabim* but to the general issue of defending communal practice against the simple meaning of the Talmud. The purpose of citing Prof. Soloveitchik, and others spanning the centuries who held similar views, was to demonstrate that communal practice need not be seen as a foreign factor in interpreting halakhah; instead, this should be seen as immanent to the halakhic process.

5. Hallel on Rosh Hodesh

Turning to some of the individual *sugyot* under debate: One of the *sugyot* Phillips presents relates to the question of whether a *berakhab* is recited on the Hallel of Rosh Hodesh. In this case, there is no apparent contradiction of *sugyot*—one *sugya*, *Arakhin* 10a-b, presents the eighteen days on which Hallel is completed, which does not include Rosh Hodesh; another *sugya*, *Ta'anit* 28b, records a custom to recite incomplete Hallel on Rosh Hodesh. Neither *sugya* discusses the question of *berakhab*. However, R. Tam infers from the *sugya* in *Ta'anit* that there is a *berakhab* on Rosh Hodesh. Even if Rambam would have accepted R. Tam's inference, which we have no reason to believe he did, this would not contradict the *sugya* in *Arakhin*, because that *sugya* is not discussing days on which a *berakhab* is recited but days on which complete Hallel is recited. Since I do not see the contradiction here, I understood Phillips to be claiming that Rambam rejects the “minor” *sugya* in *Ta'anit* even though it is not contradicted by another *sugya*. He has now clarified that he does consider these two *sugyot* to be in contradiction. I would note merely that the *sugya* in *Ta'anit* contains the same list of eighteen days on which Hallel is completed as the *sugya* in *Arakhin* which, according to Phillips' understanding, means that the *sugya* contradicts itself.¹³ I leave it for interested readers to determine whether they find his position compelling.¹⁴

A second question is how to interpret the Gemara in *Sukkah* 44b which says that R. Elazar b. Tzadok and Rav did not recite a *berakhab* on *hibut aravah* because they held that it is a *minbag nevi'im*. In my review, I noted that the Gemara does not formulate a principle that no *berakhot* are recited upon *minbagim*; instead, Rambam generalizes from this case to all *minbagim* (*Hil. Berakhot* 11:16), while R. Tam does not. Phillips sees in this

¹³ See also *Yad Malakhi, Klalei ha-Talmud*, no 497: סוגיות חלוקות, לא שייך אלא כשהם מרוחקות אבל לא היכי דסמיכי אהדדי, ר' בצלאל בש"מ על ב"מ פ"ק דף ט' א'.

¹⁴ Phillips is disturbed that I quoted *Tosafot* in *Sukkah* 44b, rather than *Tosafot* in *Ta'anit*; this was not because I wanted to avoid R. Tam's inference from *Ta'anit*, which is quoted in *Sukkah* as well. In fact, neither version is more authoritative; for R. Tam's own words, see *Sefer ha-Yashar*, no. 537 (Schlesinger ed., p. 319). I am unsure why Phillips sees this as “a clear and obvious error which in itself requires no further discussion.” In my review, I noted that the Rif also maintained that a *berakhab* is recited on Hallel of Rosh Hodesh; it is worth noting that this was the position of “all the Geonim without exception”—see R. Eliyahu Zini, *Etz Erez*, vol. 1, pp. 14-16, and see R. Perahyah b. Nissim, *Shabbat* 24b, who quotes the Rif and comments: ושמעי' מינה דמברכין על המנהגות, והיינו סברא דכל הגאונים.

a “thinly veiled” insinuation that “it is Rabbeinu Tam who is taking the Gemara at face value here while Rambam adopts a more expansive reading,” and endeavors to prove that Rambam has not ventured beyond what is stated explicitly in the Gemara. Attributing such an interpretive choice to Rambam would apparently contradict Phillips’ theory. In fact, my point was not to side with R. Tam; both R. Tam and Rambam made interpretive choices, as must every commentator. The Talmud does not interpret itself.¹⁵ As I wrote in my review, “Both Rambam and the Tosafists must reckon with the same ambiguities and conflicting sources, and both offer creative interpretations of these sources, even if, in the *Mishneh Torah*, this is done implicitly rather than explicitly.”¹⁶ In fact, Rambam himself essentially makes this point in his letter to R. Pinḥas ha-Dayyan where he distinguishes between a *perush* and a *hibbur* (see *Iggerot ha-Rambam*, Shilat ed., pp. 440-441). A *hibbur* such as the *Mishneh Torah*, Rambam explains, contains only the final rulings, not the interpretive process used to reach them—but it would certainly be a mistake to conclude based on the final, clear-cut presentation that no interpretive process took place.

6. *Berakhah on Tevilah*

This case is highly instructive but there is no point in my rehashing the whole argument. It is hard to debate with someone who is convinced that

¹⁵ For another possible interpretation which Rambam could have chosen, see R. Levi b. Avraham, *Livyat Hen: Eikhut ha-Nevuah ve-Sodot ha-Torah* (Ben Gurion University Press, 2007), p. 308: ולא על מנהג נביאים כגון וְלֹא מִבְּרַכִּין עַל מִנְהַג אַבּוֹת, ולא על מנהג נביאים כגון ערבה. According to R. Levi, the Gemara applies only to the category of *minhag nevi'im*, not other customs (see also *Sefer ha-Manhig, Hilkhot Hallel*, Mossad Harav Kook ed., p. 259; *Sefer ha-Shulḥan*, Blau ed., p. 305).

¹⁶ In a footnote, Phillips writes the following:
Since the Gemara’s reasoning for not assigning a *berakhah* to a *minhag* is that it is not subsumed within *Lo Tasur*, this clearly does [not] apply to *minhagim* subsequently endorsed or legislated by the *Beit Din HaGadol*.
The first assertion, that there is no *berakhah* on a *minhag* because it is not subsumed within *lo tasur*, is Rashi’s opinion, but it appears nowhere in the Gemara or Rambam. The second assertion, that this rule does not apply to *minhagim* endorsed by *beit din ha-gadol*, would appear to contradict the view of Rambam who writes without qualification that no blessing is recited upon *minhagim* (כל דבר שהוא מנהג, אף על פי שמנהג נביאים הוא, כגון נטילת ערבה בשביעי של חג, ואין צריך לומר (מנהג חכמים, כגון קריאת הלל בראשי חדשים ובחולו של פסח, אין מברכין עליו). It seems clear that according to Rambam, a *minhag nevi'im* creates a greater obligation than a *minhag* of *beit din*, and yet as a *minhag* it still has no *berakhah*. See R. Hananel (*Sukkah* 44a): מנהג נביאים היא: כלומר הוראה בלא תיקון. This is how Rambam refers to binding *minhagim*—see *Ta’anit* 26b and see the comment of my grandfather R. Nachum Rabinovitch, *Iyyunim be-Mishnato shel ha-Rambam*, p. 2.

the simple meaning of the words *חזן מן הטבילה* refers to the highly unique and unusual circumstance of *tevilat ger*, and this based on the use of the definite article ה. When I wrote that “an honest appraisal” of the sources supports my reading, I did not mean that Phillips intended to deceive his readers. I meant that reading the sources in an intellectually honest way, without preconceived notions, reveals this to be an example of the Rif/R. Hananel/Rambam school employing “Tosafist methodology.”

7. Conclusion

Regarding the remainder of Phillips’ arguments, I will allow my original review to speak for itself. But in closing I would like to respond to Phillips’ final salvo in praise of simplicity:

As the reviewer seemed eager to point out, there will inevitably be individual commentators who offer alternative complex interpretations for some of these cases studies and perhaps even dispute the statements of Rabbi Yosef Karo, Netziv, Yad Malakhi, and many others whom I have cited.

On the one hand, this framing obfuscates more than it simplifies. The commentators he mentions advocate a view I never contested, as noted in part 1 above. My contention, elaborated in part 2, is that none of the commentators mentioned by Phillips, or any others, takes the position that Rambam intentionally contradicts himself; all of them offer resolutions which Phillips apparently considers casuistry. But in another way, this does clarify the nature of our dispute. Brody tells us that the seeming contradictions within Rambam require us to apply Occam’s razor and accept that Rambam simply contradicts himself, and Phillips offers us a spurious quote from Confucius: “Life really is simple, but it is we who insist on making it complicated.”¹⁷ In their view, all those who understand the *Mishneh Torah* as a coherent, harmonious work (including, among all other commentators, R. Yosef Karo, Netziv and Yad Malakhi), are needlessly complicating things. In my view, the *Mishneh Torah* is a work which—like *Tosafot*—sometimes reconciles Talmudic views that seem to stand in tension—even though this means that one must dig beneath the surface to

¹⁷ See <https://en.wikiquote.org/wiki/Confucius>, Misattributed. Ironically, this seems to be a non-theistic paraphrase of *Kobelet* (7:29): האלקים עשה את האדם ישר והמה בקשו חשבונות רבים. However, Rashi on this verse explains that this refers to God creating man morally upright and man choosing moral confusion; see also *Moreh Nevukhim* 3:12. A more relevant *pasuk* is *Kobelet* 7:23: כל זה נסיתי בחכמה: אמרתי אחכמה והיא רחוקה ממני; see the commentary of *Alshikh*.

understand why there is no contradiction. In this regard, it is worth quoting the philosopher Alfred North Whitehead:

The aim of science is to seek the simplest explanations of complex facts. We are apt to fall into the error of thinking that the facts are simple because simplicity is the goal of our quest. The guiding motto in the life of every natural philosopher should be, Seek simplicity and distrust it.

The fact is that the Talmud, like life itself, is complicated. In the introduction to *Hiddushei Rabbenu Hayyim ha-Levi*, the author's sons write that their father's work will shed light "on most of the difficult topics in *Shas*" (ברוב הענינים החמורים שבש"ס). It is said that when the Ḥazon Ish read these words, he issued a critique to which even the most ardent Briskers must concede: עדיין לא מצאתי הקלות—"I have not yet found the simple ones." ❧