

## *Talmud Reclaimed and a Battle Over Methodologies of the Rishonim*

By: SHMUEL PHILLIPS

I am grateful for the opportunity that *Hakirah* has afforded me to respond to Eliyahu Krakowski's rather peculiar and misleading review of a small section of my book *Talmud Reclaimed: An Ancient Text in the Modern Era* (2023) which was printed in its previous edition (Volume 35). Peculiar because it limited itself to an incomplete exploration of less than half a single chapter of the book. And misleading, because, as I propose to show, it selectively omitted to address or even to mention my strongest sources and frequently mischaracterized those it does quote.

The editor's summary at the beginning of the journal informed readers that the review, titled "Talmud Oversimplified? A Partial Review of *Talmud Reclaimed*," "demonstrates, contrary to the claim of many, that the methodologies of Talmudic analysis of Rambam and the *Ba'alei Tosafot* were, in fact, not far apart." Indeed, the reviewer's assault on selected portions of my work concludes with patronizing passages, heavily laden with sarcasm, asking for example if I have "come to 'reclaim' the Talmud from its interpreters of the last eight hundred years?"

My crime? Advancing the position that Rambam and the Tosafists approached the Talmud from fundamentally different viewpoints and employed contrasting methodologies in reaching their halakhic conclusions.

In a nutshell, I propose that *Tosafot's* looser understanding of the notion that Ravina and Rav Ashi constituted "*sof hora'ah*"<sup>1</sup> made them (i)

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<sup>1</sup> This phrase, which eludes efforts to translate it to plain English, is rendered in *Talmud Reclaimed* as "the conclusion of [authoritative] legal rulings," *Baba Metz'ia* 86a.

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relatively more amenable to arguments that Talmudic law could on occasion be amended in order to be applied more effectively in later times and (ii) more willing to introduce their own theories and judgments in order to reconcile and synthesize Talmudic passages which appeared to be in conflict. Rambam, by contrast, followed a Geonic tradition in applying a stricter and more formulaic methodology through which he identified primary Talmudic passages and recorded their conclusions as halakhah, setting aside in the process any external consideration or tangential Talmudic source.

This essay seeks to respond in two stages to Krakowski's review which steadfastly rejected the legitimacy of the theory which I advanced. The first section of this response provides a more complete presentation of the sources which my book cites in support of its arguments (a number of these sources the reviewer neglected to quote and counter for reasons which will soon be apparent). I will then turn to address the specific challenges that the reviewer leveled against the few selected sources and case studies which he did trouble himself to cite.

It is my hope that this response will afford readers of *Hakirah* a fairer and more comprehensive picture of the theories developed in the relevant chapter, and that they will thereby be in a better position to judge (i) whether the reviewer's vituperative critique of *Talmud Reclaimed* was at all justified; and (ii) whether the reviewer's self-described "partial review of *Talmud Reclaimed*" can also in any way be considered an "impartial review."

## **SECTION A: Sources Supporting Distinct Rambam-Tosafot Methodologies**

One looming pitfall which lies before any author undertaking a rebuttal of a detailed and complex review is that, by engaging in a similarly detailed response, a high proportion of readers who have not recently studied the primary sources end up losing the thread, as claims and counterclaims disappear down the rabbit-hole of abstract argumentation. In an attempt to sidestep this scholastic stumbling block, I will start by restating—with the greater clarity that I now see is necessary—the Rabbinic and academic sources which my book referenced with regard to Maimonidean and Tosafist Talmudic methodologies.

An obvious place to begin in terms of reliable sources concerning methodologies of our Sages is the *Yad Malakhi* of Rabbi Malakhi Ha-Kohen, a highly regarded compilation of the *kelalim* which guided the Sages' Talmudic interpretations and rulings. In Rule #31 of *Kelalei Ha-Rambam*, the *Yad Malakhi* records that, when Rambam rules like one opinion in a

Talmudic debate, his legal conclusion totally rejects the reasoning advanced by opposing Talmudic voices:

דרך הרמב"ם דבכל מקום שיש שני סברות הפכיות בתלמוד ופסק תלמודא כחד מינייהו מטעים בתוך דבריו שלילת אותה הסברה דלא חש לה תלמודא.

As I show a little later in this article, this approach has strong roots in Geonic sources and contrasts sharply with that of the *Ba'alei Tosafot* who sought to reconcile and synthesize the whole range of Talmudic opinions. This Tosafist methodology is proudly attested to by one of their strongest advocates, Rabbi Shlomo Luria (the Maharshal), who relates in an introduction to his *Yam Shel Shlomo* commentary how, for those who predated *Tosafot's* commentary, the Talmud appeared to be full of internal contradiction. By underpinning their commentary with a presumption that the entire Talmudic compilation was interconnected and reconcilable, he continued, *Tosafot* succeeded in developing a basis for combining these elusive strands "into a single ball."<sup>2</sup>

The methodologies of Rambam and the *Ba'alei Tosafot* are described and contrasted by another one of its noted "interpreters of the last eight hundred years." Netziv, in his poetic *Kidmat Ha'-Emek* introduction, writes:<sup>3</sup>

והגאונים שבאו אחרי חכמי בבל מחברי התלמוד, ידעו כמה שבילים פשוטים בזה הפלטרין, אשר לא נסתפקו בהליכות אלו הלכות מעולם, וזה גרם שלא השתמשו הרבה בכח פלפולם.  
וה' חפץ למען צדקו, לשנן ברק חרבה ש"ת, ולהגדיל תורה והדרה, למען נחזק בתורת ה' בגבורה, גלה כבוד התורה מבבל למדינת צרפת ארץ לא ראו אור הקבלה סדורה, והוצרכו למצוא פתח הפלטרין עפ"י עיון וחקירה.  
לא כן ראשון להוראה הרמב"ם ז"ל אור הגולה, הוא למד מרבו מאביו רבינו מיימון והר"י מיגש קבלת הגאונים וגירסותיהם מלה במלה, המרומז בספרו של

<sup>2</sup> אלא סוגיא אומרה בכה וסוגיא זו אומרה בכה, ולא קרב זה אל זה לולי חכמי הצרפתים בעלי התוספות, שעשאוהו אותו ככדור אחד, ועליהם נאמר דברי חכמים כדורבנות, והפכוהו וגלגלוהו ממקום למקום. עד שנראה לנו כאחת, מבלי סותר ומבלי עוקר. ונמצא מיושר התלמוד ומקושר וכל הסתימות יפושרו.

In contrast to this Tosafist perspective, Rambam describes in his introduction to the *Guide* how the Talmud is an example of a compiled work consisting of numerous conflicting and irreconcilable opinions.

Further elaboration on this point and on the broader difference between the halakhic and Talmudic methodologies of Rambam and the Tosafists can be found in this 2024 *shiur* from Rav Asher Weiss, primarily minutes 4-10, titled on YouTube as "כללי הפסק | Shiur by Rav Asher Weiss, *shlit"a*, on the Rules of Rendering a Halachic Decision" and found at, <https://www.youtube.com/watch?v=1wAJC3oWf7c>.

<sup>3</sup> Selected passages from *Kidmat Ha'-Emek* 1:12-1:16.

רבינו ובה"ג ואחריהם בספר הרי"ף על סדר נכון ונעלה, וידע רמיוותיו ושתיקותיו הכל בקבלה.

Netziv is not advocating on behalf of either approach. Rather, he is describing how each has been favored and required by different groups of Sages at various stages in Jewish history. In doing so he leaves his readers in little doubt that the legal methodology of Rambam, which involves fewer innovations and less casuistry, was inherited from the Geonim via the Ri Migash and the Rif. This tradition, according to Netziv, greatly simplified the process of determining the Talmud's legal conclusions. Though our reviewer would no doubt disapprove, it appears that, in Netziv's assessment, clear methodological rules and patterns are a positive phenomenon—and certainly not something to be demeaned as “*Talmud Oversimplified*.”

The position of the Geonim will be addressed a little later in this essay. As far as the Rif is concerned, however, there is also a clear indication that he subscribed to a similar Geonic methodology.<sup>4</sup> Explaining a ruling of the Rif towards the end of the fourth chapter of *Beitzah*, the Ran explains:<sup>5</sup>

וסוגיין דהכא עיקר משום דאיתא בדוכתא הלכך נקטינן כסוגיין וההיא סוגיא ליתא.

Returning now to Rambam, and the formerly widespread knowledge of his stricter, more formulaic methodology for reaching Halakhic conclusions from the Talmud, many additional crucial sources were quoted or referenced in my book's chapter. For example, the *Migdal Oz* commentary of a fellow Spanish *rishon*, Shem Tov ben Avraham, records at the end of the second chapter of *Hilkhot Nizkei Mamon* that:

וכבר כתבתי כמה פעמים כי ר"מ ז"ל אין לו עסק בחיבור משנה תורה זה אלא במה שהוא מפורש בתלמוד אבל לא במה שנוכל לדקדק מן התלמוד.<sup>6</sup>

The same *rishon* states even more emphatically at the start of the fourth chapter of *Hilkhot Yom Tor*:

<sup>4</sup> This is particularly significant given that Rambam considered the Rif to be a mentor who heavily influenced his Halakhic rulings. He was also an important link in the chain linking Rambam to the Geonim who headed the Babylonian academies.

<sup>5</sup> S.v. *Badelet*. In fact, as I also bring in the book, this principle of ruling according to a primary passage and discounting the counter-considerations which arise from tangential ones can even be seen within the Talmud itself. See *Niddah* 50a and the comments of Rashi there.

<sup>6</sup> As will be shown shortly, these words are intended to contrast Rambam with the methodology of the *Ba'alei Tosafot*.

וכי יעלה על הדעת שר"מ ז"ל יוציא מלבו טעמים ויכתבם בזה החבור וכבר כתבתי  
שהוא בורה מלשנות שום שנוי מן הגמרא ולכך קראו משנה תורה.

It is not only Rabbinic sources describing the distinct Maimonidean-Tosafist methodologies which the relevant chapter of *Talmud Reclaimed* amasses. Academic accounts are also quoted. Perhaps the most eloquent of these is Professor Haym Soloveitchik's precise summary:

Not that the tosafists were the first to note contradictions in the Talmud. Contradictions have been noted from the moment that the Talmud became normative. The approach that had previously prevailed was to follow, in cases of contradiction, the *sugya de-shematsa* (dominant discussion). There is generally one major treatment of an issue in the Talmud, though that issue may reappear in the course of many other discussions. 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. The premise of dialectic is, however, that there are no "major" and "minor" passages in the corpus. All passages are of equal valence. The Talmud in its totality is a harmonious whole. Talmudic discussions are indeed "telegrammatic," and thus, though certain conditions of the case at bar are not always expressly spelled out, they are inferable from the discussion. The task of the scholar is to ferret out the distinctiveness of each of the seemingly similar cases under discussion and, thereby, restore harmony to an apparently dissonant corpus.<sup>7</sup>

I am at a loss to understand how any serious review could first completely conceal from its readership this impressive range of source material that I adduced in support of my arguments, and then proceed to ask in good faith whether the theory proposed in my chapter "deviates from eight hundred years of Talmudic interpretation."

The omission of these crucial sources is a serious flaw which calls into question the reviewer's ability to pass accurate judgment on the theory of distinct Talmudic methodologies. Even so, there is nothing, to my mind, that is more shocking than his refusal to engage with my direct quotes from the most prominent *Mishneh Torah* commentary: Rabbi Yosef Karo's *Kesef Mishneh*.

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<sup>7</sup> Professor Haym Soloveitchik, "The Printed Page of the Talmud," in Sharon Liberman and Gabriel Goldstein (eds.), *Printing the Talmud: From Bomberg to Schottenstein* (Yeshiva University, 2006), p. 18.

### Turning a Blind Eye to the *Kesef Mishneh*

Combining the book chapter with its accompanying Appendix, I explore close to 40 case studies that highlight the contrast between the methodologies of Rambam and the *Ba'alei Tosafot*. While it is understandable that the reviewer chose to challenge only a small selection rather than grapple with each individual example, the cases which he chose to discuss are highly instructive. Instead of seeking to counter and overturn the most powerful instances which most decisively demonstrate the application of my theory, the reviewer appears instead to have opted for the relatively more ambiguous case studies, attempting to advance alternative potential interpretations to some of those that I presented. In doing so he seems to have intended to muddy the waters sufficiently so as to prevent any definite methodological pattern from being observed within the great sea of Talmudic deliberation.

For this strategy to succeed, the reviewer could not afford to 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 differing halakhic rulings to these distinct methodologies. I will therefore fill in the gap and provide *Hakirah* readers with a very brief summary of these crucial cases.

The first example relates to a dispute between Rambam and *Tosafot* as to whether a groom should recite the *Shema* on his wedding night. Rambam, like the Rif, records the Talmud's conclusion that *Shema* may be recited<sup>8</sup> if the groom is confident that he can sufficiently concentrate his thoughts. *Tosafot*, however, reach a different understanding from the Gemara (for reasons which I explore in *Talmud Reclaimed*), namely, that the groom should not recite *Shema*. Nevertheless, they introduce a new consideration into the discussion on the basis of what they adjudge to be a post-Talmudic deterioration in the level of religious practice, ruling therefore that *Shema* should be recited despite what they understand to be the Talmud's unambiguously clear conclusion.<sup>9</sup>

Summarizing these positions, the *Kesef Mishneh* echoes the Rabbinic and academic teachings quoted above, stating powerfully:

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<sup>8</sup> *Hilkhot Keri'at Shema* 4:7 based on *Berakhot* 17b.

<sup>9</sup> "For us, however, who never concentrate our minds sufficiently, even a groom may recite for, on the contrary, it appears haughty for one *not* to recite, as it implies that he recites with the requisite concentration at all other times." S.v. *Rav Shisha*.

Rambam's practice is known, in that he simply records the law as it emerges from the Talmud...and it is the Tosafists who innovated that, nowadays, things are to the contrary, and that anyone who does not recite is considered arrogant.<sup>10</sup>

The second example concerns the Biblical prohibition against intermarriage. Rambam rules, in line with the primary Talmudic passages, that the Biblical prohibition of *lo titḥaten* applies to any marriage between a Jew and a non-Jew.<sup>11</sup> *Tosafot*, by contrast, seek to reconcile this passage with a relatively tangential mention of the intermarriage prohibition in *Yevamot*.<sup>12</sup> What is crucial once again for our immediate purposes is the summary of Rabbi Yosef Karo's *Kesef Mishneh* commentary<sup>13</sup> which states that Rambam's ruling is based upon the clear implication of the primary sources, whereas *Tosafot*'s ruling relies upon what he describes as a far-fetched attempt to reconcile primary and secondary sources.<sup>14</sup> Rambam, whose methodology identifies and then rules according to the primary source alone, is not troubled by the apparent contradiction, and is therefore not forced into any "far-fetched" resolution.<sup>15</sup>

I contend that it is only by turning a blind eye to these clear quotes from the *Kesef Mishneh*, as well as the other Rabbinic sources above, that the reviewer is able to suggest so snidely that my chapter, by highlighting the contrasting methodologies of Rambam and the Tosafists, implicitly

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<sup>10</sup> דעת רבינו שכבר נודע מנהגו שהוא כותב הדין היוצא מן הגמרא וכבר כתבתי דלפום דינא דגמ' אינו רשאי לקרות עד שתתיישב דעתו...ובעלי התוס' הם שחדשו שבזמן הזה אדרבא אם לא יקרא איכא למיחש ליוהרא כלומר בכל פעם אני מכוין ואין חילוק אצלם בין חתן לאינך דפטרי.

<sup>11</sup> *Hilkebot Issurei Bi'ah* 12:1, based on *Kiddushin* 68b and *Avodah Zarah* 36b.

<sup>12</sup> 76a. To achieve this, they rule in accordance with the Sages who dispute Rabbi Shimon and restrict the Biblical prohibition to marriage between a Jew and a non-Jew from the seven Canaanite nations.

<sup>13</sup> וכבר נדחקו התוספות ליישב זה ורבינו תפס עיקר כפשט הסוגיא.

<sup>14</sup> *Kiddushin* 68b, s.v. *Amar*. *Tosafot*'s complex reconciliation proposes that, on the basis of the secondary *Yevamot* source, we must reinterpret the Talmud's citation of the verse *lo titḥaten bam* in the other two primary passages as being an inaccurate reference to another part of that verse.

<sup>15</sup> In a third example, *Kesef Mishneh* (*Yesodei Ha-Torah* 5:1) simply states that "Rambam did not hold of" a *derash* from a tangential passage—a *derash* which *Tosafot* (*Sanhedrin* 74b, s.v. *Veha*) combined with the primary passage to produce innovative theories and a surprising Halakhic leniency. There are also far-reaching implications here for the broader discussion of the way in which more recent schools of thought, such as Brisk, approach the study of Rambam. Unfortunately, this fascinating subject was explored in a separate chapter of *Talmud Reclaimed* and therefore is not part of this review.

critiques “almost every work written on the Talmud and Jewish law since the dissemination of the *Mishneh Torah* eight centuries ago.”

### **Blidstein Reclaimed?**

Having furnished the reader with a range of sources which the reviewer unaccountably omitted, it is now time to turn my attention to the sources and counterarguments which he did consider important enough to discuss. I say “sources,” but the material offered by the reviewer to prove that Rambam and the *Ba’alei Tosafot* employed similar methodologies barely qualifies for this plural form. Aside from a broad quote from Isadore Twersky at the end of the review<sup>16</sup>—which lacks any contextualization or comment from the reviewer—the only Rabbinic or scholarly study of Maimonidean and Tosafist methodology upon which he draws in order to counter my numerous citations is a single essay from Gerald Blidstein.<sup>17</sup> Our reviewer clearly places a great deal of weight on the conclusions of this “great scholar of Maimonidean *halakhah*,” informing his readers that he has only “quoted a brief excerpt but the entire article is highly relevant to this discussion.” Having taken the opportunity to examine Blidstein’s essay, I can confirm that the whole essay is indeed relevant—though not in the way that readers of the review might have imagined.

It is true that Blidstein is cautious when it comes to identifying precise patterns and formulas which may have underpinned and guided Rambam’s methodology. And it is also true that he offered a novel rereading of one of my sources<sup>18</sup>—a suggestion that the reviewer enthusiastically promotes. On balance, however, it is abundantly clear that Blidstein both recognizes and embraces the very different approaches adopted by Rambam and the *Ba’alei Tosafot* in their efforts to assemble halakhic rulings from the Talmud.

In this very same essay, Blidstein discusses historical sources which highlight and emphasize these distinct methodological divergences. After quoting the statement of the early *Migdal Oz* commentary (cited above), that Rambam “only dealt with matters that are explicit in the Talmud and

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<sup>16</sup> The Twersky essay, which is referenced and quoted within the reviewer’s primary Blidstein source, is certainly correct that the *Mishneh Torah* “warrants meticulous investigation” and is suitable for both “small and great.” See further n. 27 below.

<sup>17</sup> Gerald Blidstein, “Where Do We Stand in the Study of Maimonidean Halakhah?” in Isadore Twersky, ed., *Studies in Maimonides* (Harvard University Press, 1991), p. 10.

<sup>18</sup> This will be discussed below.



not with those which one might deduce,” Blidstein then clarifies, for the benefit of any of those who might still be unsure, that this authoritative source is “doubtlessly contrasting Maimonides with the Tosafists.” While Blidstein does consider that this statement of the Spanish *rishon* “goes rather too far,” he approvingly cites Rabbi Shlomo Luria’s glowing praise of *Tosafot*’s revolutionary innovative approach of reconciling Talmud into a “single ball.”<sup>19</sup> This, Blidstein correctly points out, is “implicitly contrasting this synthesizing understanding with the more contextual and controlled reading of the Maimonidean school.” Most significant, however, is Blidstein’s statement towards the end of the essay that “it is clear, by now, that Maimonides is part of the geonic-North African-Andalusian tradition of Talmudic scholarship. This is apparent from the methodological affinities.”

It is hard to believe that these quotes are drawn from the very same “highly relevant” essay which serves as almost exclusive support for a review that is described to us as “demonstrat[ing], contrary to the claim of many, that the methodologies of Talmudic analysis of Rambam and the *Ba’alei Tosafot* were, in fact, not far apart.”

## **SECTION B:**

### **Responses to Specific Critiques of My Sources by the Reviewer**

The first half of this response focused on the broader presentation of sources cited in the chapter under discussion but which the reviewer ignored. These sources clearly demonstrate that the significant methodological differences between Rambam and the *Ba’alei Tosafot* are not an invention of my own but have been widely known and accepted for many centuries among both traditional and academic Talmudic students. In this, the second section of my response, I now address the specific claims and rebuttals made by the reviewer to a few of the sources and case studies that I presented in the relevant chapter and accompanying case study.

#### *i) Teshuvah of Rav Avraham ben Ha-Rambam:*

Since Rav Avraham was both a son and highly praised close student of Rambam,<sup>20</sup> any kind of statement by him as to the halakhic methodology of his father is extremely valuable to the discussion in hand. Such an indication was identified and presented in *Talmud Reclaimed*.

Faced with apparently contradictory Maimonidean rulings as to whether the performance of mitzvot requires proper accompanying intent

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<sup>19</sup> Quoted above.

<sup>20</sup> *Iggerot Ha-Rambam* (Shilat edition), vol. 1, p. 424.

to be valid, Rav Avraham first deflects the question from his father, stating unambiguously that “the question is not on my father but on the Talmud.”<sup>21</sup> In keeping with what was shown to be a Geonic-Maimonidean approach to determining halakhah from the Talmud, each respective conclusion is recorded in its relevant place, no attempt being made to introduce new ideas and distinctions in order to explain them. Later in the responsum, Rav Avraham proceeds to offer a possible rationalization which might resolve the contradiction.

Not even the reviewer could ignore this “smoking gun” first-hand evidence as to Rambam’s approach to contradictory Talmudic conclusions—but how does he deal with it? After quoting the opinion of Gerald Blidstein, who “dismisses the claim out of hand,” the reviewer focuses almost entirely on Rav Avraham’s suggested rationalization in the latter part of the responsum, arguing that “the suggestion that we should not attempt to resolve apparent contradictions, is simply put, shocking.”<sup>22</sup> Essentially, the “shocking” implication of what Rav Avraham says appears to be regarded as license to ignore it, and to focus instead on the subsequent suggested resolution. Notice how stunningly circular the reviewer’s reasoning is here. Commencing with a firmly entrenched and unassailable faith in the notion that Rambam utilized a Tosafist methodology, he finds an explicit statement to the contrary “shocking.” He then seizes on this “shocking” implication as justification for reconstruing the text to fit his preconceived position—no matter how far-fetched such a reading is. This is a remarkable way to approach the task of interpreting source material.

The reviewer, incidentally, is aware that his reinterpretation of this *teshuvah* does more than oppose the argument I present in *Talmud Reclaimed*. He understands that it also compels him to attack Professor Yerachmiel (Robert) Brody—a leading scholar of Geonic-Maimonidean Judaism and its literature, whom he accuses of “misunderstanding” the words of Rav Avraham ben Ha-Rambam. Implicitly impugned too are

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<sup>21</sup> ברכת אברהם סי' לד: ואי קשיא לך מאי שנא שופר ומגילה משאר מצות, זו ודאי קושיא עמוקה היא, והיא על הגמרא לא על אבא מארי.

<sup>22</sup> Unfortunately, the reviewer did not permit his analysis to stretch to the other chapters of the book, which discussed the function of Talmudic analysis, or even to the end of the Appendix from which he cited several of my case studies. Had he done so he would have noticed that I do *not* suggest that we should refrain from attempting to resolve Talmudic contradictions as part of the *mizvah* and function of *Talmud Torah*. Rather I show that Rambam, Rif and the Geonim were not prepared to rely upon such speculative resolutions by post-Talmudic Rabbis—the validity of which the commentaries often debate passionately between themselves—to claim an authoritative Talmudic ruling.

other scholars such as Dr. Uziel Fuchs, who authored an outstanding article which included this source in a list of multiple applications of the Geonic approach to Talmudic contradictions.<sup>23</sup> It should be noted that as well as demonstrating the Geonic-Maimonidean approach, Dr. Fuchs quotes critical responses to these Geonic rulings made by *rishonim* who, not being part of the Geonic tradition, strongly disagreed with their methodology of excluding non-primary contradictory passages from the process of halakhic determination.<sup>24</sup>

Professor Brody—who offered me valuable assistance and advice regarding several chapters of *Talmud Reclaimed*—sent me the following in response to the reviewer’s assertions:

My understanding is that (as his son implies) he [Rambam] believed his role was to codify the rulings arising from *sugyot*, and not concern himself with possible “contradictions” with regard to the underlying reasons. I can’t know for sure what he would have answered if asked about these cases but I don’t believe he saw it as his responsibility to come up with *sevarot* to reconcile them, of the sort which commentators raised on *Tosafot* have sought for centuries. I assume his first answer would have been that questions of this sort were irrelevant to his job as *posek*; if pressed further he might or might not have offered a possible *sevara* to reconcile the rulings in question. (Compare R. Avraham’s responsum; even if we assume that his thinking—after Rambam’s death—accurately reflects his father’s, his first response was to say that such “contradictions” are not the responsibility of the *posek* and only afterwards did he offer a way to reconcile the specific rulings in question.)

ii) Hai Gaon’s Testimony as to Geonic Methodology

Another highly significant source when assessing the nature of Geonic Talmudic methodology is an explicit testimony made by Hai Gaon about the tradition he received from leading scholars of earlier generations. This testimony, cited by Rabbeinu Hananel in his commentary to *Baba Batra*,<sup>25</sup> describes how, when faced with contradictory Talmudic conclusions, the transmitted methodology was to rule in accordance with each respective

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<sup>23</sup> “*Darkei ha-Hakbra’ah, Samkbut shel Tqstim u-Muda’ut Atzmit*” (in Hebrew), *Sugyot be-Mehkar ha-Talmud*, 21 Kislev 2001, pp. 100-124.

<sup>24</sup> For example:

יש בכאן שלש שמועות עמוקות בסודותיהן...ונעלמות מלב רוב חכמים עד שדנו בהן לפי דעתן שאינן כהלכה, וזה דבר של תמה, איך יהיו הדברים האמורים בתלמוד בסוד העיבור שלא כהלכה.

*Ba’al Hame’or, Rosh Hashanah* 20b (Ketav Yad Moskva).

<sup>25</sup> 52a-b.

passage, and not undertake a (Tosafist-style) attempt to resolve them by introducing novel reasons and distinctions:

זו השמועה כתבה רבינו האיי גאון ז"ל, נקישין מרבתינו ז"ל, כל היכא דאמור בתלמוד תיובתא דפלוני תיובתא, בטלו דברי מי שהתיובתא עליו לגמרי. אבל היכא דעלתה בקשיא – לא בטלו דבריו, דאמרינן לא הוה ברירא להון דבטלה שמועה זו לגמרי, אלא לא אשתכח להו פירוקא בההיא שעתא, ותליא וקיימא. והיכא דקשיא תרוייהו אהדדי בטעמייהו ולא מפרק קושיא – עבדינן כי הא בדוכתא, וכי הא בדוכתא, ולא חיישינן לאשכוחי בהו טעמא ולפרוקינהו.

On this occasion, the reviewer does not appear to have found any scholarly attempts to rebut the source. Undeterred, he suggests his own novel and counter-intuitive rereading of the passage:

R. Hananel is discussing the specific scenario where the Gemara asks a question on a position and concludes with the word קשיא— “this is difficult.” Citing a tradition transmitted by R. Hai Gaon, R. Hananel distinguishes between the Talmudic conclusions קשיא and תיובתא. Although both indicate a question that has not been resolved, תיובתא means that the position is refuted, while קשיא means that the Gemara “did not find an answer at that time” but the position stands and is not rejected. It is only in this case that R. Hananel says that we will rule in accordance with two statements that seem contradictory, because by using the term קשיא the Gemara indicates that this is not a true contradiction. This statement of R. Hananel cannot be applied elsewhere.

Once again, Professor Brody is unimpressed with the reviewer’s critique, writing:

The reviewer claims that the tradition cited by Hayye Gaon about accepting seemingly contradictory rulings was meant to apply only in cases in which the gemara says “*qashya*.” In my opinion this is extremely implausible: if Geonic tradition said that in cases of *qashya*, where the authors of the gemara point out a seeming contradiction and admit they do not (at present) have a suggestion for resolving it 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*.

Particularly when one takes into account the numerous sources cited by scholars and copious case studies of Geonim and their heirs applying the “primary passage” methodology to Talmudic contradictions, the re-

viewer's attempt to limit Rav Hai's words appears to be feeble. It is certainly not the sort of argument that can support the mockingly sarcastic tones with which he attacks my work.

iii) Rambam's Own Letter:

In a debate as to the nature of the Talmudic and halakhic methodology of Rambam, an account by Rambam himself as to how he went about compiling the *Mishneh Torah* must be considered evidence of the highest caliber. We are fortunate to be in possession of just such an account; a letter written by Rambam to Rabbi Pinchas Ha-Dayan after the latter expressed disappointment that Rambam had not provided his sources within the legal code. In response, Rambam writes that the *Mishneh Torah* did not require accompanying citations since:

All of the unattributed statements within it are clearly laid out in the Babylonian Talmud, Jerusalem Talmud, Mishnah, Sifra... Anything which has arisen from my own analysis I note explicitly "the matter appears such to me" [*yira'eh li*] or "from here it can be derived that the matter is such" [*mikan atah lomed*].<sup>26</sup>

This passage is cited in the relevant part-chapter of *Talmud Reclaimed* to support the position that Rambam's halakhic methodology involved minimal personal input in terms of novel legal distinctions and reconciliations of the sort which are the Tosafist trademark.

Imagine my surprise upon perusing the review to see that, not only did this crucial passage not receive a direct response from the reviewer, but that he had nevertheless quoted (at great length) the next paragraph of the letter as an alleged disproof of my chapter. Instead of addressing Rambam's own words as to the lack of innovation in *Mishneh Torah*, he instead attempts to build up the feeblest of strawmen in his caricature of my argument and then claims to have disproven it.

Rambam emphasized the painstaking labor involved in assembling the *Mishneh Torah* from every possible source, to the extent that he himself could not find the far-flung and tangential source on which he based the ruling in question. Obviously, the *Mishneh Torah* was not written based only on "major *sugyot*."

All that Rambam is communicating in the passage being referenced is that the process of compiling *Mishneh Torah* required him to gather laws relevant to each subject from numerous far-flung *sugyot* spread across the entire Talmud. Since the Talmud is chiefly an account of the Sages' study

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<sup>26</sup> *Iggerot Ha-Rambam* (Shilat edition), Vol. 2, pp. 442-443.

hall discussion, details of Shabbat, for example, can pop up tangentially in all sorts of other legal debate concerning matters such as intent and causation. Many such details will be recognizable only to the trained eye of an expert halakhist—of which Rambam was a first-class practitioner.<sup>27</sup> But none of this has anything to do with the ideas presented in *Talmud Reclaimed*.

The theory which I advance in the relevant chapter of *Talmud Reclaimed* about how Rambam and *Tosafot* differed in their approach to determining halakhah from contradictory *sugyot* was only from the outset addressing laws for which there exist multiple seemingly contradictory *sugyot*. In such a scenario, the Geonic-Maimonidean methodology seeks to identify and rule according to the primary passage and jettisons the reasoning and implications arising from tangential passages (rather than attempting to reconcile them in the Tosafist style).

Nowhere in my book did I argue, as the reviewer alleges, that *Mishneh Torah* is “based only on major *sugyot*.” In light of such a fundamental misunderstanding of the basic position advanced in Chapter 6 of *Talmud Reclaimed*, one cannot help but wonder whether the reviewer has adequately understood the part-chapter that he targeted in his review.

### Responses to the Reviewer’s Challenges to Some of my Case Studies

Having completed my response to the reviewer’s critique of several sources which *Talmud Reclaimed* cites regarding the Tosafist and Maimonidean methodologies, I now conclude by examining challenges which the reviewer poses to a small sample of demonstrative case studies which feature in the chapter and accompanying Appendix.<sup>28</sup>

#### i) Definition of *Reshut Ha-Rabim* for the Purposes of *Eruv*:

How one defines the halakhic concept of a *reshut ha-rabim* is of considerable importance to the laws of *eruv*, since it is a unanimously agreed principle that *eruvim* can only be constructed in a *carmelit*—in which the prohibition to carry is Rabbinic—and not in a *reshut ha-rabim*. A case study in

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<sup>27</sup> An excellent description by Rabbi Asher Benzion Buchman of the skill and profound insight involved in Rambam’s careful collation of *Mishneh Torah* can be found in *Hakirah* #7, 2009 (especially pp. 120-122). Rabbi Buchman shows there how delicately and deliberately laws are worded to ensure precision and maximize meaning.

<sup>28</sup> Due to space constraints, the remaining critiques of my case studies will be addressed in condensed form in a footnote at the end.

Appendix G of *Talmud Reclaimed* notes that the Talmud's own definition of *carmelit* and *reshut ha-rabim* focuses primarily on their size and structural features,<sup>29</sup> with the Talmud concluding that a path has the status of a *reshut ha-rabim* if it is 16 cubits wide.<sup>30</sup> This conclusion, which is recorded by Rambam,<sup>31</sup> Rif, and the Geonim,<sup>32</sup> would mean that an *eruv* which is erected within an unenclosed area which is wider than 16 cubits does not permit carrying. This example of the Geonic-Maimonidean practice of recording the halakhah precisely as it emerges from the Talmud is then contrasted with *Tosafot*, with the Ri adopting a highly significant limitation to the definition of *reshut ha-rabim*—found nowhere in Talmudic literature—that it must also be an area through which 600,000 people pass.<sup>33</sup>

While this case study is valuable in its ability to exemplify and demonstrate the gulf between the legal philosophies of the Tosafist and Maimonidean schools, the reviewer seizes it as an opportunity to attack *Talmud Reclaimed* and its author:

Does Phillips intend to say that Tosafists viewed themselves as capable of redefining Biblical law, even in contradiction to the Talmud... 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.

So, do I advance the position in this chapter that the “Tosafists viewed themselves as capable of redefining Biblical law, even in contradiction to the Talmud”? This is a great question. Unfortunately, the reviewer appears to have defeated himself here by setting incomprehensibly narrow parameters for his review, since the continuation of the chapter under discussion addresses this very question at length.<sup>34</sup> If he had troubled himself to read it, he would have found that it unsurprisingly concludes that the Tosafists also saw themselves as bound by Talmudic precedent (examples are provided), albeit in a looser way. As an aside, the analysis and theories developed in the unreviewed second half of the chapter are highly significant. It is a great shame that the reviewer limited himself to nitpicking the chapter's initial building blocks, which, as we have seen, enjoy broad support in both traditional and academic sources.

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<sup>29</sup> *Shabbat* 6-7.

<sup>30</sup> *Shabbat* 99a.

<sup>31</sup> *Hilkhot Shabbat* 14:1-4.

<sup>32</sup> Cited by Ritva in *Eruvin* 59a.

<sup>33</sup> *Eruvin* 6a s.v. *keitzad*. See also *Shabbat* 6b, s.v. *kan*.

<sup>34</sup> Pp. 178-183.

In addition, it is misleading for the reviewer to frame my case study as a personal attack on the position of the *Ba'alei Tosafot*. The case study does not put forward my own view but rather cites statements made by “traditional Talmudists” such as the Ramban<sup>35</sup>, Rivash,<sup>36</sup> Ritva,<sup>37</sup> *Maggid Mishneh*,<sup>38</sup> and the Rashba. They all note, as I summarize in my book “the innovative process which was needed in order to introduce this condition into the definition of ‘public domain,’ since no trace of it can be found anywhere in the lengthy Talmudic discussions on the subject.”<sup>39</sup>

According to the reviewer, the *Ba'alei Tosafot* “maintain that this was a Geonic tradition about how to understand the Talmud even if it is not stated explicitly in the Talmud.” It is true that the *Behag* (a book of Halakhah authored during the Geonic era) is cited in one of the relevant *Tosafot*—but it is certainly not presented as a clear and undisputed tradition.<sup>40</sup> Moreover, this stipulation does not appear in the most commonly used “*defus Venetzia*” edition of the *Behag*, only in the lesser cited “*defus Aspamia*.” Rabbeinu Tam, one of the most prominent Tosafists, rejects the apparent position of the *Behag* outright, and Rabbeinu Tam’s colleagues proceed to dispute him on the basis of logical argumentation rather than on the strength of received tradition. Furthermore, it seems odd that neither Rambam or Rif, who were shown above to represent a continuation of the Geonic tradition, are aware of such a clear tradition to read the stipulation of 600,000 into the Gemara, while the Tosafists, who

<sup>35</sup> *Erwin* 59a, וסוף דבר אין לנו אלא מה שמוזכר בתלמוד רשות הרבים שש עשרה אמה דגמרי, ומשכן כדאיתא בפרק הזורק ושאינו מקורה כדאמר' בפרק קמא דשבת אבל דירין לא ילפין הילכך כל מביי שמפולש בשני ראשין ומכוון עד חוץ למדינה ורחב שש עשרה אמה הוא רשות הרבים גמורה בכל עיירות ובכל כפרים שבעולם.

<sup>36</sup> וכן נמי להצריך ששים רבוא בחשיבות רה"ר לא נראה לחכמים אע"ג דהואי במשכן # 405. ולזה הסכימו הרמב"ן והרשב"א ז"ל גם הרמב"ם ז"ל לא הזכיר זה כלל אבל מה שמוזכר בגמרא הוא רחב שש עשרה אמה ושלא יהיה מקורה כדאיתא בפרק הזורק (שבת צ"ט).

<sup>37</sup> וע"כ רוב הגאונים ז"ל הם כדעת ר"ת ז"ל דלא בעי ששים רבוא כלל וכן דעת הר"ם ז"ל. וטעם דבריהם שאין לנו ללמוד מרגלי מדבר אלא לענין רשות הרבים ממש שלא תהא מקורה ושיש בה שש עשרה אמה ושתהא מפולשת אבל לא לענין מנין הדורסים בה. גם לא הזכיר זה בשום מקום לא בש"ס דילן ולא בירושלמי וכן נראין הדברים.

<sup>38</sup> *Hilkehot Shabbat* 14:1 ודע שיש מן הגאונים והאחרונים סוברים שאין רה"ר אלא במקום ו"ל הרשב"א ז"ל שבוקעין בו ששים רבוא כדגלי המדבר. ואין לזה רמז בגמ' ואינו עיקר וכ"כ הרמב"ן והרשב"א ז"ל.

<sup>39</sup> Nor does it sit comfortably with a series of Talmudic decrees to suspend the performance of Biblically mandated mitzvot, such as *Shofar* and *Lulav*, on Shabbat out of concern for carrying in a *Reshut Ha-Rabim*—a phenomenon which would have been extremely rare historically if one introduces the 600,000 stipulation.

<sup>40</sup> As an aside, while the *Behag* was revered as a Geonic work by Ashkenaz *rishonim* who understood it to have been authored by Yehuda'i Gaon, he is rarely quoted in this context by Sephardic *rishonim* such as Rambam and Rif. Many now believe it to be a much later work by Rabbi Shimon of Kairouan.



had no direct link to the Geonim, have heard of it. Even more significant are the words of Ritva who writes explicitly (above) that most Geonim accorded with Rambam and Rif on this point.

In summary, while it is certainly possible that the *Ba'alei Tosafot* knew of some kind of earlier tradition for the stipulation of 600,000, the fact that they ruled accordingly despite the plain meaning of the Talmudic text, in contrast to Rambam, Rif and the Geonim, is a legitimate and instructive demonstration of their contrasting halakhic methodologies.

The reviewer concludes his critique of this case study with a scarcely relevant digression (including a lengthy footnote quote with anecdotes from *Mishpachah* magazine) to argue that the Tosafists were not ““updating” the Talmud but rather viewed communal practice as an important data point for properly understanding the Talmud.” I am unable to understand what point the reviewer is seeking to make here. Is he retreating from his previous assertion that the *Ba'alei Tosafot*'s ruling was merely relying on a transmitted tradition? Are we really to assume that the true motive of the *Ba'alei Tosafot* was to justify a communal practice – a motive or practice which is mentioned nowhere in their words?

Once again, the reviewer has ignored the numerous primary (and secondary) sources cited in the relevant chapter of *Talmud Reclaimed*, which recognize the fact that the Tosafists did indeed use communal practice as a data point for interpreting the Gemara—this in contrast to the Geonic-Maimonidean methodology, which typically restates the Talmudic law without reference to such phenomena. Significantly, however, the examples that I cite show that the Tosafists were not shy about revealing this aspect of their halakhic engagement, openly stating such a motive as an important justification rather than seeking to conceal it. The review would certainly have benefited from a discussion (or even a mention) of these primary sources of Tosafist and Maimonidean methodology.

ii) *Berakbah* over *Hallel* on Rosh Hodesh:

The second case study challenged by the reviewer seeks to demonstrate the contrasting Tosafist-Maimonidean approaches to laws which appear in multiple *sugyot*.

A primary Talmudic passage in *Arakhin*<sup>41</sup> establishes when one is permitted and obligated to recite *Hallel*. This passage expands upon a *Tosefta*,<sup>42</sup> which states that there are 18 days on which it was instituted that

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<sup>41</sup> *Arakhin* 10a.

<sup>42</sup> *Sukkah* 3:2.

*Hallel* be recited (21 in the diaspora). The Talmud specifically highlights certain days—including Rosh Hodesh—which are excluded from this list. Separately, another primary passage in *masekhet Sukkah*<sup>43</sup> establishes that a *berakbah* is not recited over a *minhag*. As Rashi explains, on the basis of the Gemara's own statement in the pages that follow, it is incorrect to state “*asher kideshanu be-mitzvotot ve-tzivanu*” for a custom which we have not been commanded to perform—not even under the broad *Lo Tasur* obligation to obey the Sanhedrin. Secondary passages appear however in *Berakhot* and *Ta'anit*<sup>44</sup> which tell of Rav witnessing a Babylonian *minhag* of *Hallel* being recited on Rosh Hodesh—seemingly with a *berakbah*.<sup>45</sup>

As we have by now come to expect, Rambam excludes these secondary passages from his legal determination, ruling simply like the primary passages that:

אָבֵל בְּרֵאשִׁי הַיָּשִׁים קְרִיאַת הַהֶלֶל מְנַהֵג וְאֵינוֹ מְצֻוֶּה. וּמְנַהֵג זֶה בְּצִבּוּר לְפִיכָד  
קוֹרְאִין בְּדִלּוּג. וְאֵין מְבָרְכִין עָלָיו שְׁאֵין מְבָרְכִין עַל הַמְנַהֵג.<sup>46</sup>

Rabbeinu Tam,<sup>47</sup> by contrast, treads a trademark Tosafist path of seeking to “reconcile all the threads into a single ball” so that even the secondary *sugyot* accord with the primary ones. To achieve this goal, he reinterprets the passage in *Sukkah* distinguishing between different categories of *minhag* (a distinction which appears nowhere in the Talmudic text):

י"ח ימים שהיחיד גומר בהן את ההלל: פ"ו ובשאר ימים אין אומרים אותו כלל...ומ"מ אומר ר"ת דצריך לברך עליו דכך משמע הך דסבר לאפסוקינהו (דכיון) שמברכין עליו דאל"כ מיד שראה רב שלא ברכו לפניו מיד היה יכול להבין שלא היה חובה אלא מנהג אלא ש"מ שברכו וכן משמע מהך דריש פ"ב דברכות (דף יד:) דקאמר רבא הילכתא שמונה עשר ימים שהיחיד גומר בהן ההלל בין פרק לפרק פוסק באמצע הפרק אינו פוסק ימים שאין היחיד גומר בהן ההלל אפילו באמצע הפרק פוסק ואם אין מברכין עליו מאי הפסקה איכא בדבר ותו מפני רשות נמי יפסיק ועד כאן לא איבעיא ליה אלא מפני היראה ומפני הכבוד ולא דמי להאי דקאמר פרק לולב וערבה (סוכה דף מד:) אמנהגא לא מברכין ה"מ טלטול דמנהג כמו ערבה אבל אקריאה דמנהג מברכין שפיר.

Rabbeinu Tam's motive for reinterpreting the passage in *Sukkah* is even more explicit in a parallel *Tosafot* dealing with the question of when *Hallel* is recited:

<sup>43</sup> 44a-b.

<sup>44</sup> 28b.

<sup>45</sup> Although not all *rishonim* agree with this interpretation, see the Ran to Rif on *Sukkah* 44.

<sup>46</sup> *Hilkhhot Megillah* 3:7.

<sup>47</sup> *Arakhin* 10a s.v. *Yud Het*.

אמר שמע מינה מנהג אבותיהם בידיהם. יש מפרשים דאמנהג לא מברכין מהכא וכן משמע בסוכה בפרק לולב וערבה (סוכה דף מד:) דקאמר אמר אביי הוה קאימנא קמיה דר' יצחק ואייתי ההיא ערבה לקמיה שקל חביט חביט ולא בריך קסבר ערבה מנהג נביאים היא אלמא אמנהג לא מברכין אבל רבינו תם פסק דמברכין דאי איתא דלא מברכין אם כן מאי קאמר בגמרא כיון דשמעינהו דמדלגי ואזלי שמע מינה מנהג אבותיהם בידיהם וכי לא היה לו להכיר אי משום מנהג קרו ליה לא מברכי אי איתא דאמנהג לא מברכין ואי מברכי לא מנהג הוא.<sup>48</sup>

As *Tosafot* summarize, the clear implication of the *Sukkah* passage is that one does not make a *berakhah* on any *minhag*. However, Rabbeinu Tam is nevertheless prepared to qualify this *Sukkah sugya* in order to accommodate the secondary *Hallel* passage and its account of Rav witnessing *Hallel* with a *berakhah* in Babylonia.

In what I should like to believe is an innocent error, the reviewer ignores these explicit excerpts of *Tosafot* which I cite in my book describing Rabbeinu Tam's reasoning, and instead quotes a different *Tosafot* from *Sukkah* 44b which mentions only Rabbeinu Tam's conclusion, not his reasoning. His quoting of the wrong *Tosafot* allows for a certain ambiguity which the reviewer uses to suggest that the *Sukkah sugya*'s teaching concerning no *berakhah* over a *minhag* is limited to the *minhag* of *Aravah*, and that Rabbeinu Tam uses this conclusion in *Sukkah* to inform his interpretation of the *Hallel sugyot* (rather than the other way around). In light of the passages of *Tosafot* that I have quoted above, this interpretation is a clear and obvious error which in itself requires no further discussion.

What does still need to be addressed is the reviewer's unwarranted assertion that:

the Gemara does not formulate a principle that no *berakhot* are recited upon *minhagim*. It is rather Rambam who generalizes from this case to formulate a rule that *minhagim* have no *berakhah*...R. Tam, however, maintains that one should not generalize from this case to all *minhagim*.

The thinly veiled implication behind the reviewer's contention is that contrary to the theory which I advanced contrasting Rambam and Tosafist methodologies, it is Rabbeinu Tam who is taking the Gemara at face value here while Rambam adopts a more expansive reading.

As noted above, however, *Tosafot* themselves concede that the plain meaning (pre-reconciliation) of the *Sukkah* passage is that no *berakhah* should be recited over any *minhag*. Rashi explains there, based on a Gemara two pages later, that this is because the phrase אשר קדשנו במצוותיו

<sup>48</sup> *Ta'anit* 28b s.v. *Amar*.

וצונו denotes that some form of commandment is being performed, whereas a simple *minhag* “אפילו בכלל לא תסור ליכא”—is not even included in the Biblical obligation to obey the Sanhedrin.<sup>49</sup> This reasoning applies to the custom of reciting *Hallel* on Rosh Hodesh just as much as the custom of hitting the *Aravah*. My case study is therefore entirely correct to explain Rambam as representing the simple meaning of the text and *Tosafot* as reinterpreting the text in order to find a reconciliation with a secondary *sugya*.

iii) *Berakhab* Before or After *Tevilah*:

A further *Talmud Reclaimed* case study with which the reviewer takes issue involves the question of when to recite *berakhot* over mitzvot. The relevant Talmudic passage<sup>50</sup> concludes that, for all commandments, the *berakhab* should be prior to the action חוץ מן הטבילה בלבד. There is, however, a degree of dispute as to which cases of *tevilah* are governed by this exception.

Rambam, along with the Rif and Rav Hai Gaon, understand that this is a very specific exception for a very clear and simple reason: a non-Jew who is immersing in a *mikveh* at the conclusion of the conversion process can only say the word *ve-tzivanu* after the immersion, because only then will they have become Jewish. Aside from this case of absolute necessity, all *berakhot* over *mitzvot* are to be recited before the required act. *Tosafot*,<sup>51</sup>

<sup>49</sup> Since the Gemara's reasoning for not assigning a *berakhab* to a *minhag* is that it is not subsumed within *Lo Tasur*, this clearly does apply to *minhagim* subsequently endorsed or legislated by the *Bet Din Ha-Gadol*. Such a *minhag* (and only such a *minhag*) is explicitly included by Rambam in the scope of *Lo Tasur* since it is underpinned by the Court's authority. As he states in *Hilkhhot Mamrim* 1:2 regarding *Lo Tasur* and the Court's authority:

וְאֶחָד דְּבָרִים שֶׁעָשָׂאוּם סִיג לְתוֹרָה וְלִפִּי מָה שֶׁהִשְׁעָה צָרִיכָה וְהֵן הַגְּזֵרוֹת וְהַפְּקָנוֹת וְהַמְנָהְגוֹת.

In view of Rambam's clear teaching in this regard, none of the questions posed by later commentaries concerning the recitation of a *berakhab* over commandments performed on second-day Yom Tov challenge his position. This is because, as Rambam phrases it in *Hilkhhot Kiddush Ha-Hodesh* 5:5 (based on *Beitz'a* 4b): תִּקְנַת הַכִּמִּים הוּא שֶׁיִּזְהָרוּ בְּמִנְהַג אֲבוֹתֵיהֶם שֶׁבִּידֵיהֶם.

As the Ran (to Rif, *Sukkah* 44b) clarifies Rambam's opinion, since second-day Yom Tov was instituted by a Sanhedrin it bears the authority of *Lo Tasur* and therefore can be the subject of “*asher kideshanu be-mitzvotav ve-tzivanu*” *berakhot*. This in contrast to *Hallel* on Rosh Hodesh and the custom to beat an *Aravah* on Sukkot which are customs that the Court never formally instituted so no *berakhab* may be recited.

<sup>50</sup> *Pesahim* 7b.

<sup>51</sup> *Pesahim* 7b s.v. *Al Hatevilah* (see also *Berakhot* 51a s.v. *Me'ikara*).

by contrast, start by acknowledging that the primary meaning of the Gemara's exception is *Tevilat Ha-Ger* alone—in line with Rav Hai Gaon. Nevertheless, they add, *bedi'eved* those who recite the *berakhab* after any *tevilah* should not be rebuked, since the sages did not distinguish in their decree:

אעפ"כ אומר ר"י דאין לגעזר בנשים שמברכות אחר הטבילה כיון דאיכא טבילת  
גר דלא מצי לברך לא חילקו.

Contrary to the reviewer's assertion, the simple rendering of the הטבילה is not "all immersions," and Rambam is not "applying Tosafist methodology" to limit its primary meaning. First, the phrase "חוץ מן הטבילה בלבד" is indicative of a narrow limitation; both because of the word "בלבד"—exclusively—and also on account of the "ה" prefix which denotes one specific item (note: this limiting prefix was not used by the Gemara when mentioning other previous rejected exceptions). Secondly, from the perspective of both basic logic and proper methodology of legal interpretation, one should attempt to construe an exception as narrowly as possible so as not to undermine the efficacy of the overall principle from which it is being excepted. Thirdly, as noted above, there is a clear reason of necessity governing the specific exception of *tevilat ha-ger*—the putative convert is unable to state *ve-tzivanu*. Such necessity does not apply to other cases of *tevilah*. As the *Rif* demonstrates from other sources, and as the *Ba'alei Tosafot* themselves accept, people in a state of ritual impurity are permitted to recite a *berakhab* even before they have immersed in a *mikveh*.<sup>52</sup>

For *Tosafot* to nevertheless propose that the Sages extended this relatively rare exception of *tevilat ha-ger* to include frequent—and qualitatively very different—immersions such as *ba'al ker*i and *niddah* under the principle of *Lo Plug* is therefore an instructive demonstration of their more flexible interpretative methodology. Their caution and acknowledgement of the innovative nature of this suggestion is evident from the fact that they frame it as *bedi'eved*: הטבילה אחר שמברכות. דאין לגעזר בנשים.

For the reviewer to seek to turn this around and present *Tosafot*'s understanding as the simple reading of the text and Rambam as restricting it is remarkable. And his thinly veiled suggestion that my interpretation of this passage involved dishonesty is most unfortunate.<sup>53</sup>

<sup>52</sup> While it is true that Rashi does not accept this position, *Tosafot* cite and accept it as correct.

<sup>53</sup> "While Phillips (pp. 430-431) presents this as an example of the 'flexible' approach of the Tosafists, an honest appraisal shows that this is actually an example of Rif/R. Hananel/Rambam school employing 'Tosafist methodology' of

The reviewer's critiques of my *Talmud Reclaimed* case studies, which I have addressed above, are not the only examples of his analysis which rely on faulty reading, misinterpretation, or basic misunderstanding of my arguments. It is my hope that these samples will allow readers of *Hakirah* to see beyond some of the unfair and misleading statements that were made concerning the half-chapter which he challenged. I will briefly outline my responses to his remaining critiques in the footnote below.<sup>54</sup>

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reinterpreting one Talmudic passage to resolve a contradiction with another passage.”

- <sup>54</sup> i) On the subject of whether Rabbinic decrees remain binding even when their initial reason is no longer applicable, the reviewer mischaracterized my argument, writing:

“From this presentation, one may get the impression that the Tosafists were amenable to discarding any Talmudic rule which they viewed as no longer relevant.”

What I actually wrote was that *Tosafot*—when contrasted with Rambam and the Rif—“understood there to be a degree of inbuilt flexibility within Rabbinic legislation.” As I make clear later in the chapter, *Tosafot* did not consider themselves qualified and authorized to overturn every Talmudic ruling at will. They still understood themselves to be bound by *sof hora'ah*. The review might have been more helpful to readers had it analyzed what I wrote rather than the potential impression that the reviewer erroneously attributes to it.

ii) Regarding Rambam's understanding of Chanukah lighting time, the interpretation that I presented has the distinct advantages of both fitting into Rambam's words and also according with the approach of the Rif (with whom, Rambam wrote, he very rarely disagreed). I invite the reviewer to read the analysis in Rabbi Yosef Kappach's commentary to *Mishneh Torah* for a fuller explanation. It is noteworthy that Yemenite custom has broadly lived Rambam's rulings for many centuries rather than being a modern-day attempt to read Tosafist perspectives and Ashkenazic *pesakim* into his words (this is discussed further in Chapter 7 of *Talmud Reclaimed*).

iii) Regarding the reviewer's critique of my presentation of Rambam's teaching in *Hilkehot Gezeilah* 14:6, I refer him to my comments earlier in this response regarding the tradition cited by Hai Gaon and the *teshuvah* of Rav Avraham ben Ha-Rambam. The fact that two primary *sugyot* appear to us to conflict does not automatically grant us the right to speculate and innovate in order to reach a resolution which appeals to us. Both Rambam and Rif (as opposed to *Tosafot*) in this case record the conclusions of both primary passages, and do not speculate as to how to reconcile the apparent contradiction that *Tosafot* raise.

iv) I do concede, however, that the reviewer has raised a valid objection to the case study which I present on the subject of *Ya'aleh Ve-yavo* on *Sukkot*. While this case does not challenge my theory, he is correct that there is a simpler explanation for Rambam's rulings which does not apply the methodology that I suggested, and I thank him for drawing this to my attention.

### **Simplicity: The Ultimate Sophistication**

Ironically, in light of what I have shown above, the reviewer concludes his “*Talmud Oversimplified?*” critique of my half-chapter by accusing me of “overgeneralization, lack of nuance, and plain misinterpretation.”

The Ramban points out that Gemara is not a discipline which lends itself to easily identifiable right and wrong resolutions. Our weighty Talmudic tomes are not equipped with answers at the back which can verify or falsify our theories. This means that when we try to establish a pattern and principle or propose a theory of Talmudic methodology, it is naive to suppose that every case will fit seamlessly according to all opinions and interpretations of the numerous commentators. Notwithstanding this challenging framework, I believe that the chapter of *Talmud Reclaimed* under discussion makes a powerful case to have “reclaimed” the contrasting approaches of Rambam and the *Ba’alei Tosafot* to determining *halakhab*. It does this by presenting highly significant sources, drawn from both Rabbinic and academic spheres, which explicitly support the principles that I have proposed—as well as over 30 case studies which either openly demonstrate or strongly indicate the theory I advance. For some of these case studies I quote the words of the *Kesef Mishneh*, or other respected commentaries who describe the contrasting methodologies being applied; for others I just note the most apparent and straightforward readings of the cases and their commentaries.

As the reviewer seemed eager to point out, there will inevitably be individual commentators who offer alternative complex interpretations for some of these case studies and perhaps even dispute the statements of Rabbi Yosef Karo, Netziv, Yad Malakhi and many others whom I have cited. When one takes a step back and aggregates the arguments of the half-chapter in question, I believe that it takes incredible casuistry and innovative reinterpretation combined with a questionable motive in order to resist the conclusions towards which the evidence so clearly points.

As Professor Brody wrote to me, after reading the reviewer’s critique:

In my opinion, and in diametric opposition to the reviewer’s concluding paragraph, strong evidence for the picture you and I have presented, in addition to the relatively explicit sources mentioned above, is offered by the application of Occam’s razor—if one has to choose between seeking individual solutions of many dozens if not hundreds of difficulties and accepting an approach according to which all these difficulties disappear, the latter is obviously to be preferred.

Staying with the reviewer’s closing words, perhaps, in retrospect, he might agree that more appropriate than his caustic, doctored quote from

Hamlet about there being more complexity to Talmud than is “dreamt of in your methodology,” might be the words of Confucius:

Life really is simple, but it is we who insist on making it complicated.

