

*Reasons for Keeping the Commandments: Maimonides and the Motive of Obedience**

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The investigations that are pursued or classified under the heading of *taamei ha-mitzvot* (“reasons for the commandments”) purport to specify the values promoted by specific laws in the halakhic corpus. Although the immediate aim of such investigations is to identify the considerations that might have led a divine lawmaker to issue particular commands, the values that are identified as reasons for the commandments may also be marshaled as reasons for acting in conformity with the law. That is, if the genuine values on account of which the law was first promulgated would be promoted by compliance, this fact may surely count in favor of obedience and against disobedience when an individual is deciding whether to conform. Conversely, the specter of antinomianism is raised by the possibility that compliance would not serve the values on account of which the law was first laid down; a possibility that might arise, for example, if the values in question would not be promoted by even general compliance in a particular historical situation, or if the values could be promoted just as well (or even better) without compliance by a particular individual in a given case.¹ In order to counter such a challenge, a defender of the law would need to either point to the existence of other reasons that could supplement those deemed insufficient, or else offer a theory of authority that would apply even when there is daylight between the lawmaker’s reasons and a subject’s particular circumstances – that is, a theory that would explain why there is

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¹ The Rabbis were well aware of this risk associated with the pursuit of reasons for the commandments. See *b. Sanhedrin 21b*.

a duty (or at least a reason) to obey the law even when the lawmaker's reasons for issuing the command related to values or interests that would not be undermined by disobedience on a particular occasion.

The problem of antinomianism rears its head in the context of *taamei hamitzvot* because the latter project throws into sharp relief the existence of an axiological domain that is in some fairly robust sense independent of the halakha. After all, it is only if a given value does not owe its appeal or validity entirely to the existence of a particular law that it can be used to *explain* why that law might have been brought into existence by a rational lawmaker. Once such an independent evaluative domain has been acknowledged, however, the question arises as to why it should not be appealed to directly as sole polestar of our practical lives, and it is this possibility of discarding the legal go-between that, at the most basic level, underwrites the aforementioned antinomian challenge. However, antinomianism is by no means the only problem that arises for the halakhically-oriented Jew when confronted by the reality of an independent domain of value that serves to rationalize the halakha. Less hostile from the point of view of halakha, though no less vexing, is the question of whether and how the subject of the divine command ought to engage with the extra-halakhic values in the course of the fulfillment of his legal requirements, and it is this question of motivation that I would like to consider.

No treatment of the relation between reasons for the commandment, on the one hand, and the motivation for compliance with the commandments, on the other hand, has been more influential than that offered by Maimonides in the sixth of his *Eight Chapters*

(“EC6”) and in the present essay I will do no more than subject his account to scrutiny.² In EC6, Maimonides purports to resolve an apparent conflict between “the philosophers” and the “sages” regarding the relative merits of wholehearted and continent individuals.³ The continent individual, according to Maimonides, “performs virtuous actions, he does good things...while strongly desiring to perform bad actions.” By contrast, the wholehearted individual, free from such internal conflict, “does good things ...while strongly desiring them” (78). Having drawn this contrast, Maimonides goes on to observe that “there is agreement among the philosophers that the virtuous man is...more perfect than the continent man.” According to the Sages, by contrast, “someone who craves and strongly desires transgressions is more...perfect than someone who does not crave them and suffers no pain in abstaining from them” (79). In rehearsing the rabbinic view, Maimonides does not merely attribute to them the understanding that the continent individual, on account of overcoming her conflicting impulses, deserves more reward or praise than her wholehearted counterpart. More significantly, he reads them as prescribing how we are to exercise the control we have over our own psychological constitution.

Even more significant is their *commanding* a man to be continent and their *forbidding* him to say: ‘I would not naturally yearn to commit this transgression, even if it were not prohibited by the Law.’ This is what they say: Rabban Shimon ben Gamliel says: ‘Let a man not say, “I do not want

² Unless otherwise noted, I have used, with very slight adaptation, Raymond Weiss’s translation of EC from the Arabic, published in Weiss 1975.

³ The term “wholehearted” as used in this context is my own. The contrast is usually drawn between continent and “virtuous” individuals, but this way of speaking begs the question in favor of the philosophers.

to eat meat with milk, I do not want to wear mixed fabric [*shaatnez*], I do not want to have illicit sexual relations,' but [rather let him say] 'I want to, but what shall I do? – my Father in heaven has forbidden me.' (79, emphasis added)

Note that on Maimonides' interpretation, the norm promulgated by R. Shimon ben Gamliel⁴ does not merely enjoin one from *saying* that one does not desire to transgress; additionally, one must actually take care to retain the desire to transgress, for it is only by so doing that one could fulfill the commandment “to *be* continent.” And later in the same chapter, Maimonides clarifies that the sages “said that a man *needs* to let his soul remain attracted to them and *not place* any obstacle before them other than the law” (80, emphasis added). The normative thrust of Maimonides' interpretation is notable, since there are certainly occasions in rabbinic literature – and also in Maimonides' own corpus – where a ranking of relative merits is devoid of such implications. For instance, to consider two related examples, when the sages say that “he who is commanded and performs is greater than he who is not commanded and performs” (*Gadol ha-metzuveh ve-osseh*), this cannot be understood as imposing a requirement to join the class of the commanded, not least because it is so often out of an individual's control whether or not he or she is commanded to perform some act.⁵ Even more obviously, Maimonides' statement that “repentant individuals are greater than those who never sinned at all” cannot be understood as a license, let alone an imperative, for transgression.⁶

Maimonides resolves the apparent conflict between the philosophers and the sages

⁴ Note that in the extant versions of the *Sifra* to Lev. 20:26, the teaching is attributed not to R. Shimon but rather to Rabbi Elazar ben Azariah. Nevertheless, following Maimonides, I will continue to refer to it as R. Shimon's teaching.

⁵ b. Kiddushin 31a

⁶ Maimonides, *Laws of Repentance*, 7:4.

by restricting the scope of the rabbinic holding to the class of ritual commandments. More specifically, he invokes the rabbinic distinction between two classes of halakhic commandments, *hukkim* and *mishpatim*, and limits the rabbinic endorsement of continence only to the *hukkim*. Quite clearly, in considering this resolution much turns on how the categories *hukkim* and *mishpatim* are understood.

Mishpatim and Hukkim

Maimonides offers three closely related, but non-equivalent, characterizations of each of the categories. He begins by quoting, approvingly, the primary tannaitic characterization of *mishpatim* that appears in the form of a gloss on a verse in Leviticus, “Mine ordinances (*mishpatim*) shall ye do, and My statutes (*hukkim*) shall ye keep, to walk therein: I am the LORD your God” (18:4). On the tannaitic construal, the *mishpatim* refer to those laws, which, “if it were not for the law, it would be proper (*din*) to write them”⁷ This is to say that even if the *mishpatim* had not been ordained by Jewish law, human communities would still have decisive reasons to impose them.⁸ Since the categories of *hukkim* and *mishpatim* are mutually exclusive and jointly exhaustive of all the commandments, this implies a corresponding characterization of *hukkim* as those commandments which, had they not been written, are not such that it would have been proper (*din*) to write them. However, instead of spelling out this implied characterization of the *hukkim*, Maimonides says that they enjoin acts that, “if it were not for the Law, would not be bad at all” (80). Assuming that this is intended as a sufficient condition of

⁷ The tannaitic source is Sifra Ahare Mot 9:13. In translating “din” as “proper” I follow Twersky 1972 – with the caveat that, in this context, it is to be understood as “uniquely proper,” in the sense that it would be *improper* to fail to do what it would be proper to do, e.g., impose the *mishpatim*. Weiss 1975 translates “din” as “deserves to be,” whereas Hayes 2015 translates it as “logical,” a terminology I will occasionally use too.

⁸ Note that it does not follow from this that a community has acted contrary to reason if it has imposed a norm that was not “proper” or “logical” in this sense.

hukkim (and not merely as something that is true of all *hukkim*, but possibly of some *mishpatim* as well), the characterization implies that *mishpatim* forbid actions that would have been wrong even if they had not been prohibited by the Divine Law. On one reading of this formulation, the actions would be wrong *in virtue of* the “logical” legislation that human communities would, presumably, impose. On another reading, the actions would be wrong whether or not forbidden by positive or customary law, human or divine. This latter reading presupposes a non-conventional conception of morality, according to which an act can be wrong even if not acknowledged as such by human practices or divine decrees. The third, and final, characterization of the distinction, put forward by Maimonides in the chapter under consideration, is that the laws that are “called commandments [*mishpatim*] in the explanation of the sages” forbid acts and omissions “generally accepted by all the people as bad, such as murder, theft, robbery, fraud, harming an innocent man, repaying a benefactor with evil, degrading parents, and things like these” (79, emphasis added). The significance of this general acceptance for Maimonides is not altogether obvious: perhaps the fact that all of humanity actually does accept the *mishpatim* is good reason for thinking that the community *would* have accepted the norms even if they had not been halakhically mandated. Alternatively, more in line with a nonconventionalist approach, perhaps the fact that specific norms are generally accepted constitutes evidence that these norms are authoritative, and authoritative for reasons independent of their inclusion in the halakhic corpus.

EC6 is often read as implying that *hukkim* “have no reason for their legislation independent of the fact that they are commanded by God.” (Stern 1998, 53). Although

this interpretation is widely held, it is, I believe, based on a misreading.⁹ Maimonides does not, in fact, state in that chapter that the *hukkim* were legislated for no reason. Rather, as we have seen, he excludes the *hukkim* from the class of halakhic norms that every community would have decisive reason to impose in the absence of an halakhic imprimatur. In order to see why this does not entail that God legislated for no reason, we need to understand why the reasons imputed to God need not provide human communities with decisive reason to impose the *hukkim* on their own initiative, and to do so we need look no further than the reasons Maimonides himself offers for the *hukkim* in his later works.

In his *Guide of the Perplexed*, Maimonides maintains that the “first intention” of Jewish law is the eradication of idolatrous beliefs and practices (III, 29). Since the idolatrous Sabian cult exercised significant sway over the early Israelites, a portion of the divine laws – the *hukkim*, in general, and the laws governing sacrifices and purity, in particular – were designed to influence those caught in the grip of Sabian practices, and can only be explained by reference to those practices.¹⁰ Since, according to this view, the *hukkim* are explained by the specific historical situation of the early Israelites, the reasons to impose them would not apply to human communities operating in relevantly different times and places.¹¹

The reasons for the commandments sporadically offered in Maimonides’ legal

⁹ For examples of others who hold this view, see Twersky 1980, p. 415, n. 145; Schweid 1989, pp. 113ff.

¹⁰ “The meaning of many of the laws became clear to me and their causes became known to me through my study of the doctrines, opinions, practices, and cult of the Sabians, as you will hear when I explain the reasons for the commandments that are considered to be without cause [i.e., the *hukkim*]” (III, 29).

¹¹ Of course, it also raises the question of why subsequent generations, in different historical conditions, should be bound by a law that is not tailored to their own circumstances.

code, *Mishneh Torah*, in contrast with those given systematically in the *Guide*, rarely make reference to the historical situation of the early Israelites and instead depict the commandments, in the words of a leading commentator, as “primarily concerned with bringing to the surface those underlying motives and goals which discipline the human faculties, quell evil impulses, subdue inclination to vices, discipline the moral disposition and advance the individual toward ethical-intellectual perfection.”¹² For example, “as long as phylacteries are on a man’s head and arm, he is humble and god-fearing, is not drawn into frivolity and idle talk, does not dwell on evil thoughts occupies his mind with thoughts of truth and righteousness.” (*Laws of Tefillin*, 4:25). Even in the case of immersion rites prescribed for the ritually impure, Maimonides suggests “a moral basis” for the “divine decree”: “[The immersion ritual teaches or reminds us that] just as one who sets his heart on becoming clean becomes clean as soon as he has immersed himself, although nothing new has befallen his body, so, too, one who sets his heart on cleansing himself from the uncleanness that beset men's souls – namely, wrongful thoughts and false convictions – becomes clean as soon as he consents in his heart to shun those counsels and brings his soul into the waters of pure reason” (*Laws of Mikvaot* 11:12).

In contrast with the historical reasons offered in the *Guide* – where, “if we knew the particulars of those practices and heard details concerning those opinions, we would become clear regarding the wisdom manifested in the details of the practices prescribed in the commandments” (III, 49) – the reasons offered in the *Mishneh Torah* radically *underdetermine* the *hukkim* in the sense that there is an indefinite number of rituals that may have served the same purposes. Accordingly, there is no reason why even a community committed to these ends – that is, to encouraging its members to shun lives of

¹² Twersky 1980, p. 432

frivolity, and to inculcating a vivid sense of the possibility of atonement – should be, in the absence of divine mandate, under any rational pressure to institute rituals involving *tefillin* or *mikvah*.¹³

To be sure, the issue of underdetermination must be handled with some care if the distinction between *hukkim* and *mishpatim* is to be preserved. After all, surely there are aspects of the halakha's treatment of robbery, for example, that are not so narrowly tailored to the underlying values of personal property as to preclude reasonable variety of different legal regimes. In the absence of halakhic guidance, should a community be faulted for not imposing a fine on a robber (but not a burglar) in the amount of exactly double the value of the stolen object, drawing exceptions for cases involving stolen sheep or ox, where the fine rises to four or five times the value of the slaughtered animal, respectively? Even if one is unwilling to insist on the status of "din" at this level of detail, however, one may still characterize the Jewish laws related to robbery at a sufficiently general level – for example, by invoking the notions of compensation and penalties and not the particular amounts owed – such that the characterization applies not only to

¹³ In the fourth chapter of EC Maimonides offers a rationale for some *hukkim* (as well as *mishpatim*), which, like the rationales offered in the Mishneh Torah, also underdetermine the laws they are invoked to explain. Specifically, armed with an account of "good actions" as those that are "balanced in the mean between two extremes, both of which are bad", and of moral virtues as "states of the soul and settled dispositions between two bad states, one of which is excessive, the other deficient," Maimonides maintains that the purpose of the Law, in general, is to serve as a counterbalance to people's natural tendency to deviate from the mean toward one of the two extremes by requiring action slightly removed from the mean in the opposite direction, so that "the state of moderation should be firmly established in our souls" (72). In particular, the purpose of laws regulating food consumption and sexual relations is "that we move very far away from the extreme of lust and go a little from the mean toward insensibility to pleasure" (p. 72). In this way, the law produces an ideal balance so that further deviation from the mean in any direction, except when dictated by the need to cure a deficiency in a sick soul, becomes not only superfluous but undesirable. As mentioned, this aim plainly underdetermines the particular regulatory schemas adopted by the law. There is, a priori, no reason to think that the aim of dietary laws, for example, could not have been served just as well if venison had been forbidden and rabbits permitted.

halakha's treatment of the subject matter but to that of any reasonable regime of private property. By contrast, in the case of *tefillin* and *mikvah*, there is arguably no statement of the rule at any level of generality that reaches the level of *din* for all human communities.

There is another reason, apart from their underdetermination of the laws, that the rationales offered in the *Mishneh Torah* would not give human communities decisive reason to legislate on their own. Many of the ends attributed to the ritual law in that work are only advanced if the law is perceived by its subjects as emanating from a divine source. In such cases, human communities could not plausibly appeal to the same ends in an effort to justify imposing the norm on their own, much less be subjected to criticism for failing to do so.

Duty vs Inclination

Equipped with the foregoing account of the *hukkim-mishpatim* distinction, we may turn to consider the bearing of the distinction on the rabbinic endorsement of continent observance of the law. Notwithstanding the influence of Maimonides' interpretation, and its air of plausibility, it is by no means obvious why norms governing our desires and impulses should be sensitive to the distinction between *hukkim* and *mishpatim*. For even if it is true that some kinds of behavior wouldn't be bad were it not for a law that human communities would have no decisive reason to impose on their own, the fact remains that, on Maimonides' understanding, the *hukkim* were in fact laid down, by no less an authority than God, in the service of important ends. Moreover, presumably there are myriad counterfactual scenarios that would dislodge the "logical" status of many of the *mishpatim* as well, and so it cannot be the metaphysical, or logical, contingency of the *hukkim* alone (i.e., their sensitivity to the counterfactual where God

had not commanded them) that justifies their differential treatment. For example, in a world where resources were not scarce and where humans were marked by boundless altruism, it is doubtful that there would be decisive reasons for communities to prohibit stealing.

In order to make progress we must first identify the rationale of R. Shimon's teaching, as understood by Maimonides, with an eye toward determining whether that rationale is sensitive to the *hukkim-mishpatim* distinction. Several explanations of the rabbinic endorsement of continent observance must be briefly considered only to be set aside. While the sheer effort and determination needed to overcome wayward desires presumably contributes to the greater praise owed to the continent individual according to the Rabbis (for whom, as Maimonides quotes, "the reward is in accordance with the pain"), the struggle to resist temptation cannot explain the normative thrust of Maimonides' construal of Rabbi Shimon's teaching (80). As we have seen, as a general matter a relative ranking of types of individuals does not entail a prescription to join the higher rank, and surely a life of halakhic observance is sufficiently challenging as to render implausible a putative requirement to manufacture further obstacles solely to make observance more difficult. Likewise, the normative thrust of the teaching rules out the interpretation that "[i]n the discussion in [*Eight Chapters*], the only question is whether having ongoing inner impulses and desires toward evil, although they are controlled at the behavioral level, is in itself bad" (Spero 1983, p. 343 n.37). This interpretation, like the previous one, is not altogether beside the point: it is presumably true that the Rabbis would not have recommended the acquisition or preservation of impulses and appetites that they regarded as intrinsically bad, and would have adopted a different position if they

held that reasons not to *perform* forbidden acts are equally reasons not to *desire* to perform them. However, it does not follow, from the fact that it is not intrinsically bad to have certain desires and impulses, that one ought to acquire or preserve such desires and impulses. To reach the latter, prescriptive conclusion on the basis of views about the intrinsic value of the desires and impulses in question, the Rabbis would have needed to hold that such desires and impulses are not only *not* intrinsically bad, but also intrinsically *good* or *desirable*. But it is difficult to take such a position seriously, and Spero, to his credit, does not attribute it to them. However, by the same token he fails to explain the prescriptive dimension of the rabbinic teaching.

This leads us to a third explanation, based on the value of acting from the motive of obedience to God's command. Recall that R. Shimon, as understood by Maimonides, held not only that we should preserve our desire for the forbidden objects, but also that we obey out of recognition of the divine command ("because our Father in heaven has forbidden it"), and the present suggestion is that the reason for the former directive is to enable compliance with the latter. A glaring problem with this suggestion is that it is by no means obvious *why* acting from the motive of obedience requires that one maintain an inclination to transgress. It is commonplace for individuals to act for multiple reasons, and it would be uncharitable to interpret the Rabbis as denying this mundane phenomenon, that is, as denying that a motive of obedience can be operative alongside other motives (such as the presence of an independent appetite for the required act). And even if one were to deny this commonplace, and insist that no more than one motive can be operative in the production of a given act, it would hardly follow that the presence of an appetite or inclination for the performance of an act should preclude one from acting

from the motive of obedience – after all, why couldn't someone act from the motive of obedience without any regard for the satisfaction that the act might bring him in virtue of his other desires? Moreover, charity aside, it is not plausible to attribute to the Rabbis the view that acting from the motive of obedience is incompatible with having desires or inclinations, unrelated to the act's halakhic consequences, that would be satisfied by performance. Although it is a matter of controversy among the rabbis of the Talmud, the generally authoritative position (*mitzvot tzerikhot kavanna*) requires, as a condition of the fulfillment of ritual obligations, the presence of an intention to fulfill the legal obligation that accompanies the performance. For example, according to this view, if my only motive for blowing a shofar is to create pleasing music, then I have not discharged my duty since I have not acted with the aim of so doing. Now, if acting from the motive of obedience were incompatible with the presence of a desire or inclination for the performance unrelated to the discharge of a legal duty, then the position under discussion would have to insist that one must not be attracted to features of the blowing other than its halakhic consequences. Even the slightest inclination or appeal owing to the aesthetic dimensions of the ritual, or to one's childhood memories, or to an interest in pleasing other parties would serve as an insuperable obstacle to fulfillment. Yet strictures against such attractions are no part of the position that requires an intention to discharge the legal obligation. On the contrary, the requirement of *hiddur mitzvah* instructs individuals to invest resources into making the experience of ritual performance as beautiful and pleasing as possible.¹⁴ Thus, even though identifying the operative motive of an act may be difficult when the act would serve more than one of an individual's interests—and even though the presence of an independent appetite or inclination can create

¹⁴ See, e.g., b. Shabbat 133b; b. Baba Kamma 9b; Rashi, ad loc., s.v. B'Hiddur

opportunities for insincerity and self-deception in the self-ascription of a religious motive – we cannot attribute to R. Shimon the view that acting from the motive of obedience is inconsistent with the presence of desires for aspects of the performance unrelated to the immediate halakhic consequences. Why, then, does he direct us to preserve desires for forbidden objects in the interest of acting from the motive of obedience?

We may make headway by observing that each of R. Shimon's three examples involves a "negative commandment" (*lo ta'aseh*) that is, one that requires us to refrain from acting in some manner (e.g., mixing milk and meat, wearing fabric of wool and linen, and engaging in illicit sexual relations), as opposed to a "positive commandment" (*aseh*) that requires an affirmative act. There is a noteworthy asymmetry between negative commandments and positive commandments with respect to the conditions of complying from a motive of obedience. In the case of positive obligations, as I have mentioned, one can act from the motive of duty regardless of whether one also has other motives for complying. I donate blood, let us imagine, out of a sense of obligation but also in order to receive a free glass of orange juice and a sticker announcing my good deed – each motive may be strong enough to produce the act in the absence of any of the others, but as it happens the motives join forces and over-determine my act – whereas you donate blood solely out of a dutiful motive. By considering such cases we see that *acting* from a motive of obedience requires neither the presence of motives for noncompliance nor the absence of additional motives for compliance. By contrast, one cannot be said to *refrain from* (or *omit*) doing X for any reason, including the motive of obedience, unless one sees something desirable in X-ing, something that casts X-ing in a favorable light, something that would render it a contender in the course of one's

deliberations.¹⁵ If one does not satisfy this condition, then one cannot refrain from X-ing *out of obedience*, or for any motive at all, regardless of whether one recognizes a halakhic prohibition.¹⁶ If you were to ask me why I did not break out into dance while delivering a lecture to a distinguished university faculty, it would not be correct to say that I refrained out of respect for the venue or for the audience, given that I dislike dancing in general, did not see how it would advance any of my ends, and was not overcome by any momentary impulses of a Dionysian nature. This is so, even though, having been raised well, I would have refrained out of respect even if I had felt an urge. Accordingly, when it comes to forbidden foods or fabrics or sexual relations, if one does not have any appetite for these things, then, barring special cases when one has reason to perform the forbidden act even without any appetite to do so (e.g., if food is scarce), one would not be able to abstain from a motive of duty. Since R. Shimon (and the rabbinic worldview more generally) finds value in conforming from the motive of obedience to God, he naturally instructs us to preserve the desires that serve as preconditions for such omissions to stem from the motive of duty.

These considerations not only help us make sense of the motive-of-obedience interpretation of R. Shimon's teaching, but serve as a powerful argument in its favor. For, although it has not been discussed, it is implausible to extend R. Shimon's teaching beyond the realm of the thou-shalt-nots. Extending his teaching to the realm of

¹⁵ For present purposes, we can construe this condition liberally, such that a bare inclination or impulse for the act, unaccompanied by a judgment that the act is in any way good, would count as something that makes it a contender.

¹⁶ At most one could be motivated by the absence of inclination or perceived reasons, as when someone says that they refrained from doing something *because* they didn't want to do it and/or saw no reason to do it. Note, also, that the suggested condition is a condition for acting from a motive, rather than a condition for something being a cause of an event. I make no claims about what can be said to be the cause of my not-Xing in the cases I discuss, and restrict myself to the realm of "motivating reasons."

affirmative commandments would require that we develop an aversion to ritual performance (be it blowing the *shofar*, eating *matzah*, etc.) that we would then overcome by our sense of duty. However, as I have already noted, this is altogether inconsistent with the rabbinic approach to *mitzvah* performance. Accordingly, any viable interpretation of R. Shimon's teaching will need to explain on principled grounds why the teaching he advances is sensitive to the distinction between positive and negative commandments. And, as I have purported to show, the explanation that appeals to the value of acting from the motive of obedience does just that, since it is only with respect to the negative commandments that an independent desire for the transgressive state of affairs is, in general, needed to comply from the motive of obedience.

Duties to God and to Humanity

This brings us to the final stage of our analysis. Given the rationale of R. Shimon's teaching – enabling compliance from the motive of obedience – what principled basis is there to restrict it, following Maimonides, to the class of *hukkim*? There are, it would seem, two natural places to look: On the one hand, to the problematic nature of desires to transgress the *mishpatim*, the badness of which would perhaps outweigh whatever value would otherwise inhere in complying from a dutiful motive, and, on the other hand, to the value of the dutiful motive itself, which is perhaps attenuated in the specific context of the *mishpatim*.

It can be inferred, both from Maimonides' examples of *mishpatim* (“murder, theft, robbery, fraud, harming an innocent man, repaying a benefactor with evil, degrading parents, and things like these”) and from his claim that they are “generally accepted by all the people as bad”, that, at least in the context of EC6, *mishpatim* include all and only

“commandments between man and his fellow” (*mitzvot bein adam l’chaveiro*) and none of the “commandments between man and God” (*mitzvot bein adam l’makom*).¹⁷ Whereas an infraction of either kind of commandment constitutes a wrong against God, violations of the former class also constitute a wrong against one’s fellow human being. A proponent of the first approach might appeal to this and observe that, in the cases of *mitzvot bein adam l’chaveiro*, the relevant desire or impulse would generally be a desire to wrong a fellow human being (e.g., a desire to kill or to deceive) and that, even when they are not acted upon, such malicious desires impair our relations with other humans, relations that are partially constituted by the attitudes and feelings we harbor toward one another. Although this solution can perhaps go some of the distance toward supplying an explanation, it cannot take us all of the way, in part because, even in the case of *mitzvot bein adam l’chaveiro*, many of the relevant desires to transgress do not constitute desires

¹⁷ There is a third reason for thinking that Maimonides (in EC6) identifies *mishpatim* with duties owed to humanity, related to Maimonides’s glaring omission of the laws prohibiting forbidden sexual relations (*arayot*) from his list of examples of *mishpatim*. This omission is striking since the laws forbidding *arayot* are explicitly classified as *mishpatim* in the tannaitic passage that Maimonides otherwise relies upon in his discussion. (Indeed, Josef Stern expresses puzzlement over the omission on this ground but does not provide any explanation for it. See Stern, *ibid.*) A partial explanation of this omission is that *arayot* are also explicitly listed by R. Shimon (alongside *shatnez* and dietary restrictions) in the very teaching that Maimonides purports to restrict to the *hukkim*. This explanation is only partial, since it explains why Maimonides, on pain of inconsistency, must remove *arayot* from either the class of *mishpatim* or the class of laws that fall within the scope of R. Shimon’s teaching, but doesn’t explain his choice to remove it from the former class rather than from the latter. Indeed, given the prevalence of proscriptions against *arayot* across a wide range of societies (at least in Maimonides’s time), one might have expected him to categorize these laws as *mishpatim* in light of their “general acceptance”. A possible explanation for excluding the laws concerning *arayot* from the class of *mishpatim* is that Maimonides takes them to belong to the class of *mitzvot bein adam l’makom*, which are explicitly identified with *hukkim* in EC6. Maimonides explicitly classifies laws forbidding illicit sexual relations as duties owed to God in his *Laws of Repentance* (2:9), where the distinction carries legal significance.

to harm *as such*, as when I desire to drink from the bottle of scotch in the cabinet and the bottle happens to belong to you. In such a case, the wish to drink from the bottle is not malicious, and is consistent with the most harmonious relationship, provided that the desire does not morph into the more insidious feeling of envy, an attitude that encompasses one's fellow human and not merely his or her possessions.

According to the second approach, we must focus our analysis on the motive of obedience itself within the context of the *mishpatim*. A straightforward suggestion along these lines is that the reasons for God's commands in the case of *mitzvot bein adam l'chaveiro*, as opposed to *bein adam l'makom*, are not sensitive to whether we comply from the motive of obedience to God rather than some other motive. When considering norms that protect the bodily integrity or promote the well-being of human beings, for example, the reasons for these norms are arguably served by compliance even in the absence of a religious motive. However, even if this were true regarding particular commandments, we may ask why there is not independent basis for encouraging a motive of dutiful obedience to each of God's commands – if not as a condition for their fulfillment, then as a distinct requirement, or at least aspiration, that would apply to *hukkim* and *mishpatim* alike. Such an aspiration would be rooted in the value of subordinating one's will to that of a divine commander, a value the centrality of which to halakhic Judaism it would be difficult to overstate, and that can only be fully realized by conforming with the deliberate aim of heeding God's command. Aharon Lichtenstein has emphasized the significance of this value for the observant Jew: “The concept of mitzvah, our stance vis-à-vis the [master of the universe] as commanded beings, as sons and servants both, lies at the epicenter of Jewish existence. Not only do we glorify servile

fealty to divine orders but following [the Rabbis], and in the face of intuited common morality we revel in the contention that action in response to the halakhic call is superior to the same act voluntarily undertaken. *Gadol ha-metzuveh ve-osseh* [‘Greater is he who is commanded and performs than he who performs voluntarily’]. And this, presumably, not or, not only because...it assures a more conscientious implementation, but because, over and above the practical result, the halakhic charge renders the act intrinsically and qualitatively superior, inasmuch as it engages the agent in a dialogic encounter with his Master” (Lichtenstein 2006, 20). In light of the centrality of this value, and the fact that *mishpatim* as much as *hukkim* reflect the will of God, why differentiate between the two, at least at the level of aspiration, merely because God’s reasons for commanding the *mishpatim* would arguably be satisfied by mere conformity?¹⁸

It is, we have seen, a hallmark feature of *mishpatim* that we are in some sense *independently* obligated to comply with them, either by dint of a binding, nonconventional moral rule corresponding to and existing alongside the divine command or because God’s reasons for legislating would equally have led rational political authorities to impose the same norms even if God had remained silent on the matter. However, neither of these two senses of independence undermines the possibility of

¹⁸ It’s worth noting that even the rabbinic view that, in general, requires an intention to fulfill the law as a condition of fulfillment suspends this requirement for *mitzvot bein adam l’chaveiro*. See, e.g., R. Ovadya Yosef, *Yabbia Omer* (YD 6:29). However, notwithstanding the absence of a strict requirement, most rabbinic authorities who have considered the question have held, in keeping with the suggestion above, that the best course of conduct is to act out of, inter alia, the motive of obedience. See, e.g., *Toldot Hazon Ish* (vol. 2), p. 183. Also on point is Rabbeinu Tam’s restriction of the application of the Talmudic dictum *Gadol ha-metzuveh ve-osseh* [“Greater is he who is commanded and performs than he who performs voluntarily”] to the *mishpatim*. See Shitta Mekubetzet (*Bava Kamma* 87a). According to Rabbi Moshe Feinstein the basis of this restriction is that, in the case of *mishpatim* alone, the motive of obedience is a precondition of the religious significance of the performance, and Rabbi Feinstein urges such a motivation for this reason. *Iggerot Moshe* (YD 1:6).

acting with the intention of complying with God's commands, even when the independent basis for compliance is fully appreciated by the agent. For just as a servant can act with the aim of obeying his master even when his appetites furnish an independent basis for performance, so too can he perform a single act with the intention of satisfying two masters who independently make the same demand. Similarly, there is nothing barring a servant from acting with the intention of obeying his master, even when that servant knows that a different master would have demanded the same performance.

Still, perhaps there are other reasons that the independent credentials of the *mishpatim* might recommend downplaying the motive of obedience. For suppose there is value in complying with the *mitzvot bein adam l'chaveiro* for the reasons *in virtue of which* they are independently obligatory (e.g. as an appreciation of the value of human beings). On this assumption, perhaps compliance out of the motive of obedience is not recommended on the ground that individuals should comply for different reasons.¹⁹ The difficulty with this suggestion is that it does not explain why the multiple motives must be seen as competing, why someone cannot, and hence should not, comply from the additional motive of obedience.²⁰

Similarly, suppose there is a principle, applicable not only to *mitzvot bein adam l'chaveiro* but to obligations more generally, that requires us to comply with obligations

¹⁹ Relatedly, R. Yechiel Yaakov Weinberg maintains that, "it is better that a person give [required gifts] of his own free will, out of a feeling of love for his fellow Jew. If he gives only because God has so commanded, he diminishes the measure of love.." *Seridei Esh* (I, 61).

²⁰ Perhaps acting from a motive of obedience requires that one refrain from entering the fray of first-order considerations that might have led God to issue the command. If that were the case, the wish to preserve the non-theological motive would require us to suppress any motive of obedience. The difficulty with this suggestion is that it is predicated on an unconvincing claim about the motive of obedience. I can pay taxes, for example, both out of a sense of legal obligation and also because it is, among other things, a means of transferring money to those less fortunate, even knowing that facilitating such a transfer is one of the reasons why taxes are imposed in the first place.

for the reasons in virtue of which the obligation obtains (as opposed to the reason *that* they are obligatory, or for some other reason altogether). It is true that, in the case of *hukkim*, such a principle would require that we act from the motive of obedience to God, since such performances are, in general, not independently obligatory. However, since God's command is *a* sufficient ground of obligation for *all* of the commandments, such a principle would hardly preclude acting out of the motive of obedience in the case of *mishpatim*. Indeed, if the principle requires that actions in accordance with duty be performed for *all of* the reasons on account of which the performance is obligatory, then it would *require* such a motive of obedience for *mishpatim* as well as for *hukkim*.

Although it is lodged firmly within the consciousness of many traditional Jews, it is surprisingly difficult to justify on principled grounds Maimonides' restriction of R. Shimon's teaching. Perhaps, however, we are asking too much. Perhaps it is enough to observe that many, if not all, desires to transgress the *mitzvot bein adam l'chaveiro* would constitute desires arguably destructive to human relations in and of themselves, and that the divine rationales for this class of commandments would in any case be served by compliance that was not motivated by obedience to God, but for other reasons, such as a proper appreciation of the value of humanity.