

Two Themes in Maimonides's Modifications to His Legal Works

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The survival of the personal copy of *Commentary on the Mishnah* by Maimonides (1138–1204), which he revised throughout his life, provides an unparalleled window into the ways he continually reconsidered legal and conceptual questions. This manuscript covers five of the six orders of the Mishnah and contains countless corrections and emendations, the vast majority in the author's own hand. This article argues that Maimonides's intense interest in solving problems related to the enumeration of the commandments, which he addresses at length in *Book of the Commandments* and, to a lesser extent, *Mishneh Torah*, led him to make a number of emendations to his *Commentary* and to rethink other aspects of his work. That is, when writing *Book of the Commandments* and *Mishneh Torah* in the decade after completing his *Commentary*, Maimonides tackled, and sometimes even concocted, questions that he had no reason to consider in the latter work. This study traces two ways that Maimonides's later works diverge from his earlier ones, in the meaning of Hebrew and Arabic technical terms and in increased attention to scripture in determining Jewish law, revealing a great medieval mind "in perpetual motion."

Moses Maimonides (1138–1204) composed three major works that attempted in different ways to address the entirety of Jewish law: *Commentary on the Mishnah*, usually dated to 1168, and in the ensuing decade *Book of the Commandments* and *Mishneh Torah*. Given the enormity of this task and the at times divergent goals of these works, it was perhaps inevitable that Maimonides would change his mind about matters large and small. Even in his lifetime, readers of his works were aware of changes in Maimonides's views as well as his—often incomplete—attempts to "correct" earlier "mistakes." Drawing on the longest surviving Maimonidean manuscript, his personal copy of *Commentary on the Mishnah*, which most paleographers have concluded is an autograph,¹ as well as his *Book of the Commandments* and *Mishneh Torah*, this article traces adjustments that Maimonides made in two areas: the

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1. Earlier scholars explored this question, but discussion began in earnest in the middle of the twentieth century; see Stern 1938: 181–88; Stern 1952; Stern and Sassoon 1960; Sassoon 1956, 1: 13–50, and the unpaginated addenda and corrigenda there, 3: 9–10. Joshua Blau first thought that this manuscript was Maimonides's personal copy, but not necessarily an autograph. He subsequently accepted it as such, but later expressed further reservations; see Blau 1958; Blau 1964; Blau 1968: 400. Compare Blau and Schreiber 1981: 5 n. 1. See also Fixler 2002: 10 n. 2. Blau cited the earlier suspicions about this manuscript expressed in Lutzki 1946: 683. Simon Hopkins adopted the view of Stern and Sassoon; Hopkins 1985: 717; Hopkins 1991: 110. For review of earlier positions, see Hopkins 2001: xvii–xviii. See also Kahana 1986; Shailat 1986–87, 1: 197 nn. 5–6. Further background on manuscripts, translations, and printings of *Commentary on the Mishnah* appears in Seewald 2016: 427–35.

meaning of Hebrew and Arabic technical terms and the sources and status of particular laws. Close attention to these topics uncovers numerous cases of Maimonides's silent rejection of his own earlier linguistic choices, interpretations of rabbinic literature, and legal positions, revealing a great medieval mind "in perpetual motion."² The autograph of the *Commentary* covers five of the six orders of the Mishnah, missing Seder Ṭohorot and scattered mishnaic chapters here and there, and contains countless corrections and emendations, the vast majority in the author's own hand,³ providing an unparalleled window into Maimonides's thought process.

Although *Commentary on the Mishnah*, *Book of the Commandments*, and *Mishneh Torah* all concern Jewish law, these three books have different agendas and arrangements. The Judeo-Arabic *Commentary* chiefly explicates the Mishnah, the third-century foundational document of rabbinic literature, but also contains many digressions that address theological and other matters that the Mishnah treats sparingly. The Judeo-Arabic *Book of the Commandments* attempts to identify the 613 commandments given to Moses at Sinai, a number drawn from rabbinic literature around which Maimonides organizes Jewish law in this work and in *Mishneh Torah*. And the Hebrew *Mishneh Torah* constitutes Maimonides's complete statement of Jewish law, written, in his words, "so that no other work (*hibbur*) should be needed for ascertaining any of the laws of Israel."⁴ Maimonides's efforts to establish consistency within his legal corpus complicates the obvious suggestion that divergent goals account for some of the contradictions between these texts. Nevertheless, given that concerns to organize and set forth Jewish law shaped his *Book of the Commandments* and *Mishneh Torah*, it is likely that factors such as genre and Maimonides's objectives do explain certain differences.⁵

Scholars have long been aware that Maimonides edited his works with care. Saul Lieberman pays close attention to Maimonides's changes to *Commentary on the Mishnah*⁶ and Yosef Qafih meticulously documents each instance in his edition.⁷ Ensuing scholarship has sought programmatic motives for Maimonides's alterations to the *Commentary* and his later rejections of earlier positions. Aaron Adler points to factors such as Maimonides's increased engagement with the Jerusalem Talmud, greater confidence to disagree with the heads of the Babylonian academies (*geonim*), and a more critical attitude toward anonymous voices in the Babylonian Talmud.⁸ Tzvi Langermann argues that Maimonides "softened" an early rejection of miracles as he struggled with the question of the creation or eternity of the world and adjusted *Commentary on the Mishnah* accordingly.⁹ Shamma Friedmann suggests that Maimonides revised an earlier interpretation of one mishnah in light of Rashi's commentary on the Talmud.¹⁰ Simon Hopkins demonstrates that Maimonides often sought to improve the

2. I borrow this phrase from the English title of Toitou 2003.

3. See Sassoon 1956, 1: 32–39.

4. Twersky 1989: 40.

5. Note, for example, Maimonides's programmatic statements that he did not intend to detail the law in *Book of the Commandments*: Qafih 1971: 6 (introduction); Shailat 1986–87, 1: 378.

6. Lieberman 1947: 6–15; see earlier, Guttman 1925.

7. Though one must occasionally be cautious regarding Qafih's reconstructions of the stages of composition of this work; see, e.g., M. A. Friedman 2011, 2: 811; and below, n. 49; see in general Lieberman 1947: 6 n. 16; Hopkins 1991: 109–11.

8. Adler 1987: 92–223. I thank Menachem Butler for providing me a copy of this work. See also Adler 2001.

9. Langermann 2004: 156–57, 168. Compare Langermann 2008: 344. On this change to the *Commentary*, see also Kraemer 2006: 366; Sirat and Di Donato 2012: 57–59; Seewald 2016: 473–74, and, more generally, Manekin 2008 (I thank a *JAOS* reviewer for calling this to my attention). Sara Klein-Braslavy labels the marginalium in question "the most important change" to the *Commentary*; see her introduction to Schwarz 2011: 3 n. 4.

10. S. Friedman 2008; see also M. A. Friedman 2011: 807.

language and style of the *Commentary*, rendering the text into a higher Judeo-Arabic register.¹¹ And a series of scholars show that drafts of the *Commentary* preserved in the Cairo Genizah bear witness to Maimonides's massive editorial process.¹²

This article argues that Maimonides's intense interest in solving problems related to the enumeration of the commandments, which he engaged at length in *Book of the Commandments* and, to a lesser extent, in *Mishneh Torah*, led him to make myriad emendations to *Commentary on the Mishnah* and to reconsider his earlier lexicon. That is, when writing *Book of the Commandments* and *Mishneh Torah* in the decade after completing the *Commentary*,¹³ Maimonides tackled, or concocted, questions that he had no reason to consider in the *Commentary*. After first reviewing the dating of these three works, I explore Maimonides's edits to the fair copy of *Commentary on the Mishnah* and his rethinking of legal problems as he wrote *Book of the Commandments* and *Mishneh Torah*.

DATING MAIMONIDES'S WORKS

The colophon of an early manuscript of Maimonides's commentary on Seder Ṭohorot (the mishnaic order for which the autograph does not survive), copied "letter for letter, word for word" from the fair copy of *Commentary on the Mishnah*, reports that Maimonides "finished" this work in 1168.¹⁴ The marginalia in the fair copy mostly date to after the completion of what may be termed the "body" of this work, but several scholars have suspected that parts—or even all—of the fair copy itself may postdate 1168. (Accordingly, the colophon may refer not to the preparation of the fair copy but to the completion of an earlier draft.) A relevant piece of evidence for this is that Maimonides referred to *Book of the Commandments* twice in the *Commentary*, once in the body and once in the margin.¹⁵ At least one scholar assumes that this indicates that Maimonides began working on *Book of the Commandments* before completing the *Commentary*,¹⁶ but others note that this could merely indicate that he produced parts (?) of the fair copy of the *Commentary* after beginning *Book of the Commandments*.¹⁷ Malachi Beit-Arié also observes that Maimonides wrote the fair copy on two

11. Hopkins 1993.

12. Abramson 1957; Blau and Schreiber 1981; Hopkins 2001; Shailat 2004; Sabbato and Chwat 2005. For other treatments of Maimonides's changes to the text of the *Commentary*, see Rosenthal 1967–68: 185–88 n. 10; Soloveitchik 1980: 288 n. 16 (repr., 296 n. 17); Huttner 1998; Blidstein 2002: 201–3; Blidstein 2004: 184 (I thank a JAOS reviewer for reminding me of this passage); C. Cohen 2004; Henshke 2007: 131–33; M. A. Friedman 2010: 164–65; M. A. Friedman 2011: 803–17; Seewald 2016: 435–40, 444–96. See also M. A. Friedman 2018: 280–81.

13. See Gandz 1947–48; Twersky 1963: 167 n. 29; Shailat 1986–87, 1: 202–3, 2: 434 and n. 7; Davidson 2005: 174–75, 203–6.

14. Qafih 1963–68, 6: 456. In his notes, Qafih implies that he copied the colophon from Bodleian MS Pockoke 233, the earliest manuscript of the *Commentary* on Ṭohorot; this manuscript, however, only includes the *Commentary* on Ṭohorot until m. Parah. Qafih appears to have used Bodleian MS Pockoke 205, 172r, a fifteenth-century copy of the *Commentary*. I thank Pinchas Roth for his assistance in this matter. Other roughly contemporaneous manuscripts also contain this colophon, e.g., Paris, Bibliothèque nationale de France, MS 479, 449v and State Library of Berlin Ms Or. Qu. 574, 90r. Whatever "finished" may mean, Isadore Twersky (1980: 17) treats the corrections to the *Commentary* as evidence that this work was not produced in multiple editions but remained "one open-ended edition" throughout Maimonides's life; similarly, Hopkins 1985: 720; Hopkins 1991: 114, see below.

15. Qafih 1963–68, 5: 178 (m. Ḥullin 1:5), 5: 121 (m. Menahot 4:1) (and see 121–22 n. 7).

16. Davidson 2005: 174–75.

17. Adler 1987: 28 n. 47; Hopkins 1991: 113; Shailat 2002: 12; Kraemer 2008: 519 n. 7; M. A. Friedman 2011: 816. All these scholars wonder whether 1168 refers to the completion of an earlier draft or of the fair copy. Hopkins (1985: 718) suspects that Maimonides wrote several drafts before the fair copy. If so, which did he complete in 1168? Note also Seewald 2016: 429–30, 441, 442–44, 454–58, who identifies several passages that appear to reflect Maimonides changing his mind during the process of writing the *Commentary*; he may unnecessarily assume that

types of paper, one native to the Maghreb and the other more eastern in origin.¹⁸ There is a reason that the textual history of the *Commentary* has been dubbed “the most complicated” of any Judeo-Arabic work.¹⁹

The dates that scholars assign to *Commentary on the Mishnah* (1168), *Book of the Commandments* (by 1178),²⁰ and *Mishneh Torah* (1178)²¹ should probably be understood in a narrow sense; they may only refer to the completion of a first draft or perhaps to Maimonides’s granting of access to copy his work. Lieberman and Qafih already have demonstrated that Judeo-Arabic manuscripts and medieval Hebrew translations of the *Commentary* frequently bear witness to many changes that Maimonides made to that text.²² Likewise, although no autographs of *Book of the Commandments* survive, comparison between, for example, Moïse Bloch’s nineteenth-century Judeo-Arabic edition and Moses Ibn Tibbon’s medieval Hebrew translation suggests that the manuscript tradition preserves changes that Maimonides himself made to this work.²³ If we indeed possess the “final” edition of *Book of the Commandments*, contradictions between this work on the one hand and *Mishneh Torah* and the late emendations to *Commentary on the Mishnah* on the other, as well as the reports of two of the earliest readers of *Book of the Commandments*, Daniel ben Se’adya ha-bavli (fl. early thirteenth century) and Abraham Maimonides (1186–1237), seem to indicate that at some point Maimonides ceased editing *Book of the Commandments*.²⁴ It was no simple matter to add or remove a commandment since Maimonides sought the enumeration of precisely 613 commandments. Eliminating some of the inconsistencies between *Book of the Commandments* and *Mishneh Torah* that Daniel ben Se’adya identifies would require such corrections; therefore it is possible that Maimonides chose to leave these difficulties unresolved rather than rework the enumeration as a whole.²⁵ Echoing his father, Abraham Maimonides declared that *Mishneh Torah*, not *Book of the Commandments*, contains Maimonides’s final views.²⁶ Perhaps this statement hints that late in life, Maimonides no longer brought *Book of the Commandments* in line with his newly adopted positions. Maimonides also subjected *Mishneh Torah* to ongoing, though apparently incomplete, review, as is clear from even the best editions.²⁷

Maimonides produced the fair copy following the order of the Mishnah. See also Shailat 1986–87, 1: 199–200 nn. 13–14.

18. Beit-Arié 1993: 35 n. 5; Beit-Arié online: 254–55.

19. Hopkins 1985: 711; similarly, Hopkins 1993: 234.

20. Qafih (1963–68, 6: 5–6; 1972, 1: 13; 1987: 12) repeatedly dates *Book of the Commandments* to 1169, a date occasionally found in other publications. It is only known that Maimonides completed this work by the time he completed *Mishneh Torah*; see Shailat 1986–87, 1: 199 n. 13; Davidson 2005: 205–6.

21. See n. 13 above.

22. On Maimonides’s process of writing the *Commentary* in general, see Qafih 1963–68, 1: 15–16; Hopkins 1991: 110–11; Hopkins 2001: xx–xxiii; Shailat 2002: 14–22; Fixler 2002: 43–44; Sirat and Di Donato 2012: 52–53; Seewald 2016: 440–41. See also Lieberman 1947: 6.

23. See Heller 1946: 16–18, 28 (introductory pagination); Henshke 1985–87: 144–48; Henshke 1994: 184; see also n. 60 below. For variants preserved by early readers, see Henshke 2008: 152 n. 7; Herman 2016: 198 n. 704, 287, 314 n. 1138, 318, 328–32.

24. See Herman 2016: 276 n. 1001, 309–10, 313 n. 1134.

25. Albert Friedberg (2013) argues that *Mishneh Torah* departs profoundly from the enumeration in *Book of the Commandments*, a broader claim than the one I am making here.

26. See Goldberg 1867: 81–82 (§7). For Maimonides’s statement that *Mishneh Torah* is more reliable than the *Commentary*, see Blau 1957–61, 2: 383 (§217); echoed in Freimann 1937: 106–7 (§81), also 69–70 (§64).

27. See, e.g., n. 76 below.

SEMANTIC CHANGES

Changes in word use between *Commentary on the Mishnah* and *Book of the Commandments* primarily pertain to the technical terminology that Maimonides uses to think through the enumeration. With the partial exception of Ḥefes ben Yašliah (late tenth century?), whose own *Book of the Commandments* Maimonides appears not to have had in its entirety, Maimonides was the first to enumerate the commandments in a systematic manner.²⁸ Other writers had offered scattered reflections on some of the difficulties inherent in enumeration, but Maimonides had no true predecessor in this regard, largely because he deployed the enumeration in innovative ways. As Gerald Blidstein writes, *Book of the Commandments* “may well have been the most pioneering of Maimonides’ works.”²⁹ Maimonides realized that his groundbreaking endeavor demanded a new vocabulary in order to articulate the conceptual problems of enumeration, and he manipulated his technical terminology to do just that.

Two simple and two more complex examples of semantic changes between *Commentary on the Mishnah* and *Book of the Commandments* reveal Maimonides’s development of a new Hebrew and Judeo-Arabic terminology. The first is his use of the Hebrew word *mišvah*, lit. commandment, which Jewish writers from the rabbis on did not always use in such a specific way.³⁰ In *Commentary on the Mishnah*, Maimonides is occasionally sensitive to a more technical meaning of *mišvah* as “distinct, enumerated commandment,” as when he categorizes the blue and white strings of *šišit* (fringes) as *farīdatayn*, two rules, of a single *mišvah*.³¹ Many passages in the *Commentary* use the term *mišvah* more freely, however, associating rabbinic enactments with this term, such as when Maimonides labels both lighting a Sabbath candle and making an *‘eruv* (mixing of boundaries to permit carrying on the Sabbath) a *mišvah*.³² By contrast, in *Book of the Commandments* he insists that the rabbis used the word *mišvah* to denote individual commandments among the 613 commandments,³³ which is clearly at odds with rabbinic literature and, as Albert Friedberg and others have noted, incompatible with Maimonides’s own usage in *Mishneh Torah*.³⁴ In fact, Maimonides modifies each of the categorizations of lighting a Sabbath candle and making an *‘eruv* as a *mišvah* in *Book of the Commandments* and *Mishneh Torah*, most likely in light of his lengthy discussion of the term *mišvah* in the former work, suggesting that these later works formalize the definition of this word.³⁵

28. Maimonides only cites Ḥefes twice (though Ḥefes’s influence may be detected elsewhere). Qafih 1971: 5 (introduction), 53 (prin. fourteen). The first of these citations also appears in Judah Ibn Bal’am’s biblical commentary, which may have been Maimonides’s source; see Perez 1970: 63–64.

29. Blidstein 1990: 26.

30. See the literature cited in Herman 2016: 238–39 n. 853.

31. Qafih 1963–68, 5: 121 (m. *Menaḥot* 4:1).

32. Qafih 1963–68, 2: 20 (m. *Shabbat* 2:1), 2: 107 (m. *‘Eruvin* 3:1); compare Shailat 2004: 34 n. 13. Both passages are missing in the fair copy; for the former passage in Maimonides’s draft, see Hopkins 2001: 40 l. 6. Qafih utilized MS Pockoke 236, on which see Stern 1952: 73; Qafih 1963–68, 2: 5, 6: 7–8. For further examples of such usage of *mišvah*, see Qafih 1963–68, 2: 355 (m. *Megillah* 4:1), 3: 292 (m. *Qiddushin* 1:7), 4: 421 (m. *Avot* 2:1); also 4: 188 (m. *Sanhedrin* 8:2), 6: 328–29 and n. 26 (m. *Ohalot* 18:4). For transcription of a passage in m. *Avot* from the fair copy, see Shailat 1994: 135.

33. See Qafih 1971: 24 (prin. seven), 102 (pos. no. 82), 168–69 (pos. nos. 216–17); Herman 2016: 262–64. Maimonides’s care about the word *mišvah* is particularly striking in principle four of *Book of the Commandments* (Qafih 1971: 18–19), where he studiously avoids using this term beyond the narrow technical meaning assumed in that work.

34. See Friedberg 2013: 173–206, 271–326, and the literature cited there; add Chernick 1997.

35. For reconsiderations, see Qafih 1971: 10–11 (prin. one); Maimonides, *Mishneh Torah*, *Hilkhot shabbat*, 5:1. On the term *mišvah* in *Book of the Commandments*, see Herman 2016: 260–63, 267–68.

A second example pertains to the Arabic root *f-q-h*. Maimonides deploys the noun *fiqh* and the verb *tafaqqaha* differently in *Commentary on the Mishnah* and *Book of the Commandments*. The *Commentary* consistently employs the root *f-q-h* to denote the human process of deriving new laws, but the later *Book of the Commandments* uses it exclusively to denote laws specified by revelation that do not constitute discrete commandments.³⁶ Ignaz Goldziher already noted the lack of precedent, Jewish or Muslim, for Maimonides's usage of *fiqh* in *Book of the Commandments*.³⁷ The best translation of *fiqh* in this work is probably a divinely mandated "instantiation" or "manifestation" of a commandment (included in either the written or oral Torah).³⁸ Contrast with the Arabic term *furūʿ* ("branches", sing. *farʿ*) highlights the significance of the word *fiqh*. Where Ḥefes had used *furūʿ* to signify a "detail" of the 613 commandments not to be enumerated as a distinct commandment,³⁹ Maimonides's *Book of the Commandments* reserves this term, which it uses only once, for human expansions of divine law.⁴⁰ (The *Commentary* uses this word identically.⁴¹) As a work primarily focused on written and oral revelation, *Book of the Commandments* has little use for *furūʿ*, laws enacted by the rabbis. Maimonides instead deploys the word *fiqh* in order to clarify the distinction between enumerated commandments and details thereof. His use of the root *f-q-h* in *Book of the Commandments* to denote a "nonenumerated detail of a commandment" helped him clarify the distinction between enumerated and nonenumerated, but divinely given, laws.

The next two examples are somewhat more complex and evince an evolution in Maimonides's thinking rather than a sharp break from the *Commentary*. The first is his use of the terms *taʿkid*, repetition for the sake of emphasis, and *maʿnā*, meaning or concept, which later in his career Maimonides adopts to denote a distinct, enumerated commandment. Maimonides likely drew the link between *maʿnā* and "enumerated commandment" from Ḥefes, who made similar use of this word in a passage that Maimonides quotes.⁴² Maimonides does contrast the concepts of *taʿkid* and *maʿnā* in one passage in the *Commentary*,⁴³ but every other discussion of *taʿkid* there (in this linguistic sense) deals with the repetition of words or letters, analyses likely indebted to *Kitāb al-Lumāʿ* of Maimonides's fellow Andalusian, the philologist Jonah Ibn Janāḥ (d. ca. 1050).⁴⁴ In *Book of the Commandments*, Maimonides is anxious to establish an intimate link between scripture and the enumeration of the command-

36. See, e.g., Qafih 1963–68, 1: 32 (introduction), 3: 20 (m. Yebamot 3:12), 4: 417 (m. Avot 1:16), 5: 122 (m. Menaḥot 4:1), 6: 98 (m. Kelim 9:1), 6: 287 (m. Ohalot 9:10). For transcription of passage in m. Avot from the fair copy, see Shailat 1994: 131. On Maimonides's usage, see M. Z. Cohen 2011: 265–66, esp. n. 88; Herman 2016: 255–60. Among Muslim jurists, *tafaqqaha* denoted studying or applying oneself to the study of law; Makdisi 1981: 99–100, 103, 114, 172–73.

37. Goldziher 1889: 81–82.

38. See Herman 2016: 258–59, esp. n. 934, building on Schwarz 2007. Among earlier scholars, Benzion Halper (1915: 85) came closest to an accurate, though hardly concise, translation of this term in *Book of the Commandments*, offering "the various ramifications and hypothetical cases of a certain group of laws."

39. Zucker 1961: 14; Zucker fails to mention that his transcription of this passage, from T.-S. Ar. 18(1).22, follows a correction of a later scribe. On this passage, see also M. Z. Cohen 2011: 302. Note the resonance of a translation of this term, with the same meaning, in Moses Ibn Tibbon's introduction to his commentary on Solomon Ibn Gabirol's liturgical enumeration of the commandments (*azharot*): Israel 2007: 32.

40. Qafih 1971: 15 (prin. two).

41. See, e.g., Shailat 1992: 328, 329, 339.

42. Qafih 1971: 53 (prin. fourteen); see Halper 1915: 54–55.

43. Qafih 1963–68, 5: 144–45 (m. Menaḥot 8:7).

44. Derenbourg 1886: 278–90; Qafih 1963–68, 1: 397 (m. ʿOrlah 1:2), 2: 376 (m. Ḥagigah 1:8), 6: 388 (m. Nega'im 11:4, quoting "one of the principles of language"; compare Maimonides, *Mishneh Torah*, *Hilkhot tum'at šara'at*, 12:2). For appearance of the term *taʿkid* in *Guide of the Perplexed*, see, e.g., Munk and Joel 1930: 373 (III:28), 400 (III:37), 411 (III:41), 423 (III:45). On scriptural repetition, compare Steiner 2010: 32–44.

ments and thus needs to determine when scripture repeated itself and when it taught a new law. He turns to the concepts of *ma'nā*—in this context, a new commandment—and *ta'kid*, repetition for the sake of emphasis, in order to account for such repetitions.⁴⁵ It is noteworthy that the conclusion of the unique passage in the *Commentary* would lead Maimonides to count five commandments, whereas in *Book of the Commandments* he only counts four.⁴⁶ The fair copy of the *Commentary* preserves no evidence that Maimonides sought to bring the earlier text in line with his later conclusion, highlighting the inconsistency of Maimonides's editorial process.

A second, more intricate example relates to Maimonides's effort in *Book of the Commandments* and *Mishneh Torah* to identify scriptural sources for each commandment, a subject that he addresses in the *Commentary* much less consistently.⁴⁷ Maimonides's prolonged interest in the multivalent talmudic phrase *lav she-ba-kelalut*, which may provisionally be translated as “a prohibition that covers multiple laws,” perhaps best exemplifies his alteration of earlier usages to locate a scriptural basis for each law.

Maimonides offers three definitions of this phrase, evidently at three different points in time. The first renders *lav she-ba-kelalut* “an implied prohibition,” the second, “a prohibition that covers many laws,” and the third, “a single verb in the prohibitive mood with multiple attached objects” (i.e., “do not do X, Y, and Z”). He presents the first two definitions in the *Commentary* but appears to have added the second at a later date. Thus, the first definition begins in the body of the fair copy, finishes at the bottom of the page, and continues mid-sentence in the margin of that page in similar handwriting (the top of the next page begins a new topic).⁴⁸ Maimonides almost certainly added the first part of the marginal note when he wrote the body of this text, very likely copying from an earlier draft.⁴⁹ The second definition appears in the second half of this marginal note, written in what Solomon Sassoon labeled “Quick Cursive,” which he and others identified with Maimonides's later additions to the fair copy.⁵⁰

Turning to *Book of the Commandments*, in a passage that Maimonides describes as “appended to” principle nine of that work, Maimonides mentions the first definition in passing, but treats the second and the new, third definition, in great detail.⁵¹ (The most pertinent

45. For the principal discussion, see Qafih 1971: 33–35 (prin. nine); on the other treatments in that work, see Herman 2016: 299–315.

46. Qafih 1971: 229–30 (neg. no. 94); see Maimonides, *Mishneh Torah, Hilkhot isure mizbeah*, chap. 1.

47. This may, in part, be due to the lack of scriptural prooftexts in the Mishnah itself that could act as triggers for Maimonides (I thank Simcha Gross for this suggestion).

48. See Qafih 1963–68, 4: 238 and n. 45 (m. Makkot 3:1).

49. Sassoon (1956, 1: 33) concludes that Maimonides added this entire marginalium at a later stage; Qafih (1963–68, 4: 238 n. 45 [m. Makkot 3:1]) posits that Maimonides added the first four lines of the marginalium sometime after writing the fair copy and the second four lines at some later point. Both positions fail to account for the differences in handwriting and the fact that the marginalium picks up the discussion in the body mid-sentence (I thank Robert Brody for discussing this matter with me in detail). The placement of this marginal note may also suggest that Maimonides did not write the fair copy in sequential order.

50. Sassoon 1956, 1: 19–21; others have accepted the distinction between Maimonides's “Slow Cursive” and “Quick Cursive”; Qafih 1963–68, 5: 176 n. 33 (m. Hullin 1:2); Outhwaite and Niessen 2006: 288; Sirat and Di Donato 2012: 42, 270–75; Sirat 2014: 18; Seewald 2016: 433, 440, and passim. See, at length, Engel 2017.

51. Qafih 1971: 37–42 (prin. nine); quotation at 37. Compare the language at 54 (prin. fourteen); see Heller 1946: 31 n. 58. This description and other factors suggest that Maimonides's earlier conceptualization of this principle did not include this discussion: the closing paragraph of the first part of this principle summarizes the preceding discussion, giving the impression that it originally constituted the end of this principle. For the suggestion that there is some tension between the opening and the “appended” parts of this principle, see Perla 1973, 1: 34–37.

discussion in *Mishneh Torah* also omits the first definition.⁵²) The third definition develops and greatly expands on a brief remark found in the first definition.⁵³ Without entering into sustained analysis of Maimonides's understanding of this term, it is sufficient to emphasize that the first definition, unlike the second and third, has very little to do with the enumeration. Maimonides's assertion in *Book of the Commandments* that each negative commandment must be based on a *lav mujarrad*—perhaps best translated in this context as “a verb in the prohibitive mood with a single attached object”—and cannot be based on a *lav she-ba-kelalut*, apparently the opposite of a *lav mujarrad*, likely accounts for his abiding concern with the term *lav she-ba-kelalut* in these later works.⁵⁴ Maimonides himself emphasizes the importance of his treatment of *lav she-ba-kelalut*, telling his readers, at the end of principle nine, to “keep this principle in its entirety in mind at all times; it is a very important key for the verification (*li-tahqiq*) of the enumeration of the commandments.”⁵⁵

Taken together, the changing use of the nouns *fiqh* and *mišvah*, the opposition between *maʿnā* and *taʿkīd*, and the elaborations on *lav she-ba-kelalut* demonstrate Maimonides's need to produce a new lexicon in order to address novel problems that he made fundamental to the enumeration of the commandments, such as the relationship of scripture to Jewish law and how to classify particular laws under the headings of larger commandments.

SCRIPTURE AS A DETERMINANT OF JEWISH LAW

Book of the Commandments also evinces Maimonides's assimilation of scripture into legal conclusions much more than *Commentary on the Mishnah*.⁵⁶ One profound testimony to the extent that Maimonides went in this regard, relevant to the broader theme of this article, concerns scripture's prohibition against collecting *ʿolelot* in one's field (Lev. 19:10; Deut. 24:20). Most modern translations understand *ʿolelot* to be grapes that were forgotten during the harvest. The Mishnah, however, defines *ʿolelot* as underdeveloped grapes (m. Peʿah 7:4) and Maimonides's comment on this definition is unremarkable.⁵⁷ Moving forward in time, Maimonides ignores this mishnaic definition in *Book of the Commandments* and instead follows the more apparent meaning of scripture, rendering *ʿolelot* as forgotten grapes.⁵⁸ Nahmanides (1194–1270) clearly had a text of that work that ignored m. Peʿah 7:4, and the editio princeps of *Book of the Commandments* likewise contains a criticism of the definition of *ʿolelot* in *Book of the Commandments*, likely drawn from whatever manuscript served as the basis of this 1510 edition.⁵⁹ (Some manuscripts of *Book of the Commandments*

52. Maimonides, *Mishneh Torah*, *Hilkhot sanhedrin*, 18:3.

53. In the *Commentary*, Maimonides writes that had the Pentateuch stated, regarding the nazirite, “anything obtained from the grapevine he shall not eat, even seeds or skin he shall not eat,” the consumption of grape seeds would have resulted in two punishments, one for each “he shall not eat”: Qafih 1963–68, 4: 238 (m. Makkot 3:1). This claim about verbs in the prohibitive mood is central to Maimonides's third definition of *lav she-ba-kelalut*; see Qafih 1971: 37–38 (prin. nine).

54. Qafih 1971: 37 (prin. nine). I have not found the term *lav mujarrad* in earlier Judeo-Arabic literature, but it does appear in Abraham Maimonides's *Kifāya*: Dana 1989: 123.

55. Qafih 1971: 42 (prin. nine). Throughout *Book of the Commandments*, Maimonides refers to *lav she-ba-kelalut* more than any other conceptual problem.

56. Henshke 2018: 375–87 offers a comparable analysis of one case in *Book of the Commandments*.

57. Qafih 1963–68, 1: 122 (m. Peʿah 7:4).

58. See Qafih 1971: 36–37 (prin. nine), 121 (pos. no. 123), 283 (neg. no. 212).

59. Maimonides 1510: 17 (unpaginated); Chavel 1981: 149 (supplemental introduction).

also preserve changes that may seek to curtail the difference between this position and that of m. Pe'ah 7:4.⁶⁰ In *Mishneh Torah*, however, Maimonides returns to the mishnaic definition.⁶¹

Both Naḥmanides and Qafih struggled with Maimonides's seeming disregard of m. Pe'ah 7:4 in *Book of the Commandments*.⁶² Maimonides's understanding of *'olelot* in that work actually follows Ibn Janāh's *Kitāb al-Uṣūl*,⁶³ which the Andalusian Judah Ibn Bal'am (late eleventh century) adopted in his *Commentaries* on Judges and Jeremiah as well.⁶⁴ (It is noteworthy that Ibn Janāh recounts that his translation of the word *'olelot* accords with the meaning of his preferred Arabic translation found in "lexicographical books of the Arabs."⁶⁵) This Andalusian tradition seemingly developed out of a search for a more philologically sound understanding of *'olelot*,⁶⁶ which Maimonides felt comfortable adopting in *Book of the Commandments* in lieu of the mishnaic interpretation. In this case, Maimonides was guided more by scripture than the rabbis, perhaps a function of the focus in *Book of the Commandments* on written revelation.

Maimonides's commitment to ascertaining scriptural sources for every commandment famously manifests itself in his somewhat "circuitous"⁶⁷ programmatic claim in *Book of the Commandments* that not every law known by means of the *middot*, hermeneutical methods, of Rabbi Ishmael constitutes an enumerated commandment or is of biblical status.⁶⁸ Instead, Maimonides develops independent criteria to test the status of a law derived by the *middot*. Treatments of the *middot* in *Book of the Commandments* show that this work assumes that laws derived by them are rabbinic until proven otherwise. That is, whenever Maimonides considers a law that the rabbis derived by the *middot* to be Sinaitic, he cites additional evidence to support this conclusion.⁶⁹ This assumption does not appear to hold true for *Commentary on the Mishnah*, which frequently equates laws stemming from the *middot* with revelation without further comment.⁷⁰ Here, too, preference for scriptural law in *Book of the Commandments* may account for this argument, at least in part.

60. See Bloch 1888: 37 n. 3, 271; Heller 1946: 20 and nn. 40, 42, 152 n. 6; Qafih 1971: 121 n. 88.

61. Maimonides, *Mishneh Torah*, *Hilkhot mattenot 'aniyim*, 4:17–18 (see also 1:5).

62. Chavel 1981: 149; Qafih 1971: 36–37 nn. 22, 25, 121 n. 88, 283 n. 32, 283–84 n. 35; Qafih 1983–97, 10: 155. See also Chavel 1990: 295–96 (§215 [§220–21 in standard eds.]), 308–9 (§230 [§221 in standard eds.]); Heller 1946: 152 n. 8; Fixler 2008: 365–67.

63. Neubauer 1875: 521–22.

64. Poznanski 1906: 25 (Jud. 20:45); Perez 2002: 44 (Jer. 6:9). Naḥmanides suggested that Maimonides's definition of *'olelot* may follow one position reported in j. Pe'ah 1:4 (7b–8a); Chavel 1981: 149–50.

65. Ibn Janāh translated *'olelot* as *khuṣāṣ* (sing., *khuṣāṣa*; vocalizations differ in medieval dictionaries), defining *khuṣāṣ* as small grapes left over after harvest. Among the Arabic lexicographers who repeat this definition, the works of Ibn Janāh's fellow Cordovan intellectual Ibn Sida (d. 1066) constitute the most proximate and likely source. See Ibn Sida 2000, 4: 499; Ibn Sida 1899–1903, 11: 70 (I thank Nicholas Harris for his generous assistance with this matter).

66. This is evident in the Andalusian commentaries cited above.

67. See M. Z. Cohen 2011: 288.

68. Qafih 1971: 12–13 (prin. two).

69. See, e.g., Qafih 1971: 13 (prin. two), 243 (neg. no. 135), 334 (neg. no. 336).

70. See, e.g., Qafih 1963–68, 2: 357 (m. Megillah 4:3), 4: 242 (m. Makkot 3:5), 5: 150–51 (m. Menahot 9:7), 6: 53–55 (m. Kelim 2:1), 6: 672 (m. Zavim 3:1); note the opposite conclusion there, 1: 397 (m. 'Orlah 1:2). An anonymous *JAOS* reviewer suggested, on the other hand, that passages in the *Commentary* that equate the *middot* with laws known by tradition may rely on the argument in principle two of *Book of the Commandments* (Qafih 1971: 12–13) that some unanimously agreed-upon laws identified by the *middot* are of divine origin. Maimonides does suggest in the *Commentary* that post-Mosaic jurists used the *middot* to develop new laws, but nowhere in that work does he imply that the presence of the *middot* ipso facto denotes post-Mosaic law. While I cannot preclude such a reading, I think it more likely that one can detect a change in Maimonides' attitude on this topic.

Another line of reasoning that Maimonides develops in *Book of the Commandments* and *Mishneh Torah*, absent from *Commentary on the Mishnah*, pertains to four prohibitions that lack scriptural basis which he nonetheless considers biblical in status. Maimonides explains in *Book of the Commandments* that scripture fails to mention each prohibition because it is “obviously” forbidden. Two of these treatments amend or add to explanations found in the *Commentary*.⁷¹ The significance of these changes lies not merely in the fact that Maimonides develops this argument later in life. Rather, the very process of writing *Book of the Commandments* appears to have produced this argument, because Maimonides only deploys it regarding negative commandments, where he is particularly attuned to the need to identify divine sources for laws whose violation incurs punishment.

Maimonides rarely discloses what led him to reject his earlier positions, but I have uncovered a few cases where the systematic search for scriptural prooftexts for biblical laws seems to be the leading culprit. Two instances concern prohibitions whose violation may incur capital punishment, a crucial subject for *Book of the Commandments*, because Maimonides felt that the presence or absence of biblically mandated punishments indicates the presence or absence of a law of biblical status.⁷² These two prohibitions prohibit a priest from serving in the temple with unkempt hair and from serving in the temple in an intermediate state of impurity (known in rabbinic literature as *meḥusar kapparah*). The *Commentary* follows one talmudic passage (b. Sanhedrin 83a) and imposes capital punishment for violation of both prohibitions.⁷³ However, other evidence shows that Maimonides changed his mind regarding these prohibitions. Daniel ben Seʿadya ha-Bavli’s text of Maimonides’s *Book of the Commandments* contained only the prohibition pertaining to impurity, but Abraham Maimonides’s version seems to have only contained the prohibition pertaining to unkempt hair.⁷⁴ Ḥayim Heller also suggests that Nahmanides’s version of this work accorded with Daniel ben Seʿadya’s text.⁷⁵ *Mishneh Torah* imposes capital punishment for serving in the temple with unkempt hair, but inconsistently applies capital punishment for a priest who serves in an intermediate state of impurity,⁷⁶ likely indicating that Maimonides changed his mind about this question but failed to fully edit the text.⁷⁷

Explaining the reason for these changes requires some speculation. *Mishneh Torah* indicates that scripture renders service in the temple by a priest in an intermediate state of impu-

71. See (1) Qafih 1971: 333–34 (neg. no. 336); Maimonides, *Mishneh Torah, Hilkhot isure bi’ah*, 2:6; (2) Qafih 1963–68, 6: 244 (m. Ohalot 1:9), 6: 249 (m. Ohalot 2:4); Maimonides, *Mishneh Torah, Hilkhot tumat met*, 1:2; (3) Qafih 1971: 263–64 (neg. no. 172); Maimonides, *Mishneh Torah, Hilkhot ma’akhalot asurot*, 2:1; and (4) Qafih 1963–68, 3: 300 (m. Qiddushin 2:9), 5: 360–61 (m. Keritot 3:4); Qafih 1971: 272–73 (neg. no. 187); Maimonides, *Mishneh Torah, Hilkhot ma’akhalot asurot*, 9:2. I hope to expand on this point elsewhere.

72. As far as I know, Maimonides never states this explicitly, but does imply it in several places; see, e.g., Qafih 1971: 16–17 (prin. three), 76 (pos. no. 33), 221 (neg. no. 76), 337 (neg. no. 349). Maimonides appears to hint at this claim in two of his letters as well: see Blau 1957–61, 2: 574–75 (§310); Shailat 1986–87, 2: 454. Two early modern commentaries on *Book of the Commandments* also noticed this: see Ḥananya ben Menaḥem Qazes, *Qinat sofrim*, and Abraham Allegri, *Lev sameah*, in Hillman 2002: respectively, 55–57 (prin. two), and 62 (prin. two), 70–71 (prin. two).

73. Qafih 1963–68, 4: 195 (m. Sanhedrin 9:6); also 5: 28 (m. Zevahim 2:1). On the latter passage, see Seewald 2016: 462–63.

74. See Goldberg 1867: 2–3 (§1), 6 (§1), 18–19 (§3).

75. Heller 1946: 25 (introductory pagination), 118 n. 13.

76. See Heller 1946: 45 n. 8; see also Maimonides, *Mishneh Torah, Hilkhot bi’at ha-miqdash*, 3:9, 4:4, 9:11; Qafih 1963–68, 5: 194 (m. Sanhedrin 9:6); Sofer 1971: 301 (b. Sanhedrin 83b).

77. On this phenomenon, see Twersky 1980: 16–18; M. A. Friedman 1993: 557 n. 155; M. A. Friedman 2011: 806.

rity as invalid, but usually imposes no punishment for this sin.⁷⁸ This conclusion may have led Maimonides to revisit his earlier imposition of capital punishment for violation of this prohibition. No surviving texts explain why Maimonides might have thought that serving in the temple with unkempt hair does not incur capital punishment, but the relevant pentateuchal prohibition (Lev. 10:6) may be interpreted in opposing ways; Maimonides consistently seeks support from elsewhere in the Hebrew Bible or Aramaic *targumim* to demonstrate that this prohibition is biblical in status.⁷⁹ It is not hard to imagine that at some point, Maimonides could have felt that the lack of explicit proof that Moses commanded this law would lead to its exclusion from the list of the 613 commandments given at Sinai.⁸⁰ A similar example regarding the prohibition to eat certain types of foods grown during the sabbatical year likewise appears to turn, at least to some extent, on Maimonides's changing readings of the underlying scriptural proof text.⁸¹

A final example concerns the length of time that scripture requires for mourning the death of a close relative. Earlier halakhists had debated this question: Isaac al-Fāsi (d. 1103) reports that the *geonim* held that scripture mandates seven days, but al-Fāsi himself held that the biblical mandate extends only one day.⁸² Maimonides's *Commentary on the Mishnah* tackles this question in five places. In four instances, Maimonides writes that the biblically mandated period of grieving extends until the burial of the deceased, even if the burial is after the day of death. Maimonides then changed each of these passages to state that the biblical requirement extends only one day and that the requirements that extend until burial are only mandated by the rabbis.⁸³ In the fifth place, in the *Commentary* on m. Pesahim chap. 8, the uncorrected body of the fair copy concurs, suggesting that Maimonides wrote this part of the fair copy later than the other parts (this is also the ruling in *Mishneh Torah*).⁸⁴ Maimonides does not explain his earlier position, but al-Fāsi did feel the need to reject an interpretation of one talmudic passage (b. Mo'ed Qatan 14b) that could lead to this view; perhaps Maimonides first read this passage in the way that al-Fāsi opposed. It is also possible that Maimonides's changing view turned on the implications of Aaron's statement, following the death of his sons, that he will not eat of the sacrifices offered in the tabernacle on that day (Lev. 10:19). In two places in the *Commentary*, Maimonides explains that this verse indicates that a mourner may neither offer nor eat of the sacrifices on the day of death of a close relative, but Aaron, and later high priests by extension, may offer the sacrifices although not

78. Maimonides, *Mishneh Torah, Hilkhoh bi'at ha-miqdash*, 4:4–5.

79. Qafih 1963–68, 4: 195 (m. Sanhedrin 9:6); Qafih 1971: 256–57 (neg. no. 163–64); Maimonides, *Mishneh Torah, Hilkhoh bi'at ha-miqdash*, 1:8, 1:14. Others have struggled with this same problem; see Heller 1946: 137–38 n. 25; add Chavel 1963: 2: 214.

80. As he insists twice in the principles at the outset of *Book of the Commandments*: Qafih 1971: 9–10 (prin. one), 16 (prin. three).

81. See Qafih 1963–68, 1: 243–44 n. 3 (m. Shevi'it 6:1), 1: 254–55 n. 1 (m. Shevi'it 9:1); Qafih 1971: 277–78 (neg. no. 222); Blau 1957–61, 1: 230–35 (§128); Maimonides, *Mishneh Torah, Hilkhoh shev'itah ve-yovel*, 4:1–3; Lieberman 1947: 7, 13.

82. See *Hilkhoh rav Alfas*, b. Ber 9b–10a (al-Fāsi pagination; I thank Ezra Chwat for sharing a draft of his critical edition of this passage); Levin 1984: 1: 21 (*osar ha-perushim*, §65); Greenbaum 1979: 398–99 n. 334; Mirsky 1961: 2: 239–41 (§37); Kasher 1992–95: 7: 1872–73 nn. 33–34, 1901; Ravitsky 2009: 74–76.

83. Qafih 1963–68, 1: 133 and n. 29 (m. Demai 1:2), 1: 370 and n. 37 (m. Ma'aser sheni 5:12), 4: 485 and nn. 16–17 (m. Horayot 3:5), 5: 27 and nn. 3–4 (m. Zevahim 2:1). For transcription of the passage in m. Horayot from the fair copy, see Shailat 2002: 158–59; contrast Kahana's interpretation, cited in n. 1 above.

84. Qafih 1963–68, 2: 195 (m. Pesahim 8:6); Maimonides, *Mishneh Torah, Hilkhoh avel*, 1:1, see also *Hilkhoh bi'at ha-miqdash*, 2:6–10; Qafih 1971: 79–80 (pos. no. 37).

consume them.⁸⁵ However, elsewhere in the *Commentary* to m. Pesahim chap. 8 (where the body of the fair copy matches Maimonides's final view) and in *Mishneh Torah*, Maimonides focuses on the fact that this verse mentioned only the *day* of death and he highlights the previously unmentioned implication that no biblical mandate extends to the following night or to the period until burial.⁸⁶ If the limit of this renunciation to the day of death constitutes the basis for Maimonides's later view that the biblical mandate extends only one day, he may have rejected his earlier position due to lack of scriptural support.

CONCLUDING REMARKS

The vastness of his corpus and the survival of numerous autograph manuscripts grants access to Maimonides's thinking that is virtually unmatched for medieval Jewish authors⁸⁷ and underscores that medieval works were never truly "finished" in the lifetime of their authors (or even, frequently, thereafter). The transformations of technical terms and the shifts in legal conclusions identified here show that the task of placing talmudic law on firm theoretical footing—perhaps the unstated, overarching goal of *Book of the Commandments*⁸⁸—led Maimonides to hone his hermeneutical and intellectual toolkit. Isadore Twersky intimates that Maimonides intended to write a work like *Mishneh Torah* even before he composed *Commentary on the Mishnah*.⁸⁹ Even if this suspicion is correct, and I am far from certain that it is, the road from the *Commentary to Book of the Commandments*, and to *Mishneh Torah* in turn, required careful demarcation and an untiring review of the assumptions of Maimonides's youth. Maimonides's attempts to delineate all of Jewish law, and his consequential decision to situate the enumeration of the 613 commandments as the cornerstone of this project, led him to reevaluate many passages in the *Commentary*, some of which he altered and others he left unchanged. Moshe Halbertal has argued that, for Maimonides, the enumeration of the commandments served as the "architecture" of Jewish law,⁹⁰ but this only came about in *Book of the Commandments* and *Mishneh Torah*. As this article shows, Maimonides's novel focus on the enumeration of the commandments triggered the creation of an innovative terminology and, frequently, stimulated him to reassess earlier interpretations of rabbinic literature and conclusions regarding Jewish law.

Perhaps the inevitable result of new genres and intellectual frontiers, consideration of the totality of the manuscript evidence, both from Maimonides and from his earliest readers, displays a more human and dynamic Maimonides than the accolades frequently encountered in academic and nonacademic settings. Later Jews certainly labeled Maimonides the "Great Eagle," but he was also a man who changed his mind and revisited ideas.

85. Qafih 1963–68, 4: 485 (m. Horayot 3:5), 5: 27 (m. Zevahim 2:1); see similarly Qafih 1971: 250 (neg. no. 151). For transcription of the passage in m. Horayot from the fair copy, see Shailat 2002: 159.

86. Qafih 1963–68, 2: 196 (m. Pesahim 8:8); Maimonides, *Mishneh Torah, Hilkhot avel*, 1:1. The status of the night after the day of death also appears to be an important problem, which Maimonides revisits twice in his commentary to m. Demai 1:2; the first revision is almost illegible and must be reconstructed from the vulgate Hebrew translation (I surmise from Qafih's failure to transcribe the earlier correction [1963–68, 1: 133 n. 29] that he could not read it either). Building on premodern commentaries, modern scholars have questioned the merit of this scriptural proof-text: Twersky 1980: 307, 438–39; Hartman 1985: 292 n. 67; Feintuch 1992: 141–42; Rabinovitch 1997, 1: 71–72; Kaplan 2004: 399–406; Ravitsky 2009: 78–80; Friedberg 2013: 124–25.

87. For perhaps the best comparison, see Ofer and Jacobs 2013.

88. See Blidstein 1990: 15, 26.

89. Twersky 1980: 6, 14; see also 16 n. 21. Guttman (1925: 230) formulates this strongly. Rabinovitch (1997, 1: 3) suggests otherwise.

90. Halbertal 1990.

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