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THE AUTHORITIES AND RATIONALE
OF THE DAILY COMMANDMENTS
IN MAIMONIDES' SEFER AHAVAH

Bernard James Robinson

Thesis submitted in partial fulfillment
of the requirements for the Degree of
Master of Arts in Hebrew Letters and
Ordination

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Jewish Institute of Religion

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DIGEST

This study is an analysis of the rationale and authorities attributed to the laws concerning prayer, the reading of the Shema and use of Tefillin by Moses Maimonides in his Sefer Ahavah. The Code is taken on its face. Secondary sources have been avoided on the premise that Maimonides wrote his Code as a companion to the Tanach. He intended to relieve the necessity for reference to any legal literature written or compiled in the interim period between the two works.

In his Introduction to the Code, Maimonides describes a five strand origin of the Oral Law. These are: (1) Sinaitic interpretive material received by Moses and transmitted on by him orally; (2) decrees of the courts in the successive generations; (3) ordinances of those courts; (4) decisions of those courts; and (5) customs and practices confirmed by these courts.

These strands, together with the Written Law, which preceded them, and the post-Talmudic authorities, which succeeded them, form the rubric for the analysis of the authorities herein. Each indication by Maimonides that a rule belongs in one of these seven categories is noted and discussed.

The second part of the thesis is devoted to a presentation of the most frequent kinds of explanations

for the rules we have. Maimonides' rationales for them are categorized under the following headings: (1) historical explanation; (2) to benefit the community; (3) to teach or to motivate conduct; (4) to promote a proper state of mind; (5) to prevent unfavorable or incorrect public impression; and (6) to prevent miscellaneous mishaps.

TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION: PURPOSE AND METHODOLOGY.	1
II. AUTHORITIES.	5
A. Maimonides' History of the Authorities.	6
B. Analysis of the Text of <u>Sefer Ahavah</u>	11
1. Written Law -- the precepts.	11
2. Oral Law.	14
a. Sinaitic interpretive tradition.	14
(1) Non-precept Scriptural texts.	14
(2) Moses cited as authority.	23
(3) General references to oral tradition.	24
b. Ordinances.	27
(1) Of Moses.	27
(2) Of Ezra and his court.	27
(3) Of subsequent sages.	28
c. Decrees.	31
d. Decisions and miscellaneous teachings of the rabbis.	33
e. Customs and practices of the rabbis.	35
3. Post-Talmudic sources.	39
a. Teachings of the Geonim.	39
b. Customs and practices in post-Talmudic times.	41
c. Maimonides' statement of his own opinion.	45

	Page
III. RATIONALE.	47
A. Historical Explanation.	49
B. To Benefit the Community.	53
C. To Teach or to Motivate Conduct.	56
D. To Promote a Proper State of Mind.	58
E. To Prevent Unfavorable or Incorrect Public Impression.	61
F. To Prevent Miscellaneous Mishaps.	63
IV. CONCLUSION.	65
V. BIBLIOGRAPHY.	66
VI. FOOTNOTES.	67

INTRODUCTION: PURPOSE AND METHODOLOGY

In the Introduction to his Mishneh Torah Maimonides reveals the motivation and purpose of his work. Writing in the year 1177, he tells us that because of the vicissitudes of hard times and the fact that scholarship has diminished in Israel, the commentaries and responsa of post-Talmudic times have come to be properly comprehended by only a few individuals in Israel. Less understood still are the Sifra, the Sifre, the Tosefta, and the two Talmuds. With this in mind Maimonides set upon writing a clear, concise, orderly compendium of the entire Oral Law as reflected in the legal conclusions of all these former works. This compendium would include all the ordinances, decrees, judgments and customs instituted from the time of Moses until the compilation of the Talmud and as expounded by the Geonim in the subsequent literature. The author entitled his book Mishneh Torah (Repetition of the Law) for the reason that a person who first reads the Written Law and then reads his compilation, learning from it the entire Oral Law, has no need to read any other book written or compiled in the interim between them (אני צריך לקרות ספר).
אחר חז"ל).

It was this confident statement of a goal to simplify and make readily available in a single work the entire oral legal tradition which suggested the subject of

this thesis. Maimonides is here begging to be taken literally. What would happen if one actually sat down with but two source works, a Tanach at his right hand and the Mishneh Torah at his left? Would he have at his finger tips an adequate presentation of the totality of Jewish law up to 1177 C.E.?

Heightening the interest in such an investigation is the reputation Maimonides has acquired of being one who rarely missed an opportunity to give rational reasons for the commandments. His well-known explanation of the sacrificial cult as a device to wean the people away from idolatrous sacrifice has caused many to regard him as having generally understood the ceremonial laws of Judaism as a means to moral perfection.¹ It might be asked whether such an outlook reveals itself in the Mishneh Torah. In offering a codification of the Oral Law as an expeditious substitute for a search through all the extra-Biblical literature, did Maimonides offer that legal tradition with rationalist overtones?

It is the intention of this paper to approach the Mishneh Torah from the vantage point of a Jew, who, unlearned in his people's legal traditions, sits down to study Maimonides' Code in the belief that it and Scripture alone can give him the behavioral demands of his religion. His only tools are these two works and the ability to read and understand them. His is not the background in rabbinic literature which would

allow him to read into either text extraneous traditional views. He is limited by what is expressly stated before him. We shall seek to find here what such a student might find. How is the Jewish legal tradition presented to him? This Code might have set forth nothing other than bare legal injunctions. If Maimonides has gone beyond that, what additions has he made? How does he present the authority for the rules? Does he offer explanations? What has he included so that the injunctions of the Oral Law might be better understood?

To answer all such questions definitively would be the ideal goal of the inquiry which this paper pursues. But it is not something the achievement of which is even remotely expected. Only a small segment of the Mishneh Torah is put under examination here. Only the Introduction to the Code, and a portion of the second volume, Sefer Ahavah (Book of Love), have been analyzed. Under study in this latter volume are the sections Hilchot Keriat Shema (Laws Concerning the Reading of the Shema), Chapters I-IV; Hilchot Tefillah (Laws of Prayer), Chapters I-XIII; and Hilchot Tefillin (Laws of the Phylacteries), Chapters I-IV. Any conclusions which are derivable from this research must be qualified by the admission that they have been made only from the above sampling of the Mishneh Torah. The legal sections selected all deal with the daily regimen of the Jew and so the title of this thesis is assigned the

qualifying expression "Daily Commandments" even though not all such commandments have been studied.

The methodology of this study was that of analyzing the rules presented in the Code and separating out in the case of each any mention of its authority, rationale or purpose. This extraneous material was then categorized under the rubrics found in the Table of Contents. Such categories were the ones which Maimonides' Introduction and the text itself suggested to this writer.

The Table of Contents is regarded as an integral part of this study. The reader's close and continued attention to it will aid his appreciation of the structure of the discussion to follow.

AUTHORITIES

A code may be written to recite its "Thou shalt's" and "Thou shalt not's" without ever mentioning the source which sanctions such injunctions. The force of its rules would then rely solely upon a credibility as to the accuracy with which the author has summarized the conclusions of the prior authoritative legal literature. On the other hand, the author might choose to specify all the sources sanctioning the rules he has codified. Maimonides has chosen neither extreme for his Mishneh Torah. In part, the work consists of the enumeration of rules unsupported by the citation of authority; in part it recites rules the source or sanction for which is mentioned. Such source or sanction shall be referred to as "authority" in these pages. To be distinguished from authority is that material which explains the historical background of a rule, relates its purpose, tells of its usefulness, or specifies how it is to be performed.

A. Maimonides' History of the Authorities

In the Introduction to his Code, Maimonides traces the chain of authority which leads up to and sanctions the massive legal tradition which he has set out to codify. It serves the purpose and structure of this paper to summarize here Maimonides' main points.

Moses received two bodies of legal material from Sinai. One he wrote down and we know it by the names Pentateuch, Torah or Written Law. (*תורה שכתב*). The other body of material consisted of the interpretation of the Written Law. Moses did not write this down. Rather he transmitted it through an oral charge to the Elders, to Joshua, and to the rest of Israel. We call it the Oral Law (*תורה שבעל פה*).

This Oral Law was passed on from generation to generation. It grew as each generation added to it. By the time of Judah ha-Nasi the original Sinaitic interpretive tradition had grown considerably. The supplemental legal material was not traceable to Moses. It had its origins in the deductions derived by the Supreme Court. (*גמרא*) of each of the successive generations as it applied the thirteen hermeneutic principles. Judah ha-Nasi redacted the entire legal tradition down to his time in the Mishnah.

The Mishnah then became the subject of exposition and elucidation. Years passed and compilation once again became necessary. Rabbi Yochanan's efforts lead to the Palestinian Gemara. Those of Rav Ashi, about a century

later resulted in the Babylonian Gemara. The two Talmuds included not only the interpretations and clarifications of the Mishnah but also additional new legal material produced by the courts from the time of Judah ha-Nasi down to the time of their respective compilations.

The two Talmuds, the Tosefta (compiled by R. Hiya) and the Sifra and Sifre (both compiled by Rav), all teaching and expounding the Mishnah, then became the sources of the Oral Law for succeeding generations.

According to Maimonides, the Oral Law as of the time of the completion of the Babylonian Talmud comprised five strands:

1. That interpretive material received by Moses from Sinai which he passed down to the Rabbis through a chain of oral transmission;
2. The decrees (שִׁבְרֵי חֵן) which the sages and prophets of each successive generation instituted in order to serve as a protecting fence about the Written Law (סִימָּת הַתּוֹרָה);
3. The ordinances (תקנות) which were enacted by the courts of the successive generations;
4. The decisions (פְּסָקִים) and rules (דְּבָרִים), not received from Moses but deduced from the Written Law through application of

the thirteen hermeneutic principles by the Supreme Court in each of the successive generations;

5. The customs (*Minhagim*) confirmed by the courts in each successive generation.

After the Babylonian Talmud was completed in the days of the son of Rav Ashi, Israel suffered a worldwide dispersion. The courts established in the several countries of the dispersion, acted only for those residing in their respective countries. Post-Talmudic decrees, ordinances, decisions and customs of any one court were no longer accepted by all of Israel. Compulsion was not exercised upon those living in one country to observe the customs of another country nor upon one court to enforce the decrees of a foreign court. But those rules already found in the Babylonian Talmud bound all Israel.² The reason was that all Israel had accepted such rules and the sages who had enacted the ordinances, issued the decrees, made the decisions, and confirmed the customs had constituted the entirety or, at least, the majority of the sages of Israel. Moreover, it was they who had been the recipients of the oral tradition from Moses.

Maimonides, thus finds before him the Talmuds and pre-Talmudic literature which operate authoritatively throughout Israel. There is also the post-Talmudic literature, comprising the responsa, commentaries, and compendia

of the Geonim. The latter lacks the universality of authority of the earlier works.

This is Maimonides' history of the Oral Law up to his own time. In it he speaks freely of the literature which recorded that Law for posterity. He names the chain of sages and prophets running from Rav Ashi back to Moses. However, in the body of his Code, Maimonides chooses to neglect such specifics. Except for Ezra, a sage is seldom mentioned by name. Except for Scriptures, in all the legal material studied, no literary work is referred to. Consequently, in our analysis of the sources of authority for the rules which Maimonides codifies we cannot make use of literary references. We can, however, take advantage of his recognition of the five source strands in the Oral Law, for he does identify the origin of many of the rules. We shall utilize as our rubric his distinctions between:

- (1) the Sinaitic tradition interpreting the Written Law and transmitted orally from Moses;
- (2) the decrees of the successive courts which protected the Written Law from infringement;
- (3) the ordinances enacted by those courts;
- (4) the decisions of those courts based upon the hermeneutic principles; and
- (5) the customs either instituted or confirmed by those courts.

We shall use these strands as categories by which to analyze the rules dealing with the Shema, Tefillah and Tefillin found in Sefer Ahavah.

We shall not, however, forget that most important other strand of Jewish Law -- the Written Law itself. It is around this Written Law, and more particularly around the 613 individual Pentateuchal precepts (ש 113 נ), which Maimonides clusters the specific rules of the more expansive Oral Law. The structure of the Mishneh Torah leads the reader, precept by precept, through the Written Law teaching him the Oral Law along the way. Thus, in our analysis of the authority of the daily commandments we shall begin with the underlying Pentateuchal precepts.

B. Analysis of the Text of Sefer Ahavah

1. The Written Law - the precepts

In a prefatory phrase at the beginning of each section of each book of the Mishneh Torah there appears listed the Pentateuchal precepts (פסוקים) treated in that section. Thus, we learn that the section Laws Concerning the Reading of the Shema is based upon a single precept: to read the Shema twice daily; the section Laws Concerning Prayer is similarly based upon one precept: to serve God by daily prayer. The section Laws Concerning the Tefillin is based on two precepts: to bind one upon the head and one upon the hand.

These injunctions, together with the Pentateuchal citations supporting them, are listed among the 613 precepts enumerated immediately after Maimonides' Introduction. They are the primary authority for the rules regarding the Shema, prayer, and the Tefillin.

Of the four precepts only those concerning the Shema and prayer are specifically mentioned or discussed beyond the prefatory phrase. We are instructed that the Shema is to be read twice every day -- in the evening and in the morning, as it is said, "(And thou shalt speak of them....) when thou liest down and when thou risest up" (Deut. 6:7).³ It is explained that this text refers to the times when men customarily lie down and rise up, namely, night time and morning, respectively. We are further

instructed that to pray daily is an affirmative precept, as it is said, "And ye shall serve the Lord your God" (Exod. 23:25).⁴ Again interpretation is included: according to what "they learned from the oral tradition" (למדת אבותינו), the service referred to is prayer. Cited also is the phrase, "And to serve Him with all your heart" (Deut. 10:12), on which the sages commented "What may be described as service with the heart? This is prayer."⁵

In both instances the citation of Pentateuchal authority is accompanied by an interpretation. In the case of the Shema, the precept is to recite it twice daily; the interpretation adds to the precept by telling us the periods each day that it is to be recited. The precept is thereby made more specific. In the case of prayer, the precept is to pray daily. It is the interpretation of "serve" in Exodus 23:25 that is used to arrive at the idea of prayer in the precept itself. The interpretation is used to negotiate the precept, not to make its application more specific. The interpretation of "serve" is said to be from the oral tradition (למדת אבותינו). This might refer to the Sinaitic interpretive strand of the Oral Law. We may query: What is the relationship between the 613 precepts and the literal Scriptural support given them? Is there not an interpretive element which intervenes between Scripture and precept (Torah and mitzvah)? If

so, is there a difference in nature, source or authority between such interpretation and one that expounds upon and adds specifics to the precept itself? With but two precepts discussed directly in the twenty-one chapters analyzed in this paper, we are without data to answer these questions.

To be noted is that the precept to bind the Tefillin upon the head is based upon, "And they shall be as frontlets between thine eyes" (Deut. 6:8); the precept enjoining the binding upon the hand is based upon, "And thou shalt bind them as a sign upon thy hand" (Deut 6:8). Neither of these texts are offered any direct interpretation by Maimonides.

2. Oral Law

a. Sinaitic interpretive tradition

(1) Non-precept Scriptural texts

In addition to the texts which directly support the precepts, there are found about twenty-two Scriptural citations used to lend some kind of support to rules. If we assume that the Written Law is codified in the 613 precepts, then these additional citations from Scripture ought to fit into our rubric either as interpretive of those precepts or as in some way supportive of decrees, ordinances, decisions or customs. The discussion to follow will show that in almost every case they fit into an interpretive classification.

Thus, regarding the precept to serve God by daily prayer, we already found that "and to serve him with all your heart" (Deut. 11:13), is used to interpret "serve" in "And ye shall serve the Lord your God" (Exod. 23:25), as meaning "pray to".⁶ Similarly, "O worship the Lord in the beauty of holiness" (Ps. 96:9), is used to determine how one should pray, namely, only after adjusting his clothing and making himself neat and trim.⁷ "Now his windows were open in his upper chamber toward Jerusalem" (Daniel 6:11), is used as an historical example showing us that prayer in a synagogue requires that the windows or doors facing Jerusalem should be opened.⁸ "And let us know; let us be eager to know the Lord" (Hosea 6:3), is

used to support the praiseworthy practice of proceeding to the synagogue at a quick pace.⁹ "(Blessed is the man....) waiting at the posts of My doors," (Prov. 8:34) is used to support the rule of going at least two door widths ("posts" is in the plural) inside the synagogue upon entering before reciting one's prayers.¹⁰ "I will be sanctified in the midst of the children of Israel" (Lev. 22:32), is used to establish that every matter of sanctification in the prayer service should take place in the midst of a congregation of Israelites." "How long shall I bear with this evil congregation" (Num. 14:27), fixes a congregation as any group of ten Israelites, since those alluded to were the twelve spies less Joshua and Caleb.¹² "And the ears of all the people were attentive to the book of the Torah" (Neh. 8:3), is used as an historical example to support the imperative that the congregation listen attentively to the public reading of the Torah.¹³

The synagogue (treated by Maimonides, along with prayer) should be built at the highest part of the town, as it is said, "At the head of the noisy streets she (Wisdom) calleth" (Prov. 1:21).¹⁴ It is to be made taller than all the other courtyards of the town, as it is said, "To exalt the house of our God" (Ezra 9:9).¹⁵ Furthermore, its doors are to be made to open only on the easterly side, as it is said, "And those who encamped before the Tabernacle eastward" (Num. 3:38).¹⁶ This is the third text offering

an historical example. One may avoid a breach of the prohibition against entering a synagogue except for purposes of a religious act by simply staying there a while before leaving, for the tarrying there is also a religious act, as it is said, "Happy are they who dwell in Thy house, (yet they praise You)" (Ps. 84:5).¹⁷ "And I will desolate your sanctuaries" (Lev. 26:31) is used (in a way unclear to me) to establish that the status of synagogues and houses of study which are in ruins remains a sacred one.¹⁸

Regarding the precept to read the Shema twice daily there are but three interpretive Scriptural citations. Deuteronomy 6:7 has already been discussed;¹⁹ it is the basis of the precept. "That thou may remember the day of thy going forth from the land of Egypt all the days of thy life" (Deut. 16:3), is used as authority for the practice of reading the last paragraph of the Shema dealing with tzitzis at night even though tzitzis are not worn at night.²⁰ That paragraph mentions the Exodus from Egypt, and the above verse is taken to make it a praiseworthy deed to mention the Exodus both day and night. "Is it not thus, my words are like fire, saith the Lord" (Jer. 23:29) is regarded as lending support to the rule that even those who are ritually unclean are bound to recite the Shema and its blessings. Just as fire is insusceptible of defilement, so the words of the Torah are regarded insusceptible of defilement.²¹

Regarding the precepts to bind the Tefillin upon one's head and upon one's hand, we find four interpretive texts. The combination of "Thou shalt bind them" (Deut. 6:8), with "Thou shalt write them", (Deut. 6:9) is utilized interpretively to imply that only one enjoined to put on Tefillin and who believes in the obligation to do so is qualified to write them. Consequently, gentiles, apostates, slaves, women, minors, etc. are disqualified.²² "And these words.... shall be upon thy heart" (Deut. 6:6), is used to determine that the Tefillin of the hand should be worn on the upper left arm opposite the heart.²³ "You shall keep this ordinance in its season day by day" (Exod. 13:10), is taken to refer to the precepts concerning the Tefillin and is used to interpret them as requiring that Tefillin be put on during the daytime and not during the night.²⁴ The verse "And it shall be for a sign...." (Exod. 13:9), also taken to refer to the Tefillin, is used to indicate that the duty to wear them does not apply on the Sabbath or Festivals since these days are themselves considered signs.²⁵

The Scriptural citations cluster about the four precepts and lend interpretive support to the specifics of their fulfillment. They clarify the time, the place and the manner of obeying the precepts. They themselves, being Scripture, are "written". But as utilized in an interpretive process they are better classified as but an element in an unwritten non-Scriptural tradition. That

is, according to our rubric, their interpretive function deems them a part of the Oral Law. To which part, that is, to which strand of the Oral Law they belong, is difficult to say. This difficulty arises out of a problem which vexes our entire attempt to analyze the Mishneh Torah. We may well recognize and discuss that problem at this juncture.

We have set as the categories for our analysis of authorities the Written Law and the Oral Law. The former is taken as codified in the 613 precepts; the latter is taken as composed of the five strands mentioned by Maimonides in his Introduction. It is moot, however, whether these six classes exhaust all Jewish Law for Maimonides. On the one hand, it is uncertain whether he would agree that the 613 precepts exhaust the Written Law. On the other hand, it is possible that the five strands are an over-simplification of his thought concerning the Oral Law.

As noted in the introduction to this paper, our method here is to take the Mishneh Torah on its face. Consequently, the author has chosen to accept as his working hypotheses the structure expressed in Maimonides' Introduction. We assume that the precepts do exhaust the Written Law and that the five strands do exhaust the Oral Law, and furthermore, that Written and Oral Law exhaust all Jewish law up to the time of the

compilation of the Babylonian Talmud. The laws, teachings and customs subsequent to that time are treated in a separate category of their own.

The major problem faced in our analysis arises from the fact that Maimonides did not label every rule in his Code with its source or origin. We are faced with a majority of rules whose authority is not specifically expressed. Only the minority to which he has attached Scripture or the strands of the Oral Law bear analysis. The great body of the rules must remain unclassified even though Maimonides would have regarded them in one category or the other.

Returning then to the difficulty in assigning the non-precept Scriptural texts to a particular strand of the Oral Law, we can now realize that Maimonides' citation of Scripture may have been for purposes other than that of indicating a specific origin to a rule. Maimonides may have chosen to refer to the Scriptural confirmation of a rule even though an ordinance, decree, decision or custom, which remains unmentioned, is the real basis for it. In such cases the Scripture may have been the basis of the legislative act, or it may have simply been an after-the-fact justification for the rule given by a later commentator. For want of a more certain classification we have placed non-precept Scriptural support under the rubric of Sinaitic interpretive tradition.

There is one instance where Maimonides cites a Scriptural text to support a rabbinic ordinance. Ezra and his court ordained that a service should be recited for the third time at night. This is explained by the fact that portions of the afternoon daily offering were consumed throughout the night, as it is said, "This is the law of the burnt offering; this is that which goes upon its firewood upon the altar all night...." (Lev. 6:2). Further support for the ordinance is found in the text, "Evening, and morning and noontime I will meditate and cry aloud and He will hear my voice" (Ps. 55:18).²⁶ This indicates that the citation of Scripture does not preclude the possibility that a rule originated through a legislative act.

Scriptural support is specifically lent to a custom in the case of the local practice in Spain and Shinar (Iraq) that one does not recite the Prayer after having had a seminal emission until he has first washed his whole body with water. The text thereby fulfilled is: "Prepare to meet thy God O Israel" (Amos 4:12).²⁷

To include mention of all the Scriptural material found in the twenty-one chapters under study, five further citations will be discussed. While none of them lend any authority to rules, they do tell us something additional about how Maimonides regarded Scripture. He reports that whoever says in his supplications "He that dealt mercifully with a nest of birds, forbidding the

taking of the mother bird together with the nestlings (Deut. 22:6), or He that forbid the slaughtering of a beast and its young on the same day (Lev. 22:28), -- may He have mercy upon us," or offers petitions of similar character, is silenced. The reason for this rule is that these prohibitions are among the negative Scriptural precepts (Nos. 305 and 101 respectively) and are not matters of God's compassion. Maimonides argues that were they motivated by compassion, man would not have been permitted to slaughter at all.²⁸ Along with the overtones of dissatisfaction with animal slaughter, Maimonides is here taking an attitude toward the precepts. God's motivation in commanding them is not to be presumed by man.

At the end of the Laws Concerning the Tefillin our teacher relates that the sages used to say that whoever wears Tefillin regularly lengthens his days, as it is said "The Lord is upon them; they shall live." (Isaiah 38:16)²⁹ This citation is used homiletically. It neither sanctions nor explains the desired conduct; it is intended rather to motivate the reader. This is the only clear illustration of such a use in the material studied.

We find one reference to Scripture which is purely historical in character. That is, it tells history without serving as a model for behavior. Maimonides cites "And their children spoke half in the speech of

Ashdod, and they did not know how to speak in the Jews' language, but according to the language of each people" (Neh. 13:24). This is his evidence for the inability of the Jews to pray well in Hebrew. This inability lead Ezra to enact the Eighteen Benedictions.³⁰

The only Scriptural reference left to be discussed is perhaps the most interesting of all. Maimonides tells us that the last eight verses of the Torah (Deut. 34:5-12) may, in contrast to the rest of the Torah, be read in a synagogue even when there are less than ten adult males present. He explains that these last verses are Torah, and were uttered by Moses as received from the Almighty. However, since they convey the impression that they were composed after the death of Moses, they must have been altered (from the text as it stood originally), and consequently it is permissible for even an individual to read them (without a quorum).³¹ Maimonides here takes his position on the puzzling last eight verses. He reaffirms Mosaic authorship to the Torah, but reserves the right to pass judgment upon the accuracy of its transmission since Moses. He finds alteration and so explains a leniency in the requirements for a quorum during reading in the Synagogue. Queries: Is this leniency and its explanation the personal position of Maimonides, or did he have traditional authority for it? If Maimonides is claiming the right to judge Scripture as altered, what is the basis of that right

and what are the limits to its exercise? Has he gone beyond the precedent of the Sofrim, who are ascribed with having issued corrections to the text?

(2) Moses cited as authority

Without mention of Scripture, authority is sometimes lodged in Moses. Such cases are few but are the clearest ones of the Sinaitic interpretive strand of Oral Law. The expression "a rule that Moses received from Sinai" (י'סין דאן דאן) is used only concerning one matter. It is the sanction for the ten sine qua non requisites for the writing and making of the Tefillin. These concern the propriety of the ink, the parchment, the square shape of the boxes, the embossing of the letter Shin, the wrapping of the slips of parchment, the tying up of the wrappings, the sewing up of the compartments, the making of a border for the straps, the black color of the straps, and the special knot in the shape of a Daleth. Each of these are a "rule that Moses received from Sinai" and is deemed indispensable; a variation from in it renders the Tefillin unfit.³²

There are three further references to Moses. They concern prayer. We are told that one should not multiply epithets for God, saying: "O God, Great, Mighty, Awe-inspiring, Powerful, Strong.... etc." Rather one should use only those that Moses used, since it is beyond human power to exhaust the praises of God.³³ Here Moses' example

sets the standard. If his example be restricted to the account in the Pentateuch, this reference to Moses is tantamount to a reference to Scripture.

The last two references to Moses cast him in a new role. He is neither the writer of the Written Law, the first transmitter of a Sinaitic Oral Law, nor an exemplar. Rather he enacts (*יִצְוֶה*) ordinances for Israel. So it is the case with the rule that the people should read the Torah publicly on Sabbath, Monday, and Thursday during the morning service³⁴ and the rule that on each festival Israel should read a section of the Torah bearing upon the holiday.³⁵ We find here the beginning of the legislative process which feeds the Oral Law. These two rules were not received by Moses from Sinai; he initiated them himself. He, then, is the forerunner of the legislative courts of the later generations.

(3) General references to oral tradition

Twice Maimonides uses the expression "they learned from the oral tradition" (*לִמְדוּ מִן הַתּוֹרָה הַשְּׂמוּעָה*). Had he known that an ordinance, decree, decision, or custom were the source, it seems unlikely that he would have used this expression. It appears to be a reference here to an open-ended oral tradition. The authority for such a tradition would be its earliest source. In the absence of other claimants Moses and Sinai are ascribed as that source in this paper.

We find the expression used as authority for the interpretation that prayer is meant by the "service" referred to in "And you shall serve the Lord your God" (Exod. 23:25).³⁶ If we are correct in ascribing a Sinaitic reference to the expression, we can say that Scripture plus Sinaitic Oral Law yields the precept to pray to God daily. This is a partial answer to our above queries concerning the interpretive element that intervenes between Scripture and precept.³⁷

"They learned from the oral tradition" is also the authority for the rule designating where the Tefillin are to be placed and bound.³⁸ Since the construction and writing of Tefillin are supported by "a rule that Moses received from Sinai", it is not surprising that the manner of wearing them should have a similar origin. The difference between "a rule received by Moses from Sinai" and what "they learned from the oral tradition" is not clear.

The other expression referring to a time immemorial is "a tradition we have" (מִדְּבַר אֲבוֹתֵינוּ). This appears but once and is not used as direct authority for a rule. It is "a tradition we have" that the patriarch Jacob replied, "Blessed be the name of His glorious sovereignty for ever and ever" in thankful response to his sons' declaration: "Hear, O Israel, the Lord is our God, the Lord alone."³⁹ "A tradition we have" is used here to authenticate the historical background. It is not the

authority for Israel's imitation of Jacob's words in their services. The imitation is described as following from the history (*לפיכך נבאנו כל ישראל לאמר*). What Maimonides means by this expression is also left unclear. Possibly it is an historic recollection of the people reaching back to pre-Sinaitic times.

b. Ordinances

(1) Of Moses

The Mosaic legislative roots of the Oral Law are discussed above.⁴⁰

(2) Of Ezra and his court

The most frequently cited post-Mosaic authority is Ezra and his court (בית דין). They are responsible for having enacted (הדין) ordinances establishing (1) the Eighteen Benedictions in their present order;⁴¹ (2) the morning, afternoon, and additional services corresponding to the daily sacrifices;⁴² (3) the daily Evening Services;⁴³ (4) the Neilah Service on the Day of Atonement;⁴⁴ (5) public reading of the Torah in the Sabbath Afternoon service;⁴⁵ (6) that on Monday and Thursday three people read from the Torah a total of no less than ten verses;⁴⁶ (7) that the Curses in Leviticus be read the week prior to Shavuot and those in Deuteronomy the week prior to Rosh Hashanah;⁴⁷ (8) the blessings before and after the Shema both in the evening and in the morning;⁴⁸ and (9) that one who has had a seminal emission does not read the Shema until after taking a ritual bath.⁴⁹ Ezra's court is mentioned in connection with all of these ordinances except those concerning the Curses and the Monday and Thursday Torah readings. In these latter cases Ezra alone is mentioned. We, thus, find Ezra as a prime authority for the rules concerning the reading of the Shema, the recitation

of the services, and the reading of the Torah; he is given no credit at all for the rules concerning the Tefillin.

The issue of non-obligatory ordinances is a puzzling one. The evening service, although ordained by Ezra and his court, is regarded as technically non-obligatory.⁵⁰ We learn, too, that the above ritual bath requirement never gained widespread acceptance or practice, and so became obsolete.⁵¹ This possibility of non-obligatory or ineffective legislation by the courts suggests that the new matter introduced into the Oral Law by this means was not solely dependent upon court action. The people's acquiescence or acceptance in practice appears necessary to confirm the legislation's place in the Oral Law. Thus, the requirement of the ritual bath, unconfirmed by the practices of the people, was an enactment in vain. On the other hand, the ordinance establishing the evening service, while retaining a technically non-obligatory status, was confirmed by the people and came to be universally practiced in Israel.

(3) Of subsequent sages

Those who enacted ordinances subsequent to Ezra and his court are referred to in a variety of ways. We learn that "a Court afterward" (after Ezra's time) extended the aforementioned ritual bath requirement to the recitation of a service.⁵² "Sages and prophets" ordained the proper times for the services.⁵³ Since it was Ezra and his court who first ordained that there be services

corresponding to the sacrifices,⁵⁴ this last ordinance was either contemporaneous with or after the time of Ezra. Who the "prophets" were is unclear. In his Introduction Maimonides uses a similar reference; it was the "sages and prophets" in each generation who made decrees protective of the Torah. Rabban Gamliel and his court receive credit for having ordained the addition of the petition concerning heretics as the nineteenth benediction in the Tefillah.⁵⁵

With all the remaining ordinances we find simply that "the Sages ordained" (הסדירו) them. At the beginning of Chapter VII of the section Laws Concerning Prayer, we read this sweeping generalization: "When the Sages ordained these matters of prayer (דבריו), they (also) ordained other benedictions to be recited daily. These are they...."⁵⁶ There follow the benedictions recited for various daily acts, such as retiring for the night, waking in the morning, dressing, washing, relieving oneself, etc.⁵⁷ It is unclear what is meant above by "these matters of prayer" which were ordained by the sages. The most probable referends are the matters (דבריו) in the chapters preceeding Chapter VII. If this be so, Maimonides is here giving the authority of an ordinance to the five indispensable requisites for the Prayer: (1) cleanliness of the hands, (2) covering of the body, (3) cleanliness of the site of one's recitation, (4) absence of distractions and (5) concentration of the mind.⁵⁸ Also deemed ordained

by the sages would be the eight points regarding prayer that one should be heedful of, even though they are not absolute requirements: (1) standing position, (2) facing the Temple, (3) correct body posture, (4) adjusted clothing, (5) proper site, (6) properly modulated voice, (7) proper genuflection and (8) proper prostration.⁵⁹ Perhaps also to be included on the list of ordinances would be miscellaneous rules about the where, when and how of reciting a service.⁶⁰

Two further rules are specifically attributed to an ordinance of the sages: the benedictions recited in connection with the reading of Psalms prior to the morning Shema,⁶¹ and the single summary benediction repeated aloud by the reader at the Friday evening service after the congregation has recited the Seven Benedictions in a low tone.⁶²

c. Decrees

In his Introduction Maimonides relates that from the two Talmuds, and the Tosefta, Sifra and Sifre we learn of the matters which the sages and prophets decreed (1736) in each generation. Their purpose in making decrees was to make a protective fence for the Torah (סימ דתורה).

Thus, "they decreed" that once the time for the afternoon service has arrived certain activities should not be engaged in, e.g. getting a haircut or going to a bathhouse.⁶³ The activities are prohibited lest they delay one so long that the time for the service elapses. Maimonides further explains that the prohibition was not made applicable to bathing and hair cutting at the time of the morning service because the usual practice of the people was to engage in these activities in the afternoon and not in the morning.⁶⁴ He seems to be telling us this decree operates at the time of the greatest risk of violation of the law. The timeliness of the afternoon service was in greater danger than that of the morning service. This would confirm the protective character of a decree. We should recall, however, that, according to Maimonides, it was the Torah which the decrees protected. By Maimonides' reference to the morning service he infers that it is the timeliness of the afternoon service that is protected. The timeliness of the services was not a matter

prescribed by Scripture; it was prescribed by an ordinance of the sages and prophets.⁶⁵

The precept from the Torah which is involved here is to pray to God daily; the time is not specified.⁶⁶ It might be argued that delay of the recitation of the afternoon service by one who had not recited the morning service would have put him in jeopardy of not only an untimely afternoon service but of no service at all on the particular day. The above decree, so considered, would then be a true fence about the precept to pray to God daily. Either Maimonides did not mean the precepts when he said "fence about the Torah" or else he added a superfluous and incorrect explanation for the decree's non-applicability to the morning service.

The decree discussed above is the only one mentioned in the material studied. The distinction between decree, as a fence, and ordinance as a general enactment, appears to be borne out. None of the rules acknowledged as ordinances are specifically protective of another rule as is the above decree.⁶⁷

d. Decisions and miscellaneous teachings of the rabbis

In the twenty-one chapters of text studied no specific mention is made of a judgment (*ge'en* or *l'a*) or of the process of deciding (*l'a*). Either this strand of the Oral Law did not contribute to the "daily commandments", or else its contribution remains unarticulated.

On the other hand, the expression "they said" (*l'v'v*) appears seven times. It either stands alone or is linked with the sages. Its force is not the same in all cases. It is used to introduce an anecdote about Rav's use of Tefillin,⁶⁸ to persuade the reader to wear the Tefillin during his reading of the Shema,⁶⁹ and to advise a three day rest after a journey before reciting a service.⁷⁰ In these cases there is no legal force intended. In other cases the expression implies authority for an interpretation of scripture,⁷¹ a leniency in the time for the afternoon service when the day before Passover falls on Friday,⁷² the midnight time limit for the recitation of the evening Shema,⁷³ (possibly a decree is implied here), and a requirement for a ritual bath.⁷⁴

There remain but two expressions of rabbinic thought not yet mentioned. "They set" (*l'v'v*) that one should take leave of prayer in the same manner as one takes leave of a king. This is the explanation for the bowing to the left and right at the conclusion of a service.⁷⁵

"The sages lauded" (1070) one who reads Psalm 145 through the end of the Psalter daily.⁷⁶ "Setting" as distinguished from "lauding" appears authoritative and not very different from ordaining.

e. Customs and practices of the rabbis and their times

We turn now to the fifth strand of the Oral Law -- the customary practices of the successive generations which were recognized by the courts. The customs of the Jews not clearly assignable to the Talmudic and pre-Talmudic periods are discussed as "Post Talmudic sources" further on in this paper.⁷⁷

Some customs are referred to in order to lend support to a rule. Others are used to illustrate a rule. In the material before us it is often impossible to judge which was Maimonides' intent. While in his Introduction he makes reference to the participation of the courts of the successive generations in somehow confirming the practices of the people, in the text itself there is no mention of the courts having done so. Thus, in some cases, the reader is on his own to determine whether to imitate the practices of his ancestors or merely to appreciate and be inspired by their example.

Because no reliable guidelines have been found by which a clear distinction between authoritative and explanatory customs may be made, the discussion to follow will leave many cases unclassified on this point.

The clearest use of custom as historical explanation is found in the two cases where formal rabbinic action is justified by it. We are told that the sages ordained that

on Friday evening, in contrast to the rule on other evenings, the reader does repeat the Amidah aloud by reciting a single benediction summarizing the seven which the congregation had recited in soft tones. The addition of such a repetition is explained by the fact that on this night, especially, most of the congregation attended services, and there were always those delayed in arrival who could not complete their recitation with the congregation. Consequently, they would be left alone in the synagogue to complete it after the others had departed. This subjected them to danger. The summary benediction was added to delay the rest of the congregation until the late comers completed their recitation, thus enabling them to leave with everyone else.⁷⁸ The other instance of custom explaining court action concerns the decree prohibiting haircuts and baths once the time for the afternoon service had arrived. We are told that the reason that the decree does not apply to the morning service is that it was the people's usual habit to enter barbershops and bathhouses in the afternoon and not in the morning.⁷⁹

"And the ears of all the people were attentive to the book of the Torah" (Neh. 8:3), records one of the earliest customs found in the material studied. Its force, when cited in connection with the rule requiring attentive silence during public Torah readings, appears authoritative.⁸⁰ As in many other cases, however, we are not informed of the link between the custom and the rule.

The presence of a translator who translates verse by verse during the public Torah readings is described as a practice going back to the days of Ezra.⁸¹ Maimonides proceeds on the assumption that such practice is the rule for his own time.

The remaining practices are mentioned as those of the rabbis rather than of the people. It seems that Maimonides mentions them out of respect for the example they set rather than as a model which the Jew is duty bound to imitate. In connection with the requirement of cleanliness for the site of the recitation of prayer, we are told that the great sages (גדולי חכמים) never used to pray in a house in which there was beer or strong sauce that had turned bad.⁸² The ancient saints (חסידים קדושים) used to tarry an hour before and an hour after the service and would take an hour in its recital. They thereby gained concentration of the mind (כוונה) before the service and indicated afterwards that the duty to recite the service was not a burden which one carries to the place of worship and casts off there.⁸³ In connection with the propriety of one's dress during prayer, we are informed that the practice of all the sages and their disciples was not to pray unless wrapped (with a tallis).⁸⁴ In support of a general statement that a house of study is superior to a synagogue, Maimonides tells us that the great sages (גדולי חכמים) used to recite the service only at the place where they were engaged

with the study of Torah, as long as a congregational service were possible there. This was the case even though there were many synagogues in their city.⁸⁵

The acts of but two individuals are singled out by Maimonides. Hillel the Elder is quoted as having said in regard to his Tefillin, "These belonged to my mother's father." This is related in connection with the presumption that properly made Tefillin whose coverings remain sound are presumed to remain proper.⁸⁶ It is related of Rav, the disciple of Judah ha-Nasi, that they said of him that he was never seen to go four cubits without Torah, Tzitzis or Tefillin. By this example Maimonides urges the reader to wear Tefillin all day long.⁸⁷

Maimonides' mention of customs in pre-Gaonic times contains but two further references. In both instances the practice is one in opposition to the law. We are told that Ezra's ordinance requiring a bath by one with an emission before recitation of the Shema never became widely accepted in Israel. It failed because most people were not strong enough to follow it.⁸⁸ Here the practice of the people prevails to annul the legislation of Ezra's court. In the course of his description of the proper placement of the Tefillin, Maimonides tells us that one who wears the Tefillin of the hand upon the palm of his hand or that of the head upon his forehead follows the practice of the Sadducees.⁸⁹ Here custom is used as a negative example.

3. Post-Talmudic sources

a. Teachings of the Geonim⁹⁰

After completion of the Babylonian Talmud, the courts established in the several countries where Jews lived and acted only for those within their respective jurisdiction.⁹¹ Thus, according to Maimonides, we can no longer speak of one authoritative body speaking for all Israel. Consistent with this position is the fact that in all three cases where the Geonim are specifically mentioned, Maimonides says "they taught" (1717), instead of the more authoritative "they ordained" or "they decreed". Thus, "several Geonim taught" that it is forbidden to read the Shema if one's hands are soiled from having gone to the toilet.⁹² "A few Geonim taught" that, as between the major and minor afternoon services only the major afternoon-afternoon service may be the voluntary one when both are recited.⁹³ In both of these cases it is clear that the advice of the Geonim does not express the universal practice of Israel.

"One of them taught," that a voluntary service is forbidden on Sabbath and holidays since on such days only obligatory and not free-will offerings were brought.⁹⁴ This verb "to teach" is used only one other time in the material studied. It is in connection with the rule that if one has both the afternoon and additional services to recite, he should recite the afternoon service first and then recite the additional service. "There is one who

teaches", we are told, that this is not to be done in congregational worship to avoid misleading others (as to the normal order of the services).⁹⁵ It is reasonable to assume that the authority who "teaches" here is also a Gaon. In both of these latter cases it is only a single Gaon's teaching that Maimonides cites as his source.

b. Customs and practices in post-Talmudic times

Maimonides uses a variety of expressions to describe how widespread a practice was in his time. He refers to all Israel,⁹⁶ to those in particular countries,⁹⁷ to those of a certain city,⁹⁸ and even to individuals.⁹⁹ The designations are, however, imprecise. Thus, in one case we read "It is the widespread custom in all Israel" (*בְּכָל יִשְׂרָאֵל*) that the Torah reading cycle is of one year duration. In the same paragraph we read "There are those who complete the Torah in three years, but such is not the widespread custom."¹⁰⁰ By "widespread custom" (*מִשְׁכָּל הָעָם*) Maimonides does not evidently refer to the universal practice in Israel. Since post-Talmudic custom is so tenuous an authority, in any case, it would profit us little to differentiate between the more and the less widespread practices. We shall take up the customs according to their subject matter. That Maimonides claims for a religious observance no greater authority than that of current practice, indicates that such observance is not absolutely settled in his time. In many cases he is very clear in recognizing the leeway for customary practice to differ.

The sequence and content of services is one area where variation in practice was allowed. Maimonides relates the customs regarding the addition of certain benedictions into the service during the Ten Days of

Repentance,¹⁰¹ the recitation of both the major and minor afternoon services,¹⁰² the procedures concerning the rite of "falling upon the face" performed at the conclusion of a service,¹⁰³ the sequence after the Torah reading between Kaddish and Maftir,¹⁰⁴ the precedence of a Cohen over non-Cohens in reading the Torah,¹⁰⁵ and the readings of those who rise early to read Torah.¹⁰⁶ In this latter case we find stated "Everything is according to the custom."
(א ד נ ו ' ע ס נ ו).

In reference to the various benedictions to be recited upon retiring, rising, dressing, washing, etc., Maimonides relates that "in most of our cities" the people have the custom of reciting all eighteen such benedictions consecutively in the synagogue. They do so whether or not there are some which they are not obliged to recite. "Such is error and it is not proper to act so," advises Maimonides, on the ground that one should not recite a benediction unless he is obligated to do so.¹⁰⁷

The second area of observance in which custom is discussed is that of the Torah and Haftarah readings. The Code tells us the customs with regard to the one and three year Torah cycles,¹⁰⁸ and the various readings for special Sabbaths,¹⁰⁹ Sukkot,¹¹⁰ Rosh Hashonoh,¹¹¹ Passover,¹¹² and for the Sabbaths before and after Tisha B'Av.¹¹³ ✓
Whether or not the reading of the Curses in Deuteronomy is read by a single reader is open to choice, but the general

custom had become to have but one reader read that entire section.¹¹⁴

The flexibility of the law is well illustrated by the recognition the Code gives to local custom in the area of preparation for prayer. With regard to the general duty to adjust one's clothes prior to prayer, we are told, among other things, that one should not stand in prayer barefoot "if it is the local custom that one does not stand in the presence of great men except with shoes on."¹¹⁵

The custom in Spain and Shinar (Iraq) that certain persons are to take a bath before prayer is related in the face of a general rejection of that requirement elsewhere.¹¹⁶

The respect with which synagogues and houses of study are to be treated is also implemented in various ways. In Spain and the West (Morocco), in Babylon and in the Holy Land it is customary to kindle lamps in the synagogues and to spread mats on the floor upon which to sit. In Christian countries, we are told, the people sit on chairs.¹¹⁷

Differing local custom is recognized in the application of the decree regarding activities not to be begun once the time for the afternoon service had arrived. Among the proscribed activities is sitting down to a meal. A qualification to the rule is that if the activity had already begun when the time for the service arrived, one completes the activity and then recites the service. When, asks Maimonides, is a meal considered begun? "For those

in Palestine, when the hands have been washed; for those in Babylonia, when the girdle has been loosened.¹¹⁸

The construction of the Tefillin is one further area where custom served to fill in details not prescribed by the pre-Gaonic authorities. There were customs with regard to the kind of hair used to tie up the parchments,¹¹⁹ the sinew used to separate the compartments of the Tefillin of the hand,¹²⁰ the number of stitches on each side of the boxes,¹²¹ and the use of raw hide for the construction of the boxes.¹²²

There are only two appearances of the expression "they followed the practice" (היו נוהגין) not mentioned heretofore in either the section on customs of the rabbis or in this section on post-Talmudic customs. The expression introduces the practice of reciting "Blessed be the name of His glorious sovereignty forever and ever" in the Shema,¹²³ and that of reciting the evening service.¹²⁴ Both practices appear to be universally accepted throughout Israel, although the date of their acceptance is not specified.

aloud. This is to save the congregation an inconvenience.¹²⁸
In both of these first person opinions, Maimonides introduces
a leniency into the law.

This completes our discussion of the authorities
in the Mishneh Torah.

RATIONALE

The original premise of this paper was: since a code could be written to include nothing extraneous to the rules of law themselves, an analysis of any extraneous material would give insight as to how the codifier sought to present the legal tradition. Thus, the first dichotomy drawn was that between the recital of injunctions and all statements or descriptions which were only adjunct to such injunctions. From this latter extraneous material we separated out those statements whose purpose appeared to be that of lending authority or support to the rules. Thus, the second dichotomy drawn was between the authoritative and non-authoritative extraneous material. The authoritative matter has been dealt with in an exhaustive manner in the previous section of this paper. We now turn to that which is non-authoritative. It is here labeled "Rationale". Included in our discussion shall be such matters as the historical background, the purpose, and the usefulness of the rules. The treatment here will not be exhaustive. Specifically omitted are the occasions when Maimonides is answering the question, "How do we fulfill this rule?" This is because the answer is most often either an example of conduct or an elaboration of specifics in terms of other rules. To pursue the chain of answers would involve us in

the relationships among a chain of rules. To articulate Maimonides' matrix of relationships between rules would be a valuable subject for a thesis, but it is not the undertaking of this paper. We shall avoid the question "how?", and emphasize the question "why?". What, according to the codifier, is the purpose of the rules other than that of carrying out other rules in more specific detail? In our answers we shall be selective in choosing illustrative examples. No attempt at a complete cataloguing of purposes will be made

The reader's attention to the Table of Contents headings will apprise him of the areas of rationale to be discussed. These areas were those of which the material studied gave most frequent example.

A. Historical Explanations

Maimonides uses historical references in basically two different ways. One is to explain the conduct enjoined upon us as somehow imitative of conduct of our ancestors in years past. The other way is to explain the background of a rule, that is, the circumstances and needs of the people, which motivated a court to take remedial action by enacting the rule.

We have already discussed the customs and practices of the past when we dealt with them as authority.¹²⁹ Only those references to historical example not mentioned heretofore will be treated in this section. All of these involve the comparison of prayer services to the Temple sacrifices. Thus, we are told that the morning and afternoon services correspond to the morning and afternoon daily offerings; the additional service corresponds to the additional offering. This was the rationale behind the ordinance of Ezra and his court establishing such services.¹³⁰ Since portions of the afternoon offering were being consumed throughout the night, as it is said, "This is the law of the burnt offering; this is that which goes upon its firewood upon the altar all night...." (Lev. 6:2), Ezra and his court ordained the evening service also.¹³¹ In setting the time for the (minor) afternoon service at nine and one half hours after dawn on, Ezra was but using the afternoon daily sacrifice as his model; that was the time of its being offered up.¹³²

Since it was the ancient practice to slaughter the afternoon sacrifice at six and one half hours after dawn when the day before Passover fell on Friday, the sages said that one who prays after six and one half hours on such a day fulfills his obligation.¹³³

The remaining historical analogies between prayer and sacrifice involve comparisons with the free will offerings. A service recited voluntarily in addition to those one is obligated to recite is likened to the bringing of a free will offering. Consequently, one must introduce something new in at least one of the intermediary benedictions.¹³⁴ On the other hand, a congregation may not hold a voluntary public service in addition to those prescribed because the community as such never offered free will offerings.¹³⁵ An individual may not recite the additional service (Musaf) twice, once as obligatory and once as voluntary, because the additional sacrifices were never brought as free will offerings.¹³⁶ Since free will offerings were never brought on Sabbath and holidays, one of the Geonim taught that a voluntary service is forbidden on such days.¹³⁷

Turning now to the use of history as the background of legislative action, we find a rather full explanation for Ezra's ordinance which established the Eighteen Benedictions. There was an acute historical need for the ordinance. Neither the frequency, form nor time of prayer is prescribed in the Torah.¹³⁸ Consequently, prior to Ezra's time, each

individual prayed according to his own ability.¹³⁹ When the Israelites went into exile in the days of Nebuchadnezzar, they became intermingled with the Persians, Greeks, and other peoples. The language of their children became so corrupted that they were no longer able to express their needs or recount the praises of God in a pure Hebrew.¹⁴⁰ When Ezra and his court realized this condition they ordained the Eighteen Benedictions in their present order. The object was to enable all Israel, including those who were inarticulate, to learn and use appropriate prayers in an orderly form.¹⁴¹

Later, in the days of Rabban Gamliel, Israel suffered vexation from an increased number of heretics. When Rabban Gamliel realized that a solution to this problem was Israel's most urgent need, he and his court ordained the incorporation of a nineteenth benediction into the prayers. This enabled all Israel to petition God for the destruction of the heretics.¹⁴²

The rule that a scroll of the Torah, the Tefillin and a Mezuzah must all be written in Assyrian script (square Hebrew characters) also has an historical background. It had been permissible to write scrolls of the Torah in Greek characters also. But the Greek script became forgotten, corrupted and lost. Consequently, the same script for all three was required by Maimonides' time.¹⁴³

The last of the historical explanations involves the repetition of the summary benediction by the reader at

the Friday evening service. This was discussed previously.¹⁴⁴

B. To Benefit the Community

The benefit of the community is a consideration which explains several of the rules concerning prayer. It takes three different forms: (1) the bestowal of an advantage upon the community, (2) the avoidance of an inconvenience to the community, and (3) the rendering of honor to the community. "Community" is used here to refer to the religious community of Jews and so is synonymous with "congregation" in this discussion.

The positive benefits accomplished through the law are underlined in the following enumeration. We find that a platform (*דוכן*) is erected in the center of the sanctuary for purposes of Torah readings and sermons so that all the congregation may hear.¹⁴⁵ There is a translator present during public readings of the Torah so that the people might understand the reading.¹⁴⁶ The reader repeats the Amidah out loud in order to enable those who did not know how to say it for themselves the first time to fulfill their obligation by listening and responding "amen."¹⁴⁷ The Friday evening repetition of a summary benediction was instituted in order to delay the congregation so that latecomers may complete their recitation and leave with everyone else.¹⁴⁸ The Sabbath, Monday and Thursday morning public Torah readings were ordained so that three days should not elapse without the people hearing Torah; and the Sabbath afternoon reading is for the benefit of those who would otherwise spend the

day vacuously.¹⁴⁹ A synagogue built in a city (as distinguished from one in a village) may never be sold and disbanded by the local residents because a city synagogue is built to serve as a place of worship for whomever may come into that district and so belongs to all Israel.¹⁵⁰

The avoidance of an inconvenience to the congregation (usually expressed תקנת ה'תק"ו) calls for certain accommodations in the worship service. One recites his prayer in a whisper, allowing himself but not others to hear the words, so that other congregants might not be disturbed by his loud praying.¹⁵¹ If the reader makes an error in his own whispered recitation of prayer (past the first three benedictions), he does not recite it to himself a second time. Rather he relies upon his public repetition to satisfy his obligation so as not to inconvenience the congregation.¹⁵² The scrolls of the Torah are not rolled (to the appropriate place) at a public worship service, and if it is necessary to read two separated sections, two scrolls are used. These rules are to avoid the congregation being put to the trouble of remaining standing while the scroll of the Torah is being rolled.¹⁵³ While ordinarily workmen working on the top of a tree should descend to recite their prayers, if they are on an olive tree or fig tree they may remain where they are, because descending from such trees entails excessive trouble.¹⁵⁴

The "honor of the congregation" (ה'תק"ו ה'תק"ו) is given as the reason for three rules. It is apparently

considered a self-evident explanation by Maimonides, as he does not elaborate upon it. Thus, we find that anyone whose beard is not full grown should not serve as reader at public worship because of the "honor of the congregation."¹⁵⁵ For the same reason a woman should not read from the Torah at a public service,¹⁵⁶ nor should the reading be from scrolls of the individual books of the Pentateuch.¹⁵⁷ The last example of honor or respect concerns that due any adult. While a minor may serve as translator to an adult who reads from the Torah, the honor of an adult precludes his serving as translator if the reader is a minor.¹⁵⁸

C. To Teach and to Motivate Conduct

There are only two rules given an expressly pedagogic purpose. Women, servants, and minors are exempt from the precept of reciting the Shema. Nevertheless, children are taught to read it and its benedictions at the proper times in order to train them in the performance of their religious duties.¹⁵⁹ Similarly, if a minor knows how to care for Tefillin, his father should buy them for him in order to train him in their use.¹⁶⁰

There are other rules whose purpose is to motivate us to praiseworthy conduct. We are told that the afternoon Torah reading on the Day of Atonement (concerning incestuous relations) has been so prescribed so that anyone who is guilty of any of those offenses will be reminded, become ashamed and turn in repentance.¹⁶¹ If grass has sprung up in the ruins of a synagogue or house of study, we are instructed to pluck it up and leave it there, so that people will see it and be stirred to rebuilt the ruined edifices.¹⁶² Maimonides urges his readers to endeavor to wear Tefillin all day long, for as long as they are on a man's head and arm, "he is humble and God-fearing, is not drawn into frivolity or idle talk, does not dwell on evil thoughts, but instead occupies his mind with thoughts of truth and righteousness."¹⁶³ An unusual example of the attempt to motivate conduct through ritual observance is the obsolete ritual bath requirement for the recital of the Shema. One who had an

emission was required to take the bath before he read the Shema. Maimonides tells us that the purpose of the ordinance was to discourage scholars from having relations with their wives too frequently.¹⁶⁴

D. To Promote a Proper State of Mind

The reading of the Shema, the recitation of the prayers, and the wearing of the Tefillin each have prescribed states of mind which are to accompany the act. One must concentrate upon the first verse "Hear O Israel...." in his reading of the Shema or else he does not fulfill his obligation.¹⁶⁵ "All prayer without concentration of the mind (דב"ד) does not count as prayer."¹⁶⁶ The wearer of Tefillin must not let his consciousness of them wander.¹⁶⁷

Many rules are explained as prescribing the way to put oneself in the proper frame of mind or to keep oneself there. We are advised to sit a while prior to a worship service in order to concentrate one's mind, and then to sit a while afterward before departing, so that the prayer not be regarded as a burden which one carries to the place of worship, casts off there, and then leaves behind.¹⁶⁸ Two services should never be recited one immediately after the other; one should pause between them in order to obtain the proper frame of mind toward the second.¹⁶⁹ One under the influence of drink should not even recite a service because of his inability to attain the proper concentration of mind.¹⁷⁰ Nor, for the same reason, should one attempt to pray immediately after having engaged in frivolity, idle conversation, quarreling, outbursts of anger, or legal discussions involving profound contemplation.¹⁷¹ One should not hold Tefillin, money or vessels in his hands, nor a

Torah in his arms while praying because they are a distraction.¹⁷² One is excused from alighting from an animal for prayer to avoid his being distracted by it.¹⁷³ On Rosh Hashanah and Yom Kippur of the Jubilee Year, even one who knows how to recite the special services may rely upon the reader's repetition, "because the benedictions are long and even most of those who know them are not able to concentrate their minds as can the reader!"¹⁷⁴

Turning to the rules regarding one's state of mind while reading the Shema, we find that one walking must stand and one working must pause while reciting the first verse, "so that their reading not be perfunctory."¹⁷⁵ For the same reason one should neither wink, signal with the lips or point with the fingers while reciting the Shema even though should he do so his obligation is fulfilled.¹⁷⁶ One bereaved of a relative for whom he is to observe mourning is exempt from the obligation until after the burial, because his mind is not regarded as clear enough to read it.¹⁷⁷ A bridegroom who marries a virgin is exempt until he consummates the marriage, his mind being pre-occupied with finding evidence of virginity, and one whose mind is pre-occupied with a religious duty is exempt from reading the Shema.¹⁷⁸

With regard to Tefillin we find that one who is in pain or whose mind is not calm and composed is exempt from the precept, for the wearer is forbidden to allow his

consciousness of them to wander.¹⁷⁹ For the very purpose of preventing one's mind from wandering, we are advised to touch the Tefillin (frequently) all the while we wear them.¹⁸⁰ If while writing either a scroll of the Torah, a Mezuzah or Tefillin, one writes one of the Names of God without express intent ($\int N \in \delta$), the article is unfit. While writing such name therefore, even if the king of Israel greets one, one does not respond.¹⁸¹

E. To Prevent an Unfavorable or Incorrect Public Impression

Certain acts are proscribed simply because they might mislead others and leave a wrong or poor impression. This rationale is used to explain certain strictures upon conduct during a worship service. During the Torah service the reader is not allowed to prompt the translator, so that it not be said ($\text{לֹא יִתְּנוּ עֵצָה$) that the translation is written in the Torah.¹⁸² Should no Levite be present, the Cohen who read the first section also reads the second section. Another Cohen does not read after the first, lest the people should say that the first was unfit and therefore the second was called up. So too, one Levite does not read after another.¹⁸³ One person should not read the same section ($\text{לֹא יִקְרָא שְׁנֵי מִן הַסֵּפָרִים$) from two different scrolls of the Torah, lest the people say that the first scroll was defective.¹⁸⁴

The general rule is that if one has both the afternoon and additional services to recite, he should recite the afternoon service first and then the additional service. One authority taught that this sequence is not to be followed with congregational worship so that the people not be lead to err (as to the normal order of service).¹⁸⁵

A clear and interesting example of concern with public appearance is found in the explanation for the rule dealing with walking past the rear of a synagogue during congregational worship. One is forbidden to do so unless

(1) he is carrying a burden, (2) the synagogue has two entrances on two different sides, (3) there are two synagogues in the city, or (4) he has Tefillin on his head. The first exception is left unexplained. In the second an observer might say "Perhaps he will enter at the other door." In the third one might conjecture that perhaps he is going to the synagogue he usually attends. In the last case the Tefillin prove that he is one who follows religious duties and is not a neglecter of prayer.¹⁸⁶

F. To Prevent Miscellaneous Mishaps

Some restrictions upon conduct have everyday practical explanations. They are the things which ordinary prudence would dictate under the circumstances. Thus, there is a series of rules concerning what is to be done with one's Tefillin upon entering a latrine. Most all of these are explained by the practical considerations of preventing their being stolen on the outside or soiled on the inside.¹⁸⁷ Neither a scroll of the Torah, Tefillin nor a Mezuzah are to be bought from gentiles for more than their value, so as not to accustom them to steal these articles or take them by force.¹⁸⁸ A scribe of a Torah, Tefillin or a Mezuzah is not to be fully believed if he claims that he did not write the names of God with the proper intent; this is to avoid an injury to the owner which might be but the result of the scribe's deceit.¹⁸⁹

A general precaution against mishap is the explanation for several other rules. We are enjoined not to demolish a synagogue in order to build another on its site nor on another site. Rather we first should build the new one and only then destroy the old.¹⁹⁰ Upon coming home from work one should not delay one's recitation of the evening service until after eating or napping, lest he become overcome by sleep and sleep the night through without reciting his prayers.¹⁹¹ A midnight limit for the recitation of the evening Shema was prescribed as a precaution lest one neglect its recitation

before dawn.¹⁹² Similarly, a limit upon one's activities once the time for the afternoon service has arrived had as its purpose the avoidance of a delay which might cause one to neglect the service.¹⁹³ Even the manner of replacing one's Tefillin in their bag is prescribed with the purpose of avoiding the predicament of reaching in and taking out the wrong one first. Such a mistake would require one to put it aside, and it is forbidden to set aside one precept so as to pass on to another.¹⁹⁴

Of interest is one precaution, the reason for which Maimonides does not specify. He tells us that one who has put on Tefillin prior to sunset is permitted to leave them on after it gets dark, even all night long. He advises, however, that this is not to be taught publicly, "rather we teach everyone (כָּל) that they should not wear Tefillin at night but should remove them before sunset.¹⁹⁵ Evidently, Maimonides sought to prevent some risk involved when Tefillin are worn at night. Perhaps it was that of falling asleep with them on.

While this does not exhaust the variety of explanations given by Maimonides, the most frequent types have now been discussed. Other rationales hinge upon the issues of nakedness,¹⁹⁷ fasting,¹⁹⁸ sanctity,¹⁹⁹ heresy,²⁰⁰ ignominy²⁰¹ and acceptability of prayers.²⁰²

CONCLUSION

This study has not lead to any grand conclusions. It has shown that there is a precise correspondence between the structure of the authorities which Maimonides outlines in his Introduction and his treatment of the authorities in the text. The codifier uses the vocabulary of that structure in a precise way. Consequently, careful reading of the Code bears information about the sources of the law which would be missed in a cursory reading.

The presentation of explanations, as that of the authorities, reveals to this writer little bias. The codifier has an interest in making the rules of the tradition appear grounded, whether that be in Scripture, historical circumstance, practical needs or everyday prudence. There is no overriding rationalization of ritual as a means to moral conduct. There is no appeal to abstract reason or philosophical concepts. It might be said, that where reasons for rules were supplied, they favored a practical rather than theological or philosophical bent.

It has been this writer's pleasure to work with a Hebrew text whose style is so easily comprehended, and whose presentation of ideas is so clear and appealing to one living some eight centuries after it was written.

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FOOTNOTES

Unless otherwise noted, all references below are to Maimonides' Sefer Ahavah; Hilchot Keriat Shema is designated "Shema", Hilchot Tefillah is designated as "Tefillah", and Hilchot Tefillin is designated "Tefillah".

1. Maimonides, Guide for the Perplexed, III, 2.
- 2 The place of the Palestinian Talmud, the Sifra, Sifre and Tosefta is left unclear.
- 3 Shema I 1
- 4 Tefillah I 1
5. Maimonides offers no explanation for prayer being a daily obligation.
- 6 Supra p. 12
- 7 Tefillah V 5
- 8 V 6
- 9 VIII 2
- 10 VIII 2
- 11 VIII 6
- 12 VIII 5
- 13 XII 9
- 14 XI 2
- 15 XI 2
- 16 XI 2
- 17 XI 9
- 18 XI 11
- 19 Supra p. 11

20	<u>Shema</u>	I	3		
21		IV	8		
22	<u>Tefillin</u>	I	13		
23		IV	2		
24		IV	10		
25		IV	10		
26	<u>Tefillah</u>	I	6		
27		IV	6		
28		IX	7		
29	<u>Tefillin</u>	IV	26		
30	<u>Tefillah</u>	I	4		
31		XIII	6		
32	<u>Tefillin</u>	I	3;	III	1
33	<u>Tefillah</u>	IX	7		
34		XII	1		
35		XIII	8		
36		I	1		
37	Supra. p. 12				
38	<u>Tefillin</u>	IV	3		
39	<u>Shema</u>	I	4		
40	Supra, p. 24				
41	<u>Tefillah</u>	I	4		
42		I	5		
43		I	6		
44		I	7		

45	<u>Tefillah</u>	XII	1		
46		XII	1		
47		XIII	2		
48	<u>Shema</u>	I	5-7		
49		IV	8; <u>Tefillah</u>	IV	4
50	<u>Tefillah</u>	I	6		
51		IV	5; <u>Shema</u>	IV	8
52		IV	4		
53		III	1, 2		
54		I	5		
55		II	1		
56		VII	1	Note that דברי תפלות might mean "words of prayer" rather than "matters of prayer." It would then be referring back to Chapter I. The use of דברים (requisites) in IV, 1 and V, 1 appears to this author as the preferable referent.	
57		VII	1-6		
58		IV	1 et. seq.		
59		V	1 et. seq.		
60		VI	1 et. seq.		
61		VII	12		
62		IX	10, 11		
63		VI	5-7		
64		VI	7		
65		III	1, 2		
66		I	1		

- 67 Note that the midnight limit upon recitation of the Shema is not described as a decree or ordinance.
- 68 Tefillin IV 25
- 69 IV 26
- 70 IV 15
- 71 Tefillah I 1
- 72 III 2
- 73 Shema I 9
- 74 Tefillah IV 5
- 75 V 11
- 76 VII 12
- 77 Infra pp. 41 et. seq.
- 78 Tefillah IX 10, 11
- 79 VI 7
- 80 XII 10
- 81 XII 10
- 82 IV 9
- 83 IV 16
- 84 V 5
- 85 VIII 3
- 86 Tefillin II 11
- 87 IV 25
- 88 Shema IV 8; Tefillah IV 5
- 89 Tefillin IV 3
- 90 The Geonim are defined in Maimonides' Introduction as the post-Talmudic scholars.
- 91 See page 8 supra.

92	<u>Shema</u>	III	11
93	<u>Tefillah</u>	III	3
94		I	10
95		III	11
96		I	6
97		IV	6
98		XIII	19
99		VII	13
100		XIII	1
101		II	19
102		III	3
103		V	13-15
104		XII	20
105		XII	18
106		VII	10-13
107		VII	9
108		XIII	1
109		XIII	2
110		XIII	12
111		XIII	10
112		XIII	8
113		XIII	19
114		XIII	7
115		V	5
116		IV	6
117		XI	5

118	<u>Tefillah</u>	VI	6
119	<u>Tefillin</u>	III	8
120		III	11
121		III	10
122		III	15
123	<u>Tefillah</u>	I	4
124		I	6
125		VII	9
126	<u>Shema</u>	III	11
127		II	11
128	<u>Tefillah</u>	X	2
129	Supra pp. 35, 41		
130	<u>Tefillah</u>	I	5
131		I	6
132		III	2
133		III	2
134		I	9
135		I	10
136		I	10
137		I	10
138		I	2
139		I	3
140		I	4; citing Neh. 13:24
141		I	4
142		II	1
143	<u>Tefillin</u>	I	19

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144	Supra, pp. 35-36		
145	<u>Tefillah</u>	XI	3
146		XII	10
147		IX	3
148		IX	11
149		XII	1
150		XI	16
151		V	9
152		X	2; see also X 12
153		XII	23
154		V	8
155		XIII	11
156		XII	17
157		XII	23
158		XII	11
159	<u>Shema</u>	IV	1
160	<u>Tefillin</u>	IV	13
161	<u>Tefillah</u>	XIII	11; see also XIII 5, 18
162		XI	11
163	<u>Tefillin</u>	IV	25
164	<u>Tefillah</u>	IV	4, 5
165	<u>Shema</u>	II	1
166	<u>Tefillah</u>	IV	15
167	<u>Tefillin</u>	IV	13
168	<u>Tefillah</u>	IV	16

169	<u>Tefillah</u>	X	15
170		IV	17
171		IV	18
172		V	5
173		V	2
174		VIII	10
175	<u>Shema</u>	II	3, 4
176		II	8
177		IV	3
178		IV	1
179	<u>Tefillin</u>	IV	13
180		IV	14
181		I	15
182	<u>Tefillah</u>	XII	11
183		XII	19
184		XII	23
185		III	11
186		VI	1
187	<u>Tefillin</u>	IV	17-20
188		I	13
189		I	18
190	<u>Tefillah</u>	XI	12
191		VI	7
192	<u>Shema</u>	I	9
193	<u>Tefillah</u>	VI	5, 6
194	<u>Tefillin</u>	IV	8

195	<u>Tefillin</u>	IV	11
196		IV	15
197	<u>Shema</u>	II	7; III 7, 16
198	<u>Tefillah</u>	I	7; V 15
199		XI	20
200		X	3
201	<u>Tefillin</u>	III	14
202	<u>Tefillah</u>	VIII	1