



The Brisker Method Reconsidered

The Analytic Movement: Hayyim Soloveitchik and his Circle by Norman Solomon

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Review Essay

THE BRISKER METHOD RECONSIDERED

The history of Torah study is marked by various trends, such as Tosafistic analysis, the combination of philosophy and Talmud study, and *pilpul*. In this century, it is the “Brisker” method of Talmud study which stands out. The analytic approach developed by R. Hayyim Soloveitchik of Brisk (1853-1918) quickly conquered the yeshiva world and created a revolution in Talmud study. It is true that R. Hayyim did not create the Brisker method *ex nihilo*. Still, there is no doubt that this method reached its most polished state in R. Hayyim’s hands. He was the major force behind its development and his contribution was unique. Without exaggeration it is possible to say that R. Hayyim raised the quality of Talmud study to a level not seen since the days of the Tosafists. In his hands the argumentation of the Talmud and *rishonim* assumed a “scientific” character, without parallel in previous generations. At the same time, he transformed the practical halakhic work *par excellence*—Maimonides’ *Mishne Torah*—into both the central feature of his theoretical analyses as well as the most profound commentary on the Talmud. By doing so, he became the first to reveal the profundity of the *Mishne Torah* in all of its grandeur. The centrality of Maimonides’ code in contemporary Talmudic *shiurim* is a direct result of R. Hayyim’s influence.¹

As is to be expected with anything new, the approach of R. Hayyim met with opposition among many scholars. No doubt, there was a good deal of jealousy and small-mindedness in this opposition. It would not be surprising if there were those who, because of their inability to produce *biddushim* of R. Hayyim’s quality, attempted to destroy his influence. Yet it is also true that a number of important *gedolei Yisrael* distanced themselves from R. Hayyim’s method of study. They did so not merely as a natural conservative response to the new method, but because they believed that R. Hayyim’s approach endangered the tradition of Talmud study.

Norman Solomon, *The Analytic Movement: Hayyim Soloveitchik and his Circle*. Atlanta, 1993.

It is likely that many of the opponents who recognized the greatness of R. Hayyim feared that in the hands of improperly trained students, R. Hayyim's method would become nothing more than verbal gymnastics.² There was a precedent for this type of fear. A few hundred years earlier, authentic *pilpul* had also been distorted by some students until it bore only a slight resemblance to true Talmud study, leading many of this era's scholars to condemn the extreme *pilpul*. One can also assume that among the opponents of R. Hayyim were those who were only acquainted with the new approach second and third hand, with all the distortions this entailed. (R. Hayyim's novellae on the *Mishne Torah* did not appear until after his death.)

The great, perhaps even exaggerated, pride which students of R. Hayyim took in their master's ability could have also led to opposition from traditionalists. For example, what is one who does not belong to R. Hayyim's school supposed to make of R. Soloveitchik's statement that "the Torah was married to R. Hayyim, while betrothed to the other sages of his generation," or his statement that R. Hayyim "knew how to learn better than many of the *geonim* (excluding famous *geonim* such as Rav Hai)"? Although these statements were made many years after the initial dispute about R. Hayyim's method, they convey a sense of how R. Hayyim's students regarded his approach as greatly superior to the standard methods of Talmud study.³

Among the leading opponents of the analytic method of study was R. Jacob David Wilovsky (1845-1913), known, among other things, for his monumental commentary on the Jerusalem Talmud and his strong stand against selling land in Palestine during the *shemitta* year. In the introduction to his responsa, *Bet Ridbaz* (Jerusalem, 1908), R. Wilovsky writes as follows:

A certain rabbi invented the "chemical" method of study. Those in the know now refer to it as "chemistry," but many speak of it as "logic." This proved to be of great harm to us, for it is a foreign spirit from without that they have brought in to the Oral Torah. This is not the Torah delivered to us by Moses from the mouth of the Omnipresent. This method of study has spread among the yeshiva students who still hold a *gemara* in their hands. In no way does this type of Torah study bring men to purity. From the day this method spread abroad, this kind of Torah has had no power to protect its students. . . . It is better to have no *rosh yeshiva* than to have one who studies with the "chemical" method.⁴

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In his ethical will, printed at the end of his responsa, R. Wilovsky returns to this criticism and directs his sons: “Be careful, and keep far away from the new method of study that has in recent years spread through Lithuania and Zamut. Those knowledgeable in Torah refer to it as ‘chemistry.’”⁵

Another scholar who opposed the new method of study was R. Aryeh Karlin. It is worth quoting at length from the introduction to his *Lev Arye*, complete with its distortions, because of its importance in helping us understand the motivations of R. Hayyim’s critics.

New times have come, numerous “methods” proliferate in the world of the Torah students. The halakha does not, however, follow a “method.” They lay claim to being pioneers and revolutionaries, the creators of the world of logical method in the study of the Torah. One must strongly protest against this. These methods have altered the whole face of halakhic studies. The “Telzer” method and “the method of R. Hayyim” which are now widespread in the yeshiva world have done far more harm than good. . . . [The sages in years past] did not content themselves with only the words of Maimonides and Rabad, as is now customary in yeshivot. The *roshei yeshiva* teach that only Maimonides and Rabad are the basis for logic and the study of Torah, and all discussion concerns them; as if without Maimonides there is no *biddush* in Torah, and there is no need to explain and elaborate the Talmudic opinions themselves and the contradictions [in them] which are difficult to understand.

Contrary to R. Karlin’s portrayal, R. Hayyim and his colleagues/students believed that even though there were novel elements in their approach, through their interpretations they were able to reveal what was latent in the sources. This is the meaning of R. Hayyim’s comment, as transmitted by R. Elhanan Wasserman, that it is not our role to create *biddushim*, for this was the task of the *rishonim*. Our duty is merely to understand the words of the *rishonim*. R. Hayyim’s approach postulates that in order for us to properly understand both Talmud and *rishonim*, we must study in a fashion which causes everything to appear in a new light, even though, in truth, our insights are *not* “*biddushim*.” Rather, what we are stating is simply the obvious and plain meaning of the texts, the “removal of the veil from upon the halakha.”⁶

R. Hayyim’s denial that he wrote *biddushim*—the task of the *rishonim*—needs clarification. After all, the *rishonim* would say the same as R. Hayyim, namely, that even though their words appear as *biddushim* in our eyes, they never intended to produce novel insights, but

merely to expound the meaning, the *peshat*, of the Talmud. In fact, this would appear to be the method of all traditional authors, who claim to be either following the path of their predecessors or restoring the truth which has been lost over time.

This outlook is reflected in the words of R. Hayyim's sons in their introduction to his work on Maimonides, in which they write that he illuminated the eyes of Torah scholars with his method "in accordance with the approach taught to us by our teachers, the *rishonim*, of blessed memory."⁷ In other words, R. Hayyim is merely continuing the path of the *rishonim*, and his assumptions and analytical reasoning develop directly from this base. Inherent in this notion is that even if the *rishonim* never considered the reasoning of R. Hayyim, the latter's explanations are able to provide the analytical framework through which one can best understand their views. Furthermore, the Brisker method assumes that if the *rishonim* had seen the way their positions were explained and presented, they would agree with all that R. Hayyim had "derived" from their words and with the analytical structure he erected upon them.

The opposition aroused by R. Hayyim's approach was not able to hold its ground, and the new method quickly conquered the yeshiva world. What was the nature of this method and why did it achieve such popularity? One of R. Hayyim's students, R. Judah Leib Don Yihye, described the *shiurim* of R. Hayyim as follows:

He would approach every Talmudic theme as a surgeon. He would first search out the logical elements of every *sugya*, showing the strengths of one side and then the other. After the logical basis was clear to all listeners, he would then focus on the dispute in the Talmud or between Maimonides and Rabad, and explain it in accordance with two [divergent] logical approaches.⁸

When R. Hayyim approached a dispute between Maimonides and Rabad, or between other *rishonim*, he did not adopt the traditional approach, which was to answer the difficulties raised (*e.g.*, by Rabad against Maimonides) or to bring proofs in support of one side against the other. Rather, he attempted to *clarify* the divergent understandings of the *rishonim*, those which brought them to their different conclusions. It is known that R. Joseph Baer, R. Hayyim's father, said to his son, "When people point out a difficulty to me and I answer it, the questioner is happy because he asked well, and I am happy because I succeeded in formulating an answer. However, when they ask you a

question and you answer it, no one is happy, because you show the questioner that there was never a difficulty in the first place, and thus no need for any answer.”⁹ A similar approach is found in the writings of R. Elhanan Wasserman, a leading student of R. Hayyim. According to him, it is not desirable for us to answer the questions of the Tosafists, but merely to *understand* these questions. “When people find an answer to a difficulty posed by the Tosafists, this is not a discovery but a loss. They have lost the *peshat* of the Tosafists’ words.”¹⁰

Another reason, perhaps the most important, for the popularity of R. Hayyim’s method is that he took the halakha, which until then had been studied in all its details in order to enable its performance in the real world, and turned it into an ideal structure. This facet is best expressed by Rabbi Joseph B. Soloveitchik: “Suddenly the pots and the pans, the eggs and the onions disappeared from the laws of meat and milk; the salt, the blood and the spit disappeared from the laws of salting. The laws of *kashrut* were taken out of the kitchen and removed to an ideal halakhic world . . . constructed out of complexes of abstract concepts.”¹¹ Yet all the attempts at describing R. Hayyim’s method, including the wonderful writings of his grandson, do not provide a complete picture. In order to truly understand the method one must experience it “in action,” and only then can one begin to sense its great attraction.¹²

Since the novellae of R. Hayyim were not published in his lifetime, all of his fame was due to the students who attended his *shiurim* and spread his reputation. These *shiurim* were known as “logical” and far removed from *pilpul*, something which was important during this time because of the attacks of the *maskilim* against the “accursed” *pilpul*. From the time of R. Hayyim, *roshei yeshiva* ceased, on the whole, to write commentaries on the Talmud in the traditional fashion, that is, page after page. Instead, they began to write on themes, or “*sugyot*.” When one reads their *hiddushim*, one is reading the major points of their *shiurim*.¹³

It would have been natural to expect that just as so many in the yeshiva world were transformed into adherents of the Brisker method, academic Jewish scholarship would have analyzed this historical phenomenon. It is indeed strange that the researchers of Judaism, those who made it their goal to investigate all aspects of Jewish history and thought, ignored the original contributions of yeshiva learning. Even the method of R. Hayyim was regarded by them as nothing more than *pilpul*. Over sixty years ago, Rabbi Jehiel Jacob Weinberg stressed this defect in modern Jewish scholarship in a eulogy for his teacher, R. Moses Mordechai Epstein:

When we shall be worthy of having a true Hebrew science, they will recognize and understand the value of the great ideas spread throughout his books. The new Hebrew science, and in particular the field of *Mishpat Ivri*, can learn much Torah and wisdom from his magnificent works, if it knows how to retrieve the original ideas from the give and take of the Talmudic discussion which [R. Epstein] made the framework for his *hiddushim*. Here and there, brilliant ideas and new definitions of legal terms and concepts shine. Their scientific value is immeasurable.¹⁴

Norman Solomon has attempted to rectify this shortcoming in modern Jewish studies in his recent book, *The Analytic Movement: Hayyim Soloveitchik and his Circle*. Solomon investigates that which he terms the “analytic approach” and attempts uncover its originality as expressed in the writings of twelve leading scholars and *roshei yeshiva*: Rabbis Hayyim Soloveitchik, Isaac Jacob Rabinowitz, Shimon Shkop,¹⁵ Joseph Leib Bloch, Moses Mordechai Epstein, Baruch Ber Leibowitz, Isser Zalman Meltzer, Naftali Trop, Elhanan Bunim Wasserman, Hayyim Rabinowitz, Moses Avigdor Amiel, and Abraham Isaac Bloch. Even though half of these scholars were not students of R. Hayyim, R. Hayyim was the intellectual maestro of this movement, as is implied by the title of the book.

Solomon’s book is a good introduction to the analytic approach and certainly worth reading. This is particularly so if the author is correct in his assertion that even though most of the yeshivot accepted the analytic approach, it has since deteriorated so much that today it is almost impossible to find it in its “pure” form. In order to clarify the nature of the analytic approach and its uniqueness, the author offers numerous telling examples. He also investigates, though much too briefly, the precursors of this approach, in particular R. Arye Leib Heller, author of *Ketsot haHoshen* and *Shev Shemateta*. Yet it is doubtful if some of Solomon’s more grandiose statements are correct, such as that the *Talmudic Encyclopedia* could not have been written without the influence of the analytic approach and the halakhic definitions it provided.

Solomon describes the development of the “*hilluk*,” which was common among all Talmudists, to the “*hakira*,” which was the method of study among R. Hayyim and the analytic school. He identifies seven types of *hakirot* which were used by this school, giving examples for each. He also offers an interesting explanation concerning the word *hakira*. Since the *maskilim* tended to used words such as *hoker*, *mehkar*,

etc. when describing their method of research, R. Hayyim and his circle appropriated the word *hakira* in order to show that their method of study was just as analytic. Solomon is not saying that they consciously took this word from the *maskilim*, only that they made use of a word which in their day signified the heights of intellectualism. While it is possible that the *maskilim* did, in fact, contribute to the widespread use of the word during this era, one mustn't overlook the fact that it was also part of the rabbinic phraseology in the generations preceding R. Hayyim. A good example of this is provided by the work *Heker Haklacha* by R. Eleazar Kalir, which appeared in Vienna in 1838. This book is divided into a number of sections, each of which is called *hakira*.

Solomon's assumption that R. Hayyim and the analytic school were engaged in a struggle with non-traditional forces for the soul of Jewish youth is not new. R. Joseph B. Soloveitchik claimed that it was precisely R. Hayyim's approach which showed talented youth that Torah study was not any less modern or intellectual than the secular studies of his day.¹⁶ Furthermore, R. Soloveitchik argued that without the method of R. Hayyim, we would no longer be able to spread Torah study.¹⁷ What the Rav no doubt meant is that without the attraction of R. Hayyim's method, the most talented students of then and now would have devoted their attention and skills to areas other than Torah study, areas which appeared more intellectually challenging. This idea also finds expression in Abraham Besdin's summary of the Rav's lectures: "It would be most difficult to study Talmud with students who are trained in the sciences and mathematics, were it not for his [R. Hayyim's] method, which is very modern and equals, if not surpasses, most contemporary forms of logic, metaphysics, or philosophy."¹⁸

Another valuable section of Solomon's book is his chapter on the unique terminology employed by the analytic school. A number of analysts—although not R. Hayyim—made use of terms such as *he'eder*, *hiyyuvi*, *shelili*, *hagdara*, *guf*, *siba*, *mikre*, *be-fo'al*, and *metsiut*. This is quite significant since these terms had never before appeared in rabbinic literature. Their origin is the philosophical writings of the Middle Ages, and they came to the analysts either through direct acquaintance with this literature or via the Mussar literature. Other chapters of Solomon's book add to our understanding of the analytic movement, as do a couple of significant articles he has written.¹⁹ There is no question that Solomon is an expert in the works of R. Hayyim and the analytic movement, and anyone who reads his book and articles will profit thereby.

Despite the positive aspects of Solomon's book, one cannot overlook the defects which detract from its value. To begin with, the author

has published his dissertation, written some thirty years ago, without changing a thing. That is, he ignored all the research which has been carried out in the intervening years. Although in some places he has added short notes with corrections, the text itself remains unchanged, even in the face of blatant errors. It is as if Solomon were editing the work of another, in which case one is not permitted to touch the original text. For example, on page 236 he has an explanatory note which begins: "The syntax of the preceding sentence is confusing." Why, one must ask, did he not simply correct this sentence in the text? What possible purpose is served by showing us how he corrects his own syntax in a note? I have never before encountered such a bizarre method of publication. At times, this approach leads to results which are almost comical. For example, on page 9 he refers to an article on the Lithuanian yeshivot by "Allon," inexplicably neglecting to point out where this article appears. In his note, he writes: "This reference is incorrect. I cannot trace the correct reference, but it could not possibly have been to Gedaliah Alon." Yet Solomon was right the first time, having in mind Gedaliah Alon's famous article on the yeshivot.²⁰

There are a number of other errors of a historical and bibliographical nature. To give some examples:

P. 11: Solomon writes about the method of study of R. Isaac Jacob Rabinowitz without being aware of Rabinowitz's most important work, *Zekher Yitshak*, the first edition of which appeared in Jerusalem, 1948.

P. 29: Solomon writes that R. Joseph B. Soloveitchik "was responsible for the decision to close the [Volozhin] Yeshiva" in 1892. In truth, R. Soloveitchik had severed his connection with the yeshiva some twenty five years before this. In 1864 he left Volozhin to become rabbi of the city of Sulzen, and R. Naftali Zvi Judah Berlin was responsible for closing the yeshiva.²¹

P. 30: "The Gaon of Vilna had charged R. Hayyim of Valozhyn [!] with establishing a Yeshiva where Torah would be studied systematically, and ancillary studies would be included in the curriculum." Even the *maskilim*, who incorrectly attempted to show that they were the spiritual heirs of the Vilna Gaon,²² never made such an outlandish assertion. The notion of studying secular subjects within the walls of a yeshiva was unheard of in the Vilna Gaon's era. Furthermore, there is no truth to the popular tradition which claims that the Volozhin yeshiva was established at the request of the Gaon.²³

P. 43: Solomon claims that Agudat Israel was formed on a platform of religious Zionism. In fact, the exact opposite is true. Solomon

also claims that R. Hayyim and R. Elhanan Wasserman were “active political Zionists.” Yet not only did R. Hayyim oppose Zionism, but he was one of the leaders (together with R. Shalom Ber Schneersohn) of the anti-Zionists. R. Wasserman was, in his day, the most extreme anti-Zionist in the Agudah, and today his articles are used to support the Satmar ideology.²⁴

P. 84: The author writes that after the close of Volozhin in 1892, R. Kook went to Brisk to study with R. Hayyim. In truth, R. Kook served as rabbi of the city of Zaumel from 1888.

It is unfortunate that prior to publication, the book was not reviewed by someone knowledgeable in the history of East European Orthodoxy, who could have corrected many of its mistakes. Due to these errors, and the strange way the book has been published, there is a possibility that some readers will lose interest before they are able to benefit from the numerous good things the book has to offer.

There are a couple of aspects of the Brisker approach which either are omitted in Solomon’s treatment or more elaboration is required. Every historian who examines the *biddushim* of R. Hayyim will ask himself if the latter’s brilliant explanations truly correspond to the views of Maimonides. That is, do R. Hayyim’s explanations offer us the “historical Rambam,” or is R. Hayyim’s Rambam a modern creation. In fact, one needn’t be a historian to ask this question. For example, R. Jehiel Jacob Weinberg writes as follows with reference to a *biddush* of R. Hayyim:

While the ideas of R. Hayyim Soloveitchik are true from the standpoint of profound analysis, they are not always so from a historical standpoint, that is, with regard to the true meaning of Maimonides, whose way of study was different than that of R. Hayyim Soloveitchik. This does not detract from the value of this intellectual genius, who is worthy of being called a “new Rambam,” but not always as an interpreter of Maimonides. Yet R. Hayyim, by means of his brilliance, arrived at the same conclusions Maimonides reached through a different method of study.²⁵

R. Weinberg raises a very interesting issue, the difference between *biddushim* which are true from the standpoint of analysis but not from the standpoint of history, between Torah truth and historical truth. There is a tradition in the Soloveitchik family that R. Hayyim did not “like” the twenty four responsa of Maimonides to the sages of Lunel.²⁶ This is not surprising. These responsa were written by Maimonides in

order to explain a number of rulings in the *Mishne Torah*. Had he thought along the lines of R. Hayyim, we would have expected learned answers in accordance with the analytic approach. Yet Maimonides gives short, non-analytical answers. In a number of these responsa, he tells the sages of Lunel that there are mistakes in their copy of the *Mishne Torah*. In one responsum he says that he has abandoned his earlier opinion.

For example, in *Teshuvot haRambam* (Blau) no. 433, the sages of Lunel pointed out a difficulty in *Hilkhot Nizkei Mamon* 4:4. Many subsequent commentators, including R. Hayyim, have struggled with this difficulty and offered various interpretations. What was Maimonides' response? He informed the sages of Lunel that the difficulty they found was due to a mistake in their copies of the *Mishne Torah*. In other words, all of the explanations offered over the years to explain the difficulty—which was only due to a copyist's error—have no relation to the historical view of Maimonides.²⁷ Nevertheless, no one will deny that these explanations are to be included under the rubric, "Torah." In fact, *Shulhan Arukh*, *Hoshen Mishpat* 396:8 rules in accordance with the mistaken text of the *Mishne Torah*!

R. Joseph Karo did not know about Maimonides' responsum when he wrote the *Shulhan Arukh* (he did know about it when he wrote his commentary, *Kesef Mishne*). Had Karo known about Maimonides' responsum, there can hardly be any doubt that he would have recorded a different halakha. Yet, even though his ruling in the *Shulhan Arukh* is based on a faulty Maimonidean text, it is questionable whether we should reject *Shulhan Arukh's* halakha, for Karo's view can still be supported. This is so because many scholars offered explanations for this halakha, thinking it was stated by Maimonides.²⁸ Other scholars, such as R. Hayyim, explained this halakha even though they were aware of Maimonides' responsum.²⁹ Finally, at least two important *rishonim* ruled in accordance with the faulty *Mishne Torah* text.³⁰ It would therefore appear that there is no necessity for *us* to reject the *Shulhan Arukh's* ruling, even though *Karo himself* presumably rejected it when he became aware of Maimonides' responsum.³¹

Returning to our main topic, there is no doubt that the *Mishne Torah* was transformed into an independent entity which had a life of its own. Scholars offered interpretations of the *Mishne Torah* without taking into account that which Maimonides wrote in his other works. On occasion, they even ignored the explanations Maimonides himself gave for *halakhot* in the *Mishne Torah*. Similarly, scholars found sources for *halakhot* in the *Mishne Torah* which appeared more reasonable than those sources which Maimonides pointed to in his responsa.³² As R.

Nahum Ash put it in justification of this approach, "In his old age, Maimonides forgot the source of many things, and those who came after him probed and pointed to their source."³³

It was also believed that a halakhist could rely on the *Mishne Torah* in rendering halakhic decisions even if Maimonides later retracted what he wrote in his *Code*.³⁴ Both from the standpoint of theoretical analysis as well as practical halakha, it was not Maimonides the *person* who was important, but the *Mishne Torah* itself.³⁵ It is thus clear that R. Yaakov Hayyim Sofer is mistaken when he writes that the numerous discussions about whether we accept Maimonides' view in his *Code* or in his responsa are only applicable when we don't know what his final decision was, but when we do know, all agree that it is the final ruling which binds us.³⁶

With this approach, *i.e.*, of the *Mishne Torah* having a life apart from its author, one can understand, for example, the many explanations which have been offered over the centuries for Maimonides' view of "*divrei sofrim*." Many of these explanations have been collected by J. J. Neubauer in his book, *HaRambam al Divrei Sofrim* (Jerusalem, 1957). There is no doubt that Neubauer is correct when he writes that "the idea of explaining Maimonides in accordance with Maimonides himself remained foreign to the authors, the halakhic authorities. If, on rare occasion, we do find this tendency, it is no more than an isolated phenomenon" (p. 79).³⁷ However, one must not conclude from this that because these *hiddushim* are not *historically* correct explanations of Maimonides' view, that they are not "true." They are indeed true and as much a part of Torah study as are all other *hiddushim*.³⁸

Presumably, R. Hayyim knew that his *hiddushim*, even though they were *consistent* with the words of Maimonides, did not reflect the historically accurate position of the latter. However, uncovering the historically accurate teaching of an author is the work of an historian or a commentator who concentrates on the *peshat*. It is not the realm of the interpreter, who, by all available measures, produces *hiddushim*, however much he denies that his interpretative endeavor should be characterized as such. Such an expositor is only concerned that his ideas be consistent with the work he is commenting on, the work he is using as a springboard for his *hiddushim*. He is not interested in original intent. In his mind, a book has a life of its own and can be interpreted on its own terms.³⁹

The story of the "oven of Akhnai" (*Bava Metsia* 59b) teaches that as far as Torah interpretations are concerned, original intent is not the decisive factor. It is the conclusion of the sages which is central. Even when God Himself reveals His intention, we do not listen to Him, for it

is God's will that after the Torah was given, it be explained through human intellect.⁴⁰ The same phenomenon applies to the *Mishne Torah* (and indeed to every work). After the author has offered it to the world, he no longer has "exclusive rights" over it, and permission is given to all to interpret it in many different ways. Just as there are seventy facets to the Torah of Moses, so too there are seventy facets to the teaching of Moses ben Maimon (as well as all other sages).

Furthermore, it is possible that an author is not aware of all the wisdom contained in his work. This idea is well established in literary circles, which stress that the most reasonable interpretation is not necessarily identical with the position of the author. Although the notion that an author understands his words better than everyone else would appear to be self-evident, and most intellectual historians still operate in this fashion, modern literary and philosophical thought argue that even the author does not recognize all that is found in his work, both in terms of background and motivation as well as content.⁴¹ If R. Hayyim did not hold to the positions suggested in both this paragraph and the previous one, and if he indeed thought that his explanations gave us Maimonides' historically accurate view, there appears to be no escaping the well known criticisms of R. Abraham Isaiah Karelitz, which arose, in part, from R. Hayyim's attempt "to read certain concepts and ideas into the Rambam . . . which are not stated clearly therein."⁴² (We have previously seen the comment of R. Weinberg concerning R. Hayyim's interpretations.)

This discussion leads to another area. It is well known that there are halakhists who believe that the scholars of Israel only accepted R. Karo's rulings in the *Shulhan Arukh* (and *Bet Yosef*), but not in his other works.⁴³ In other words, it is the book which has been accepted as the halakhic authority and not the man behind the book. In accordance with this approach, it is possible to argue, and a number of Moroccan halakhists have done so, that it does not matter if R. Karo changed his mind in his other writings, since we do not decide halakha based upon what came last but upon the book which has been accepted, namely, the *Shulhan Arukh*.⁴⁴

There is another difference between the approaches of R. Hayyim and Maimonides, although it is unclear if R. Hayyim recognized it. As is well known, there is a dispute about the purpose of Talmudic learning. Some argue that its objective is practical halakha, whereas others argue that theoretical analysis is the pinnacle of Torah study—"li-shma," in contemporary parlance. This debate is quite wide-ranging and cannot be adequately dealt with here. Yet it is impossible not to call attention to

the fact that the approach of Maimonides is in accordance with the first approach, *i.e.*, study for the purpose of practical halakha. In line with this, Maimonides regarded the *Mishne Torah* as a practical halakhic work which everyone could use and from which scholars could formulate halakhic decisions when necessary. Even when he dealt with the Temple, sacrifices, and other non-applicable laws, it was not in order to “investigate and receive reward.” Rather, he was intent on establishing the practical halakha. He therefore ruled in matters which all other halakhists regarded as belonging to the realm of “Messianic halakha.”⁴⁵

The approach of R. Hayyim and the yeshivot of Lithuania had, as its major characteristic and most exalted goal, Torah study as a theoretical discipline. As R. Soloveitchik put it in describing “halakhic man,”—and R. Hayyim is the closest thing there is to such an ideal type—“The foundation of foundations and the pillar of halakhic thought is not the practical ruling but the determination of the theoretical Halakha. . . . The theoretical Halakha, not the practical decision, the ideal creation, not the empirical one, represent the longing of halakhic man.”⁴⁶ In line with this conception, R. Hayyim and his students transformed the *Mishne Torah* from a work of *pesak* into the most complete commentary on the Talmud and the basis of countless analytic novellae.⁴⁷

Returning to Maimonides, he describes his method of study in a number of places. In his commentary to *Nedarim* 2:1, concerning an argument between the *tanna kamma* and R. Judah with regard to the view of Bet Shammai, Maimonides writes: “Since R. Judah’s view is concerned with Bet Shammai and Bet Shammai’s approach is rejected, we are not concerned with its particulars.” In other words, since Bet Shammai’s view is rejected, it is not important to understand its logic and ramifications. After quoting this passage, R. Kafih writes as follows: “In our days, they would angrily reject this approach as ‘*am-aratsut*’ and those in the yeshivot⁴⁸ would call it ‘*ba’al bayitiyyut*,’ but our great rabbi had a different view.”⁴⁹

The same approach appears in Maimonides’ letter to R. Joseph concerning study of the *Mishne Torah*.

The desired goal of the material collected in the Talmud and other works has been destroyed and lost.⁵⁰ The goal of those who study is to waste time in the argumentation of the Talmud, as if the intention [of Talmudic study] is only to be trained in argumentation. This is not the primary intention, but the disputes arose accidentally. . . . The primary intention [of Talmudic study] is knowledge of what one must do and what one must avoid.⁵¹

In another letter to R. Joseph, which applies to all but advanced scholars, Maimonides writes that it is proper to devote oneself exclusively to the *Mishne Torah* and the *Halakhot* of R. Isaac Alfasi. Only if there is a disagreement between them should one examine the Talmudic *sugyot*. One should not concern oneself with explanations and disputes that have no relevance to practical halakha.⁵²

The difference of opinion between Maimonides and R. Hayyim is thus clear. Yet, preference for the theoretical halakha in accordance with R. Hayyim's approach is one thing: active avoidance of *pesak*, which also characterized his approach, is something else. (It is known that R. Hayyim used to have the *dayyan* of Brisk, R. Simha Zelig, decide matters of practical halakha.) In explaining this attitude, R. Shlomo Yosef Zevin writes:

R. Hayyim was aware that he was incapable of simply following convention and that he would be obliged, consequently, to render decisions contrary to the norm and the traditionally accepted whenever his clear intellect and fine mind would show him that the law was really otherwise than as formulated by the great codifiers. The pure conscience of a truthful man would not allow him to ignore his own opinions and submit, but he would have felt himself bound to override their decisions, and this he could not bring himself to do.⁵³

It is well known that R. Hayyim once requested a *pesak* from R. Isaac Elhanan Spektor, but stated that he wished to hear only the conclusion and not the reasoning. Had he heard the reasons, it is likely that he would have had to reject them, and together with this the *pesak*. However, if he only heard the decision, he could rely on the authority of R. Spektor.⁵⁴ All this illustrates the difference between the theoretical halakha, the ideal creation, in which all conclusions are possible, and the real halakha, in which one must follow convention and accept the traditional methods of *pesak*. In theoretical halakha one can reject the *Shulhan Arukh* and its commentators and establish the halakha based upon Maimonides alone or upon an original understanding of a Talmudic passage. In the real world, however, this approach is not possible. For example, one can imagine the conflict which would have developed in Orthodoxy had R. Hayyim publicly advocated his position that, with the exception of *Yom Kippur*, there is no longer an obligation to fast, since all people today are regarded as suffering from non-life-threatening illnesses.⁵⁵

Having said this, it must also be noted that there were a number of

times when R. Hayyim departed from his practice and did decide in matters of practical halakha. Among these decisions, some are at variance with the *Shulhan Arukh*. R. Hayyim, who was guided by truth and not consensus, explained that it was only a custom not to dispute with the sages of previous generations. In his conception, *amora'im* were even permitted to dispute with *tannaim*, although they generally refrained from doing so.⁵⁶ Perhaps the most famous example of R. Hayyim's disputing the *Shulhan Arukh*—at least according to the generally accepted understanding of R. Karo's code—is his decision that one who is ill on Yom Kippur can eat as he wishes, rather than consume small bits of food, as is prescribed in *Shulhan Arukh, Orach Hayyim* 618:7.⁵⁷

Similarly, R. Hayyim, in an era before any “change of nature,” decided that one must violate the Sabbath, including biblical prohibitions, for a baby born in the eighth month. This decision opposes *Shulhan Arukh, Orach Hayyim* 330:7.⁵⁸ (It is well known that R. Hayyim was very strict when it came to matters of life and death.⁵⁹) In addition to these examples, there are other positions of R. Hayyim which do not correspond with the *Shulhan Arukh*,⁶⁰ but it is questionable whether they were intended for the wider community or only for his family and close students. If today there are some who follow these rulings, it is because they accepted the practice of their teachers, who themselves were close to R. Hayyim.

The intellectual independence of R. Hayyim is also seen in how he related towards various customs. He was—if popular stories are to be believed—often unsympathetic to customs that could not be placed within some sort of halakhic framework, despite the fact that throughout history, *posekim* never argued that a *minhag* must abide by halakhic logic.⁶¹ To give one example of this attitude, which finds expression in the thought of his grandson, even though it is a long-standing and universal custom to refrain from shaving during the period of *sefira*, this is not to be regarded as a “*minhag*.” According to the Rav, reflecting R. Hayyim's approach, since halakha recognizes certain forms of mourning, *sefira*, as a time of mourning, must fall into one of these categories. Since *sefira* is identified with the mourning of twelve months, it assumes all of the mourning practices associated with this category. Consequently, those who shave every day are also permitted to shave during *sefira* (the same logic applies for the period of 17 Tammuz to *Rosh Hodesh Av*).⁶²

It is possible to elaborate on this matter, as well as the other issues I have mentioned. My primary goal, however, has been to show that even though Solomon's book clarifies a number of aspects of R.

Hayyim's approach, much more needs to be done in this area. Perhaps we will be fortunate to have the author return to these topics, and if not, we are still in his debt for being the first to set the analytic movement in its rightful place as a subject of serious study in modern Jewish scholarship.

APPENDIX

After this article was completed, Rabbi Hillel Novetsky sent me the transcript of R. Aharon Lichtenstein's 1984 lecture at the Bernard Revel Graduate School of Yeshiva University, "*Torat Hesed and Torat Emet: Methodological Reflections*." Since R. Lichtenstein's comments are not readily available, I will quote a few passages which, I was gratified to see, are very similar to what I argued in my article.

"It may indeed perhaps be doubtful that in setting forth the Rambam's *shitah* . . . that the Rambam personally intended everything that R. Hayyim expounds by way of its explication. And yet that should not deter the exposition. The potential for the whole of R. Hayyim's book—as potential—is surely latent within the raw material of the *Yad ha-Hazakah*, although it may have taken a genius of R. Hayyim's stature to extract and elucidate it.

"That is all that need concern us. Perhaps we do not divine in psychological, subjective terms the Rambam's intention, but, on the other hand, neither are we studying ourselves. We are studying the texts, the concepts, the raw material to be found within the Rambam and mined therefrom. *Kol asher talmid atid le-hithadesh ne'emar al yedei Rabbeinu Moshe ben Maimon*. Would the Rambam have recognized his own recast handiwork? Probably not." (R. Lichtenstein then quotes the Talmudic passage in *Menahot* 29b which describes how Moses could not fathom R. Akiva's method of expounding the Torah, and applies the lesson of this passage to Maimonides' works. He concludes:) "*Hakhmei Yisrael*, too, have then their *Torat Emet*—that which is, as best as can be perceived, an accurate statement of their conscious and willed position—and their *Torat Hesed*—the increment they have contributed to the world of halakha which can then lead its own life and be understood in its own terms, both as an independent entity and in relation to other halakhic elements."

With regard to practical halakha, R. Lichtenstein says: "If one indeed assumes that in learning *rishonim*, interpreting them, we can find content but not necessarily intent, this is well and good to the

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extent that we are simply trying to plumb the depths of Torah proper. However, the moment that, in dealing with *pesak*, we seek to invoke their authority and to insist that a particular point of view be adopted because the weight of the Rambam or the weight of the Rashba is behind it, then of course the element of intent—whether indeed this was the clearly stated and articulated position of the Rashba or the Rambam proper—becomes a far more critical and crucial consideration than when we simply are learning with excitement and passion in the confines of the *Bet Midrash*. That is a consideration which those who are concerned with *pesak* I think should bear in mind.”

NOTES

1. During R. Hayyim's era, R. Isaac Jacob Reines published his books, *Hotam haTokhnit* (2 vols., Mainz-Pressburg, 1880-1881) and *Urim Gedolim* (Vilna, 1887), in which he, too, advanced a new conceptual approach to Talmud study. Yet his approach never succeeded in finding an audience in the *yeshivot* and was subjected to great criticism. See e.g., the anonymous article in *HaPeles* 5 (1903), pp. 673-674, in which the author regards R. Reines' approach as falling into the category of “that which is new is forbidden by the Torah.” See similarly R. Naftali Zvi Judah Berlin, *Meshiv Davar* (Jerusalem, 1993), vol. 5, no. 44.
2. See R. Aryeh Karlin, *Lev Arye* (Tel Aviv, 1938), Introduction. See, however, R. Isser Yehudah Unterman, “*Torah Mehazeret le-Akhsanya Shela*,” *Sefer haYovel liKhvod . . . R. Shimon Yehuda haKohen Shkop Shlita* (Vilna, 1936), p. 20, who defends any such aberrations of the analytic method. He views them in the same light as the pilpulistic flights of fancy which were common in earlier centuries. According to him, both of these phenomena should be viewed as recreation and as a means to rejuvenate the creative impulses, which in turn better enable the students to devote themselves to proper Talmud study.
3. Pinhas Peli, ed., *BeSod haYahid ve-haYahad* (Jerusalem, 1976), p. 213; R. Zvi Schachter, *Nefesh haRav* (Jerusalem, 1994), p. 248.
4. Most of this translation, and that of *Lev Arye*, below, is taken from Louis Jacobs, *A Tree of Life* (Oxford, 1984), pp. 59-60. Shaul Stampfer, *HaYeshiva haLita'it beHithavuta* (Jerusalem, 1995), p. 113, note 29, quotes Saul Lieberman's opinion that R. Wilovsky's words were directed against R. Reines. This is clearly incorrect. As I pointed out above (n. 1), R. Reines' method had no influence whatsoever, and R. Wilovsky is speaking about a method of study which was widespread in the *yeshivot*. It is obvious that he can be referring only to the method of R. Hayyim and his colleagues/students.
5. It is not surprising that R. Zvi Simeon Album, in his polemic against R. Wilovsky, *Divrei Emet* (Chicago, 1912), vol. 2, p. 45, points to R. Wilovsky's words as proof that the latter had contempt for the Torah scholars of Eastern Europe.

6. *Kovets He'arot: Yevamot* (Jerusalem, 1985), Preface. The final words of this paragraph are taken from R. Joseph B. Soloveitchik's eulogy for his uncle, R. Isaac Ze'ev Soloveitchik. See Pinhas Peli, ed., *BeSod haYahid ve-haYahad* (Jerusalem, 1976), p. 231.
7. A similar view is found in R. Moses Avigdor Amiel, *HaMiddot leHecker haHalakha* (Tel Aviv, 1939), Introduction.
8. This passage is quoted in Shaul Stampfer, *HaYeshiva haLita'it beHithavuta*, p. 111.
9. Schachter, *Nefesh haRav*, p. 19, in the note. Since the conclusions of Maimonides and Rabad were each valid, considering their divergent approaches to the Talmudic sources, R. Hayyim regarded Rabad's harsh language as uncalled for. See his comment to *Hilkhot Malve veLove* 19:8, where in quoting Rabad's *hasaga*, he deletes the latter's sharp pronouncement: "On my life, I have not found a greater error in all of his books."
10. See *Kovets He'arot leMasekhet Yevamot* (Tel Aviv, 1967), Introduction, p. 5. Concerning study of the Tosafists and R. Hayyim, see R. Hayyim Ozer Grodzinski's comment recorded in R. Aharon Lichtenstein's eulogy for his father-in-law, *Mesora* (Adar, 5754), p. 13.
11. *BeSod haYahid ve-haYahad*, p. 227 (translation in Lawrence Kaplan, "Rabbi Joseph B. Soloveitchik's Philosophy of Halakha," *Jewish Law Annual* 7 [1988], p. 150). For further discussion of this theme, see Kaplan's essay as well as the articles of R. Aharon Lichtenstein and R. Mosheh Lichtenstein in *Alon Shvut: Bogrim* (Nisan, 5754), pp. 105-132, and Avinoam Reznik, "Hashpaot shel Modalim Filosofiyim al haHashiva haTalmudit shel HaRav Yosef Dov Soloveitchik" (unpublished master's dissertation, Hebrew University, 1994).
12. In 1989, Yitzhak Adler's *Iyyun beLomdut* appeared. This is a sort of introduction to the approach of R. Hayyim, and is unique in how it illustrates the basis of this approach while examining almost one hundred different *sugyot*. (See p. vii for his definition of R. Hayyim's approach, which he terms the "conceptual approach" or "*lomdut*.") From the standpoint of Talmudic analysis, Adler's work far supersedes that of Norman Solomon, which I will soon discuss. However, Adler's book is a work of traditional Talmudic study and has no historical dimension. Moshe Wachtfogel's *The Brisker Derech* (Spring Valley, 1993) has also recently appeared. It is an attempt to present, in a popular and coherent fashion, the approach of R. Hayyim.
13. See Yaakov Ariel, "Megamot Hadashot beSifrut haToranit," *HaMa'ayan* 35 (Tishrei, 5755), p. 3.
14. *LiFrakim* (Jerusalem, 1967), pp. 269-270.
15. R. Shkop himself described his approach as *shitat ha-iiyun*. See R. Moses Avigdor Amiel, "Yoma Tava leRabanan," *Sefer haYovel liKhvod . . . R. Shimon Yehuda haKohen Shkop Shlita*, p. 42.
16. See Lawrence Kaplan, "The Hazon Ish: Haredi Critic of Traditional Orthodoxy," in Jack Wertheimer, ed., *The Uses of Tradition* (New York, 1992), pp. 152-153. Kaplan also calls attention to the comments of R. Isser Yehudah Unterman, "Torah Mehazeret leAkhsanya Shela," p. 20.
17. *BeSod haYahid ve-haYahad*, p. 213.
18. *Man of Faith in the Modern World* (Hoboken, 1989), p. 22.

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19. "Concepts of *Ze Neheneh* . . . in the Analytic School," *Jewish Law Annual* 3 (1980), pp. 49-62; "Anomaly and Theory in the Analytic School," *ibid.*, 6 (1986), pp. 126-177.
20. See Alon's *Mehkarim beToledot Yisrael* (Tel Aviv, 1967), vol. 1, pp. 1-11.
21. See Hayyim Karlinsky, *HaRishon leSholshelet Brisk* (Jerusalem, 1984), pp. 153-154; Jacob J. Schacter, "Haskalah, Secular Studies and the Close of Volozhin in 1892," *Torah u-Madda Journal* 2 (1990), pp. 76-133.
22. See Immanuel Etkes, "*HaGra ve-haHaskala—Tadmit uMetsiut*," *Perakim beToledot haHevra haYehudit Biyme'ei haBenayim u-va-Et haHadasha Mukdashim leProf. Yaakov Katz* (Jerusalem, 1980), pp. 192-217.
23. See Norman Lamm, *Torah for Torah's Sake* (Hoboken, 1989), pp. 25-26.
24. See R. Wasserman, *Yalkut Ma'amarim uMikhtavim* (Brooklyn, 1987).
25. *Seridei Esh* (Jerusalem, 1977), II:144. See also *ibid.*, II, p. 343 and R. Weinberg's letter in *HaMa'ayan* 34 (Tevet 5754), p. 19. On the necessity of understanding Maimonides in accordance with the latter's own method, see also *Seridei Esh* III:132-133. Incidentally, in a letter to R. Mordekhai Gifter, dated April 24, 1961, Weinberg expresses regret that he had never troubled himself to make the acquaintance of R. Hayyim. "Because of this I deprived myself of growth and lost something that can never be replaced."
26. See Isadore Twersky, *Introduction to the Code of Maimonides* (New Haven, 1980), p. 94, note 171. Many Lithuanian sages ignored Maimonides' responsa, using them neither to clarify passages in the *Mishne Torah*, nor to decide practical halakhic questions. This approach continues in our day. For example, R. Moses Feinstein does not cite the responsa of Maimonides. Apparently, in his eyes they do not have the importance for practical halakhic decision-making as do other collections of responsa, such as those by R. Asher and R. Solomon ben Adret. Although, as a rule, Sephardic authorities show much more deference to Maimonides' responsa, even here there are exceptions. R. Ben Zion Uziel would never have attempted to refute Maimonides' words in the *Mishne Torah*. Yet this is exactly what he tries to do with a responsum of Maimonides, adducing proofs to show that the latter erred in his ruling. He treats Maimonides in this case as if the latter were an *aharon* and not the greatest halakhist in history. See *Mishpetei Uziel* (Jerusalem, 1947), second series, *Orah Hayyim* no. 19. See also R. Ovadiah Yosef's criticism of Uziel, *Yabia Omer* (Jerusalem, 1986), vol. 6, *Orah Hayyim* no. 26:5. Another example of this tendency is found in R. Dov Ber Anushiski's *Matsav haYashar* (Vilna, 1886), vol. 2, pp. 79ff (Hebrew numerals), and was noted by Shraga Abramson in his notes to *Teshuvot haRambam*, vol. 4, pp. 51, 54. According to R. Anushiski, the *Mishne Torah* is primary because it was written after great thought. The responsa, on the other hand, were written in a haphazard manner. Therefore, R. Anushiski is able to assert that Maimonides erred in his responsa. R. Menahem Mendel Schneersohn raised this possibility without deciding definitively. See *Kovets Ginat haMelekh* (no place, 1987) pp. 5-8. There is a dispute among *posekim* as to what the halakha is when there is a contradiction between the *Mishne Torah* and Maimonides' responsa. According to R. Hayyim's school, there is no question that the halakha is in accordance with the *Mishne Torah*.
27. For what seems to be another contradiction between the responsa of

- Maimonides and R. Hayyim's *hiddushim*, see R. Isser Yehudah Unterman, *Shevet miYehuda* (Jerusalem, 1994), vol. 3, pp. 340-341.
28. The earliest such explanation is found in R. Asher ben Yehiel, *She'elot uTeshuvot haRosh*, ed. Yudelov (Jerusalem, 1993), p. 468 (no. 6).
 29. Malbim, in his commentary to *Mekhilta*, Exodus 21:29 (note 106), knows of the responsum of Maimonides and nevertheless offers a source from the *Mekhilta* for the faulty text of the *Mishne Torah*. See also R. Moses Avigdor Amiel, *HaMiddot leHeker haHalakha* (Tel Aviv, 1942), vol. 2, p. 294.
 30. R. Moses of Coucy, *Sefer Mitsvot Gadol*, positive commandment no. 67; R. Jeroham, *Mesharim* (Venice, 1553), p. 88d.
 31. R. Jehiel Jacob Weinberg was unsure how to proceed in cases such as this. In an unpublished letter to R. Isaac Herzog (Herzog Archives, Heikhal Shlomo), he writes as follows: "The *Bet Yosef* used faulty manuscripts and was therefore forced to explain and decide halakha from texts of *rishonim* which had omissions due to scribal errors. The question is, do we leave everything as is and just explain and formulate [the *halakhot*] in an appealing manner, or do we return to the sources and investigate everything anew?" See also R. Weinberg's letter in *HaMa'ayan* 32 (Tammuz, 5752), p. 14, where he rejects the approach of the Hazon Ish regarding the reliability of manuscripts in deciding halakha. This letter appeared too late to be discussed in two comprehensive articles which recently dealt with this issue. See Zvi Yaakov haLevi Lehrer, "Kitvei haYad leRabbotenu haRishonim she-Nitgalu beDorot ha-Aharonim veSamkhutam leGabei Keviat haHalakha," *Tsefunot* 16 (Tammuz, 5752), pp. 68-73; Moshe Bleich, "The Role of Manuscripts in Halakhic Decision-Making: Hazon Ish, his Precursors and Contemporaries," *Tradition* 27 (Winter, 1993), pp. 22-55. Obviously, those who believe that we reject the *Shulhan Arukh's* view because of the discovery of manuscripts unknown to R. Karo would also agree that we reject R. Karo's view if it is based on a faulty text or an unrevised version of the *Mishne Torah*. See R. Ovadiah Yosef's introduction to *She'elot uTeshuvot Rabbenu Moshe ben Maimon: Pe'er haDor* R. David Yosef, ed., (Jerusalem, 1984).
 32. Concerning this approach, see R. Reuven Margaliyot's introduction to his edition of R. Abraham Maimonides' *Milhamot Hashem* (Jerusalem, 1959), p. 13, note 3. Margaliyot cites a number of examples where *aharonim* provided what they believed to be better proofs for Maimonides' views than what he himself was able to supply. See R. Kalman Kahana, "Al 'Hazarotav' shel haRambam veSiboteihen," *HaMa'ayan* 17 (Tevet, 5737), pp. 5-26, who shows that the *aharonim* who adopted this approach erred in almost every example, sometimes because they did not have the complete text of Maimonides' responsa. However, for my purposes it is not important whether these *aharonim* erred or not, only that they thought that this line of reasoning, that is, preference for *their* explanation of the *Mishne Torah* over Maimonides' own explanation, was an acceptable approach. In line with this, see also Margaliyot's *Nefesh Haya* (Tel Aviv, 1954), *Orah Hayyim* 209, where he brings examples from the Talmud in which one sage interprets another sage's words in a manner different than what was explained by the latter sage himself. With regard to Maimonides, I have found another example in R. Reuven Katz, *Degel Reuven* (Petah Tikvah, 1976), vol. 3, no. 38:

"It is possible to explain Maimonides' halakhic position, not how he himself resolves it [in his responsum] to the Sages of Lunel, but in accordance with what he explains in his commentary on the *Mishna*." See also Shraga Abramson's notes to *Teshuvot haRambam*, vol. 3, p. 177 and vol. 4, p. 5.

See also R. Eleazar Shakh, *Avi Ezri* (Bnei Brak, 1993), *Hilkhot Teshuva* 5:5, who asks what is the meaning of Maimonides' words at the beginning of *Sefer haMitsvot*, positive commandment no. 1, according to which there is a commandment "to believe" in God. R. Shakh writes that he asked R. Isaac Ze'ev Soloveitchik and the latter offered him, in the name of R. Hayyim, an interesting explanation which elaborates on the nature of belief and the difference between belief and knowledge. However, as R. Hayyim Heller and R. Yosef Kafih have already noted in their editions of *Sefer haMitsvot*, and R. Hayyim Hirschenson, *HaMisderona* 1 (1885) p. 237, pointed out many years before, there is a mistake in the standard translation of *Sefer haMitsvot*. Maimonides never wrote that there is a commandment "to believe." He used the Arabic word *itikad*, which does not mean belief, but rather knowledge derived from investigation. It turns out, therefore, that R. Hayyim's explanation is actually the opposite of Maimonides' true view. One must then ask if it possible to "save" R. Hayyim's explanation, to which there is no one answer. Certainly, R. Hayyim's fascinating explanation has no relevance to Maimonides' view. However, it does have importance in and of itself, for even though Maimonides did not count belief in God as a commandment, it is possible to dispute with him and make use of the argument of R. Hayyim as the basis for this approach.

33. *Tsiyyunei Maharan* to *Hilkhot Nizkei Mamon* 4:4 (found at the end of the Frankel editions of the *Mishne Torah*). In support of this approach Margaliyot, *Nefesh Haya*, *Orah Hayyim* 209, cites *Bava Metsia* 44a-44b. It is here stated that Rabbi taught his son that "gold acquires silver." His son replied, "Master, in your youth you did teach us silver acquires gold; now, advanced in age, you reverse it and teach, gold acquires silver." After the Talmud explains why Rabbi changed his view, it states: "R. Ashi said, reason supports the opinion held in his youth." See also R. David Fraenkel, *Shiyarei Korban* to Jerusalem Talmud, *Yoma* 3:6, who writes that Maimonides forgot the source of a certain halakha in the *Mishne Torah*. In his letter to R. Jonathan of Lunel, Maimonides writes that in his old age, he too suffers from forgetfulness. In another letter, Maimonides mentions that he once temporarily forgot the source of a halakha. See Yitzhak Shailat, ed., *Igrot haRambam* (Jerusalem, 1988), pp. 444-445, 503. See *ibid.*, p. 287, note 18, where Shailat argues that in a responsum, Maimonides forgot what he himself wrote in the *Mishne Torah*. See also *ibid.*, p. 452, where Shailat points to another example of what he regards as Maimonides' forgetfulness with regard to his own works.
34. See the Vilna Gaon's note to *Orah Hayyim* 301:42, and R. Anushiski's comment, referred to above, note 26. See also R. Hayyim's view as recorded in R. Moshe Sternbuch, *Teshuvot veHanhagot* (Jerusalem, 1989), vol. 2, no. 49. In advancing his opinion, R. Hayyim ignored the fact that Maimonides retracted what he wrote in the *Mishne Torah*. There is no doubt that R. Hayyim was aware of this retraction, since it is mentioned by a number of *rishonim* and recorded in *Kesef Mishne*, *Tefilla* 7:17.

35. Some were not satisfied with this approach and adopted a simple argument, namely, that several of Maimonides' responsa to the sages of Lunel are inauthentic. See R. Solomon of Chelm, *Mirkevet haMishna, Hilkhhot Shabbat* 19:24, *Hilkhhot Nizkei Mamon* 4:4. This approach has recently been advocated by R. Yosef Kafih, but he claims that *all* the responsa are forgeries. See his "*She'elot Hakhmei Lunel uTeshuvot haRambam—Kelum Mekoriyyot Hen? Sefer Zikkaron le-haRav Yitshak Nissim* (Jerusalem, 1985), vol. 2, pp. 235-252, and Shailat's response, *ibid.*, pp. 253-255. See also Shlomo Zalman Havlin's comment on Kafih's view in *Alei Sefer* 12 (1986), p. 14. Kafih's argument has absolutely no basis. In fact, Maimonides' own son, R. Abraham, discusses his father's responsa to the sages of Lunel. How can anyone in this generation, even one as knowledgeable in Maimonides' works as Kafih, believe that he recognizes Maimonides' method of writing responsa better than R. Abraham?
36. "*Al Sefarim veSoferim*," *Tsefunot* 19 (1993-1994), p. 77. Sofer's position is strange, since in his *Berit Yaakov* (Jerusalem, 1985), p. 306, he himself quotes the Vilna Gaon's comment referred to above, note 34.
37. See also Jose Faur, *Iyyunim baMishne Torah le-haRambam* (Jerusalem, 1978), p. 1.
38. See R. Nahman Greenspan, *Pilpula shel Torah* (London, 1935), pp. xvii-xx, who elaborates on what he regards as an essential element of Torah study; namely, explaining the approach (*shita*) of earlier scholars in a manner which, although valid in and of itself, would have been foreign to these scholars.
39. See Thomas S. Kuhn, *The Essential Tension* (Chicago, 1977), chapter 1, who points to significant differences between the philosopher and the historian concerning how to read texts. His comments, which have great relevance to our discussion, were called to my attention by Rabbi Robert Klapper.
40. See e.g., Leon Feldman, ed., *Derashot haRan* (Jerusalem, 1977), pp. 44-45, 84, 112, 198-199; R. Hasdai Crescas, *Or Hashem*, 3:5:2; R. Joseph Albo, *Sefer ha-Ikkarim*, 3:23; R. Samson Bacharach, *Hut haShani* (Jerusalem, 1980), no. 53; R. Aryeh Leib haKohen, *Ketsot haHoshen*, Introduction. See also Izhak Englard, "*Tanur shel Akhnai—Perusheha shel Aggada*," *Shenaton haMishpat ha-Ivri* 1 (1974), pp. 45-56, *idem*, "Majority Decision vs. Individual Truth," *Tradition* 15 (Spring-Summer, 1975), pp. 137-152. Along the same lines, see R. Moshe Feinstein, *Igrot Moshe* (New York, 1959), *Orah Hayyim*, Introduction.
41. This observation, concerning Maimonidean studies in particular, was recently made by Michael Wyschogrod in his review of Marvin Fox, *Interpreting Maimonides* (*Tradition* 28 [Winter, 1994], p. 74). See, however, David Halivni's opposing position, "Contemporary Methods of the Study of Talmud," *Journal of Jewish Studies* 30 (1979), pp. 195-197. Since this dispute arises from fundamental differences of opinion about how to read and interpret texts, there can be no definitive "right" answer.
42. Kaplan, "The Hazon Ish: Haredi Critic of Traditional Orthodoxy," p. 155. Kaplan quotes one observer's perceptive remark that R. Karelitz judged R. Hayyim's interpretations of Maimonides "by the wrong criterion; he wanted to determine if they were true!" R. Hayyim's explanations found a

- defender in R. Hayyim Dov Ber Gulevski (a grandson of R. Simhah Zelig), *Lahat haHerev haMithapahat* (Brooklyn, 1976). See also the anonymous volumes of *Hiddushei Batra al Hiddushei R. Hayyim haLevi* (Jerusalem, 1978, 1986, 1995). I have already noted that R. Hayyim ignored Maimonides' responsum to the sages of Lunel concerning *Hilkhot Nizkei Mamon* 4:4. In contrast, *Hazon Ish*, *Bava Kama* 7:7, writes simply that this responsum supplies us with Maimonides' "true text."
43. See the discussion in R. Joseph Hayyim, *Rav Pe'alim* (Jerusalem, 1980), vol. 2, *Hoshen Mishpat*, no. 2.
 44. See R. Joshua Maman, *Emek Yehoshua* (Jerusalem, 1981), vol. 2, p. 269; R. Shalom Messas, *Shemesh uMagen* (Jerusalem, 1985), vol. 1, *Yore De'a*, no. 5, *Shemesh uMagen* (Jerusalem, 1993), vol. 2, *Yore De'a*, nos. 42-43; and the sources cited by R. Yaakov Hayyim Sofer, *Shem Betsalel* (Jerusalem, 1995), no. 37.
 45. Rav Zair argued that Maimonides decided "Messianic halakha" because he believed that the Messianic era was imminent and he saw his *Code* as a constitution for the newly reconstituted state. See *Toledot haPosekim* (New York, 1946), vol. 1, pp. 249-251. Solomon Zeitlin also adopted this approach in his *Maimonides: A Biography* (New York, 1955), chapter 8.
 46. *Halakhic Man*, transl. Lawrence Kaplan (Philadelphia, 1983), p. 24. R. Hayyim of Volozhin in at least one place expresses himself in accordance with Maimonides' approach. In the introduction to the Vilna Gaon's commentary to *Shulhan Arukh*, he writes: "The entire purpose of Talmud study is to derive practical halakha." Yet these words stand in opposition to his famous doctrine of *Torah li-shema*, as he explains it in many other places. See Lamm, *Torah for Torah's Sake*, who analyzes this issue in depth.
 47. This, of course, is not to say that earlier scholars did not also recognize, in more limited fashion, the *Mishne Torah's* use as commentary; see Twersky, *Introduction to the Code of Maimonides*, pp. 143-164.
 48. *Hameyushavim*, i.e., those in the Lithuanian *yeshivot* who believe that one must also understand the rejected view. Incidentally, R. Kafih never mentions R. Hayyim or the other analysts in his encyclopedic commentary to the *Mishne Torah*. This shows that he does not regard them as "commentaries" on Maimonides, i.e., works which attempt to clarify Maimonides' original intent.
 49. Introduction to Kafih's edition of *More Nevukhim* (Jerusalem, 1984), pp. 17-18.
 50. I.e., that its study be for the purpose of practical halakha.
 51. A. S. Halkin, "Sanegorya al Sefer Mishne Torah," *Tarbits* 25 (1956), pp. 417 (Hebrew), 423 (Arabic); Shailat, ed., *Igrot haRambam*, pp. 256 (Arabic), 257-258 (Hebrew; and see Shailat's accompanying notes).
 52. *Ibid.*, p. 312. See also his Commentary to *Nidda* 4:15.
 53. *Ishim veShitot*, p. 58 (translation in Jacobs, *Tree of Life*, pp. 66-67).
 54. *Ibid.*
 55. *Nefesh haRav*, pp. 261-262.
 56. R. Hayyim's opinion is quoted by R. Elhanan Wasserman, *Kovets Shiurim* (Givatayim, 1959), no. 633. See Shlomo Zalman Havlin's discussion of this view in his "Al 'haHatima haSifrutit' kiYsod haHaluka liTkufot baHala-

- kha*,” *Mehkarim baSifrut haTalmudit* (Jerusalem, 1983), pp. 179-180. See also Schachter, *Nefesh haRav*, p. 63, who quotes the Vilna Gaon’s assertion that a decisor who is convinced of the correctness of his view must hold to this position even when it diverges from the *Shulhan Arukh*. Although R. Hayyim agreed with the Gaon, there is no doubt that this is a minority position in modern times. Even as independent a *posek* as R. Moshe Feinstein states that the authority of the *Shulhan Arukh* cannot be questioned, since it has been accepted in all our lands. See *Igrot Moshe* (New York, 1959), *Yore De’a*, p. 186. (In this context, the term *Shulhan Arukh* includes R. Karo, R. Isserles, and the major commentaries, all of whom were “accepted” as a unit.)
57. According to R. Isaac Ze’ev Soloveitchik, as quoted in Zevin, *Ishim ve-Shitot*, p. 64, R. Hayyim believed that his position was even consistent with the *Shulhan Arukh*’s ruling. Yet, as R. Ovadiah Yosef has shown, *Yehave Da’at* (Jerusalem, 1984), vol. 6, no. 39, this view is very difficult to sustain.
 58. See R. Ahron Soloveichik’s note in Gersion Appel, *The Concise Code of Jewish Law* (New York, 1989), vol. 2, pp. 489-490. Although R. Soloveichik does not mention it, it appears obvious that R. Hayyim ruled in accordance with Maimonides, *Hilkhot Mila* 1:13, who understood *Shabbat* 135a as teaching that a baby born in the eighth month is not *circumcised* on the Sabbath, but that we do violate the Sabbath to save his life. See R. Israel Meir haCohen, *Be’ur Halakha, Orach Hayyim* 330:7 (who quotes other *rishonim* who concur); R. Isser Yehudah Unterman, *Shevet miYehuda* (Jerusalem, 1984), p. 373; R. Nachum Rabinovitch, *Yad Peshuta* (Jerusalem, 1984), *Mila* 1:13.
 59. Among many rulings in which this tendency is seen, especially noteworthy is that he believed it was permissible to send a telegram on the Sabbath to a holy man so that the latter could pray on behalf of one who was very ill. Unlike some other *aharonim*, R. Hayyim regarded this action as falling into the category of questionable *pikuah nefesh*. See *Nefesh haRav*, p. 167. Maimonides’ commentary to *Yoma* 8:4 does not permit one to violate Jewish law for cures which are not “natural.” The fact that this view is not mentioned in the *Mishne Torah* was undoubtedly important for R. Hayyim in reaching his decision. Furthermore, since this is a matter of life and death, it is obviously significant that a number of important *rishonim* disagreed with Maimonides. See R. Yaakov Hayyim Sofer, *Barkhi Nafshi* (Jerusalem, 1994), vol. 2, pp. 136-147; R. Ovadiah Yosef, *Yabia Omer* (Jerusalem, 1995), vol. 8, *Orach Hayyim*, no. 37.
 60. *E.g.*, he did not wear a *tallit katan* on the Sabbath in a *reshut ha-rabbim*. See *Halikhot haGRaH* (Jerusalem, [1996]), p. 2. (This book takes a good deal of material, often word for word, from Schachter’s *Nefesh haRav* without acknowledgment.)
 61. However, as Professor Haym Soloveitchik has pointed out to me, there were indeed some customs of a problematic halakhic character which R. Hayyim did support. For example, he said *Kol Nidrei* and read the Torah the night of *Simhat Torah*. (Regarding this last practice, see Avraham Ya’ari, *Toledot Hag Simhat Torah* [Jerusalem, 1964], chapter 20.) He may have distinguished between customs which, although problematic, could be jus-

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tified halakhically and thus placed into a halakhic framework, and customs which were entirely independent of halakha. Since very little has been written about R. Hayyim's attitude towards *minhag*, it is perhaps best to avoid any generalizations in this area.

62. *Nefesh haRav*, p. 191. See also *ibid.*, p. 198, that R. Moses Soloveitchik used the logic of "categories of mourning" in order to permit bathing during the period from *Rosh Hodesh Av* until *Tisha be-Av*.