

Obvious Laws, or Circumventing Qaraism: A Chapter in the Development of Maimonidean Jurisprudence¹

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Moses Maimonides's major halakhic works attempt, in different ways, to address the entirety of Jewish law. But while his *Commentary on the Mishnah*, *Book of the Commandments*, and *Mishneh Torah* treat many of the same topics, divergences between these works abound. This essay traces a Maimonidean argument that is deployed inconsistently in these three works, namely, that certain prohibitions that the Hebrew Bible appears to take for granted are nevertheless considered "scriptural" in status even though they go unmentioned in the text itself. Homing in on what I call the "obviousness argument" (based on Maimonidean terminology) sheds light on Maimonides's accounts of revelation to Moses and subsequent development of Jewish law, found in the *Commentary on the Mishnah*, *Mishneh Torah*, and elsewhere. This is because the obviousness argument addresses exceptions to Maimonides's general rules. Evidently, the borderline cases dealt with by the obviousness argument did not fit neatly into Maimonides's system. What is more, because Maimonides did not resort to the obviousness argument uniformly in his writings, the etiology and development of this idea are fairly apparent. And, perhaps most significantly, the obviousness argument may be a rare

- 1 In honor of Suzanne Last Stone, who taught her many students to "emphasize the importance of understanding law ... from an internal perspective and, especially, as a mental or imaginative activity"; "A Thing Imaginary," *JQR* 112 (2022): 626–30 (628). Unless otherwise noted, rabbinic and medieval texts derive from alhatorah.org, *ma'agarim*, and the Bar Ilan Responsa Project. Translations are my own. I thank Dana Fishkin, Rachel Furst, Maud Kozodoy, Daniel J. Lasker, and Hanan Mazeh for their assistance. Interventions from an anonymous reader proved especially helpful.

example of Maimonidean thinking that came close to—but ultimately circumvented—Qaraite jurisprudence.

Maimonides was the ultimate systematizer. But sometimes Jewish legal sources did not neatly fit his principles. The Maimonidean argument analyzed in this essay had a very narrow purview: it only affects four rules, and Maimonides may have even withdrawn one of its applications. Its significance, therefore, lies not with its broad applicability but with what it says about its author. Attention to Maimonides's reasoning lays increased emphasis on his still-underestimated innovations in scriptural exegesis and on his efforts to organize the law around coherent axioms.

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The classification of Jewish law into those laws that have a divine source—found in either the Written Torah or God's extra-scriptural revelation to Moses—and those that were later enacted by the rabbis, as well as the identification of scriptural sources for those in the first category, are hallmarks of Maimonidean literature.² These tasks were closely connected to Maimonides's definitions of the terms *biblical* and *rabbinic* (that is, *de-'orayta / min ha-torah* and *de-rabbanan / mi-divre sofrim*, along with several intermediate phrases).³ In the context of the cases analyzed in this essay, the operative categories are not *biblical* in the sense of "connected to scripture" and *rabbinic* in the sense of "disconnected from scripture."⁴ For Maimonides, what matters here is the nature of the four unique laws that he deemed scripture to have "taken for granted"—God, he insisted, revealed them to Moses orally; they are not the product of later interpretation. (The extent to which claims about the contours of divine

- 2 Gerald J. Blidstein, "Maimonides on 'Oral Law,'" *Jewish Law Annual* 1 (1978): 108–22 (108); and Blidstein, "Where Do We Stand in the Study of Maimonidean Halakhah?" in *Studies in Maimonides*, ed. Isadore Twersky (Cambridge, MA: Harvard University Center for Jewish Studies, 1990), 1–30 (13).
- 3 Much ink has been spilled about the meaning of these terms, especially *mi-divre sofrim*; for the history of interpretation, see Marc Herman, "Systematizing God's Law: Rabbanite Jurisprudence in the Islamic World from the Tenth to the Thirteenth Centuries" (PhD diss., University of Pennsylvania, 2016), 113–28.
- 4 David Henshke, "The Basis of Maimonides' Concept of Halacha," *Shenaton ha-mishpat ha-ivri* 20 (1997): 103–49 (128–29) (Hebrew), concluded that for Maimonides, the concepts of *biblical* and *rabbinic* are defined by "connection ... to verses" (emphasis in original). My interest here is narrower.

revelation to Moses correspond to jurisprudential distinctions is beyond the scope of this essay; I hope to return to this problem in another context.)

Maimonides's interest in these tasks, namely, determining whether a law is divine or manmade, categories that at least partially overlap with the classifications of biblical and rabbinic, and searching for scriptural supports, when available, is far more pronounced in the *Book of the Commandments* and *Mishneh Torah* than in the earlier *Commentary on the Mishnah*.⁵ To take a straightforward example, in the *Book of the Commandments*, he ascertained scriptural prooftexts with prodigious consistency. Commandments in that work generally require a scriptural verse that says *do* or *do not*, to the point that Maimonides asserted that the 613 commandments are all "contained in the Torah scroll (*sefer ha-torah*)."⁶ But in the *Commentary on the Mishnah*, which follows rabbinic literature, he was less troubled to identify such verses and to classify Jewish law into *dos* and *do not*s. Indeed, the association between the Written Torah and the 613 commandments proposed in the *Book of the Commandments* underscores Maimonides's preference for scriptural sources, although it does not quite capture his entire system.⁷ But concern to connect written revelation with Jewish law plausibly motivated Maimonides's project of enumerating the commandments,⁸ which was closely tied to his scriptural exegesis.

- 5 Marc Herman, "Two Themes in Maimonides's Modifications to His Legal Works," *Journal of the American Oriental Society* 139 (2019): 907–22 (914–18); for dating, see there, 909–910, with reference to earlier literature.
- 6 Moses Maimonides, *Sefer ha-Mitsvot: Makor ve-targum*, ed. and trans. Yosef Kafih (Jerusalem: Mossad ha-Rav Kook, 1971), 7 (introduction). Thus, once the law was classified into *dos* and *do not*s, questions arose regarding the in-between category of a prohibition derived from an affirmative directive (*lav ha-ba mi-khila'aseh*); see Rabad's *hassagot* to *MT*, Short enumeration, positive commandments #7, #60, #146, #149, #198, and the literature spurred by these comments. For Maimonides's view, see below, nn. 21, 33.
- 7 Maimonides's position is more complex because he counted a few commandments when rabbinic literature describes them as "biblical," even though they are not found in the Bible. On the exceptions, see Marc Herman, "What is the Subject of Principle 2 in Maimonides's *Book of the Commandments*? Towards a New Understanding of Maimonides's Approach to Extrascriptural Law," *AJSR* 44 (2020): 345–67 (354–56), with reference to earlier literature. Of these exceptions, only one coincides with those addressed by the obviousness argument.
- 8 As proposed in Ezra Blaustein, "Cataloguing Revelation: Echoes of Islamic Legal Theory in Maimonides' *Sefer ha-Mitsvot* [Book of Commandments]" (PhD diss., University of Chicago, 2019), 21–28, 188–96.

There are some cases where Maimonides's skill in establishing scriptural sources fails, however. In four cases, he ascertained laws of divine origin and scriptural status that do not have an explicit scriptural source. Maimonides accounted for their absence from scripture by resorting to what I call the obviousness argument. The obviousness argument runs as follows: certain prohibitions that are explicit in the scriptural text can be said to take other, unmentioned prohibitions for granted; these unmentioned prohibitions are therefore legally equivalent to explicit ones, for example, violating them incurs the same punishment. But even though these laws might be inferred from scripture, Maimonides contended that God made them known to Moses orally. This is because, for Maimonides, a law derived through a rabbinic interpretive tool, such as an *a fortiori* argument (*kal va-homer*), is rabbinic in status, not biblical.⁹ Crucially, therefore, in this case, because they are based on oral/aural tradition (*mi-pi ha-shemu'ah*) from God, they are not the product of human juristic reasoning, but are biblical in status (*din torah*).¹⁰

The distinction is subtle.¹¹ *Kal va-homer* reasoning is an argument *a minori ad maius*, an inference drawn from a less severe case to a more severe one: if a rule applies to the former, it must also apply to the latter.¹² The obviousness argument is more akin to what linguists label a presuppositional term, something that is taken for granted in speech. In these cases, a prohibition is

9 I specify *derived* in order to exclude laws that Maimonides considered to be known by way of received tradition and connected to scripture after the fact; see *Sefer ha-Mitsvot*, 12–13, 15 (principle two). Mordechai Z. Cohen noted that the rabbinic status of these laws is only made clear in the *Book of the Commandments*, not in the earlier *Commentary on the Mishnah; Opening the Gates of Interpretation: Maimonides' Biblical Hermeneutics in Light of His Geonic-Andalusian Heritage and Muslim Milieu* (Leiden: Brill, 2011), 288.

10 Below, nn. 19, 30.

11 The text cited below, n. 30, even appears to conflate the obviousness argument with laws derived through reasoning, as do a number of interpreters, e.g., Moses ha-Kohen, *hassagot*, Hil. issue bi'ah, 2:6; Joseph Karo, *Kesef mishneh*, there; and Samuel ben Uri Shraga Phoebus, *Bet shemu'el*, *EH*, 6:16. Contrast, e.g., Abraham Allegri, *Lev sameah*, principle two, s.v., *ve-neha*; Mas'ud Hay Rakkah, *Ma'aseh rakkah*, Hil. tum'at met, 1:2; and Shlomo Kimhi, *Yeme shlomo*, Hil. ma'akhalot asurot, 9:2. Nahmanides's comments on Lev 11:3 influenced some of these discussions. Other passages, however, emphasize that although the four cases *may* be derived through reasoning, in actuality, God taught them to Moses.

12 See H. L. Strack and Günter Stemberger, *Introduction to the Talmud and Midrash*, trans. Markus Bockmuehl (Minneapolis: Fortress Press, 1996), 18.

taken for granted by the enunciation of a less obvious, explicit prohibition.¹³ (I use the word obvious because Maimonides asserted that the prototypical case “is clear and obvious” [*li-bayān al-amr wa-wuḏūḥihi*].)¹⁴ The obviousness argument is also unrelated to the division of commandments into rational (*‘aqliyyāt*) and revealed (*sam‘iyyāt*) classes, which Maimonides criticized.¹⁵ Although it may seem that rational laws are “obvious,” Maimonides did not deploy the obviousness argument in a philosophical context.

The cases addressed by the obviousness argument, Maimonides asserted, are among the interpretations that God gave to Moses (what he called the *tafsīr marwī*, lit., narrated interpretation).¹⁶ But unlike other laws in this category, Maimonides here apparently felt the need to explain why scripture decided not to mention them. The identification of unwritten, obvious, “biblical” laws is therefore quite anomalous. Its genesis can only be understood by exploring its uses in the Maimonidean corpus.¹⁷

13 See David I. Beaver, Bart Geurts, and Kristie Denlinger, “Presupposition,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2021), plato.stanford.edu/archives/spr2021/entries/presupposition. I thank an anonymous reviewer for pointing me in this direction.

14 Below, n. 19.

15 For recent reviews, see, e.g., Tamar Rudavsky, “Natural Law in Judaism,” in *The Cambridge Companion to Natural Law Ethics*, ed. Tom Angier (Cambridge: Cambridge University Press, 2019), 113–134 (116–19); and Marc Herman and Jeremy Brown, “The Commandments as a Discursive Nexus of Medieval Judaism,” in *Accounting for the Commandments in Medieval Judaism*, ed. Jeremy Brown and Marc Herman (Leiden: Brill, 2021), 3–24 (15–19).

16 For characterizations of this corpus, see Wilhelm Bacher, *Ha-Rambam parshan ha-mikra*, trans. A. S. Rabinovitz (Tel Aviv: Aḥdut, 1931), 31–32; Jon I. Bloomberg, “Arabic Legal Terms in Maimonides” (PhD diss., Yale University, 1980), 33, 38–41; Cohen, *Opening the Gates of Interpretation*, 261–64, 472–74; and Herman, “Systematizing God’s Law,” 150–52.

17 The obviousness argument has received little scholarly attention. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven: Yale University Press, 1980), 158 n. 19, wrote only that “the idea that a verse teaches by deliberate silence is noteworthy.” The most extensive traditionalist treatment is found in Joseph Te’omim, *Ginat veradim* (Lublin, 1897), 10b–12a (*kelal* #1). My analysis rejects Henshke, “Basis,” 126–27, which conflates the exceptional commandments that are identified by the term “biblical” in rabbinic literature with laws that are identified by the obviousness argument. These are two different classes: the former are discussed in Principle Two of the *Book of the Commandments* but the latter (except for case 1) do not meet the criteria spelled out there, i.e., rabbinic use of the terms *de-’orayta* or *guf torah*. The present inquiry explores the

The Four Cases

Maimonides used the obviousness argument to account for the absence of four rules from the text of the Bible. These are: (1) the prohibition against father-daughter incest; (2) the prohibition against consumption of non-kosher meat; (3) the prohibition against consumption and /or derivation of benefit from mixtures of milk and meat; and (4) that transportation of a human corpse transmits impurity. This chart traces and summarizes the relevant passages in Maimonides’s writings; the obviousness argument is in bold.

	<i>Commentary on the Mishnah</i> (1168)	<i>Book of the Commandments</i> (~1178)	<i>Mishneh Torah</i> (~1178)
(1) Father-daughter incest	(No source is mentioned in this work.) ¹⁸	The Torah was silent because it is obviously forbidden ; there is an argument from verbal congruity (<i>gezerah shavah</i>) but the law is a Sinaitic tradition. ¹⁹	There is no verse; the Torah was silent because it is obviously forbidden ; it is biblical, not rabbinic. ²⁰

“interpretative-hermeneutical dimension within the *Mishneh Torah*,” which, as Twersky noted there, “needs study.”

- 18 This prohibition is mentioned in Maimonides, *Mishnah ‘im perush Rabbenu Moshe ben Maymūn*, ed. Yosef Kafīḥ (Jerusalem: Mossad ha-Rav Kook, 1963–68), 5:341 (m. Ker. 1:1); similarly, 4:191 (m. Sanh. 9:1).
- 19 Maimonides, *Sefer ha-Mitsvot*, 333–34 (negative #336). A *gezerah shavah* is an analogy between two statements with a common word; see Strack and Stemberger, *Introduction to the Talmud and Midrash*, 18–19.
- 20 Maimonides, *MT*, Short enumeration, negative #336 (some editions cite Lev 18:10 here; Shailat’s does not); *MT*, Hil. issure bi’ah, 2:6. Maimonides also mentioned this prohibition in Hil. issure bi’ah, 1:5, and Hil. Sanh., 15:11.

	<i>Commentary on the Mishnah</i> (1168)	<i>Book of the Commandments</i> (~1178)	<i>Mishneh Torah</i> (~1178)
(2) Consumption of non-kosher meat	Implied by the affirmative statement “they are impure” (Lev 11:27). ²¹	Based on an <i>a fortiori</i> argument, but the true source is like that discussed regarding (1) father-daughter incest. ²²	Based on an “all the more so” (<i>kol she-khen</i>) argument. ²³
(3) Consumption of and benefit from mixtures of milk and meat	Thrice-repeated verse; ²⁴ benefit is a type of eating. ²⁵	Benefit is a type of eating, and the Torah skips over benefit because all consumption is prohibited. ²⁶	The Torah omits eating because having prohibited cooking, eating is obviously forbidden like (1) father-daughter incest. ²⁷
(4) Transport of a corpse transmits impurity	Based on an <i>a fortiori</i> argument. ²⁸	(No source is mentioned in this work.) ²⁹	Oral tradition; <i>a fortiori</i> claim; obvious rule like (1) father-daughter incest and (2) the consumption of milk and meat. ³⁰

21 This verse is formulated in the affirmative and cannot be the basis for a negative commandment; Maimonides, *Mishnah 'im perush*, 7:735 (m. *Uk.* 3:9); see below, n. 33.

22 Maimonides, *Sefer ha-Mitsvot*, 263–64 (negative #172).

23 Maimonides, *MT*, Hil. ma' akhalot asurot, 2:1.

24 Maimonides, *Mishnah 'im perush*, 3:300 (m. *Kidd.* 2:9).

25 Maimonides, *Mishnah 'im perush*, 5:360–61 (m. *Ker.* 3:4).

26 Maimonides, *Sefer ha-Mitsvot*, 272–74 (negative #187).

27 Maimonides, *Mishneh Torah*, Hil. ma' akhalot asurot, 9:2 (this claim does not appear in the Short enumeration, negative #187).

28 Maimonides, *Mishnah 'im perush*, 6:244 (m. *Ohal.* 1:9), 6:249 (m. *Ohal.* 2:4).

29 Only regarding the high priest; Maimonides, *Sefer ha-Mitsvot*, 159 (negative #168).

30 Maimonides, *MT*, Hil. tum' at met, 1:2; Hil. tum' at met, 5:13, reiterates that this impurity is not explicit (*eino meforash*).

The first point to note is that Maimonides deployed the obviousness argument inconsistently, and did so for the first time in the *Book of the Commandments*. It seems, then, that he only conceived of this argument (or, less likely, only had need for it) when he tackled problems involved in enumerating the commandments. Moreover, it is almost certain that the prototypical obvious law—(1) the prohibition against father-daughter incest, which is the only one to receive sustained analysis in the *Book of the Commandments*—constitutes the genesis of this argument. Although Maimonides worked on the *Book of the Commandments* and the *Mishneh Torah* concurrently, there is much to support the supposition that he completed the former first.³¹ Accordingly, arguments found in both works probably first appeared in the *Book of the Commandments*. And even though he mentioned the obviousness argument in the context of the prohibition against the consumption of non-kosher meat (negative commandment #172), there is every reason to believe that father-daughter incest (negative commandment #336) was the origin point. First, Maimonides cited the father-daughter incest prohibition as the model for obvious laws on three occasions. Second, the commandment against father-daughter incest contains the lengthiest discussion of the obviousness argument in all of Maimonidean literature. And third, the status of this prohibition as a discrete commandment is among the most tenuous of the 613; it is here that he most needed an innovative presentation.

The other three cases where Maimonides would later cite the obviousness argument are each assigned a different source in the *Commentary on the Mishnah*. Appraisal of Maimonides's analyses uncovers how he rethought earlier presentations once he had devised a new approach to scriptural silences.

(2) In the *Commentary*, Maimonides derived the prohibition against consumption of non-kosher meat from the statement that certain meats are "impure" (Lev 11:27).³² But according to guidelines set forth in the *Book of the Commandments*, negative commandments require a verb in the prohibitive mood (i.e., a *do not*) and prohibitions implied by verbs in the imperative mood (such as "they are impure") constitute positive commandments.³³ As

31 See above, n. 5.

32 Above, n. 21.

33 For statements that prohibitions derived from affirmative directives constitute positive commandments, see, e.g., Maimonides, *Mishnah 'im perush*, 3:337 (m. *Mak.* 3:1); Maimonides, *Sefer ha-Mitsvot*, 80, 124 (positive commandments #38, #129); Maimonides, *MT*, Hil. *issure mizbeah*, 3:8.

a result, “they are impure” is insufficient for a negative commandment. As Maimonides noted in the *Book of the Commandments*, biblical prohibitions against the consumption of non-kosher meat single out certain animals (“But the following, which do bring up cud or have cleft hoofs, you may not eat: the camel, the hare, and the hyrax ... and the swine”; Deut 14:7–8). There is no negative prohibition against the consumption of non-kosher meat in general, just a positive commandment that only animals that chew their cud and have cleft hoofs may be consumed (Deut 14:6). Not wanting to limit this negative commandment to the meat of the animals named in Deuteronomy, Maimonides cited an *a fortiori* argument found in the *Sifra*: since the Torah lists as permissible to eat animals that have only one of the two signs of kosher meat, eating animals that lack both signs must also be forbidden. But Maimonides quickly added that this analysis is not the source of this law. In keeping with his view that human reasoning produces only rabbinic rulings, he compared this law to father-daughter incest; that is to say, scripture does not mention a prohibition against consumption of non-kosher meat because it takes such a law for granted. Surprisingly, the *Mishneh Torah* repeats the *Sifra’s a fortiori* argument without qualification.³⁴ Did Maimonides abandon the claim made in the *Book of the Commandments*? In any case, Maimonides was concerned to ascertain sources for negative commandments in the *Book of the Commandments*, and neither the positive directive of Lev 11:27 nor the *Sifra’s a fortiori* argument would do.

(3) The third application of the obviousness argument explains the Torah’s silence about the consumption of and benefit from mixtures of milk and meat. This case is particularly telling because it betrays several stages in Maimonides’s thinking. Three verses prohibit cooking a kid in its mother’s milk (Exod 23:19, 34:26, and Deut 14:21), a charge that the rabbis took to cover the (i) cooking of, (ii) consumption of, and (iii) derivation of benefit from any mixture of milk and meat, based on a variety of prooftexts.³⁵ Over his lifetime, Maimonides became increasingly interested in the absence of the latter two prohibitions from the Bible. In what can only be the first stage of his thought, a passage in the *Commentary on the Mishnah* cites the view that one

34 Above, nn. 22–23; *Sifra*, Dibbura de-sherašim, 2:2; similarly, *Sifre Deuteronomy*, 101. The use of the terms positive and negative commandment (*mišvat ‘aseh / lo ta ‘aseh*) made these passages particularly appealing. Maimonides also referenced this argument in *Mishneh Torah*, Hil. issure mizbeah, 5:6.

35 See, e.g., b. *Hul.* 114b–116a.

verse refers to cooking, a second to consumption, and a third to other types of benefit.³⁶ However, elsewhere in the *Commentary*, Maimonides presented a new explanation, one that he proudly referred to as a “wondrous point” (*nukta ‘ajiba*). He suggested that since the Bible prohibits consumption and benefit using the same phrase (“do not cook a kid in its mother’s milk”), when the prohibition against consumption is not in operation, neither is the prohibition against benefit.³⁷ In effect, there are only two scriptural prohibitions, one against cooking and a second against consumption, which also covers benefit. Among other things, this “wondrous point” displays new analysis of the discordance between rabbinic teachings and the literal meaning of these verses, and it shows Maimonides to have moved on from the straightforward midrashic explanation found earlier in the *Commentary*.

In light of this “wondrous point,” when he wrote the *Book of the Commandments*, Maimonides enumerated two commandments that pertain to the three prohibitions of mixtures of milk and meat: a first prohibits cooking milk and meat and a second prohibits their consumption—including any benefit from such mixtures. Maimonides himself posed the logical question: why are these two commandments, not three? His answer relies on the “wondrous point”; since consumption is a type of benefit, he wrote, these must be a single prohibition. Maimonides cited an unusual case in order to demonstrate that the prohibition is one of consumption, not derivation of benefit: one is liable for consumption of a boiling hot mixture of milk and meat, even though no benefit is derived.³⁸ Only in the *Mishneh Torah* did Maimonides resort to the obviousness argument. Here, he wrote that the prohibition against consumption goes unmentioned because it is obvious, as even cooking is prohibited. Here, too, he compared scripture’s silence about the prohibition against consumption to its silence about father-daughter incest.³⁹ In these passages, one witnesses his growing concern to explain scripture and, commensurately, to rethink rabbinic interpretations of the Bible.

36 Above, n. 24.

37 Above, n. 25.

38 Above, n. 26 (based on b. *Pesah.* 25a); on the relationship between consumption and benefit, see also Maimonides, *Mishnah ‘im perush*, 3:299 (m. *Kidd.* 2:9); and Maimonides, *MT*, Hil. ma’ akhalot asurot, 8:15; on the boiling mixture, see also Hil. yesode ha-torah, 5:8; and Hil. ma’ akhalot asurot, 14:10–11.

39 Above, n. 27. The prohibition against benefit from mixtures of milk and meat receives less treatment here, presumably based on the argument set forth in the *Book of the Commandments*. Henshke deemed Maimonides to have ruled that

(4) The fourth instance of the obviousness argument justifies the rabbinic teaching, not found in the Bible, that transportation of a corpse transmits impurity. For the rabbis, and Maimonides in their wake, this rule is biblical in status, despite not being found explicitly in the text. In the *Commentary on the Mishnah*, Maimonides explained that transmission of impurity through touching a corpse and through sharing a structure both have an explicit scriptural basis (Num 19:11, 14). But the transmission of impurity through transporting a corpse, without touching it, is based on received tradition (*naql*), i.e., it is a rule that God revealed to Moses. Maimonides added midrashic derivations to substantiate this received tradition.⁴⁰ No derivation of this law appears in the *Book of the Commandments*,⁴¹ but the *Mishneh Torah* offers several new justifications:

Impurity transferred through transport is known by oral tradition (*mi-pi ha-shemu'ah*). These matters are also *a fortiori*: if an animal carcass, which only transfers impurity until nightfall and does not transfer impurity within a structure nevertheless transfers impurity through transport—as it says, “one who carries their carcasses etc.” (Lev 11:28)—all the more so a human corpse! ... Impurity for carrying a corpse is not rabbinic (*mi-divre sofrim*) but biblical (*din torah*). It seems to me that scripture was silent about this matter for the same reason that it was silent about father-daughter incest: because it explicitly (*be-ferush*) forbade even a granddaughter. And it was silent about the prohibition against consumption of mixtures of milk and meat because it explicitly forbade even cooking it. So, too, it was silent about transportation of a corpse because it explicitly impurified even one who enters a structure with it—all the more so transporting.⁴²

derivation of benefit from mixtures of milk and meat is prohibited rabbinically; “Basis,” 126 n. 74; and Henshke, “Lavin she-'ein lokin 'alehem le-shiṭat ha-Rambam,” *ha-Ma'ayan* 24, no. 2 (1984): 33–40 (33–36). None of the cases of the obviousness argument are rabbinic in status, however.

40 Above, n. 28; the comparison between types of impurity is based on *Sifre*, Num 127.

41 See above, n. 29.

42 Above, n. 30.

In this passage, the rule in question could be derived through a *a fortiori* argument, but it is in fact based on teachings that can be traced to Sinai.⁴³ The Bible, it might be said, takes this law for granted. Maimonides's approach stems from his proposition that human reasoning cannot create laws that are biblical, even if the derivations are as straightforward as *a fortiori* arguments (other medieval Jews disagreed). The obviousness argument, accordingly, helps him explain why scripture omitted this "biblical" law.⁴⁴

Although the obviousness argument is somewhat technical, it is not at all difficult to explain Maimonides's need for it. As mentioned, Maimonides was on the lookout for "biblical" laws, and he located their origin at Sinai when rabbinic literature indicates that they are of biblical status, even when they have no scriptural basis. Such indications are easy to come by; to take the cases one-by-one: (1) the Mishnah states that father-daughter incest is a capital crime;⁴⁵ (2) the *Sifra*, quoted by Maimonides, identifies the prohibition against consumption of non-kosher meat as a negative commandment;⁴⁶ (3) several passages, also quoted by Maimonides, name punishments for cooking and consumption of milk with meat (but not benefit!);⁴⁷ and (4) the Mishnah states that a nazirite must interrupt his vows if he contracts impurity from a corpse, including by transporting it.⁴⁸ In short, while the obviousness argument sometimes accounts for a discrete commandment and sometimes does not, it always explains the presence of biblical law in places that lack scriptural support.

43 See above, n. 11.

44 Comparison to both father-daughter incest and to consumption of milk and meat suggests that this case was the last application of the obviousness argument. Alternatively, perhaps Maimonides saw the obviousness argument as relevant to this case at an earlier stage but had no place to include it in the *Book of the Commandments*.

45 See below, n. 53; and Maimonides, *MT*, Hil. Sanh, 15:11. For the imposition of punishment as evidence of a law's biblical status, see Herman, "Subject of Principle 2," 362–63.

46 Above, n. 22; also t. *Mak.* 3:6; and see Maimonides, *MT*, Hil. Sanh., 19:4, #80.

47 Above, n. 26. see Maimonides, *Mishneh Torah*, Hil. Sanh., 19:4, #92–93.

48 m. *Naz.* 7:2; see Maimonides, *Mishneh Torah*, Hil. nezirut, 7:5–6; and Hil. bi'at ha-mikdash, 3:13–14.

Circumventing Qaraism

The stakes of the obviousness argument are clear: recourse to this claim enabled Maimonides to assert that rules not found in the Hebrew Bible are nonetheless “biblical.” The obviousness argument bypasses the conclusion that some of these laws are manmade, not divine. But why, in these cases, was Maimonides so averse to the idea that human analysis might create “biblical” law? As far as I know, the only suggested etiology for the obviousness argument is found in the *Sefer mišvot ha-gadol* of Moses of Coucy. The author proposed that Maimonides offered the obviousness argument, as applied to the consumption of milk and meat, in “response to heretics,” that is, for Moses of Coucy, either Christians or Qaraites (the latter appears to be preferable here).⁴⁹ In this instance, as Solomon Luria suggested in his commentary on *Sefer mišvot ha-gadol*, Moses of Coucy was bothered by the lack of rabbinic precedent for Maimonides’s obviousness argument.⁵⁰ Therefore, Luria explained, Moses of Coucy ascribed these assertions to intrareligious polemic.

49 Moses of Coucy, *Sefer mišvot ha-gadol*, negative #140–41. On this passage, see Jeffrey Woolf, “Some Polemical Emphases in the *Sefer Mišvot Gadol* of Rabbi Moses of Coucy,” *JQR* 89 (1998): 81–100 (96–97); and Judah Galinsky, “The ‘Talmud Trial’ of 1240 in Paris – Rabbi Jehiel’s Disputation and Rabbi Moses of Coucy’s ‘Book of the Commandments,’” *Shenaton ha-mishpat ha-‘ivri* 22 (2001–2003): 45–69 (56, 62–68) (Hebrew); see also Judah Galinsky, “The Significance of Form: R. Moses of Coucy’s Reading Audience and his *Sefer ha-Mišvot*,” *AJSR* 35 (2011): 293–321 (296 n. 17). On Qaraism in *Sefer mišvot ha-gadol*, see also Daniel J. Lasker, “Qaraism and the Jewish-Christian Debate,” in *The Frank Talmage Memorial Volume*, ed. Barry Walfish (Haifa: Haifa University Press, 1993), 323–32 (331–32 n. 37). Moses of Coucy’s perspective is picked up, at some length, in Ḥayyim Benveniste, *Kenesset ha-Gedolah*, YD, 87:6.

50 Solomon Luria, *‘Amude shelomo: Bi’urim la-semag* (Jerusalem: Makhon Yerushalayim, 2020), 494–95. Luria is correct that no rabbinic precedent may be found; nevertheless, the commentary printed under the title *Maggid Mishneh* to Hil. ma’ akhalot asurot, 9:2, cites Leviticus Rabbah as a source. No such text is otherwise attested, and this alleged passage should probably be ascribed to Maimonidean influence. See also Menachem Kasher, *Torah Shelema* (Jerusalem, 1992), 19:218–19 n. 269. The spread of Maimonides’s arguments, without citation, is evinced in Baḥya ben Asher’s comments to Leviticus 18:10; similarly, J. N. Epstein, ed., *Mekhilta d’Rabbi Šim’on b. Joḥai* (Jerusalem: Sumpribus Hillel Press, 1979), 224 lines 2–3 (Hebrew). Note that Targum Pseudo-Jonathan (Deut 14:21) finds that since cooking milk with meat, eating is forbidden “all the more so” (*kol de-khen*).

I believe that Moses of Coucy was correct in ascertaining anti-Qaraite motives for the obviousness argument, but that the picture is considerably more complex—and need not be chalked up to simplistic “responses to heretics.” Rather than merely rejecting “heresy,” Maimonides in fact subtly dodged Qaraite exegesis and, at the same time, addressed potential problems with his depictions of the revelation and transmission of Jewish law. This is particularly certain if, as suggested, considerations of father-daughter incest prompted the obviousness argument in the first place.

Maimonides, like other medieval Jews, was faced with a striking omission in the Levitical incest pericopes. The verses pertaining to father-daughter incest only prohibit relations between a man and his granddaughter (18:10) and a woman and her daughter (18:17); no prohibition against incest between father and daughter is mentioned, especially if “her daughter” in 18:17 refers to relations with his wife’s daughter from a previous marriage.⁵¹ Some biblical scholars have labeled the absence of a prohibition against father-daughter incest the “daughter gap.” Several suggestions have been offered.⁵² The rabbis glossed Lev 18:10 to refer to a granddaughter born from an extramarital relationship and Lev 18:17 to refer to a daughter born in wedlock. Rabbinic literature addresses the “daughter gap,” as it pertains to a daughter born outside of a marriage, through either a *gezerah shavah* or a *fortiori* argument.⁵³

- 51 Abraham Ibn Ezra read “her daughter” to address any daughter of the mother, from this or another man. Solomon Ibn Adret and Yom Tov Ibn Ishbili read this part of the verse similarly, but reached different conclusions; *Ḥiddushe ha-Rashba*, b. *Yev.* 3a, s.v. *bitto*; and *Ḥiddushe ha-Ritva*, b. *Yev.* 2a, s.v. *bitto*. See also Naḥmanides, *Ḥiddushim*, b. *Yev.* 22b, s.v. *ha-ketsad*.
- 52 Ephraim Neufeld chalked this “accidental omission” up to “some mishap”; *Ancient Hebrew Marriage Laws* (London: Longmans, 1944), 198–99; see also, e.g., Jonathan Ziskind, “The Missing Daughter in Leviticus XVIII,” *Vetus Testamentum* 46 (1996): 125–30; Eve Levavi Feinstein, *Sexual Pollution in the Hebrew Bible* (Oxford: Oxford University Press, 2014), 170–74; and Johanna Stienbert, *Fathers and Daughters in the Hebrew Bible* (Oxford: Oxford University Press, 2013), 102–65, with extensive reference to earlier scholarship. The term “daughter gap” comes from Jonathan Ziskind, “Legal Rules on Incest in the Ancient Near East,” *Revue internationale des droits de l’antiquité* 35 (1988): 79–109 (100).
- 53 A prohibition against father-daughter incest is presumed in m. *Sanh.* 9:1 and t. *Kidd.* 1:4. For rabbinic discussions, see *Sifra*, Aḥare mot 8:3; y. *Yev.* 11:1 (11d); y. *Sanh.* 9:1 (26d–27a); b. *Ḥag.* 11b; b. *Sanh.* 76a; b. *Yev.* 3a, 22b, 97a. See also M. Friedman (Meir Ish Shalom), *Seder Eliahu rabba und Seder Eliahu zuta (Tanna d’be Eliahu)* [in Hebrew] (Vienna, 1902), 75.

Which approach is authoritative appears to be at issue in this and similar passages (b. *Sanh.* 76a):

What is the source for the prohibition against incest with a daughter born outside of wedlock?

Abayye said: “An *a fortiori* argument: if one is punished for relations with his granddaughter, even more so for relations with his daughter.”

But is punishment imposed based on reasoning? This is just its disclosure (*giluy milta be-’alma hu*; i.e., not the actual source of the law).

Rava said, “Rabbi Yiṣḥak bar Avdimi said to me, ‘It is derived [by means of a *gezerah shavah* between Lev 18:17 and Lev 20:14].’”

One of the earliest post-talmudic texts to find a source for the prohibition against father-daughter incest is Saadia Gaon’s commentary on the thirteen principles of R. Ishmael, part of his commentary on Leviticus. Saadia asserted that the rabbis knew this law by way of a received tradition (*naql*), an Arabic term that denotes divinely revealed information. Under the heading of *gezerah shavah*, Saadia referred to Rava’s derivation and explained that a “received tradition arrived, adding (*wa-jā’ al-naql bi-idāfat*) a man’s daughter to his daughter’s daughter” (the latter being the prohibited granddaughter of Lev 18:10).⁵⁴ Affirmation of received traditions over the human reasoning proposed by Abayye aligns with Saadia’s other comments about incest laws; unlike Qaraite, he argued that the laws of incest are not subject to human analysis but are solely the purview of revealed teachings.⁵⁵

Saadia’s rejection of human reasoning in the realm of incest laws was evidently formulated in conversation with proto-Qaraite and Qaraite thinking on this subject. The standard Qaraite approach to father-daughter incest was apparently already suggested by ‘Anan ben David, who based this prohibition on *a fortiori* argument, using this claim as evidence for the validity of *a fortiori*

54 Y. Zvi Stampfer, “Sa’adia Gaon’s Interpretation of the Thirteen Hermeneutical Principles according to the Arabic Source: Commentary, Tendencies, and Unknown Sources,” *Tarbiz* 87 (2020): 641–705 (682) (Hebrew).

55 See the citation of Saadia in Jeshua ben Judah, *Das Buch von den verbotenen Verwandtschaftsgraden*, ed. Isaak Markon (St. Petersburg, 1908), 152. This passage was first published in Moritz Steinschneider, *Catalogus librorum hebraeorum in bibliotheca Bodleiana* (Berlin: Welt-Verlag, 1852), 2:2163, with reference to similar reports of Saadia’s views, also from Qaraite authors.

reasoning in general (at least according to a later Byzantine author).⁵⁶ Daniel al-Qūmisī's *Commentary on Daniel* takes this prohibition for granted, offering no source.⁵⁷ Repeating 'Anan's arguments, and countermanding Saadia, the tenth-century Iraqi Qaraite Ya'qūb al-Qirqisānī used the Bible's prohibition against relations with a granddaughter but its silence about relations with a daughter as evidence for the permissibility of *a fortiori* reasoning altogether.⁵⁸ Later Qaraites made similar points. In the eleventh century, Jeshua ben Judah cited Leviticus's silence about father-daughter incest in order to substantiate Qaraite reliance on human reasoning concerning forbidden relations.⁵⁹ In Byzantium, Judah Hadassi (twelfth century) and Elijah Bashyatchi (fifteenth century) used *a fortiori* reasoning to derive a prohibition against father-daughter incest; the latter cited this example to make the same, broader argument as Qirqisānī.⁶⁰ Knowledge of the Torah's silence regarding father-daughter incest circulated among Muslims too: the Andalusian Muslim polymath and

- 56 Moshe Bashyatchi, *Sefer Maṭṭeh elohim*, ed. Yosef Algamil (Ramla: Mekhon Tiferet Yosef, 2001), 47; see also Abraham Harkavi, *Studien und Mittheilungen aus der Kaiserlichen Oeffentlichen Bibliothek zu St. Petersburg, Achter Theil: Likkute Kadmoniot II. Zur Geschichte des Karaismus und der Karäischen Literatur, Erstes Heft: Aus den ältesten Karäischen Gesetzbüchern* (St. Petersburg, 1903), 99–100, 160–61, 166 and n. 6.
- 57 Jacob Mann, "Early Qaraite Bible Commentaries," *JQR* 12 (1922): 435–526 (520).
- 58 Ya'qūb al-Qirqisānī, *Kitāb al-Anwār wal-Marāqib: Code of Karaite Law* [in Arabic], ed. Leon Nemoy (New York: The Alexander Kohut Memorial Foundation, 1939), 2:365 (IV 9.2 lines 12–13); see Aviram Ravitsky, "Ya'qūb al-Qirqisānī's Critical Commentary on the Thirteen Hermeneutical Principles Enumerated in the Introduction to the Sifra," *Jerusalem Studies in Jewish Thought* 22 (2011): 123–57 (135) (Hebrew).
- 59 Jeshua ben Judah, *Das Buch von den verbotenen Verwandtschaftsgraden*, 53.
- 60 Judah Hadassi, *Eshkol ha-Kofer* (Gözeve, 1836; repr. Gregg: Farnborough, 1971), 117a (alphabet 319), as compared with the forthcoming edition by Daniel J. Lasker, whom I thank for sharing; Elijah Bashyatchi, *Adderet Eliyahu* (Odessa, 1870), 4 (unpaginated introductory pagination), 146a, 148a; see also Daniel Lasker, "The Use of Reason in Rabbanite and Karaite Legal Exegesis of the Bible" (forthcoming; I again thank the author for sharing). See also David Weiss, *Die Incestgesetze bei den Karäern von Samuel al-Magrebi* (Berlin, 1911), 10–11, which echoes Yefet ben 'Eli on Lev 18:10 (see Paris, Bibliothèque nationale de France, MS hébreu 282, 127r–127v); and Moses ben Elijah Bashyatchi, *Sefer 'Arayot*, ed. Isaak Markon, in *ha-Kedem* 3 (1909): 60–78 (60–61). Also note John Selden, *John Selden on Jewish Marriage Law: The Uxor hebraica*, ed. and trans. Jonathan Ziskind (Leiden: Brill, 1991), 50; and Judah ben Eliezer Chelebi Fuki, *Sefer Sha 'ar yehudah: Be-ve'ur dine 'arayot*, ed. Yosef Algamil (Ashdod: Makhon Tife'ret Yosef, 2006), 25–26. For

polemical Ibn Ḥazm criticized Jews (alongside Zoroastrians) for permitting a man to marry his daughter.⁶¹

Maimonides thus faced a problem. On one hand, rabbinic sources dictate that father-daughter incest incurs capital punishment. On the other, the talmudic (and Saadianic) basis for this punishment, a *gezerah shavah*, does not produce biblical law in Maimonides's system, and one certainly cannot take a life for the violation of a rabbinic norm. The Qaraite approach was also unavailable, as Maimonides held that *a fortiori* arguments generate rabbinic, not biblical, law. In addition, he was likely reluctant to explicitly contravene Rava's rejection of Abayye's *a fortiori* derivation, as the Talmud rules that Rava is generally to be followed (see b. *Kidd.* 52a and parallels). Maimonides therefore needed a novel explanation for the prohibition against father-daughter incest, one that might account for its status as a biblical law and even as a discrete entry on his list of the 613 commandments.

Maimonides admitted that father-daughter incest is a rare commandment that lacks scriptural basis. In Principle Two of the *Book of the Commandments*, he explained that the exceptions to the rule that the commandments are based on scripture are all laws that rabbinic literature labels *de-'orayta* ("biblical") or *guf torah* ("essence of the Torah"). While a handful of commandments are supported by the former term,⁶² the latter is only discussed twice in this work. The first appearance of *guf torah* does not substantiate a distinct commandment.⁶³ The second is the father-daughter incest prohibition. Maimonides explains at some length:

Qaraite use of analogy in this context, see Louis Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge, MA: Harvard University Press, 1942), 266.

- 61 Ibn Ḥazm, *Rasā'il Ibn Ḥazm al-Andalusī*, ed. Iḥsān 'Abbās (Beirut: al-Mu'assasa al-'arabiya lil-dirāsāt wal-nashr, 1980), 1:370; and Ibn Ḥazm, *Kitāb al-Akhlaq wa'l-siyar*, ed. Eva Riad (Uppsala, 1980), 1:48; see Camila Adang, *Muslim Writers on Judaism and the Hebrew Bible: From Ibn Rabban to Ibn Ḥazm* (Leiden: Brill, 1996), 104 (the current discussion sheds light on the problems highlighted there, n. 160); and Geert Jan van Gelder, *Close Relationships: Incest and Inbreeding in Classical Arabic Literature* (London: Tauris, 2005), 24–25.
- 62 See above, n. 7.
- 63 Maimonides, *Sefer ha-Mitsvot*, 240–41 (negative #132); Maimonides reformulated other appearances of the term *guf torah* in rabbinic literature (see b. *Ker.* 5a) in various ways; see *Sefer ha-Mitsvot*, 50 (principle fifteen), 240 (negative #131). For two similar Maimonidean deployments of this phrase, neither of which reflect rabbinic uses, see *MT*, Short enumeration, negative #135, and Hil. Shabb, 12:8.

Commandment 336: the prohibition against relations (*nikāh*)⁶⁴ with one's own daughter. This is not explicit in the Torah; there is no verse "do not uncover the nakedness of your daughter." However, it was silent about this matter because it is clear and obvious, since it forbade the daughter of a son and the daughter of a daughter, who are even further from (*bu 'dan min*)⁶⁵ the daughter. In Yevamot [3a] they said: "The basis (*'ikar issura*) of father-daughter incest is a *midrash*." ...⁶⁶ And the text of Keritot [5a] is: "Do not treat a *gezerah shavah* lightly, since father-daughter incest is one of the *gufei torah* and the Torah only taught it (*limdah*) through a *gezerah shavah*." ... Consider their statement "the Torah only taught it." They did not say "they derived it" (*limmadnuha*) because all these matters were transmitted from the emissary and are a transmitted interpretation (*tafsīr marvī*), as we explained in the introduction to our work that comments on the Mishnah. However, scripture refrained from mentioning it because it may be known (*tata 'allam*) through a *gezerah shavah*. This is the meaning of their statement "the Torah only taught it through a *gezerah shavah*." And their statement that it is *guf torah* is sufficient.⁶⁷

In this most extensive discussion of the obviousness argument, Maimonides displayed a creative rereading of rabbinic literature and a keen interest to align that literature with his pictures of how Jewish law was revealed. He marshaled two talmudic passages to support the idea that Moses received a "transmitted interpretation" that establishes an entirely non-scriptural negative commandment against father-daughter incest. This transmitted interpretation was not "derived" by jurists after Moses's day but was given by God as part of the oral accompaniment to the Written Torah. Maimonides

64 On this term here, see Herman, "Systematizing God's Law," 181 n. 650.

65 This translation follows Kafīh; Ibn Tibbon has "all the more so" (*ve-khol she-ken*), perhaps based on a different text. The phrasing in *Sefer ha-Hinukh* (#195) seems to reflect Kafīh's version. Maimonides's claim about the distance of a granddaughter from a grandfather is the inverse of that of Qirqisānī: "since a granddaughter is forbidden," wrote Qirqisānī, "a daughter—who is more closely related—is forbidden" (above, n. 58).

66 Here and in the next ellipsis, Maimonides repeated and explained the *gezerah shavah*.

67 Above, n. 19.

thus narrowed the Talmud's statement that this prohibition is midrashic to mean only that the *gezerah shavah* is of rabbinic origin—the prohibition itself, however, was given at Sinai.

Another of Maimonides's moves merits attention. For the rabbis, the prohibition against incest with a daughter born in wedlock derives from Lev 18:17, while the prohibition against incest with a daughter born out of wedlock lacks an explicit verse. But in the text just quoted, Maimonides foregrounded b. *Yev.* 3a, the only discussion in the Bavli that indicates that the prohibition against father-daughter incest is absent from scripture altogether, regardless of the relationship between mother and father.⁶⁸ And when he quoted the passage in b. *Ker.* 5a, he wrote that the *gezerah shavah* pertains to any daughter, even though every single manuscript of this passage in *Keritot* limits this derivation to a daughter born out of wedlock!

Not only that, but there is also evidence that Maimonides's conception of the negative commandment against father-daughter incest, which in all surviving versions of the *Book of the Commandments* covers all daughters, underwent some development. When that work treats negative commandment #172—against the consumption of non-kosher meat—Maimonides invoked the father-daughter incest prohibition. In that context, however, he referred to passages in the Bavli that pertain only to a daughter born out of wedlock.⁶⁹ Furthermore, in the medieval translation of the *Book of the Commandments* by Solomon ben Joseph Ibn Ayyūb, preserved in manuscripts and in the late-fourteenth-century Provençal *Sefer ha-Battim*, Maimonides referred to the prohibition against father-daughter incest as one that pertains only to a daughter born out of wedlock.⁷⁰ While standard texts of negative command-

68 Among manuscripts versions, only Vatican ebr. 110 contains the word *me-anusato* here. The prohibition against marriage to a wife and her daughter is mentioned in Maimonides, *Mishnah 'im perush*, 3:298 (m. *Kidd.* 2:7).

69 As Maimonides cited the talmudic phrase *giluy milta be-'alma hu*, which appear in those discussions (cited above, n. 53). I owe this point to Chaim Ison.

70 For Ibn Ayyūb, e.g., Munich, Germany Cod. hebr. 282, 177v; Italy Cod. Parm. 2460, 141r; Paris Ecole Rabbinique 40, 121r; and Vatican Urb. 30, 133r. For *Sefer ha-Battim*, see David ben Samuel de Estella *ha-kokhavi*, *Sefer ha-Batim*, vol. 2, *Sefer Mišvah*, ed. Moshe Hershler (Jerusalem: Shalem, 1983), 379. For David's reliance on Ibn Ayyūb, see there, vol. 1, *Sefer Emunah*, 32–33; Henshke, "Basis," 144 n. 127; and Henshke, "'Like a Spring That Becomes Stronger': Maimonides' *Sefer ha-Mitzvot* and its Role in His Legal Thought," in *Al Pi ha-Be'er: Studies in Jewish Philosophy and in Halakhic Thought Presented to Gerald Blidstein*, ed. Uri Ehrlich et al. (Beer Sheva: Ben Gurion, 2008), 151–82 (157, 166 n. 61, 176). I am currently

ment #336 cover both types of father-daughter incest,⁷¹ I would propose that the cross-reference in negative commandment #172 shows that, at a certain stage, Maimonides considered the negative commandment against father-daughter incest to address only daughters born out of wedlock (it is not clear how daughters born in wedlock would be dealt with).⁷² If a change did occur in Maimonides's thinking, then such a change might be chalked up to increased confidence to move away from rabbinic interpretation: at first he saw Lev 18:10 and 18:17 as addressing different kinds of father-daughter relationships, but the obviousness argument allowed him to make a novel claim about all types of father-daughter incest. At this later stage, he could take the prohibition in Lev 18:17 ("do not reveal the nakedness of a woman and her daughter") to refer, more literally, to a mother and her daughter, women who are only related to the man through marriage.⁷³

Be this reconstruction as it may, Maimonides's argument about father-daughter incest does not explicitly address Qaraite scriptural inter-

investigating the relationship between Ibn Ayyūb's translation and other versions of the *Book of the Commandments*.

- 71 For the earliest Judeo-Arabic manuscript, see Oxford Pococke 239, 142v; transcribed in Moses Maimonides, *Le Livre des Préceptes par Moïse ben Maimon dit Maïmonide*, ed. Moïse Bloch (Paris: Bouillon and Viewag, 1888), 251. Kafīḥ cited no variants; Maimonides, *Sefer ha-Mitsvot*, 264. For discussion of Pococke 239, see Blaustein, "Cataloging Revelation," 197–201, 202–4. Malachi Beit-Arié first dated this manuscript to the second-half of the thirteenth century, but more recently to Maimonides's lifetime; Beit-Arié, *Catalogue of the Hebrew Manuscripts in the Bodleian Library: Supplement of Addenda and Corrigenda to Vol. I (A. Neubauer's Catalogue)*, ed. R. A. May (Oxford: Clarendon Press, 1994); 134 no. 858*; and Beit-Arié, *Hebrew Codicology: Historical and Comparative Typology of Medieval Hebrew Codices based on the Documentation of the Extant Dated Manuscripts until 1540 using a Quantitative Approach*, trans. Ilana Goldberg, ed. Nurit Pasternak (Jerusalem: The Israel Academy of Sciences and Humanities, 2021), 157 n. 102. Mordecai Akiva Friedman suggested that this manuscript dates to Maimonides's lifetime (*Ha-Rambam u-Genizat Qahir*; forthcoming—I thank the author for discussing this).
- 72 The parallel discussion in *MT* (above, n. 20) is somewhat unclear to me, but most likely reads negative #336 to pertain to any daughter, not just one born out of wedlock. *Sefer ha-Hinnukh* (#195, #203) represents the father-daughter incest prohibition as pertaining only to daughters born out of wedlock, either wary of Maimonides's innovation or reflecting an earlier version of this text. See also Moses Maimonides, *Sefer ha-Mitsvot le-Rabbenu Moshe ben Maimon*, ed. Ḥayim Heller (Jerusalem: Mossad ha-Rav Kook, 2006), 141 n. 12.
- 73 Compare Ibn Ezra's interpretation, noted above, n. 51.

pretation, but it does not require much imagination to think that he did his best to avoid Qaraite arguments in order to maintain the view that laws produced by legal reasoning lack the force of biblical law.⁷⁴ It is precisely in his discussions of “biblical” laws that are taken for granted, which by definition lack explicit scriptural support, that the fault lines in his thought become most clear. Maimonides may have realized the potential of Qaraite reasoning to produce conclusions that he sought, but he pulled back from endorsing their position. If so, in its rejection, Qaraite exegesis played a role in the development of Maimonides’s attitude towards biblical laws that do not appear in the bible. Unable to countenance the idea that violation of a rabbinic norm might incur biblically mandated punishment, he needed a strong dose of creativity in order to account for these exceptional laws. Cases that sit on the edge of his system clarify that system as a whole and bear witness to a dynamic and fertile Maimonides.

Maimonides’s fascination with the Oral Torah was forged in multiple contexts. His attempts to define it were shaped by the larger environment and by his personal interests. When he produced the obviousness argument, did he consciously avoid Qaraite-style reasoning? Or was it his commitment to the notion that human reasoning creates rabbinic, not biblical laws that pushed him to innovate new analyses of scriptural silences? One cannot be certain. What is clear, however, is that Maimonides drew on a wide range of discourses as he attempted to mold Jewish law into a coherent picture.

74 On Elijah Bashyatchi’s suggestion that Maimonides’s views of legal *midrash* reflect an esoteric Qaraite orientation, see Daniel Lasker, “Maimonides and Karaism—Mutual Influences,” in *From Judah Hadassi to Elijah Bashyatchi: Studies in Late Medieval Karaite Philosophy* (Leiden: Brill, 2008), 155–89 (163); see more generally Lasker, “Maimonides and the Karaites: From Critic to Cultural Hero,” in *Maimonides y su época*, ed. Carlos del Valle et al. (Madrid: Sociedad Estatal de Conmemoraciones Culturales, 2007), 311–25 (315); and Gerald Blidstein, “Tradition and Institutional Authority On Oral Law in Maimonides,” *Daat* 16 (1986): 11–27 (13) (Hebrew).

