

LETTERS TO THE EDITOR

Talmud Reclaimed

Shmuel Phillips writes:

The two previous editions of *Hakirah* have contained essays from Rabbi Krakowski critiquing one of the chapters of my work, *Talmud Reclaimed*, which contrasts the Talmudic and Halakhic methodologies of Rambam and the *Ba'alei Tosafot*. I understand that space constraints do not permit me to write a full response here. Instead, I will briefly summarize my sources and position.¹

To briefly summarize the theory I advanced in *Talmud Reclaimed*, I proposed that *Tosafot's* looser understanding of the notion that Ravina and Rav Ashi constituted “*sof bora'ab*” made them (i) relatively more amenable to arguments that Talmudic law could on occasion be amended to be applied more effectively in later times, and (ii) more willing to introduce their own theories and judgments 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 innovative interpretation or tangential Talmudic source.

It is my contention that Rambam is not just “much more willing than the Tosafists to reject one Talmudic passage in favor of another,”² as Rabbi Krakowski conceded in his *Rejoinder*. Rather Rambam is a clear methodical thinker applying a consistent and testable methodology through which to determine halakhah from the Talmud. This methodology was broadly transmitted to him from the Geonim via the Rif, which explains why the two are so rarely in dispute. Rambam’s clear and consistent approach is attested to by early commentators for whom his methodology was a matter of fact rather than controversy. Spanish *rishon Migdal Oz* notes on several occasions how “[i]t would not have occurred to Rambam to innovate explanations from his own mind since he distances himself from making any change to the Gemara.”³

Explicitly contrasting Rambam’s approach to that of *Tosafot*, Rav Yosef Karo notes more than once how “Rambam’s methodology is known, in that he simply records the law as it emerges from the Talmud...” [*Kesef Mishneh, Hilkehot*

¹ A full response to Rabbi Krakowski’s challenges concerning my presentation of Rambam’s *Mishneh Torah* methodology can be found at: <https://judaismreclaimed.blogspot.com/2025/04/talmud-reclaimed-and-hakirah-debate.html>

spot.com/2025/04/talmud-reclaimed-and-hakirah-debate.html and <https://www.facebook.com/share/p/1AbLbqefQw/>

² *Hakirah*, vol. 36, p. 218.

³ *Hil. Shevitat Yom Tov*, chap. 4.

Keriat Shema 4:7]. This consistent methodology, as Netziv describes in *Kidmat Ha-Emek*, is a reflection of Rambam's clear Geonic tradition, which allowed him to avoid problems which others, such as Tosafists, sought to resolve through innovative *pilpul*. This is just a very small sample of the sources which I presented from traditional commentaries.

However, even if we suppose that these traditional commentaries to Rambam can be ignored, countered or reinterpreted, there is one further source as to how Rambam approached the task of Talmudic interpretation when compiling *Mishneh Torah*—a first-hand account written by Rambam himself which appears thoroughly consistent with how his primary commentaries understood his methodology. Responding to a concerned inquiry from Rabbi Pinchas Ha-Dayan about the lack of Talmudic sources in *Mishneh Torah*, Rambam responds that all his rulings are explicitly replicating Talmudic rulings, before adding the crucial words that, “*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]*.’”⁴

Such phrases are relatively rare in *Mishneh Torah*, clearly indicating that, in Rambam's own words, the vast majority of his rulings there do not arise from his own analysis. We

can surmise from this, as *Migdal Oz* would later state explicitly, that careful restatement of the law without innovation, interpretation, or personal input lies at the very heart of Rambam's project of *Mishneh Torah*—a name which Rambam tells us was chosen to reflect this strict methodology of repetition without elaboration. Rambam's own words render any further debate and thumb-twisting as to his methodology entirely redundant.

Despite these clear and unambiguous statements by Rambam and his earliest commentators concerning his methodology, which I elaborated on in the relevant chapter of *Talmud Reclaimed*, Rabbi Krakowski critiques my suggestion that Rambam possessed a simple and consistent methodology as a “caricature.” In the face of Rambam's own words, and *Migdal Oz*, *et al.*, who describe Rambam as simply recording Talmudic conclusions without interpretation or innovation, Rabbi Krakowski states confidently that:

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.⁵ And “Both Rambam and the Tosafists must reckon with the same ambiguities and conflicting sources, and both offer creative

⁴ *Iggerot Ha-Rambam*, Shilat edition, p. 443.

⁵ *Hakirah*, vol. 36, p. 218.

interpretations of these sources, even if, in the *Mishneh Torah*, this is done implicitly rather than explicitly.⁶

If Rambam had wanted to tell us that his *Mishneh Torah* does not include such creative interpretations and innovations, one wonders how much more clearly he could have presented his position!

The Talmudic perspective and approach of the Tosafists, by contrast, has become so popular and widely practiced that many find it hard to imagine Talmud study without it. This difficulty is what leads to the historically flawed and anachronistic practice of studying Rambam through the lens of the Tosafists and considering that he pursued a similar methodology.

We are fortunate that a number of important halakhic and academic figures preserve the significant divergences between these Tosafist and Maimonidean methodologies. Most notably Maharshal, who writes glowingly of the revolutionary nature of the Tosafist enterprise: that the innovations of the *Ba'alei Tosafot* combined all the elusive strands of the Talmud “into a single ball”⁷ thereby transforming the Talmudic landscape which had previ-

ously been a maze of internal contradictions which was impossible to navigate.

The chapter in question of *Talmud Reclaimed* developed and analyzed these ideas further, bringing many more sources and over 30 case studies. Due to a lack of available space, I am unable to elaborate further here. I will instead leave readers with the following questions which arise from Rabbi Krakowski’s critique. Readers can find these questions thoroughly addressed in my full article:

- 1) How and why does Rambam’s received Geonic methodology for deriving halakhic conclusions from the Talmud distinguish between different types of apparently contradictory *sugyot*?
- 2) Why, when addressing an apparent contradiction within Rambam’s rulings does his son, Rav Avraham, consider such a contradiction to be a question only on the Talmud and not on his father?
- 3) What does Rambam mean when he writes, in his introduction to *Mishneh Torah*, that his work comprises the entirety of “*Torah Shel Ba’al Peh*,” bearing in mind that Rambam defines this term very precisely and carefully elsewhere in *Mishneh Torah*?⁸

⁶ Ibid., p. 227.

⁷ Introduction to *Yam Shel Shlomo*. A similar point was made eloquently by Professor Haym Soloveitchik. See the masterful passage I quoted in the previous *Hakirah* edition de-

tailing how the innovative approach of the Tosafists to contradictory Talmudic *sugyot* represented a radical departure from prior methodologies among the *rishonim*.

⁸ My full article can be found at: <https://hakirah.org/vol36Phillips.pdf>

Eliyahu Krakowski responds:

Rabbi Phillips has again presented his views about what he sees as the categorical divergence between Rambam and *Tosafot*. I stand by my original review in *Hakirah*, vol. 35, and my previous rejoinder in *Hakirah*, vol. 36. Regarding Rambam's use of *יראה לי*, I refer readers again to Prof. Isadore Twersky's *Introduction to the Code of Maimonides*, p. 157:

...for the most part critics and commentators alike acknowledge that Maimonides the authoritative codifier is also a versatile commentator. They are aware, moreover, that those original statements clearly labeled by the phrase 'it appears to me' are a minuscule part of the *Mishneh Torah*'s all-permeating originality. It was recognized that *Mishneh Torah* was not a mechanical scissors-and-paste

compilation, that curt normative formulations reflect Maimonides' latent explanation of Talmudic texts or halakhic concepts, and incorporate his inferences, deductions, and interpretive *tours de force*. Although Maimonides claimed to have reproduced only those Talmudic statements whose meaning is indisputable, *Mishneh Torah* abounds with instances of originality of interpretation, harmonistic summation of disparate passages... and the like.⁹

Regardless, even if we were to accept that Rambam never innovates except when he explicitly tells us he is doing so, this still means that Rambam does not have a fundamental objection to innovating in his rulings. (Note that Rambam uses the expression *יראה לי* more than 100 times in *Mishneh Torah*.)¹⁰

⁹ While Rambam's innovative interpretations are ubiquitous in the *Mishneh Torah*, as Prof. Twersky notes, my friend Prof. Marc Herman offered the following proof that Rambam did not label all his innovations with the words *יראה לי* or the like: In *Sefer ha-Mitzvot, lo taaseh* 179, Rambam writes that all his predecessors—which includes Rif and R. Hananel—erred in their interpretation of the Gemara in *Makkot* 16b, and Rambam offers his own interpretation. Yet, in *Hil. Ma'akhalot Assurot* 2:23, Rambam presents his own interpretation of the *sugya* and makes no note of its novelty. (See also Marc Daniel

Herman, "Systematizing God's Law: Rabbanite Jurisprudence in the Islamic World from the Tenth to the Thirteenth Centuries" (Univ. of Pennsylvania: ScholarlyCommons, 2017), pp. 310–311, n. 1128.)

¹⁰ For enumeration and discussion, see Aderet's *Teshuvah me-Yirah*. I previously noted that one of Phillips' own examples demonstrates how Rambam and Rif employ the "Tosafist approach"—regarding the *sugya* of *berakhab* on *tevilah* (*Pesahim* 7b), which Rambam and Rif reinterpret to refer to the *berakhab* for *tevilat ger*. Even remaining

As for Rambam's ambivalent attitude toward the Geonim, see the sources I cited in *Hakirah*, vol. 36, p. 225, n. 11, including *Iggerot ha-Rambam*, Shilat ed., p. 305, where Rambam states that in his *Commentary on the Mishnah* he was misled by his reliance on the Geonim.¹¹

Note as well that regarding *mitzvot tzerikhot kavannah*—where Phillips insists Rambam is following the methodology he inherited from the Geonim—Rambam's position has no apparent Geonic precedent; see *Otzar ha-Geonim*, *Rosh ha-Shanah* 28b. Without knowing Rambam's conclusion, no one—including his son—would have been able to anticipate it by invoking Geonic *kelalei ha-pesak*. There is, in other words, no “Geonic formula” that can be applied to the Talmud to yield Maimonidean results. Instead, this view of Rambam, like countless others, remains enigmatic, despite the best efforts of commentators over the past eight centuries; given these myriad remaining Maimonidean mysteries, I fail to understand how

one could confidently claim to understand what approaches Rambam deemed legitimate in Talmudic interpretation.¹²

To Prevent Iggun: Delay Negotiations Until After the Get Is Given

J. Jean Ajdler writes:

Rabbi Dayan A. Yehuda Warburg in “Which Precedes the Other: The Giving of a Get or the Resolution of End-of-Marriage Matters?” *Hakirah*, vol. 36, writes, “Even if one adopts the majority opinion that opposes the retroactive annulment...” At first glance, this formulation seems to imply that we do not adopt the majority opinion. How is that possible? In fact, there is a tradition in the Rabbinical courts, ascribed to R. Yom Tov Algazi (1727–1802), that in matters of *ervah* (marital and sexual related cases) we follow the most stringent opinion,

within the subject of *tevilat ger*, we find another example of Rambam following the “Tosafist methodology” and reinterpreting one Gemara to account for an apparently contradictory second *sugya*—see *Hil. Issurei Biah* 13:9, and compare Rashi, *Tosafot* and Ramban, *Yevamot* 45b, s.v. *mi lo tavlal*.

¹¹ Translated and discussed by R. Benzion Buchman, “Tradition! Tradition? Rambam and the Mesorah,” *Hakirah*, vol. 8, p. 192ff., and see R. Aharon Adler, *Al Kanfei Nesharim* (Mikhlelet Herzog, 2023),

pp. 91–138. See also, e.g., *Hil. Malveh ve-Loveh* 6:8: ...הורו מקצת גאונים... ולא ירדו לעומק הדבר... ולפיכך נתקשו להקן דברי חכמי התלמוד.

¹² In addition, given that the range of sources upon which Rambam drew far exceeded that of his predecessors (as well as his successors), it is hard to imagine how Geonic rules would be relevant to determining the relative levels of authority among these sources.

even an individual opinion. This explains why we find several decisions by Israeli courts that follow stringent minority opinions. This is the case in the matter of retroactive annulment of a *get* because of the breach of the divorce agreement according to the opinion of Maharam of Lublin no. 122. It is also the case in the matter of allowing a husband obliged to give a *get* to set conditions deemed to be “easy to fulfill,”¹³ but the definition of this qualifier is debatable.

Based on the examination of two original responsa of Rabbi Yom Tov Algazi, I showed¹⁴ that the rule ascribed to him was diverted from its original terms and meaning by the omission of an essential restriction: “on the express condition that it is an *à priori* ruling and that it does not involve any possibility of *iggun*.” Thus, this tradition of stringent ruling does not apply if it would lead to dragging out the delivery of the *get*, thereby “chaining” the wife, or if a lenient ruling, following the majority opinion, had already been given. This restriction is essential, but it was lost along the way. Therefore, we ascribe to R. Yom Tov Algazi decisions diametrically opposite to his directive and in so doing the Jewish law is perverted. My article has so far not influenced the Israeli rabbinical legal system. Perhaps an authority like

Rabbi Dayan Yehuda Warburg can help put the justice back on track. In the two above cases, the ruling mistakenly follows the stringent individual opinion, despite endangering the delivery of the *get* in direct contradiction to the opinion of R. Algazi, who specifically states that in such a situation we must follow the lenient majority opinion.

Now concerning the subject of the present paper devoted to the order of the procedure, the postponement of the *get* endangers its delivery and can lead to a prolonged or even a definitive *iggun* situation; therefore, according to the “well understood” opinion of R. Yom Tov Algazi, the negotiations should be delayed until after the delivery of the *get*. This concurs with the recommendation of the author according to the lenient majority tradition.¹⁵

Besides these legal aspects, we must also have the courage to consider the practical aspects. Negotiations before the delivery of the *get* are unfair and problematic: The husband is in a position of power and wants to impose strict conditions while the wife fears that at the last minute he will refuse to give the *get*. As a result, the wife accepts conditions that she considers unfair, but perhaps she does not intend to respect them. It is now that the threat of retroactive annulment of

¹³ Rashdam *E.H.* 41.

¹⁴ See *Tehumin* 40, pp. 43–50 and *Tehumin* 41, pp. 234–241: חשש לדעת יחיד מחמירה במקום עיגון, יוסף

יצחק איידלר

¹⁵ See the paper on top of p. 191. Even R. Ettlinger (note 10) already half-opened the door to this solution.

the *get* comes into play. This unfair procedure leads to an infernal circle.

The proposal of the author makes practical sense and goes according to the rule of R. Yom Tov Algazi when correctly understood and applied.

Tahanun After Sukkot

Yaakov Jaffe writes:

Moshe Becker's thorough examination of the question of "*Tahanun After Sukkot*" (*Hakirah*, vol. 36) cites dozens of sources who weigh in on the recitation of *Tahanun* in the week after the holiday, before ultimately concluding that the decision to recite or omit *Tahanun* is a matter of custom. There are two topics related to omitting *Tahanun* that Becker does not address, which seem to be critical additions to the discussion.

First, it is worth wondering what is the theory of the development of halakhah for those communities that skip *Tahanun*. Section V.a. of the essay notes that *Tur* and *Shulhan Arukh* are both in favor of the recitation of *Tahanun*, and that this reflects the widespread custom in the medieval period. Section V.b. fails to adduce any early authorities who argue for skipping *Tahanun*: only a rejected view of Hai Gaon about the entire month of Tishrei and a multiple-step deduction from Raavyah's and *Haggabot Ashrei*'s permission to recite *tzidduk ha-din* are brought as any evidence to support omitting *Tahanun*. Section V.c.

notes that the early Ashkenazic decisors, including Rema and Levush, also support the recitation of *Tahanun*. Thus, anyone seeking to omit *Tahanun* on these days should be prepared to address the question why, if Jews recited *Tahanun* in late Tishrei for a thousand years between the Talmud and the early *apharonim*, should this practice change in a more modern period? Becker argues in section VI that *Tahanun* is different from other halakhah where local custom can displace previously settled halakhah but the mechanism how communities may do so remains unexplored. This type of argument would typically be rejected in other areas of halakhah.

Second, it is well known that things that are permitted by the Bible ought not be prohibited by the later Rabbis (*Ta'ar O'H* 588:5, *YD* 117:1). The 9th chapter of *Nehemiah* reports that the Jewish people fasted and engaged in mourning on the 24th day of Tishrei. They recited a lengthy prayer which is echoed by parts of long *Tahanun*, the type of conduct normally forbidden on days that *Tahanun* is omitted. Thus, a decision to skip *Tahanun* is not only rejecting Rambam, *Tur*, *Shulhan Arukh*, Rema, Levush, and *Arukh Ha-Shulhan*, it is also going against the portrayal of the day in *Tanakh*, itself.

I am the Rabbi of the Maimonides Kehillah in Brookline, Mass., and we have a *masorah* from the Rav, זצ"ל, to recite *Tahanun* on those days, and so it was gratifying to read

the article that justifies our congregation's practice. However, more discussion is needed to craft a cogent argument supporting the other view, that *Tahanun* is omitted on those days.

Moshe Becker responds:

I thank Rabbi Jaffe for his thoughtful comments on my essay. It is surely good fortune that arguments in favor of reciting *Tahanun* during the final week of Tishrei resonate with the Rabbi of a shul whose existing practice is to do the same.

In our discussion, we demonstrated that a custom to omit *Tahanun* during this time period did in fact exist in parallel with an arguably more prevalent practice to recite it. With the further integration of kabbalistic elements to everyday liturgy over the past several centuries, the choice to omit appears to have become more common.

Unfortunately, space constraints, both in the essay and in the present note, do not allow for a full treatment of a "theory of the development of halakhah," though this is certainly a crucial question whenever addressing Jewish practice. Suffice it to say, however, that the status of *Tahanun* as *minhag* does

leave it open for change. Much in the same way that someone's custom to only eat *shemurah* matzah or to light Chanukah candles according to "*mehadrin min ha-mehadrin*" might be revisited in a situation of limited availability, so might *Tahanun* on certain days be revisited in the face of newly appreciated kabbalistic teachings. I do not believe this is a huge stretch, and examples of such adaptation abound, contrary to Rabbi Jaffe's assertion that "this type of argument would typically be rejected in other areas of halakhah."

I look forward to continued exploration of these and similar topics and to developing a stronger appreciation for the many customs of our communities.

Erratum:

Ed. Note: In *Hakirah*, vol. 36, p. 232, the phrase, "the 13th-century sage and grandson of Maimonides" should have read "the 13th-century sage born in the generation of Maimonides' grandchildren." We regret the error. ❧