

## Translator's Preface

Similar to many of Rambam's works, such as his commentary on the *Mishnah* or his *Moreh Nevuchim*, the Rambam wrote *Sefer Hamitzvos* in Judeo-Arabic. This was the common language of his primary audience. Upon realizing the significance of his works, Rabbinic scholars fluent in this language took to translating these texts into Rabbinic Hebrew. The most famous of these translation attempts is by Rav Shmuel Ibn Tibbon, which received endorsement from the Rambam himself. Another translation was made by Rav Shlomo Ibn Ayub (13<sup>th</sup> century France).

For copyright reasons, the 1883 Warsaw edition of *Sefer Hamitzvos* with Rav Ibn Tibbon's translation was used as the base text for this *sefer* (hereby standard edition). As indicated in the preface to the Shabsi Frankel edition of *Sefer Hamitzvos* (hereby SF edition), the standard edition was the result of many changes that were made to the original translation over the years, some less productive than others. At times, these changes, as well as other factors, made parts of this edition difficult to translate. In these instances, Rambam's original Judeo-Arabic text, Rav Chaim Heller's edition (which utilized Rav Ibn Ayub's translation), Rav Kapach's (sometimes spelled Qafih) new Hebrew translation, and the SF edition were used to help with these ambiguities. Otherwise, we weren't particular about comparing the different editions for all of the anomalies or inaccuracies in the present version of the standard edition. This has already been beautifully dealt with in the SF edition and is beyond the scope of this attempt at a translation and elucidation into English. However, whenever there was a difficulty with translation, different versions were compared for their merits and demerits.

Upon even a cursory reading of *Sefer Hamitzvos*, it becomes quickly apparent that the Rambam wrote this work as a polemic against the author of *Halachos Gedolos*, known as the Bahag. There is a dispute who wrote this work,<sup>1</sup> some attributing it to Rav Yehudai Gaon. The Rambam names him as Rav Shimon Kaira.<sup>2</sup> Either way, the Bahag simply made a listing of all the 613 *mitzvos* without any explanation as to how he reached this conclusion. In response, the Rambam wrote his *Shorashim* as a means to simultaneously justify his own count, while disproving the Bahag's.

More confusingly, the Bahag doesn't break down his *mitzvos* into separate numbers. If one were to count all the *mitzvos* listed, they would reach a number higher than 613. As a result, there's some dispute how exactly to break down his listing. Some authorities ignore some of the ones listed, and some are counted as more than one. Due to this confusion, to make things simple we have used the Warsaw edition of the *Halachos Gedolos*. This edition was put together by Rav Avraham Shimon Traube (19<sup>th</sup> century Lithuania), who took the effort to precisely show how to break up the *mitzvos* of the Bahag into 613. All of our *mitzvah* number references use his numbering. A more recent publication of the *Halachos Gedolos*, known as the Hildesheimer edition, based on a Vatican manuscript, has significant differences in the text of this work. Rav Perla (see below) makes numerous references to this version, and discusses which version the *Rishonim* had of this text.

The main commentaries on *Sefer Hamitzvos* are the Ramban, *Megillas Esther*, *Lev Sameach*, *Kinas Soferim*, and *Marganisa Tava*. An additional work that proved helpful is *Derech Mitzvosecha*. Since accurately citing these works is a difficult task, due to their brevity and their many different editions, page references for the SF edition were chosen for simplicity. This edition was selected as it seems to be the most commonly found edition in *Batei Midrash*, making it easier for the reader to see the original inside.

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<sup>1</sup> See Rambam's Introduction, note 6.

<sup>2</sup> See *Shoresh* § 10.

No work on the 613 *mitzvos* can be written without copious references to Rav Yerucham Fischel Perla's magnum opus on Rav Saadiah Gaon's *Azharos* (20<sup>th</sup> century Poland). He dubbed his work *Biur al Sefer Hamitzvos Larasag*, essentially constructing an entire book of *mitzvos* from a very terse poem. In his commentary, he not only reverse engineered Rav Saadiah Gaon's rules for *mitzvah* inclusion (similar to the Rambam's "*Shorashim*"; see Appendix C), but he was very lengthy in discussing the various attempts at enumerating the *mitzvos*. He compared and contrasted the approaches of the Rambam and the Bahag against each other, as well as against Rav Saadiah Gaon. His comments on the Rambam's *Sefer Hamitzvos*, and in particular regarding the discussions surrounding the *Shorashim*, are invaluable. As such, whenever possible, his comments have been included in the footnotes. For brevity, references to his work are referred to simply as "*Rav Perla*".

A contemporary work that proved useful was Rav Shlomo Arieli's comprehensive commentary on *Sefer Hamitzvos*. References to his work are referred to simply as "*Rav Arieli*".

The difficulty with translating Rabbinic works into English is the sentence structure doesn't necessarily follow the same rules of grammar. One frequent example is sentences in the works of *Rishonim* are often very long, something which would violate standard English grammar. The fact that *Sefer Hamitzvos* is already a translated work compounds this issue. As such, we took the liberty of splitting up long sentences to make them more comprehensible, even if some words had to be removed or added for flow. Being as there's no punctuation in the original Hebrew, commas or full stops were added to mostly follow the English.

## Rambam's Introduction<sup>1</sup>

...I came and saw that it is fitting that I place at the beginning of my <i>sefer</i> [what will eventually become the <i>Mishneh Torah</i> ] a listing of all the <i>mitzvos</i> , both positive and negative...	...בְּאֵתִי וְרָאִיתִי שֶׁהוּא רָאוּי שְׁאֲשִׁים תְּחַלֶּה בְּפִתִּיחַת הַסֵּפֶר מְסַפֵּר הַמִּצְוֹת כְּלָם עֵשָׂה וְלֹא תַעֲשֶׂה...
After I conceived this idea and I endeavored to make this <i>sefer</i> , to mention <sup>2</sup> all of the <i>mitzvos</i> in a definitive way and to list them at the beginning of the <i>sefer</i> , <sup>3</sup> anguish grabbed hold of me which I have suffered from for many years. <sup>4</sup>	וְאַחַר שֶׁנִּשְׁלַם לִי זֶה הָעֵנֶן וְהַשְׁתַּדְּלֵתִי לַעֲשׂוֹת הַסֵּפֶר וְלִזְכֹּר הַמִּצְוֹת כְּלָם זָכְרוֹן מַחְלֹט וּמְסַפֵּרָם בְּפִתִּיחַת הַסֵּפֶר, הַתְּעוּרְרֵתִי אֶל הַשְּׂרֵשׁ שֶׁכָּבַר עָלַי בְּדַעְתִּי זֶה שָׁנִים רַבּוֹת.
I'm referring to the fact that many of those who counted the <i>mitzvos</i> erred in this area. I cannot begin to list the extent of their mistakes.	וְהוּא בְּמֵה שְׂמוֹנִין מִנֵּין הַמִּצְוֹת הֵנָּה נִשְׁתַּבְּשׁוּ בּוֹ רַבִּים בְּעֵנִינָם. לֹא אוּכַל סַפֵּר גְּדֹל גְּנוּתָם.
For all those who endeavored to count the <i>mitzvos</i> or to write a <i>sefer</i> in this matter and this intent, <sup>5</sup> all of them followed suit after the <b><i>Ba'al Halachos Gedolos</i></b> . <sup>6</sup>	כִּי כָל מִי שֶׁהִשְׁתַּדַּל לְמִנּוֹתָם אוֹ לַחֲבַר סֵפֶר מְדַבֵּר מֵהַכּוֹנֵה הַזֶּה, נִמְשְׁכוּ כְּלָם אַחַר דְּבָרַי בְּעַל הַלְכוֹת גְּדוּלוֹת.
None of them swayed from his understanding of the count more than a little bit, as if they were all standing by his side. <sup>7</sup>	וְלֹא נָטוּ מִכּוֹנְתּוֹ בְּמִסְפָּרָם כִּי אִם נִטְיָה קִטְנָה, כְּאִלוֹ הֵם כְּלָם עִמְדוּ אֶצֶל מְאָמְרֵי הָאִישׁ.
I saw that even <sup>8</sup> the author of the famous " <i>Sefer Hamitzvos</i> " <sup>9</sup> noticed a minority of the mistakes that the <i>Ba'al Halachos Gedolos</i> made, and distanced himself from counting visiting the sick and comforting mourners, which the Bahag counted. <sup>10</sup>	עַד שֶׁבְּעַל סֵפֶר הַמִּצְוֹת הַמְּפָרֵס רָאִיתִי שֶׁהִרְגִישׁ עַל חֶלֶק קָטָן מִשְׁבוּשֵׁי בְּעַל הַלְכוֹת גְּדוּלוֹת וְהִרְחִיק שְׂיִמְנָה בְּקוֹר חוֹלִים וְנַחוּם אֲבָלִים כְּמוֹ שְׂיִמְנָה בְּעַל הַלְכוֹת.
What he distanced is in fact far, but he counted things that are even further than these and he was drawn after [the Bahag] in things that are even more ridiculous, as is clear to those who delve into our work.	וּמֵה שֶׁהִרְחִיק הוּא רְחוֹק אֲבָל הֵבִיא יוֹתֵר רְחוֹק מִמֶּנּוּ וְנִמְשַׁד אַחֲרָיו בְּמֵה שֶׁהוּא יוֹתֵר מִגְּנָה כְּמוֹ שֶׁהִתְבָּאֵר לְמִי שֶׁיַּעֲיִן בְּמְאָמְרָיו זֶה.
They counted things with superficial thinking which are not fitting to count, and they were all drawn after each other in this,	וְיוֹדַע הָאֵל יִתְבָּרַךְ וְדִי בּוֹ עֵדוּת כִּי אֲנִי כָל מֵה שֶׁהִשְׁתַּכְּלֵתִי בְּשְׁבוּשָׁם בְּמֵה שֶׁיַּמְנּוּ וְהֵיוּתָם מוֹנִים

<sup>1</sup> Only the parts relevant for the *Shorashim* have been included.

<sup>2</sup> [TN] Based on *Rav Kapach*. The standard edition reads "remember".

<sup>3</sup> [TN] *Rav Kapach* writes the Rambam is referring to his listing of the *mitzvos* at the beginning of his *Mishneh Torah*, which lacks any details and is just a one-line definition of the *mitzvah*. See ad loc., note 26 and 31.

<sup>4</sup> [TN] Based on *Ibn Ayub*.

<sup>5</sup> [TN] See *Rav Chaim Heller* edition.

<sup>6</sup> Also known as the Bahag, the author of the *Halachos Gedolos*, one of the first compilations of Jewish law. *Halachos Gedolos* was written anonymously, and it is disputed who wrote it. All agree it is from the period of the *Geonim*, in 8<sup>th</sup> century Babylonia.

Some say this work was written by Rav Yehudai Gaon (*Rashi*, *Sukkah* 38b; *Tosafos* and *Tosafos Harosh*, ad loc.; *Tosafos*, *Gittin* 88b; *Sefer Yereim* (throughout); *Semag*, Introduction; see as well *Mesoras Hashas*, *Bava Kamma* 53b).

However, most assume this work was written by Rav Shimon Kaira (Rav Sherirah Gaon in *Zichron Larishonim* p. 191; Ra'avad in *Sefer Hakaballah*; *Ramban*, p. 12; Meiri in *Beis Habechirah*, *Pesicha L'Maseches Avos*; *Tosafos Rid*, *Megillah* 30b; *Zohar Harakiah*, Introduction and *Aseh* § 11, 50). The

Rambam himself almost explicitly identifies the Bahag this way later in *Shoresh* § 10, and explicitly does so in his *Pe'er Hador* § 229 (also printed in *Iggeros Harambam*, *Chiddushei Harambam* § 191). Later authorities who make this identification include the *Aruch Laner* in his *Teshuvos Binyan Tzion* § 134 and the *Netziv* in his *Ha'emek She'eilah* in many places.

For more on this dispute, see *Yad Malachi*, *Klalei Bahag* § 4, *Shem Hagedolim*, Vol. 2, *Halachos Gedolos*, *Maharatz Chiyos*, *Sukkah* loc. cit., and the Introduction to *Halachos Gedolos* (5635 Warsaw ed. and Rav Hildesheimer ed.).

<sup>7</sup> [TN] See *Rav Chaim Heller* ed. fn. 27.

<sup>8</sup> [TN] *Rav Kapach*.

<sup>9</sup> The Rambam mentions this work again in *Shoresh* § 14. As pointed out by *S'dei Chemed*, *Klalei Haposkim* 8:21, this is referring to the *Sefer Hamitzvos* by the 10<sup>th</sup> century Rav Chafetz ben Yatzliach, one of the last *Geonim*. This identification is deduced from *Iggeros Harambam* p. 31 (Lifsia ed.). It can also be deduced from *Teshuvos Harambam* § 217 (Blau ed.). Only recently was part of this *sefer* discovered in manuscript form and published. His *Sefer Hamitzvos* is cited by many *Rishonim*.

<sup>10</sup> See *Shoresh* § 1 why the Rambam feels these two *mitzvos* should not make the list of the 613.

without putting much thought into it. G-d knows and is witness <sup>11</sup> that the more I contemplated their mistakes in that which they counted, the difficulty of my lot only increased. <sup>12</sup>	מה שִׁנְרָאָה בְּתַחֲלַת הַמַּחְשְׁבָה שְׂאִין רְאוּי לְמִנּוּתוֹ, נִמְשְׁכוּ קֶצֶתָם אַחַר קֶצֶתָם בְּזֶה מִבְּלַתִּי הַשְׂתַּכְלוּת גְּדוּל וְזֶה אֶצְלִי קָשִׁי מִזְּלֵנוּ.
The responsibility of the destiny that He, may He be elevated, <sup>13</sup> placed upon me, only became clearer.	וְנִתְאַמְתָּ אֶצְלִי חַיִּיב יְעוּד אֲשֶׁר יַעֲדֵנוּ.
“Let this entire prophecy be for you like the words of a sealed book, such that if you give it to someone who can read, telling him: ‘Please read this’, he’ll say: ‘I cannot, for it is sealed’.” <sup>14</sup>	”וְיִתְּהִי לָכֶם חֲזוֹת הַכֹּל כְּדַבְּרֵי הַסֵּפֶר הַחֲתוּמִים אֲשֶׁר יִתְּנוּ אֹתוֹ אֶל יוֹדֵעַ סֵּפֶר לֵאמֹר קְרָא נָא זֶה וְאָמַר לֹא אוֹכֵל כִּי חֲתוּמִים הוּא” (יְשַׁעְיָהוּ כ”ט, י”א):
Similarly, all the numerous <i>Azharos</i> poems <sup>15</sup> which have been composed near us in Spain have sprung me with agony, <sup>16</sup> that which I’ve seen their popularity and spread.	וְכֵן כָּל מַה שֶּׁשִּׁמְעֵתִי הָאֲזָהָרוֹת רַבּוֹת הַמִּסְפָּר הַמַּחְבְּרוֹת אֶצְלֵנוּ בְּאַרְץ סִפְרָד, נִהְפְּכוּ עָלַי צִירֵי לְמַה שֶּׁאַרְאָה אוֹתוֹ מִפְּרָסוּם הָעֵנִין וְהַגְּלוּתוֹ.
Although, we can’t impose guilt upon them, for their authors were poets, not learned rabbis. <sup>17</sup> From the perspective of their trade they completed the work appropriately, with the sweetness of the words and the beauty of the rhyming scheme. <sup>18</sup>	וְאִם אֵין לְהַאֲשִׁימָם כִּי מַחְבְּרֵיהֶם הָיוּ מְשׁוֹרְרִים לֹא רַבָּנִים. וְהָרְאוּי לָהֶם מִצַּד מְלֶאכֶתָם הַשְּׁלִימוֹהָ מְעַרְבוֹת הַמַּאֲמָר וְיוֹפֵי הַסְּדוּר.
However, it’s clear from the content that they were all drawn after the <i>Ba’al Halachos Gedolos</i> and his associates from the later authorities.	אֲבָל בְּמוֹבָן מִהַדְּבָרִים נִמְשְׁכוּ בּוֹ אַחַר בַּעַל הַלְכוֹת גְּדוּלוֹת וְזוּלָתוֹ מִהַרְבָּנִים הַמְּתַאֲחָרִים.
The more I contemplated this, and I realized the popularity of this count <sup>19</sup> amongst the masses, I accepted that if I share the true count [of the 613] that’s fitting to count as a matter of fact without any proof, the first person to read it will assume it’s mistaken.	וְכַאֲשֶׁר הִתְבוֹנַנְתִּי בְּזֶה וְיָדַעְתִּי פְּרָסוּם הָעֵנִין הַזֶּה בִּיַדִּי הַהֵמוּן, יָדַעְתִּי כִּי אִם אֶזְכֹּר אֲנִי הַמִּנְיָן הָאֲמֵתִי שֶׁרְאוּי שְׂיִמְנָה זְכָרוֹן מְחֻלָּט מִבְּלַתִּי רְאִיָּה, הִנֵּה הַקּוֹרֵא הָרְאוּשׁוֹן שֶׁיִּקְרָאֵהוּ יַחֲיִב בְּמַחְשְׁבָתוֹ שֶׁזֶה טְעוּת.

<sup>11</sup> [TN] *Rav Kapach*.

<sup>12</sup> [TN] *Rav Chaim Heller* ed. and *Rav Kapach*.

<sup>13</sup> [TN] *Ibn Ayub* and original Arabic.

<sup>14</sup> *Yeshayahu* 29:11. I’m not sure the Rambam’s intent in quoting this verse. Maybe his intent is the Bahag’s count is incomprehensible?

<sup>15</sup> *Azharos* are *piyutim*, or poems, which were composed specifically to delineate the 613 *mitzvos*. Many communities have the custom to recite them on *Shavuos*, the festival commemorating when the Torah was given.

Various *Azharos* can be found in most *Machzorim* for *Shavuos*. Famous ones include Rav Sa’adiah Gaon’s 10<sup>th</sup> century *Anochi Eish Ochela* (divided according to the Ten Commandments, cited by *Rashi*, *Shemos* 24:12) and *Es Hashem Elokecha Tira* (the *piyut* Rav Perla based his commentary on), Rav Yitzchak Albargaloni’s 11<sup>th</sup> century *Ei Zeh Makom Binah*, his contemporary Rav Shlomo Ibn Gabirol’s *Shemor Libi Ma’neh* (the *piyut* *Zohar Harakiah* is based on), and Rav Eliyahu Hazaken’s *Emes Yehgeh Chiki* (cited by *Tosafos*, *Yoma* 8a, *Sukkah* 49a, *Bava Basra* 145b, *Makkos* 3b, and *Niddah* 30a).

As well, the anonymous *Ata Hinchalta* appears in most *Machzorim*. Some say that it was also composed by Rav Eliyahu Hazaken (*Chida*, *Shem Hagedolim*, Vol. 1 § *Rabbeinu Hai Gaon*). Others attribute it to the 10<sup>th</sup> century Rabbeinu Shimon Hagadol (*Teshuvos Maharshal* § 29; *Rav Wolf Heidenheim*, *Machzor L’Shavuos*). Some even date this work to the times of Rav Sa’adiah Gaon, or earlier (Rav Yitzchak Isaac ben Yaakov in

*Otzar Hasefarim* § *Azharos*; see Rav Naftali Tzvi Hildesheimer’s introduction to *Halachos Gedolos*, which brings those who date *Ata Hinchalta* to even the time of the *Halachos Gedolos*).

<sup>16</sup> Cf. *Daniel* 10:16.

<sup>17</sup> [TN] See *Ibn Ayub* and *Rav Kapach* note 42.

There’s a dispute who the Rambam is referring to here. Some say he means Rav Shlomo Ibn Gabirol (*Teshuvos Radvaz* 3:645; *Zohar Harakiah* § 2). Others say he means Rav Yitzchak Albargaloni (*Rav Kapach* note 40 in the name of *Sefer Hadoros*). Perhaps he meant *Korei Hadoros*, p. 12a, who indeed asserts the Rambam meant him as well as Rav Shlomo Ibn Gabirol). Rav Kapach contemplates the possibility that the Rambam is referring to other famous *Azharos*, like those of Rav Sa’adiah Gaon and Rav Eliyahu Zaken.

However, the assertion that they were written by *unlearned* poets strongly indicates he doesn’t mean any of these sages, who were the giants of their generation. Indeed, the *Tzafenas Paneach*, ad. loc. takes the *Zohar Harakiah* to task for insinuating that Rav Shlomo Ibn Gabirol wasn’t learned. The Chida in *Shem Hagedolim*, Vol. 2 § *Azharos* also argues on *Korei Hadoros*, for the reasons above. Instead, he suggests the Rambam is referring to unknown poets of his generation who also wrote *Azharos*.

<sup>18</sup> [TN] *Rav Kapach*.

<sup>19</sup> [TN] *Rav Chaim Heller* ed. and *Rav Kapach*. The standard edition reads, “matter”, and *Rav Kapach* suggests it’s a typo.

His proof of the mistake will be <sup>20</sup> that it's the opposite of what <i>Ploni</i> or <i>Ploni</i> said.	וְתִהְיֶה רְאִיתָ הַטְּעוּת אֲצִלוּ רְאוּתוֹ בְּחִלּוּף מָה שְׂזָכַר פְּלוֹנִי וּפְלוֹנִי.
For this is the mindset of most of the learned individuals of our times, <sup>21</sup> that they don't discern the teaching for its content. Rather, [they seek] that it corroborates with a teaching of an earlier authority, without delving into the teaching itself first. All the more so the unlearned masses.	כִּי זֶהוּ בְּכָל רַב אֲנָשֵׁי הַסְּגָלָה בְּזַמְנֵנוּ זֶה, כִּי לֹא יִבְחָנוּ הַמַּאֲמָר בְּעֵנֵינוּ אֲבָל בְּהַסְפִּימוֹ לְמַאֲמַר מִי שְׁקֻדָּם בְּלִתִּי בַּחִינֵת הַמַּאֲמָר הַקּוֹדֵם, כֹּל שֶׁכֵּן הַהֲמוֹן:
Therefore, I saw fit to introduce before my work which I mentioned <sup>22</sup> a composition, which is this <i>sefer</i> , where I will explain the count <sup>23</sup> of the <i>mitzvos</i> and how it's fitting to count them.	וְלָכֵן רְאִיתִי שְׂאִקְדִּים לִפְנֵי הַחֲבוּר שְׂזָכַרְתִּי מַאֲמָר, וְהוּא הַסֵּפֶר הַזֶּה, שְׂאֲבָאֵר בּוֹ עֲנִין הַמִּצְוֹת וְאֵיךְ רְאוּי שְׂיִמְנוּ.
I will bring proofs to this count from verses in the Torah and teachings from our Sages and their commentary. <sup>24</sup>	וְאָבִיא רְאִיָּה עַל זֶה מִכְּתוּבֵי הַתּוֹרָה וּמִמַּאֲמָרֵי הַחֲכָמִים בְּפְרוּשׁ.
I will precede with <i>Shorashim</i> (principles) <sup>25</sup> that are fitting to rely upon when it comes to the <i>mitzvos</i> and their counting.	וְאִקְדִּים שְׂרָשִׁים רְאוּיִים לְסַמֵּךְ עֲלֵיהֶם בְּמִצְוֹת וּבְמִסְפָּרָם.
When the proper count becomes clear through reading this work, with certain and solid proof, then it will become obvious to the one who reads it the mistake of all those who counted differently than what we ourselves counted.	וּכְשִׁיתְאֲמַת מִסְפָּרָם בְּמַאֲמַר הַזֶּה בְּרְאִיָּה מִבְּאֵרֵת אֵין סֶפֶק בָּהּ, אִזּוֹ יִתְבָּאֵר לְמִי שְׂיִקְרָאֵהוּ טְעוּת כֹּל מִי שְׂמָנָה חִלּוּף מָה שְׂמָנִינוּ אֲנַחְנוּ.
And there's no need for us to respond to each detail, nor to speak out their mistake. For the purpose and precise goal of this work will be achieved for those who seek it even without this.	וְאֵין אֲנַחְנוּ צְרִיכִין לְהִשִּׁיב עַל כָּל אֶחָד בְּפֶרֶט וְלֹא לְבָאֵר טְעוּתוֹ. כִּי הַתּוֹעֵלֶת וְהַתְּכַלִּית הַמְּכֻוֹנֶת בָּזֶה הַמַּאֲמָר תִּגִּיעַ לְמִבְקָשֶׁיהָ בְּזוּלַת זֶה.
For I will explain all of the <i>mitzvos</i> and their enumeration, each one at a time. I will bring proof for anything for which there is a doubt.	וְזֶה כִּי אֲנִי אֲבָאֵר הַמִּצְוֹת כָּלֶם וּמִסְפָּרָם מִצְוָה מִצְוָה. וְאָבִיא רְאִיָּה עַל כָּל מָה שְׂיִישׁ בּוֹ סֶפֶק.
My intent in this work isn't to explain the laws of each <i>mitzvah</i> ; just to list them.	וְאֵין כּוֹנֵנִתִּי בָּזֶה הַמַּאֲמָר לְבָאֵר דִּין מִצְוָה מִן הַמִּצְוֹת אֲבָל מִסְפָּרָם לְבַד.
If I do end up explaining the <i>mitzvah</i> when I count it, I'll explain it solely for the purpose of defining it. It'll be clear what this <i>mitzvah</i> or prohibition is referring to. <sup>26</sup>	וְאִם אֲבָאֵר מֵהֶם בְּעֵת שְׂאֲזַכְרֶם אֲבָאֵר אוֹתוֹ עַל צֶד בְּאוּר הַשֵּׁם. עַד שְׂיִדַּע זֶה הַצּוּוִי אוֹ הַאֲזָהָרָה עַל אֵי זֶה דְּבָר הוּא נּוֹפֵל.
Once the knowledge of the count has been achieved, through the various proofs in this work, then I'll mention them briefly at the beginning of my future work on that which I already mentioned. <sup>27</sup>	וּכְשִׁתִּגִּיעַ יְדִיעַת מִסְפָּרָם בְּרְאִיָּה מְזִיהַ הַמַּאֲמָר אִזּוֹ אֲזַכְרֶם זְכָרוֹן מַחֲלֵט בְּתַחֲלַת הַחֲבוּר הַכּוֹלֵל כְּמָה שְׂזָכַרְנוּ:

<sup>20</sup> [TN] *Rav Chaim Heller* ed. and *Rav Kapach*. The standard edition reads "his sight".

<sup>21</sup> [TN] See *Rav Chaim Heller* ed.

<sup>22</sup> I.e., what eventually became the *Mishneh Torah*.

<sup>23</sup> [TN] *Rav Chaim Heller* ed. and *Rav Kapach*.

<sup>24</sup> [TN] *Ibid*.

<sup>25</sup> TN] Literally: Root. The original Arabic word can be translated as "rule", "root", "principle", and "trunk", depending

on the context (*Rav Kapach* ed. note 55). He felt in this case the Rambam was discussing his rules for counting the 613 *mitzvos*, and therefore translated accordingly. *Ramban*, p. 13, had "principle" or "trunk". Most works refer to them as the *Shorashim*.

<sup>26</sup> [TN] See *Rav Chaim Heller* and *Rav Kapach* ed.

<sup>27</sup> I.e., what ended up becoming the *Mishneh Torah*.

Now I will begin by mentioning the <i>Shorashim</i> that are worth relying upon for the enumeration of the <i>mitzvos</i> . They are fourteen <i>Shorashim</i> in total.	וְאֵנִי עֹתָה מֵתַחִיל בְּזָכְרוֹן הַשְּׂרָשִׁים שֶׁרְאוּי לְסַמֵּךְ עֲלֵיהֶם בְּמִסְפֵּר הַמִּצְוֹת, וְהֵם י"ד שְׂרָשִׁים.
First, I'll introduce that all of the <i>mitzvos</i> that are included in the <i>Sefer Torah</i> which was given to us by G-d, may He be elevated, are 613 <i>mitzvos</i> .	אַחַר שֶׁאֶקְדִּים <sup>28</sup> כָּל הַמִּצְוֹת שֶׁיִּכְלֹל סֵפֶר הַתּוֹרָה אֲשֶׁר נָתַן לָנוּ הָאֵל יִתְעַלֶּה הֵם תְּרִי"ג מִצְוֹת.
Of them are 248 positive <i>mitzvos</i> , correlating to the number of limbs of a person, as well as 365 negative <i>mitzvos</i> , correlating to the number of days of the solar year.	מִהֵן מִצְוֹת עֲשֵׂה רמ"ח מִסְפֵּר אֲבְרֵי הָאָדָם, וּמִהֵן מִצְוֹת לֹא תַעֲשֶׂה שס"ה מִסְפֵּר יְמֵי הַשָּׁנָה הַשְּׁמִשִּׁית.
This number is mentioned in the Talmud <sup>29</sup> at the end of <i>Maseches Makkos</i> : 613 <i>mitzvos</i> were said to Moshe at Sinai; <sup>30</sup> 365 correlating to the days of the solar year and 248 correlating to the number of limbs of a person. <sup>31</sup>	וְזֶה הַמִּסְפֵּר נִזְכָּר בְּמִצְוֹת בְּתַלְמוּד בְּסוּף גְּמָרָא מִכּוֹת (דף כ"ג): אָמְרוּ "תְּרִי"ג מִצְוֹת נֶאֱמְרוּ לוֹ לְמֹשֶׁה בְּסִינֵי, שס"ה כְּנֶגֶד יָמוֹת הַחֹמֶה רמ"ח כְּנֶגֶד אֲיֻבְרֵי שֶׁל אָדָם."
[The Sages] also said as a form of exposition, that the number of positive <i>mitzvos</i> correlating to the number of limbs is as if to say that each limb says to a person: "Perform a <i>mitzvah</i> with me!"	וְאָמְרוּ גַם כֵּן (תַּנְחוּמָא פְּרָשַׁת תִּצְאָה) עַל דְּרַדְךָ הַדְרָשׁ, כִּי הָיִית מִצְוֹת עֲשֵׂה מִסְפֵּר כָּל הָאֲיֻבְרֵים, כְּלוֹמַר כָּל אֶבֶר וְאֶבֶר אוֹמֵר לוֹ "עֲשֵׂה בִי מִצְוָה!"
As well, the number of negative <i>mitzvos</i> correlates to the number of days of the year is as if to say that each day says to a person: "Don't transgress today!" <sup>32</sup>	וְהָיִית מִצְוֹת לֹא תַעֲשֶׂה מִסְפֵּר יְמֵי הַשָּׁנָה, כְּלוֹמַר כָּל יוֹם וְיוֹם אוֹמֵר לוֹ לְאָדָם "אַל תַּעֲשֶׂה בִּי עֲבָרָה!"
This is something that none of those who counted the <i>mitzvos</i> missed, i.e., that this is the total number <sup>33,34</sup>	וְזֶה מֵה שֶׁלֹּא יִסְכַּל בּוֹ אֶחָד מִמֵּי שֶׁמְנֶה הַמִּצְוֹת, רוֹצֵה לוֹמַר שֶׁזָּהוּ מִסְפָּרָם.

<sup>28</sup> [TN] In the standard edition this is the end of a paragraph, but the *Rav Chaim Heller* ed. and *Rav Kapach* put this together with the next sentence.

<sup>29</sup> [TN] *Rav Chaim Heller* ed.

<sup>30</sup> Regarding the Rambam's text of the *gemarra*, see *Shoresh* § 1 note 1.

<sup>31</sup> *Makkos* 23b.

<sup>32</sup> *Midrash Tanchuma, Ki Seitzei* § 2 and *Tanchuma Yashan*, ad loc.

*Rav Kapach* ed. note 54 notes that the way we have these teachings isn't exactly how the Rambam quotes it. His quotation matches more closely how *Rivan*, *Makkos* 23b (in *Rashi's* stead) quotes it. The implication is there's another related teaching that they're both quoting but we are lacking.

<sup>33</sup> [TN] *Rav Kapach*.

<sup>34</sup> Although everyone assumes that it is unanimous that there are 613 *mitzvos*, based on the teaching of Rav Simlai in *Makkos* loc. cit., *Ramban*, p. 13, questions this assumption. Perhaps there's a dispute as to how many *mitzvos* there are. He also wonders if Rav Simlai had a tradition for this number, from Hashem to Moshe and throughout the generations, or it was just the number he ended up with when he counted the *mitzvos*.

The Ramban is prompted by *Sotah* 3a, which presents a Tannaic dispute regarding three verses if they are teaching three *mitzvos* or three permits. According to the one who says they aren't *mitzvos*, they're lacking three from the count! We also don't see how they replace these three *mitzvos*. *Tosafos* ad. loc. ask similarly (see *Yedei Moshe*, Introduction to *Midrash Rabbah*, for a potential resolution, and *Teshuvos Shivas Tzion* § 34 and *Chiddushei Mahardam* p. 1 for a couple refutations). He presents other examples of this phenomenon throughout *Shas*.

After a long presentation of various *Midrashim* and *gemarros* which mention the 613 *mitzvos*, the Ramban's conclusion (p. 16) is that no one argues on Rav Simlai. He must

have had a tradition from Sinai that this is the number, just what makes the list is up for debate.

However, the Bahag had a different understanding. Since he includes Rabbinic *mitzvos* in the list, it must be that Rav Simlai was simply providing the number of *mitzvos* that have existed throughout all the generations, even after Sinai. That means there's no inherent significance to the number 613, or to the 248 positive *mitzvos* or 365 negative *mitzvos*. Rather, to help remember this number, he provided a mnemonic device to associate the *mitzvos* with the limbs of the body and the days of the solar year (see *Rav Arieli, Shoresh* § 1 note 34).

One could ask on the Ramban, that we are taught that the principles and details of all the *mitzvos* were taught at Sinai (*Toras Kohanim, Behar*, 25:1). If so, how could there be a suggestion that they received the number 613 as a tradition from Hashem to Moshe? What need would there have been for such a thing? They could have simply counted the *mitzvos* whose details they received and come to the number 613 (*Kinas Soferim*, p. 15)!

Even though the Rambam clearly holds that the way the Torah was given was first through *mitzvos* and then their details (*Peirush Hamishnayos, Hakdama Laseder Zerayim; Mishneh Torah*, Introduction), the Ramban's doubt implies he had a different understanding of how the Torah was originally transmitted (*Shoresh V'Anaf, Shoresh* § 1, *Anaf* § 1). On the other hand, one could argue that even if the *mitzvos* were all given, exactly how to divide them up wasn't given. As is clear throughout this *sefer*, even if the Rambam and Ramban agree on a *mitzvah* being included in the list of 613 *mitzvos*, they can disagree if they're listed as one, two, or more *mitzvos*. Without a clear tradition from Hashem, the Jews could have come up with a different numbering.

Although the Ramban clearly retracts from his doubts and concludes everyone agrees there are 613 *mitzvos*, for some reason some sources still cite him as viewing it as a matter of dispute. See *Maharatz Chiyos, Makkos* loc. cit. and *Ataros*

However, they made a major mistake in their enumeration, as will be evident from this work. This is because they weren't aware of these fourteen <i>Shorashim</i> , which I'll now explain. <sup>35</sup>	וְאִמְנָם נִשְׁתַּבְּשׁוּ בּוֹ שְׁבוּשׁ גָּדוֹל בְּזִכְרוֹן הַדְּבָרִים הַמְּנוּיִין כְּמוֹ שֶׁיִּתְבָּאֵר בְּמֵאמָר הַזֶּה. וְזֶה מִפְּנֵי שֶׁנֶּעְלַם מֵהֶם עֲנִינֵי אֵלּוּ הַשְּׂרָשִׁים ה"ד.
The first <i>Shoresh</i> is that it is not fitting to include Rabbinic <i>mitzvos</i> in the count.	הַשְּׂרֵשׁ הָרֵאשׁוֹן מֵהֶם שֶׁאֵין רְאוּי לְמִנּוֹת בְּכֻלָּל הַזֶּה הַמִּצְוֹת שֶׁהֵם מִדְּרַבָּנָן.
The second <i>Shoresh</i> is that it is not fitting to count anything that is extracted using one of the thirteen principles with which the Torah is derived, nor anything derived from a <i>ribui</i> (superfluous wording).	הַשְּׂרֵשׁ הַשֵּׁנִי שֶׁאֵין רְאוּי לְמִנּוֹת כָּל מֵה שֶׁלְּמִדּוּן בְּאַחַת מִשְׁלֹשׁ עֶשְׂרֵה מְדוֹת שֶׁהַתּוֹרָה נִדְרָשֶׁת בָּהֶן אוֹ בְּרַבּוּי.
The third <i>Shoresh</i> is that it is not fitting to count <i>mitzvos</i> that aren't relevant for all generations.	הַשְּׂרֵשׁ הַשְּׁלִישִׁי שֶׁאֵין רְאוּי לְמִנּוֹת מִצְוֹת שֶׁאֵין נוֹהֲגוֹת לְדוֹרוֹת.
The fourth <i>Shoresh</i> is that it is not fitting to count the <i>mitzvos</i> which encompass the entire Torah.	הַשְּׂרֵשׁ הָרְבִיעִי שֶׁאֵין רְאוּי לְמִנּוֹת הַצְּוִיִּין הַכּוֹלְלִים כָּל הַתּוֹרָה.
The fifth <i>Shoresh</i> is that it is not fitting to count the reason behind a <i>mitzvah</i> as its own <i>mitzvah</i> .	הַשְּׂרֵשׁ הַחֲמִישִׁי שֶׁאֵין רְאוּי לְמִנּוֹת טַעַם הַמִּצְוָה מִצְוָה בְּפְנֵי עֲצָמָה.
The sixth <i>Shoresh</i> is that a <i>mitzvah</i> that is both positive and negative, it's fitting to count the positive part of the <i>mitzvah</i> with the positive <i>mitzvos</i> , and the negative part of the <i>mitzvah</i> with the negative <i>mitzvos</i> .	הַשְּׂרֵשׁ הַשֵּׁשִׁי שֶׁהַמִּצְוָה שִׁיְהִיָּה בְּהָ עֲשֵׂה וְלֹא תַעֲשֵׂה, רְאוּי שִׁיִּמְנָה עֲשֵׂה שְׂבָה עִם מִצְוֹת עֲשֵׂה וְלֹא תַעֲשֵׂה שְׂבָה עִם מִצְוֹת לֹא תַעֲשֵׂה.
The seventh <i>Shoresh</i> is that it's not fitting to count the details of the laws of the <i>mitzvah</i> .	הַשְּׂרֵשׁ הַשְּׁבִיעִי שֶׁאֵין רְאוּי לְמִנּוֹת דְּקְדוּקֵי מִשְׁפָּטֵי הַתּוֹרָה.
The eighth <i>Shoresh</i> is that it's not fitting to count a statement of negation as a prohibition.	הַשְּׂרֵשׁ הַשְּׁמִינִי שֶׁאֵין רְאוּי לְמִנּוֹת שְׁלִילוֹת הַחַיִּיב עִם הָאֲזָהָרָה.
The ninth <i>Shoresh</i> is that, with regard to the positive and negative <i>mitzvos</i> , it's only fitting to count that which is prohibited and that which is commanded.	הַשְּׂרֵשׁ הַתְּשִׁיעִי שֶׁאֵין רְאוּי לְמִנּוֹת הַלְּאֻוִּין וְהָעֲשֵׂה, אֲבָל הַדְּבָרִים הַמְּזָהֵר מֵהֶן וְהַמִּצְוָה בָּהֶם.
The tenth <i>Shoresh</i> is that it isn't fitting to count the introductions, which are for a specific purpose.	הַשְּׂרֵשׁ הָעֲשִׂירִי שֶׁאֵין רְאוּי לְמִנּוֹת הַהַקְדָּמוֹת שֶׁהֵן לְתַכְלִית אַחַת מִן הַתְּכַלִּיּוֹת.
The eleventh <i>Shoresh</i> is that the individual parts of a <i>mitzvah</i> shouldn't each be counted as their own <i>mitzvah</i> , when they all combine into one <i>mitzvah</i> .	הַשְּׂרֵשׁ הָאֶחָד עָשָׂר שֶׁאֵין רְאוּי לְמִנּוֹת חֻלְקֵי הַמִּצְוָה בְּפָרֵט חֻלְק חֻלְק בְּפְנֵי עֲצָמוֹ כְּשִׁיְהִיָּה הַמְּקַבֵּץ מֵהֶם מִצְוָה אַחַת.
The twelfth <i>Shoresh</i> is that the different jobs involved in the <i>mitzvah</i> shouldn't be counted as their own <i>mitzvah</i> .	הַשְּׂרֵשׁ הַשְּׁנַיִם עָשָׂר שֶׁאֵין רְאוּי לְמִנּוֹת חֻלְקֵי מְלָאכָה מִן הַמְּלָאכוֹת שְׂבָא הַצְּוִי בְּעִשְׂיָתָם כָּל חֻלְק וְחֻלְק בְּפְנֵי עֲצָמוֹ.
The thirteenth <i>Shoresh</i> is that the number of <i>mitzvos</i> don't increase according to the number of days that the <i>mitzvah</i> applies.	הַשְּׂרֵשׁ הַשְּׁלֹשָׁה עָשָׂר שֶׁהַמִּצְוֹת לֹא יִרְבֶּה מִסְפָּרָם כְּמִסְפַּר הַיָּמִים שֶׁתִּתְחַיֵּב בָּהֶן הַמִּצְוָה הַהִיא.

*Adar, Miluim to Shemos 20:14*, by the Aderes. However, although *Zohar Harakiah*, Introduction, writes like the Ramban, at the end of the *sefer* he backtracks somewhat. He suggests that perhaps the idea of 248 positive *mitzvos* and 365 negative *mitzvos* is only according to Rav Simlai. He's open to

the possibility that there are a few more or a few less than 613. See *Rav Perla, Mevo* § 1, Vol. 1 p. 3, who explains his intent and presents the arguments against it in the strongest terms.  
<sup>35</sup> [TN] *Rav Chaim Heller* and *Rav Kapach* ed.

<p>The fourteenth <i>Shoresh</i> is how is it fitting to count the fulfillment of punishments as positive <i>mitzvos</i>?<sup>36</sup></p>	<p>הַשְּׂרֵשׁ הָאֲרָבָעָה עָשָׂר שְׂאִין רְאוּי לְמִנּוֹת הַעֲמֻדָּת הַעוֹנְשִׁים בְּמִצְוֹת עֲשֵׂה.</p>
<p>I'll return to explain each individual <i>Shoresh</i>, and to bring proof for it, with the help of G-d, may He be elevated.<sup>37</sup></p>	<p>וְאֶשׁוּב לְבָאֵר כָּל שְׂרֵשׁ וְשְׂרֵשׁ מֵהֶם וּלְהַבִּיאַ רְאִיָּה עָלַי בְּעֲזֶרְתְּ הָאֵל יִתְעַלֶּה.</p>

<sup>36</sup> [TN] See *Shoresh* § 14 for notes on the translation.

<sup>37</sup> [TN] This line is missing from the standard edition for some reason.

## Shoresh 1

<p><b>That it is not fitting to include Rabbinic <i>mitzvos</i> in the count.</b></p>	<p>שְׁאִין רְאוּי לְמִנּוֹת בְּכֻלָּל הַזֶּה הַמִּצְוֹת שֶׁהֵן מִדְּרַבָּנָן.</p>
<p><b>Background:</b></p> <p>The motivation behind this <i>Shoresh</i>, as the Rambam will proceed to explain, is that the Bahag and those that followed him list various Rabbinic commandments in the 613 <i>mitzvos</i>. The Rambam's problem with this is his whole concept of the 613 <i>mitzvos</i> is that they are a listing of what the Torah commands us. By definition, Rabbinic <i>mitzvos</i> would not be included. The Rambam will present other problems he has with their approach, namely that these authorities only list some of the Rabbinic <i>mitzvos</i>, but not all of them. The various commentaries try to defend the Bahag and his followers, some by explaining why the <i>mitzvos</i> they chose may be different than regular Rabbinic <i>mitzvos</i>, and some present other approaches.</p>	
<p>You should know that this topic wasn't even worth discussing or explaining. Once the Talmud stated: "613 <i>mitzvos</i> were said to Moshe at Sinai"<sup>1,2</sup> how could we say that something which is Rabbinic could be included in the count?<sup>3</sup></p>	<p>דַּע כִּי זֶה הָעֲנָן לֹא הָיָה רְאוּי לְעוֹרֵר עָלָיו לְבַאֲרוֹ. כִּי אַחֲרַי שֶׁהָיָה לְשׁוֹן הַתְּלֻמוֹד (מִכּוֹת כ"ג ע"ב) "תְּרִי"ג מִצְוֹת נִאֲמָרוּ לְמֹשֶׁה בְּסִינַי", אֵיךְ נֹאמֵר בְּדָבָר הַזֶּה הַהוּא שֶׁהוּא מִדְּרַבָּנָן שֶׁהוּא מְכֻלָּל הַמִּנְיָן?</p>

<sup>1</sup> The version that we have in the Vilna Shas just says, "were said to Moshe", without mentioning Mount Sinai. The Rambam (as well as the *Ramban*, p. 17 and *Zohar Harakiah*, Introduction, *Shoresh* § 1) have the same version of the text which appears in *Sheiltos D'Rav Achai Gaon, Vezos Haberacha* § 166 and *Ein Yaakov*, ad. loc. (*Rav Chaim Heller* ed. note 1; *Rav Kapach* ed., Rambam's introduction note 53). The Rambam also quotes the *gemarra* this way in his *Peirush Hamishnayos, Chullin* 7:6.

However, upon a careful examination of *Halachos Gedolos*, Introduction, it's clear he had a different version of the *gemarra* than the Rambam. There, he writes "Yisroel was commanded six hundred and thirteen *mitzvos*", also without mentioning Sinai. According to this version, the Rambam's question doesn't get started (*Ramban*, p. 17). The problem is, the Bahag at the end of his listing writes, "these are the *mitzvos* that Yisroel received at Sinai". Accordingly, the Rambam has a point (*Nesiv Mitzvosecha, Ri Albargaloni, Aseh* § 8; *Rav Naftali Tzvi Hildesheimer, Asin* note 324; *Rav Perla, Mevo* 7:1, Vol. 1 p. 9a; see also *Kinas Soferim* p. 17). Furthermore, the Hildesheimer ed. doesn't even have the text that the Ramban cites, and makes multiple references to receiving the *mitzvos* at Sinai (*Rav Perla*).

The Ramban further defends the Bahag by bringing some examples of *mitzvos* that were clearly given after Sinai, while the Jews were in the wilderness. We see then that *Chazal's* usage of "Sinai" is not to be taken too literally. The Rambam himself in *Shoresh* § 3 agrees it's not literal and clarifies there what's intended with the word "Sinai". It must be then that the Rambam's main argument is what he says later, that if we included Rabbinic *mitzvos* there would be far greater than 613. The Rambam is simply adding that the word "Sinai" implies like his opinion as well (*Kinas Soferim*, p. 21; see also *Ibid.* p. 23).

In a similar vein, *Rav Perla* brings examples of *mitzvos* which were given before Sinai and not repeated at Sinai (see *Sanhedrin* 59), yet they are

included in the 613 *mitzvos* according to everyone. It must be then that *Rav Simlai's* mention of Sinai isn't to be taken too literally.

<sup>2</sup> *Makkos* 23b.

<sup>3</sup> Even according to the Rambam's version of the *gemarra*, the *Ramban*, p. 17, upholds the Bahag's approach with three defenses: (1) We often find that *Chazal* describe Rabbinic laws as "Torah". If so, there's a precedent to say that Rabbinic laws were given at Sinai, even if they weren't literally given then. (2) *Chazal* have no problem discussing the majority and ignoring the minority. Therefore, even if there are a few Rabbinic *mitzvos* in the list, it's fine to say all 613 were at Sinai. (3) We were told at Sinai to accept upon ourselves everything the *Beis Din* enacts. As such, everything they eventually instituted was also included at Sinai.

Regarding (1), although it's true Rabbinic laws are called "Torah", they're never called "*Mitzvah*". Rather, they are always called a "*Takanah*" (enactment) or a "*Gezeirah*" (decree) (*Megillas Esther*, p. 18). See note 32. The examples the *Megillas Esther* brings are all Rabbinic decrees related to Biblical *mitzvos*. However, regarding original Rabbinic *mitzvos*, such as *Chanukah*, we find many instances where they're referred to as *mitzvah*. See *Shabbos* 21b. In fact, even an *Eruv*, which is a Rabbinic decree related to a Biblical *mitzvah*, is itself referred to as a *mitzvah* in *Shabbos* 117b (*Rav Arieli, Hasagos Haramban*, note 42).

Regarding (2), although it's true that *Chazal* often ignore the minority and speak about a group in terms of the majority, this is something we find with the *Tanaim*. However, *Amoraim* are really expected to be precise with their words and elaborate on their intent (*Halichos Olam* 2:2, quoting *Sefer Kerisos, Loshon Limudim* 3:25; *Tosafos, Beitzah* 25a s.v. כָּאן בַּשָּׂדֶה). Therefore, *Rav Simlai*, as an *Amora*, is assumed to be precise when he says 613 *mitzvos* were given to Moshe at Sinai (*Megillas Esther*, p. 20; *Marganisa Tava*, p. 438).

<p>However, we bothered discussing it, since there are many who were mistaken and counted lighting <i>Chanukah</i> candles<sup>4</sup> and reciting <i>Megillas Esther</i><sup>5</sup> within the positive <i>mitzvos</i>.</p>	<p>אָבַל הָעִירוֹנוּ עָלֵינוּ מִפְּנֵי שֶׁטָּעוּ בּוֹ רַבִּים וּמְנוּ נִרְחַמֵּם וּמִקְרָא מְגִלָּה מְכֻלָּל מִצְוֹת עֲשֵׂה.</p>
<p>They include as well: one hundred blessings each day,<sup>6</sup> comforting mourners,<sup>7</sup> visiting the sick,<sup>8</sup> burying the dead,<sup>9</sup> clothing the</p>	<p>וְכֵן מֵאָה בְּרָכוֹת בְּכָל יוֹם, וְנִחוּם אֲבָלִים, וּבִקּוּר חוֹלִים, וּקְבוּרַת מֵתִים, וְהַלְבָּשַׁת עֲרוּמִים, וְחִשׁוּב תְּקוּפוֹת, וְשִׁמּוֹנָה עֶשֶׂר יָמִים לְגִמּוּר אֶת הַהֶלֶל.</p>

Regarding (3), this is a surprising statement. The Ramban later in this *Shoresh* argues vehemently against the Rambam's opinion on the severity of the Sage's authority (see note 21). Unlike the Rambam, the Ramban holds every Rabbinic enactment is *not* considered Biblical at its root. However, Ramban's third defense here of the Bahag reveals that he in fact agrees somewhat with the Rambam. Since we at Sinai accepted upon ourselves everything the Sages would eventually enact, they are, in essence, Biblical (*Kuntres Divrei Sofrim* 1:41). See Appendix A for an explanation of the argument between the Rambam and Ramban.

<sup>4</sup> This *mitzvah* is counted by the Bahag (*Halachos Gedolos*, loc. cit. *Aseh* § 139), Rav Eliyahu Hazaken (p. 4b), Ri Albargaloni (*Nesiv Mitzvosecha*, *Aseh* § 8), Rav Shlomo Ibn Gabirol (Ibid., *Aseh* § 160), Rav Sa'adiah Gaon (*Aseh* § 60), and *Ata Hinchalta*.

*Rav Perla*, ad. loc., Vol. 1 p. 260 col. 4, is bothered that Rav Sa'adiah Gaon omitted counting a *mitzvah* of reciting *Hallel* (see below, note 14)). Because of this and other considerations, he interprets Rav Sa'adiah Gaon to hold like Rav Daniel Habavli, cited in *Ma'aseh Nissim* § 1. His opinion is that by lighting *Chanukah* candles, one fulfills a Biblical obligation of publicizing the miracle that Hashem performed. This is the very same obligation as reciting *Hallel*. On *Chanukah*, there's a Biblical obligation to publicize the miracle, but no specific way is proscribed. As such, the Rabbis instituted to specifically light candles. See *Teshuvos Chasam Sofer*, *Orach Chaim* § 208, who writes similarly, although for different reasons.

Given the above, when Rav Sa'adiah Gaon counts a *mitzvah* to light *Chanukah* candles, the intent is the same Biblical *mitzvah* as reciting *Hallel*. Namely, to publicize the miracle.

*Sefer Yereim* § 429 (100) also counts a *mitzvah* to light *Chanukah* candles. This is surprising, for although he follows the opinion of the Bahag, he doesn't include Rabbinic *mitzvos*. He therefore explains himself that his intent is really the Bahag's *mitzvah* of lighting *Shabbos* candles (Ibid § 138), which the *Sefer Yereim* holds is Biblical (see *Midrash Tanchuma*, *Noach* § 1). Even though the source for this *mitzvah* is from *Yeshaya* 58:13, he holds that it was really an oral tradition from Sinai which *Yeshaya* later recorded in a verse (Cf. *Moed Kattan* 5a). He only mentioned *Chanukah* candles tangentially. Although Rav Avraham Shimon Traube understood the Bahag to be counting two *mitzvos*, the *Sefer Yereim* seems to be reading them as only one. Clearly, the Rambam disagreed with the *Sefer Yereim*'s interpretation of the Bahag.

<sup>5</sup> This is counted by the Bahag (Ibid. § 200), Rav Eliyahu Hazaken (loc. cit.), Ri Albargaloni (Ibid. § 146), Rav Shlomo Ibn Gabirol (Ibid. § 211), Rav Sa'adiah Gaon (*Aseh* § 59), and *Ata Hinchalta*.

*Rav Perla*, ad. loc., Vol. 1 p. 261 col. 4, notes the curiosity that Rav Sa'adiah Gaon didn't count a *mitzvah* to remember what Amalek did to us in the wilderness (*Aseh* § 189), nor the *mitzvah* to never forget it (*Lo Sa'aseh* § 59). As such, he innovates that when Rav Sa'adiah Gaon counts a *mitzvah* to recite *Megillas Esther*, his intent is really the Biblical *mitzvah* of remembering what Amalek did to us. Since our Sages tell us that remembering means verbally (*Sifra*, *Vayikra* 26:3, brought by *Ramban*, *Devarim* 25:17), and that by reciting *Megillas Esther* we in fact accomplish the same goal, we don't have to say Rav Sa'adiah Gaon counted this Rabbinic *mitzvah*. See also *Sefer Hachinuch* § 603 and *Ritva*, *Megillah* 17b.

<sup>6</sup> This *mitzvah* is counted by the Bahag (Ibid. § 25), Rav Eliyahu Hazaken (p. 3a), Ri Albargaloni (Ibid. § 50), and *Sefer Yereim* § 255 (10). Rav Shlomo Ibn Gabirol seemingly counts this as well (Ibid. § 20), but *Rav Perla*, *Aseh* § 2 Vol. 1 p. 54 col. 3 for whatever reason understood that he left it out. See there for his reasoning for why it wouldn't be counted. Rav Sa'adiah Gaon doesn't count it since, despite following the Bahag, he never counts Rabbinic *mitzvos* (*Rav Perla*, loc. cit. p. 55 col. 2).

*Hiddur Zaken*, ad. loc. note 15, reminds us that the *Sefer Yereim* doesn't include Rabbinic *mitzvos*, despite following the Bahag. His inclusion of one hundred blessings would imply he held they are Biblically required. See *Sefer Hamanhig*, *Hilchos Tefillah*, who declares that he has a tradition going back to Sinai that Moshe enacted one hundred blessings each day, although it was forgotten and later reinstated by King David (*Rav Naftali Tzvi Hildesheimer*, *Asin* note 324).

<sup>7</sup> This *mitzvah* is counted by the Bahag (Ibid. § 35), Rav Eliyahu Hazaken (p. 2a), Ri Albargaloni (Ibid. § 85), and Rav Shlomo Ibn Gabirol (Ibid. § 61). It seems to be omitted by *Ata Hinchalta*. Rav Sa'adiah Gaon doesn't count this *mitzvah*. See the upcoming note about burying the dead.

<sup>8</sup> This *mitzvah* is counted by the Bahag (Ibid. § 36), Rav Eliyahu Hazaken (p. 4b), Ri Albargaloni (Ibid. § 56), and Rav Shlomo Ibn Gabirol (Ibid. § 60). It seems to be omitted by *Ata Hinchalta*. Rav Sa'adiah Gaon doesn't count this *mitzvah*. See the upcoming note about burying the dead.

<sup>9</sup> This *mitzvah* is counted by the Bahag (Ibid. § 34), Rav Eliyahu Hazaken (p. 8a), Ri Albargaloni (Ibid. § 49), and Rav Shlomo Ibn Gabirol (Ibid. § 62). Rav Sa'adiah Gaon only counts the *mitzvah* incumbent upon the court to ensure those executed get buried (*Parshiyos* § 34). He doesn't count the *mitzvos* the Bahag includes from walking in Hashem's ways (see note 11). See *Rav Perla*, *Aseh* § 19, Vol. 1 p. 144 col. 3 – 147 col. 4, for an explanation of his opinion. *Sefer Yereim* § 219, 220 (50) doesn't count a separate

naked<sup>10,11</sup> calculating the seasons<sup>12,13</sup> and the eighteen times full *Hallel* is recited.<sup>14</sup>

*mitzvah* to bury the dead. Instead, he includes it in the *mitzvah* to walk in Hashem's ways. See *Rav Perla*, loc. cit. p. 145 col. 3. *Ata Hinchalta* only counts the prohibition of leaving a corpse overnight without burial (*Lo Sa'aseh* § 66).

*Ramban*, p. 46 notes that this is a problematic attack of the *Rambam*, for he himself counts a *mitzvah* to bury the dead (*Aseh* § 231). As well, it is prohibited to delay burying the dead (*Lo Sa'aseh* § 66). One could say the *Rambam's* issue here is that the Bahag derived this *mitzvah* from a *derasha*, making it *derabanan* (see *Shoresh* § 2), when really it comes from an explicit verse (*Megillas Esther*, p. 46).

An extension of this is the *Rambam* viewed the verse as simply commanding to ensure the deceased be buried. The Bahag instead counted the *derasha*, which he viewed as a *mitzvah* to involve oneself physically in the burial (*Marganisa Tava*, p. 448).

See also *Rav Perla*, loc. cit., who infers a support for these approaches from *Sefer Yereim* § 220 (50) and 384 (252). There it's apparent that he holds the *mitzvah* to bury the deceased comes from the *derasha*, and not the explicit verse in the Torah, which is referring specifically to someone who was executed. This is significant as the *Sefer Yereim* is based on *Halachos Gedolos*.

An alternative approach is that perhaps the *Rambam* merely counted a *mitzvah* for the relatives to bury their deceased, whereas the Bahag instead counted the Rabbinic *mitzvah* for everyone to assist in the burial (*Kinas Soferim*, p. 47; *Lev Sameach*, ad loc.; *Yashir Moshe*, *Aseh*, *Bayis Tzivui Avodaso*, brought by *Nesiv Mitvosecha*, ad. loc.) The *Ramban* already rejected this approach.

<sup>10</sup> This *mitzvah* is counted by the Bahag (*Ibid.* § 33), *Rav Elyahu Hazaken* (p. 4b), *Ri Albargaloni* (*Ibid.* § 54), and *Rav Shlomo Ibn Gabirol* (*Ibid.* § 216). It seems to be omitted by *Ata Hinchalta*. *Rav Sa'adiah Gaon* doesn't count this *mitzvah*. See the previous note about burying the dead.

<sup>11</sup> This and the previous three *mitzvos* are really all examples of the *mitzvah* to walk in Hashem's ways (*Aseh* § 8). Looking at the Bahag inside, you'll see he's merely paraphrasing *Sotah* 14a. His intent isn't to count these as separate *mitzvos* (*Ramban*, p. 44; *Yashir Moshe*, loc. cit.). *Lev Sameach*, p. 47, affirms this approach of the *Ramban*. See there, where he explains why the *Rambam* disagrees. See also *Shoresh* § 2 for further discussion on these *mitzvos*.

The *Ramban* supports this approach based on the wording of the Bahag, who describes these *mitzvos* as a list: "to clothe the naked, to bury the dead, to comfort mourners, to visit the sick". This approach fits with the Hildesheimer ed. of the Bahag, but not the text as we have it in the Warsaw ed., which says "visiting the sick", and not "to visit the sick". See also *Marganisa Tava*, p. 449, who wants to suggest the *Rambam* disagreed with the *Ramban's* interpretation of the Bahag due to having a different version of the text.

However, it's clear from the *Geonim* who followed the Bahag that they understood him to be counting these as separate *mitzvos*. Otherwise, how could they count them in a scattered fashion (*Nesiv Mitvosecha*, loc. cit.; *Hiddur Zaken*, p. 2a note 11)? As noted in the *Rambam's* introduction, he was very familiar with the different *Azharos* of the *Geonim*. We

therefore don't need to say the *Rambam* had a different text of the Bahag than the *Ramban*.

See *Hiddur Zaken*, where he explains the *Ramban* differently than above. Instead, he suggests the *Ramban's* intent is similar to *Marganisa Tava's* explanation (p. 448; see there) for the *Rambam* in *Mishneh Torah*, *Hilchos Avel* 14:1. Meaning, even though these *mitzvos* are included in the Biblical *mitzvah* to walk in Hashem's ways, the Rabbi's made individual *mitzvos* for each of these acts. As such, the Bahag did intend to count them separately. See also *Sefer Yereim* § 219, 220 (50).

<sup>12</sup> This is counted by the Bahag (*Ibid.* § 75), *Rav Elyahu Hazaken* (p. 3a), *Ri Albargaloni* (*Ibid.* § 92), *Rav Shlomo Ibn Gabirol* (*Ibid.* § 159), and *Ata Hinchalta*. However, *Rav Sa'adiah Gaon* doesn't count it.

See *Shoresh* § 2 for more on this *mitzvah*.

<sup>13</sup> In *Shoresh* § 2, the *Rambam* understands the Bahag to consider comforting mourners, visiting the sick etc. as Biblical *mitzvos*, and argues on him that they are derivations and are not to be included. Yet here he writes that the Bahag counted them although they are Rabbinic! It must be that his real issue with these *mitzvos* is because they are derivations, as he writes there. Here, his real issue is that the Bahag counted lighting *Chanukah* candles and reciting *Megillas Esther*. He included these other *mitzvos* because in his opinion they are also Rabbinic (*Shorshei Hayam*).

<sup>14</sup> This is counted by the Bahag (*Ibid.* § 101-119), *Rav Elyahu Hazaken* (p. 5a), *Ri Albargaloni* (*Ibid.* § 95-113), *Rav Shlomo Ibn Gabirol* (*Ibid.* § 27-45), and *Ata Hinchalta*. This *mitzvah* is mysteriously absent from *Rav Sa'adiah Gaon's* listing. See note 4.

The Bahag actually counts eighteen times that full *Hallel* is said by day and one time that it is said by night. *Rav Avraham Shimon Traube* understands the Bahag to be counting nineteen separate *mitzvos*. This is also the understanding of *Nesiv Mitvosecha*, *Bahag Aseh* § 103-121, who notes that without this interpretation the Bahag's count would be below 613. See *Ibid.*, *Ri Albargaloni*, loc. cit. and *Hiddur Zaken*, p. 5a note 36, who have difficulties with this opinion of the Bahag. See also *Shoresh* § 13. *Ata Hinchalta*, besides mentioning the nineteen times *Hallel* is recited in the land of Israel, he adds that there are twenty-one times it is recited in the Diaspora. This addition makes it unclear if he meant to count a total of twenty-one *mitzvos*, nineteen (and the Diaspora comment was just for clarity), or just one *mitzvah*.

Since the Bahag mentions nineteen times *Hallel* is recited, why did the *Rambam* mention only eighteen? In truth, *Arachin* 10a only mentions the eighteen times *Hallel* is recited by day. Whereas *Soferim* 20:9 and *Yerushalmi Sukkah* 4:5 mention the eighteen times as well as the *Hallel* recited the night of *Pesach*. The Bahag is quoting *Soferim* and the *Yerushalmi*. *Ramban*, *Pesachim* 117b s.v. ואומר explains that there is no dispute. *Arachin* doesn't mention the *Hallel* of the night of *Pesach* since it was established to accompany the *Pesach* offering. *Hallel* accompanying *mitzvos* wasn't listed there.

However, the *Rambam* doesn't mention the *Hallel* of the night of *Pesach*. As well, in *Mishneh Torah*, *Hilchos Chanukah* 3:18 he only writes that there are eighteen times *Hallel* is recited. The

<p>One would become surprised<sup>15</sup> from one who would hear their words, “said to Moshe at Sinai”,<sup>16</sup> and then count reciting the <i>Hallel</i> praises that King David, peace be upon him, said about G-d, may He be blessed, [implying] that Moshe commanded it.<sup>17</sup></p>	<p>וְהִשְׁתַּכַּח מִמִּי שִׁישְׁמַע לְשׁוֹנָם “נֶאֱמָרוּ לוֹ לְמֹשֶׁה בְּסִינַי” וְיִמְנָה קְרִיאַת הַהֵלֵל שֶׁשָּׁבַח בּוֹ דָּוִד, עֲלִיו הַשְּׁלוֹם, אֶת הָאֵל יִתְבָּרַךְ שֶׁצִּוָּה בָּהּ מֹשֶׁה.</p>
<p>Similarly with <i>Chanukah</i> candles, which the Sages in the Second Temple established. A similar argument can be made with the <i>mitzvah</i> of reciting <i>Megillas Esther</i>.</p>	<p>וְכֵן נִרְחַק שֶׁקְבֻעוֹת הַחֲכָמִים בְּבֵית שְׁנֵי, וְכֵן קְרִיאַת הַמְּגִלָּה.</p>

Rambam understands that *Arachin* argues on *Soferim*, and rules that the *Hallel* of the night of *Pesach* isn't a separate obligation. Rather, it's simply part and parcel of reciting the *Haggadah* (see *Sefer Hachinuch* § 21 and *Meiri, Megillah* 20b s.v. נִסְיָו לְבִיאָר). Therefore, the Rambam didn't need to mention this recitation here. Even if we were to count *Hallel* in the 613 *mitzvos*, the *Hallel* of the night of *Pesach* wouldn't be counted, as it's not a separate obligation (*Rav Arieli*, note 1).

The Rambam assumes that reciting *Hallel* is a Rabbinic obligation. This assumption is addressed by the Ramban, as brought in an upcoming note. However, there are *Rishonim* that maintain it's Biblical. One is *Sefer Yereim* § 262 (125). Even though *Arachin* 10b derives it from *Yeshaya* 30:29, he holds that it was really an oral tradition from Sinai which *Yeshaya* later recorded in a verse (Cf. *Moed Kattan* 5a). Although he follows the Bahag, he is consistent with his opinion that the Bahag never counted Biblical *mitzvos*. It's also counted by *Semak* § 146, derived from *Devarim* 10:21. *Zohar Harakiah, Aseh* § 19 (14-16) suggests another verse: *Vayikra* 19:24. Ibn Ezra in his *Yesod Moreh, Sha'ar* 6, cites a Rav Bachaye as considering it Biblical, also quoting *Devarim*. Perhaps this is a reference to Rabbeinu Bachaye Ibn Pekuda, the author of *Chovos Halevavos*. See also *Ma'aseh Nissim* § 1 and Rav Daniel Habavli's citation of *Toras Kohanim, Vayikra* 22:32, where *Chazal* infer from prohibition of profaning Hashem's name the obligation to sanctify His name.

<sup>15</sup> [TN] Based on *Rav Kapach*, who translates the original Arabic as: “contemplate and be surprised”. This is also how the *Ramban*, p. 32, quotes him. *Ibn Ayub* translates the original Arabic as: “I am shocked”. See as well *Shores* § 14.

<sup>16</sup> As noted above, according to our text of the *gemarra*, this question isn't as strong as it seems.

<sup>17</sup> This is difficult, as the Rambam is of the opinion that *Tefillah*, daily prayer, is included in the 613 *mitzvos* (*Aseh* § 5). This, despite the fact that the text and details of the prayer service were only decided later by the Rabbis (*Berachos* 32a). Why can't we then say the same regarding *Hallel*, that it was Biblically commanded to sing praises to Hashem on the festivals, and the exact text was later decided by King David (*Ramban*, p. 32)? He cites other precedents for this, such as the song that is recited while bringing Temple offerings, and the text of *Birkas Hamazon* (*Aseh* § 19).

One could differentiate between the *mitzvah* of *Tefillah*, as that has an explicit verse commanding it (*Shemos* 23:25; *Devarim* 11:13), unlike *Hallel*. Although, there's a different issue with the Rambam's attack. There are opinions that Moshe himself said part of *Hallel* when they left Egypt (*Pesachim* 117a). It's not so surprising then that the Bahag could count *Hallel*. Granted, not everything Moshe did is considered Biblical (see *Shores* § 2). Therefore, the Rambam is justified in not counting *Hallel*, even if Moshe himself said it (*Megillas Esther*, p. 36).

Others address the Ramban's counter on the Rambam by explaining the latter's issue is the way the Bahag phrased the *mitzvah*. Had the Bahag counted a *mitzvah* to sing praises of Hashem, and the intent is what eventually became *Hallel*, that would have been fine. The problem is *Hallel* didn't exist yet at Sinai, so how could the *mitzvah* specify it (*Lev Sameach*, p. 43; *Marganisa Tava*, p. 447)?

A related issue is the Rambam's assumption that King David wrote the words of *Hallel*. Psalms were composed with Divine inspiration by many other great personalities throughout our history, including Adam and Avraham. Perhaps Moshe composed *Hallel*, as we know there's an opinion that he recited it when they left Egypt (*Ramban*, p. 34). If we see that *Hallel* may have been recited before receiving the Torah at Sinai, perhaps they were even commanded to recite it (*Rav Arieli, Hasagos Haramban*, note 148). Although, it could be the Rambam wasn't being specific when he mentioned King David. His intent was simply to state that *Hallel*, whoever composed it, even if it was Moshe, is not Biblical (*Kinas Soferim*, p. 37; see also *Lev Sameach*, p. 45).

The *Ramban*, p. 36, concludes by questioning the Rambam's premise that *Hallel* is Rabbinic. There are sources, such as *Ta'anis* 28b and *Arachin* 10b, which imply it's Biblical. The source for the obligation would have to be a *Halacha L'Moshe MiSinai*, or it would be included in the obligation of rejoicing on the festivals (*Aseh* § 54). If the latter is true, then there's no need to include a separate *mitzvah* anyways in the 613 (*Zohar Harakiah, Aseh* § 19 (14-16)). Although, see *Sha'agas Aryeh* § 69 and *Rav Perla, Aseh* § 59-60, Vol. 1, p. 254 col. 3, who refute such an option. The Ramban's opinion on the status of *Hallel* remains inconclusive, although at the end of his work he concedes to the Rambam, at least in not counting it in the 613. Nevertheless, the *Zohar Harakiah* maintains it's due to above, that the Ramban holds it's part of the *mitzvah* to rejoice.

<p>Indeed, I don't believe that anyone would imagine or think that, "to Moshe at Sinai", would mean that He commanded us that if it would ever be that at the end of our sovereignty, such and such would happen to us with the Greeks, that we would be obligated to light <i>Chanukah</i> candles.</p>	<p>אָמַנְסָּ הָיִיתָ נֹאמֵר "לְמוֹשֶׁה בְּסִינַי" שֶׁיִּצְוֶנוּ כִּי כְּשִׁיהִיָּה בְּאַחֲרִית מַמְלַכְתָּנוּ וְיִקְרָה לָנוּ עִם הַיּוֹנִים כָּד וְכָד יִתְחַיֵּב לָנוּ לְהַדְלִיק נֵר חֲנֻכָּה, הִנֵּה אֵינִי רוֹאֶה שְׁאֶחָד יִדְמֶה זֶה אוֹ יַעֲלֶה בְּמַחְשַׁבְתּוֹ.</p>
<p>After proving that Rabbinic <i>mitzvos</i> are excluded, the Rambam will now try to speak on behalf of the Bahag and his followers by suggesting how they could have come to such a conclusion. He will then show where they went wrong.</p>	
<p>It appears to me that what brought them to this approach is that we make the blessing, "Who sanctified us with His commandments and commanded us...",<sup>18</sup> and the Talmud inquired: "Where did He command us?", and they said, "From the verse '<i>Lo Tasur</i> (Don't stray)'<sup>19</sup>".<sup>20</sup></p>	<p>וְמָה שִׁירָאָה לִי שֶׁהֵבִיאָם אֶל זֶה הַיּוֹתֵנוּ מִבְּרַכִּין "אֲשֶׁר קִדְּשָׁנוּ בְּמִצְוֹתָיו וְצִוָּנוּ", וְשֶׁאֵלֶת הַתְּלֻמוֹד (שִׁבְתָּ כ"ג ע"א) "הֵיכָן צִוָּנוּ?" וְאָמְרוּ "מִלֵּא תְּסוּר" (דְּבָרִים י"ז, י"א).</p>
<p>If they counted these <i>mitzvos</i> for this reason, it would have been fitting for them to include <i>all</i> Rabbinic <i>mitzvos</i>. For <i>everything</i> that the Sages commanded us to do, and all that they refrained us from doing, has already been commanded by Moshe our Teacher, peace be upon him, at Sinai.<sup>21</sup></p>	<p>וְאִם מִטַּעַם זֶה מְנוּ אוֹתָם, הִנֵּה רָאוּי שֶׁיִּמְנוּ כָּל דָּבָר שֶׁהוּא מִדְּרַבָּנָן. כִּי כָּל מָה שֶׁצִּוָּנוּ חֻכְמִים לַעֲשׂוֹתוֹ וְכָל מָה שֶׁהִזְהִירוּנוּ מִמֶּנּוּ כְּבָר צִוָּה מוֹשֶׁה רַבֵּינוּ ע"ה בְּסִינַי.</p>

<sup>18</sup> [TN] The original Arabic, followed by *Rav Chaim Heller* and *Rav Kapach* editions, has the full text of the blessings for *Megillas Esther*, *Chanukah*, and *Hallel*. It was omitted in the standard edition.

<sup>19</sup> *Devarim* 17:11.

<sup>20</sup> *Shabbos* 23a.

<sup>21</sup> The implication of the Rambam's words is that he holds that every Rabbinic law is at its core Biblical, as the Torah commands us to listen to the Sages and everything they say. This would include their restrictive fences, as well as the *mitzvos* that they created. He rules this way in *Mishneh Torah*, *Hilchos Mamrim* 1:2.

*Ramban*, p. 18, takes the Rambam to task for this understanding. We see in many places that we treat Rabbinic laws less severely than Biblical ones. If the Rambam were correct, breaking a Rabbinic law should be liable to the same lashes as any other *mitzvah* violation. The Ramban brings many other questions on the Rambam.

He concludes that *Lo Tasur*, the *mitzvah* not to deviate from their words, is solely regarding their

interpretations of the Torah. We are commanded to follow their understanding, and not what we think the Torah is telling us. However, Rabbinic fences and *mitzvos* are not included in this Biblical *mitzvah*. As such, if the Bahag concurs with the Ramban, this would not be his motivation in including Rabbinic *mitzvos* in the count.

One could be tempted to read the Rambam as not saying his own opinion. Rather, he is solely explaining the rationale of the Bahag, as he sees it. The Bahag is the one who holds *Lo Tasur* includes all Rabbinic enactments. As such, the Rambam is asking that the Bahag should have then included all their enactments in the count. The Rambam himself, however, could agree with the Ramban. Indeed, some suggest such an approach (*Lev Sameach*, p. 37). See there for how this fits with the Rambam's statements in his other works which imply he is sharing his personal view.

See Appendix A for a more in-depth discussion of the dispute between the Rambam and Ramban in this matter.

<p>For he commanded us to follow the Sages,<sup>22</sup> as the Torah says: “According to the Torah that he will rule for you...”<sup>23</sup>, and [Hashem] warned us, may He be blessed,<sup>24</sup> from transgressing any matter that they enacted or decreed,<sup>25</sup> as it says: “<i>Lo Tasur...</i>”<sup>26</sup></p>	<p>שְׁהוּא צִוָּנוּ לַעֲשׂוֹתוֹ וְהוּא אָמְרוּ (דְּבָרִים שֵׁם) “עַל פִּי הַתּוֹרָה אֲשֶׁר יוֹרֵד וְגו’”, וְהִזְהִירָנוּ יִתְבָּרַךְ מֵעֲבֹר דְּבַר מִכָּל מָה שֶׁתִּקְנֶנוּ אוֹתוֹ אוֹ גָּזְרוּ וְאָמְרוּ “לֹא תִסּוּר וְגו’”.</p>
<p>If one were to include all <i>mitzvos</i> that are Rabbinic in the count of the 613 <i>mitzvos</i>, due to their being included in His statement, may He be blessed, “<i>Lo Tasur</i>”, why then did they count specifically these ones, but not include others?<sup>27</sup></p>	<p>וְאִם יִמְנָה כָּל מָה שֶׁהוּא מְדַרְבְּנֵן בְּכָלֵל תְּרִי”ג מִצְוֹת מִפְּנֵי שֶׁהִכֵּל נִכְנַס תַּחַת אָמְרוּ יִתְבָּרַךְ “לֹא תִסּוּר”, מִפְּנֵי מָה מְנֵנוּ בְּפֶרֶט אֵלּוּ וְלֹא מְנֵנוּ זוּלָתָם?</p>

<sup>22</sup> [TN] “To perform them” (*Rav Kapach*).

<sup>23</sup> *Devarim* loc. cit. *Aseh* § 174; *Sefer Hachinuch* § 495.

Bahag and those that followed him didn’t count this positive *mitzvah*. The exceptions are *Ata Hinchalta* and Rav Sa’adiah Gaon (*Parshiyos* § 4). Although, the latter’s intent is to count a *mitzvah* upon the community to *ask* the Sanhedrin for halachic guidance, not a *mitzvah* to listen to them. For that obligation it suffices to count the prohibition (*Rav Perla, Lo Sa’aseh* § 46, Vol. 2 p. 40 col. 4).

According to the Rambam, one fulfills a positive precept when they listen to the Sages. This creates a difficulty with *Shabbos* loc. cit., the *gemarra* the Rambam just quoted. The *gemarra* asks where we were commanded to listen to the Sages, and it answers *Lo Tasur*. Why didn’t the *gemarra* then bring the verse describing the positive command, and instead pick the prohibition to not listen? This matter still requires clarification (*Shorshei Hayam; Kovetz Biurim, Shev Shematesa* § 9).

<sup>24</sup> [TN] This is strange, as the previous point was referring to Moshe commanding us, not Hashem. Indeed, “may He be blessed” isn’t in the original Arabic, and *Rav Kapach*’s translation follows suit.

<sup>25</sup> [TN] *Ramban*, p. 18 quotes the Rambam differently than we have it. See SF edition and *Rav Arieli*, note 4, for alternative translations.

<sup>26</sup> *Devarim* loc. cit.; *Lo Sa’aseh* § 312; *Sefer Hachinuch* § 496.

The Bahag (*Ibid.*, *Onshim* § 33) counts the punishment of strangulation for one who rebels against the Sages, known as a *Zakein Mamrei*, whose source is this verse. In the Hildesheimer edition he doesn’t, however, count a separate prohibition of *Lo Tasur*. This is consistent with the Ramban’s understanding of the Bahag’s usage of his *Onshim mitzvos* (see *Shoresh* § 14). However, he does count a separate prohibition of *Lo Yezidun Od* (they shall not wantonly transgress again; *Devarim* loc. cit. v. 13). In the Warsaw edition, this is in *Lavin Shb’Malkos* § 207. This is seemingly the same prohibition as *Lo Tasur*. As well, in the Warsaw edition, he counts *Lo Tasur* (*Ibid.* § 206). Either *mitzvah* is difficult with the Ramban’s understanding of *Onshim mitzvos*.

It could be for this reason that Rav Shlomo Ibn Gabirol doesn’t count a separate prohibition of *Lo Tasur* (nor *Lo Yezidun*), just the *Onesh* (*Nesiv Mitzvosecha, Onshim* § 56). *Ata Hinchalta* as well. According to *Nesiv Mitzvosecha, Ri Albargaloni, Lo Sa’aseh* § 60-62, and *Yashir Moshe, Ri Albargaloni* only counted the *Onesh* as well. When he writes “*Pen*

*Tasur Ufen Yazid*”, his intent is with regards to the prohibitions specific to a King (which he’s discussing; see *Devarim* 17:17). However, *Rav Perla*, loc. cit., disagrees and believes his intent there is to count both *Lo Tasur* and *Lo Yezidun* as one combined prohibition. This could also be the Bahag’s intent, as he puts the two together.

Rav Sa’adiah Gaon (*Lo Sa’aseh* § 46) and Rav Eliyahu Hazaken (p. 27b; see *Hiddur Zaken* § 53) only count *Lo Yezidun*. Cf. *Mesek Azharos*, ad. loc. § 86, who doesn’t think the latter’s intent is to count anything. See *Rav Perla*, loc. cit., for an explanation for why these *Geonim* counted the way they did. His main point is that the prohibition of *Lo Tasur* only includes those who could be liable to the death penalty as a *Zaken Mamrei*. There are many details to this prohibition and not every case of going against the Sages will lead to the death penalty. *Lo Yezidun Od*, on the other hand, includes any case where someone goes against what the Sages decree or rule. Although not exactly the same, this is reminiscent of the explanation of *Zohar Harakiah*, Introduction, *Shoresh* § 1, brought by *Megillas Esther*, p. 30, of the Rambam’s understanding of *Lo Tasur* including Rabbinic prohibitions, even if there’s no death penalty of *Zaken Mamrei*. See Appendix A for more on this topic.

See *Sefer Hazichronos* 1:1, who writes that those who count the *mitzvos* count the prohibition of *Lo Tasur* and the *mitzvah* of “According to the Torah that he will rule for you”. There’s no dispute about this. He’s correct that those that followed the Rambam count them. He must have not been referring to those that followed the Bahag, for, as noted, they didn’t necessarily count both of them, or even either of them.

<sup>27</sup> One of the questions the *Ramban*, p. 30, asks on the Rambam is why is he so against counting Rabbinic *mitzvos* in the 613? He himself holds that all of the Rabbinic *mitzvos* are themselves Biblical! However, according to the approach of some commentaries (see Appendix A), the Rambam doesn’t actually hold that every violation of Rabbinic law is included in *Lo Tasur*. Only a rebellion against their opinion, by arguing against them, would be included. As such, there’s no place for Rabbinic *mitzvos* in the count, as merely their transgression wouldn’t entail a Biblical prohibition (*Kinas Soferim*, p. 35; *Chiddushei Mahardam*, p. 13a).

As we will see, the Rambam has other reasons why not to count Rabbinic *mitzvos* in the 613.

<p>Just like they counted lighting <i>Chanukah</i> candles and reciting <i>Megillas Esther</i>, they should have counted ritual hand washing,<sup>28</sup> and the <i>mitzvah</i> of an <i>Eruv</i><sup>29,30</sup></p>	<p>וְכִמוֹ שֶׁמִּנּוּ נֵר חֲנֻכָּה וּמִקְרָא מְגִלַּהּ, הָיָה לָהֶם לְמִנּוֹת נְטִילַת יָדַיִם וּמִצְוֹת עֶרֶב.</p>
<p>The Rambam will now demonstrate beyond any doubt that the <i>mitzvos</i> of hand washing and <i>Eruv</i> are equally Rabbinic to <i>Chanukah</i> candles and <i>Megillas Esther</i>. Therefore, according to the Bahag, they all should have been included in the count of 613 <i>mitzvos</i>. However, according to the Rambam, it's clear why they all should be excluded.</p>	
<p>For we make the blessing, “Who sanctified us with His commandments and commanded us regarding washing the hands”, and “regarding the <i>mitzvah</i> of <i>Eruv</i>”,<sup>31</sup> just like we make a blessing for reciting the <i>Megillah</i> and <i>Chanukah</i> candles, and they're all Rabbinic.</p>	<p>כִּי הִנֵּה אֲנַחְנוּ מְבָרְכִים “אֲשֶׁר קִדְּשָׁנוּ בְּמִצְוֹתָיו וְצִוָּנוּ” כְּמוֹ שֶׁמְבָרְכִין עַל מִקְרָא מְגִלַּהּ וְנֵר חֲנֻכָּה, וְהַכֹּל מִדְּרַבָּנָן.</p>

<sup>28</sup> A possible reason why the Bahag didn't count ritual handwashing is that it's merely a decree related to the purity of *Terumah* (*Ramban*, p. 38). See also next note.

Some suggest the Bahag did in fact count this *mitzvah*. See *Shoresh* § 4.

<sup>29</sup> It's obvious why the Bahag didn't count *Eruvin*, as there's no new *mitzvah* to make an *Eruv*. It's merely a decree that falls under the general obligation to observe *Shabbos* (*Ramban*, p. 38)! Although, in truth, the *Tur*, *Orach Chaim* § 395, brought by *Shulchan Aruch*, ad. loc. § 366:13, explicitly writes that one should go out of their way to fulfill the *mitzvah* of *Eruv*. This is clearly not like the Ramban (*Lev Sameach*, p. 45).

The Ramban further posits that the Bahag only counts *mitzvos* where it is incumbent upon us to perform something. No one is obligated to go make an *Eruv*. Similarly, no one is obligated to go wash their hands. Rather, these acts are merely prerequisites to permit the forbidden. Therefore, they are unfit to be counted in the list (*Ibid.*, p. 40).

See below, when the Rambam discusses Rabbinic decrees, for the *Marganisa Tava's* suggestion for where the Rambam is coming from.

The Ramban compares *Eruvin* and ritual hand washing to the *mitzvah* of *Shechitah*, ritual slaughter (*Aseh* § 146). The Bahag doesn't count it, because no one is obligated to go and slaughter an animal. Rather, it's just a way to permit the animal for consumption. See *Tosafos*, *Shevuos* 24a s.v. האוכל. This logic is echoed by the *Ra'avad*, as explained by *Kesef Mishnah*, *Minyan Hamitzvos*, ad. loc.). Cf. *Kinas Soferim*, p. 43, who suggests the Bahag left out the *mitzvah* of *Shechitah* because he includes it in the *mitzvah* of slaughtering offerings (*Ibid.*, § 191).

The assertion of the Ramban regarding the Bahag's counting preferences requires justification (*Megillas Esther*, ad. loc.). As well, if one were to want to carry in a courtyard on *Shabbos*, they would be obligated to make an *Eruv*. As well, if they wanted to

eat bread, they would be obligated to wash their hands. If so, why should these *mitzvos* not be included in the count (*Marganisa Tava*, p. 447)? See *Rosh*, *Kesubos* 1:11, who writes a similar argument regarding *Shechitah*. As well, by the Ramban's standards, there are many other *mitzvos* which the Bahag shouldn't have counted. There's no obligation to specifically live in a house, so the Bahag shouldn't have counted a *mitzvah* of affixing a *mezuzah* (*Ibid.*, § 3) or building a fence around the roof (*Ibid.* § 199) (*Marganisa Tava*). Additionally, seemingly the Bahag shouldn't have counted a *mitzvah* for the gifts given to a *Kohen*, like *Terumos* and *Ma'asros* (*Ibid.* § 16). Although, this could be why the Bahag didn't count a *mitzvah* to divorce one's wife, since there's no obligation to do so. This is unlike the Rambam, who does count it (*Aseh* § 222). Regarding these last two points, see *Minchas Asher*, *Devarim* § 46, *Kiddushin* 43:1.

<sup>30</sup> The Rambam could have been briefer and simply written that everything Rabbinic should be counted, since it all falls under the prohibition of *Lo Tasur*. Why did he specify these Rabbinic *mitzvos*? He could be alluding that the only Rabbinic *mitzvos* that are included in *Lo Tasur* are those that were enacted by the Grand Court in Jerusalem in the Temple's *Lishkas Hagazis* (Chamber of Hewn stone). Any Rabbinic enactment that was made elsewhere wouldn't be included (*Marganisa Tava*, p. 442).

This is the *Marganisa Tava's* suggestion for how to resolve all the issues the Ramban raises with the Rambam's opinion on *Lo Tasur* (see note 21). As stated there, there are many other approaches to the Rambam. See Appendix A for a summary of the opinions.

<sup>31</sup> [TN] Based on the original Arabic. The full text of the blessings was omitted in later editions of *Sefer Hamitzvos*, but the sentence doesn't make much sense without it.

In the Talmud they explained: “Washing before bread is a <i>mitzvah</i> ”, and they said, “Which <i>mitzvah</i> ? <sup>32</sup> Abaye said it’s a <i>mitzvah</i> to listen to the Sages.” <sup>33</sup>	וּבְבֵאוּר אָמְרוּ (חֲלִין ק”ו ע”א) “מִיָּם רֵאשׁוּנִים מְצֻה” וְאָמְרוּ “מֵאֵי מְצֻה? אָמַר אַבְיִי מְצֻה לְשִׁמוּעַ דְּבָרֵי חֲכָמִים.”
Just as they said regarding reciting <i>Megillas Esther</i> and lighting <i>Chanukah</i> candles, “Where were we commanded? From the verse ‘Don’t stray’”. <sup>34</sup>	כְּמוֹ שֶׁאָמְרוּ בְּמִקְרָא מְגִלַּת וְנֵר חֲנֻכָּה “הֵיכָן צֻוֵּנוּ? מִלֵּא תְּסוּר.”
Therefore, we see that the <i>mitzvah</i> of hand washing is Rabbinic. The Rambam will now go on to show that even though the <i>mitzvos</i> of hand washing and <i>Eruv</i> were enacted by Prophets (similar to <i>Megillas Esther</i> ), nevertheless, they are Rabbinic.	
It’s already been demonstrated that everything enacted by the Prophets <sup>35</sup> who stood after Moshe, our teacher, is all considered Rabbinic.	וּכְבָר הִתְבָּאֵר שֶׁכָּל מֵה שֶׁתִּקְנוּ חֲכָמִים וּנְבִיאִים שֶׁעָמְדוּ אַחַר מֹשֶׁה רַבֵּינוּ הוּא גַם כֵּן מִדְּרַבָּנָן.
As they explained: “At the moment that Shlomo enacted the <i>mitzvos</i> of hand washing and <i>Eruv</i> , a heavenly voice declared: ‘Be wise, My son, make My heart joyous!’ <sup>36</sup> .” <sup>37</sup>	וּבְבֵאוּר אָמְרוּ (עִירוּבִין כ”א ע”ב) “בְּשַׁעָה שֶׁתִּקֵּן שְׁלֹמֹה יְדִים וְעִירוּבִין יִצְאָה בֵּת קוֹל וְאָמְרָה ‘חֲכָם בְּנִי וְשִׂמַח לְבִי (מִשְׁלֵי כ”ז, י”א).”
They also explained elsewhere that the concept of <i>Eruv</i> is considered Rabbinic <sup>38</sup> and washing the hands is considered <i>Divrei Sofrim</i> . <sup>39</sup> Behold, it is clear to you that everything that was enacted after Moshe is considered Rabbinic. <sup>40</sup>	וּבְאָרוּ בְּמִקּוּמוֹת אַחֲרֵים שֶׁעִירוּבִין יִקְרָא דְרַבָּנָן וְיְדִים מִדְּבָרֵי סוֹפְרִים. הִנֵּה הִתְבָּאֵר לְךָ שֶׁכָּל מֵה שֶׁתִּקְנוּ אַחַר מֹשֶׁה נִקְרָא דְרַבָּנָן.

<sup>32</sup> According to the *Megillas Esther*, p. 18 (see note 3), the intent of the *gemarra*’s question is as follows: We never find that a Rabbinic *mitzvah* is referred to by the Sages as a “*mitzvah*”, rather as an enactment or decree. If so, how could handwashing, which is clearly Rabbinic, be referred to as a *mitzvah*?

<sup>33</sup> *Chullin* 106a.

<sup>34</sup> *Shabbos* 23a says this regarding lighting *Chanukah* candles but there doesn’t seem to be a source which asks this query regarding *Megillas Esther*.

<sup>35</sup> [TN] The standard edition adds the word “Sages”, but this doesn’t appear in the original Arabic. It’s also not relevant to the point he’s discussing.

<sup>36</sup> *Mishlei* 27:11. The original Arabic quotes *Ibid.* 23:15. The *gemarra* actually quotes both.

<sup>37</sup> *Shabbos* 14b; *Eruvin* 21b.

Our version of the *gemarra* has “hand washing”, but the Rambam quotes it that Shlomo enacted “hands”. However, he is obviously referring to the *mitzvah* of ritual hand washing.

Cf. *Maharsha, Shabbos*, brought by *Gilyon Hashas*, ad. loc., who writes the proper text should simply say that Shlomo enacted “hands”, as it says in *Eruvin*. He writes that this is because the *gemarra* in *Shabbos* concludes that Shlomo only enacted impurity of hands for *kodshim*, which would then require *immersion* in water, not simply washing (*Chagigah* 2:5).

The *Pnei Yehoshua, Shabbos*, retorts that our texts in *Eruvin* are the same as in *Shabbos*, which all say: “hand washing”. Furthermore, he notes that the requirement of immersion for *kodshim* could postdate Shlomo, so there’s no proof it doesn’t refer to handwashing, even if the text simply says he enacted “hands”.

In fact, many manuscripts of the *gemarra*, both in *Shabbos* and in *Eruvin*, have the text as the Rambam quotes it and the *Maharsha* emends it. Nevertheless, as has been shown, the intent could still be hand washing, unlike the *Maharsha*. Indeed, *Rashi* in *Eruvin* also had this text, and explicitly writes it’s referring to hand washing. A much earlier source for this approach can be found in *Teshuvos Hageonim, Sha’arei Teshuva* § 44.

For more discussion on the variant texts of this *gemarra*, see *Dikdukei Sofrim, Eruvin*, ad loc. note *Chaf*.

<sup>38</sup> *Ibid.* 5b.

<sup>39</sup> *Yadayim* 5:2. See *Shoresh* § 2 for a discussion of this term.

<sup>40</sup> *Keli Chemdah, parshas Devarim* § 5, notes that the Rambam is ostensibly repetitive with this remark. He infers that the Rambam is stressing prophets that came *after* Moshe to teach us that anything Moshe *himself* enacted is indeed Biblical. See *Shoresh* § 2 for more on this.

<p>Indeed, I explained<sup>41</sup> this to you in order that you should not think that reciting <i>Megillas Esther</i>, due to the fact that it was established by the Prophets, would be considered Biblical. For we see that <i>Eruv</i> is Rabbinic, despite the fact that it was enacted by King Shlomo and his court. This is what our opponents<sup>42</sup> didn't realize.<sup>43</sup></p>	<p>וְאִמְנֵם כְּבָר בְּאַרְתִּי לָךְ זֶה כְּדֵי שֶׁלֹּא תַחֲשֹׁב בְּמִקְרָא מְגִלָּה בְּעֵבוֹר שֶׁהוּא תְקוּן נְבִיאִים יִקְרָא דְאוּרֵיתָא. שְׁעֵרוּבֵיךְ דְרַבְּנָן אַע"פ שֶׁהוּא תְקוּן שְׁלֹמֹה וּבֵית דִּינֹו. וְזֶהוּ שֶׁנֶּעְלַם מִזְוֹלְתָנֹו.</p>
<p>Having proven his point, the Rambam will now show additional issues he has with other Rabbinic mitzvos that the Bahag counted.</p>	
<p>They [also] counted clothing the naked as a <i>mitzvah</i>, since they found in Yeshaya: "When you see the naked, clothe them."<sup>44</sup> They didn't realize that this is included in His statement, may He be blessed: "his sufficient need, that which he is lacking."<sup>45</sup></p>	<p>וּמִנֵּה הַלְבָּשֵׁת עֲרוּמִים בְּעֵבוֹר שֶׁמִּצְוָה בִּישְׁעִיָּה (נ"ח, ז') "כִּי תִרְאֶה עָרֹם וְכִסִּיתוֹ". וְלֹא יָדַע שֶׁזֶה נִכְנָס תַּחַת אֲמָרוֹ יִתְבָּרַךְ "דֵּי מַחְסָרוֹ אֲשֶׁר יַחְסֵר לוֹ" (דְּבָרִים ט"ו, ח').</p>
<p>For this <i>mitzvah</i>, without a doubt, includes that we feed the hungry, cover the naked, give sheets to those without, clothes to those without,<sup>46</sup> that we marry off someone single who lacks the means to get married, and that we mount on a horse those who were used to such treatment, as is famous in the Talmud.<sup>47</sup></p>	<p>כִּי עֲנִין זֶה הַצְּוִי הוּא בְּלִי סִפְק שֶׁנֶּאֱכִיל לְרָעֵב, וְנִכְסָה הָעָרוֹם, וְנִתַּן מַצָּע לְמִי שֶׁאֵין לוֹ מַצָּע, וְכִסוּת לְמִי שֶׁאֵין לוֹ כִּסוּת, וְנִשְׂאָה הַפְּנוּי שֶׁאֵין לוֹ יְכָלֵת לְהַנְשֵׂא, וְנִרְכָּיב מִי שֶׁדָּרְכּוֹ לְרֶכֶב, כְּמוֹ שֶׁהוּא מְפָרְסֵם בְּתַלְמוּד (פְּתִילֹת ט"ז ע"ב).</p>
<p>All of this is included in the verse, "his sufficient need".</p>	<p>שֶׁזֶה כְּלוֹ נִכְנָס תַּחַת אֲמָרוֹ "דֵּי מַחְסוּרוֹ".</p>
<p>It must be that they consider the Talmud to have been composed in a stuttering and foreign language.<sup>48</sup> Otherwise, they wouldn't have counted reciting <i>Megillas Esther</i> and the like together with <i>mitzvos</i> that were said to Moshe at Sinai.</p>	<p>וְהִיא לְשׁוֹן הַתַּלְמוּד אֲצֵלֶם מַחְבָּר בְּלַעֲגֵי שְׁפָה וּבְלִשׁוֹן אַחֲרֵת, וְלוֹלָא זֶה לֹא מְנוּ מִקְרָא מְגִלָּה וְהַדּוּמָה לוֹ עִם הַמִּצְוֹת שֶׁנֶּאֱמָרוּ לְמֹשֶׁה בְּסִינַי.</p>
<p>The Rambam will now demonstrate another source which explicitly excludes reciting <i>Megillas Esther</i> from being included in <i>mitzvos</i> that were given at Sinai.</p>	

<sup>41</sup> [TN] Literally: "I already explained to you", but the word "already" doesn't appear in the original Arabic, and is awkward.

<sup>42</sup> [TN] Literally: "Other than us". **Is opponents a proper translation?**

<sup>43</sup> It sounds like the Rambam understood that the reason why the Bahag counted reciting the *Megillah* was because he considered it Biblical, having been enacted by prophets. This is difficult, for the Rambam already mentioned that the Bahag counted lighting *Chanukah* candles, which wasn't enacted by the prophets. Clearly this wasn't a factor (*Rav Arieli*, note 12).

<sup>44</sup> *Yeshaya* 58:7.

<sup>45</sup> *Devarim* 15:8.

The Rambam seems to be asking two questions here. As above, he is again rejecting the Bahag's premise that *mitzvos* enacted by the prophets should be included in the count. As well, the Bahag didn't realize that this *mitzvah* is of Biblical origin (*Shorshei Hayam*).

<sup>46</sup> This is a reference to night garments. Otherwise, this is a repetition of the previous "cover the naked" (*Rav Arieli*, note 16).

<sup>47</sup> *Kesubos* 67b.

<sup>48</sup> Based on *Yeshaya* 28:11.

Presumably he means the Bahag must not have felt it necessary to take these *gemarros* literally.

<p>In tractate <i>Shevuos</i> it says: “I only know <i>mitzvos</i> that were commanded at Mount Sinai [were included in the national covenant]. From where do I know <i>mitzvos</i> that are to be enacted in the future, such as reciting <i>Megillas Esther</i>? The verse teaches us: ‘They fulfilled and accepted’,<sup>49</sup> i.e., they fulfilled that which they accepted.”<sup>50</sup></p>	<p>וּבְגִמְרָא שְׁבוּעוֹת (ל"ט ע"א) "אֵין לִי אֶלָּא מִצְוֹת שֶׁנִּצְטְווּ עַל הַר סִינַי, מִצְוֹת שֶׁעֲתִידִין לְהִתְחַדֵּשׁ כְּגוֹן מִקְרָא מְגִלַּת מִנְיֹן? תִּלְמוּד לומר 'קִיְמוּ וְקִבְלוּ קִיְמוּ מֵה שֶׁקִּבְלוּ".</p>
<p>That is, we are to believe<sup>51</sup> in every <i>mitzvah</i> that the Prophets and Sages enact afterwards.</p>	<p>וְהוּא שֶׁיֵּאֱמִינוּ בְּכָל מִצְוָה שֶׁתִּקְנוּ הַנְּבִיאִים וְהַחֲכָמִים אַחֲרָיו.</p>
<p>All that we've been discussing until now are the positive Rabbinic <i>mitzvos</i> that the Bahag counted. However, the Bahag curiously omits negative Rabbinic <i>mitzvos</i>. The Rambam will now proceed to attack this approach to the 613 <i>mitzvos</i> from this omission.</p>	
<p>The astounding thing is why did they include the positive Rabbinic <i>mitzvos</i> which we mentioned, but didn't include the prohibitions which are Rabbinic?<sup>52</sup></p>	<p>וְהַתְמָה מִפְּנֵי מָה מְנוּ מִצְוֹת עֲשֵׂה שֶׁהֵם מְדַרְבְּנֵן כְּמוֹ שֶׁזָּכְרָנוּ, וְלֹא מְנוּ גַם כֵּן מִצְוֹת לֹא תַעֲשֶׂה שֶׁהֵם מְדַרְבְּנֵן.</p>
<p>Just like they included the <i>mitzvos</i> of reciting <i>Megillas Esther</i>, lighting <i>Chanukah</i> candles, reciting one hundred blessings each day, and <i>Hallel</i>, they should have included in the Biblical prohibitions every single Rabbinic “secondary incestuous relationship”,<sup>53</sup> each one its own prohibition.<sup>54</sup></p>	<p>וְכִמוֹ שֶׁמְנוּ בְּמִצְוֹת עֲשֵׂה מִקְרָא מְגִלָּה, וְנֵר חֲנֻכָּה, וּמֵאָה בְּרָכוֹת בְּכָל יוֹם, וְהֵלֵל, הִיא לָהֶם לְמִנּוֹת גַּם כֵּן בְּכָלֵל לֹא תַעֲשֶׂה דְאוֹרֵיתָא כָּד כָּל שְׁנֵיָהּ וְשְׁנֵיָהּ לֹא תַעֲשֶׂה מְדַרְבְּנֵן.</p>
<p>As the Sages explained and said: “secondary incestuous relationships are <i>Divrei Sofrim</i>”.<sup>55</sup></p>	<p>כְּמוֹ שֶׁבְּאָרוּ וְאָמְרוּ (יְבָמוֹת כ' ע"א) "שְׁנֵיּוֹת מְדַבְּרֵי סוֹפְרִים".</p>

<sup>49</sup> *Esther* 9:27.

<sup>50</sup> *Shevuos* 39a.

<sup>51</sup> [TN] I'm not sure what the Rambam is stressing with the word “believe”.

<sup>52</sup> The easy defense for the Bahag is that his intent is only to count new *mitzvos* which the Rabbis created, not safeguards to already existing *mitzvos*. Those safeguards are included in the verse, “You shall safeguard my watch” (*Vayikra* 18:30; see *Yevamos* 21a and *Shoresh* § 4) (*Ramban*, p. 42). Uncharacteristically, *Megillas Esther*, ad. loc., concurs with the *Ramban* in this case. See also *Lev Sameach*, p. 46.

However, based on the wording of the Rambam earlier, it would appear his intent is that the Bahag is being inconsistent. The only explanation the Rambam has for the Bahag's counting of Rabbinic *mitzvos* is that everything the Rabbis enact or decree is included in *Lo Tasur*, which itself is Biblical. If so, just like the Bahag counted the positive enactments, he should have counted the safeguards as well. As well, the Bahag should have counted ritual handwashing and *Eruvin* in the list. The *Ramban* would only be correct if we count include Rabbinic *mitzvos* in the listing on

their own merit. Once we need to invoke *Lo Tasur*, there shouldn't be a difference between these different types of *mitzvos* (*Marganisa Tava*, p. 448).

<sup>53</sup> The Sages added to the list of Biblical incestuous relationships, such as a grandmother, or a grandfather's wife. These Rabbinically prohibited relationships are called “*sh'niyos*”, or secondary incestuous relationships. See *Yevamos* 21a.

<sup>54</sup> [TN] The standard edition is very different from the original Arabic, the latter of which says: “They should have included in the list of prohibitions twenty secondary incestuous relationships as twenty separate prohibitions. Just as every other forbidden relationship is counted as a separate *mitzvah*, so too each Rabbinic secondary relationship.”

Regarding the number twenty, this fits with his *Mishneh Torah*, *Hilchos Ishus* 1:6. However, *Ibn Ayub* and *Ramban* have the Rambam as writing here “twenty-one”. See *Rav Chaim Heller* ed. note 24. The reason is that the Rambam changed his mind a few times on the exact number of secondary relationships (*Rav Kapach* ed., note 84, basing himself on manuscripts).

<sup>55</sup> *Yevamos* 20a.

<p>It's also already been explained in the Talmud that the <i>Mishnah</i> which mentions a "Prohibition of a <i>Mitzvah</i>"<sup>56</sup> is referring to secondary incestuous relationships. The Talmud then inquires: "What <i>Mitzvah</i> is this referring to? It's a <i>Mitzvah</i> to listen to the Sages."<sup>57</sup></p>	<p>וְכָבֵד הַתְּבָאֵר בְּתַלְמוּד שֶׁמֵּאָמַר הַמְּשֻׁנָּה "אִסוּר מִצְוָה" רוֹצֵה בּוֹ הַשְּׁנִיאוֹת. וְאָמְרוּ "מֵאֵי מִצְוָה? מִצְוָה לְשָׁמוֹעַ דְּבָרֵי חֲכָמִים".</p>
<p>It also would have been fitting for them to count one's <i>Chalutzah's</i> sister,<sup>58</sup> which is <i>Divrei Sofrim</i>.</p>	<p>וְכֵן הִיא רְאוּי לְהֵם לְמִנּוֹת בְּכֻלָּל אַחֲוֹת חֲלוּצָה שֶׁהִיא מִדְּבָרֵי סוּפְרִים.</p>
<p>In general, if we were to count every Rabbinic command and prohibition, the number of <i>mitzvos</i> would reach the thousands, which obviously can't be.</p>	<p>וּבְכֻלָּל, אִם נִמְנָה כָּל עֲשֵׂה דְרָבָנָן וְכָל לֹא תַעֲשֶׂה דְרָבָנָן יִהְיֶה זֶה עוֹלָה לְאַלְפִים רַבִּים וְזֶה דְבָר מִבְּאֵר.</p>
<p>In summary, everything that is Rabbinic cannot be counted in the 613 <i>mitzvos</i>. This is because this listing<sup>59</sup> only includes things that are written<sup>60</sup> in the Torah; nothing Rabbinic is included, as has been shown.<sup>61</sup></p>	<p>הַכֻּלָּל, כִּי כָּל מֵה שֶׁהוּא מִדְּרָבָנָן לֹא יִמְנָה בְּכֻלָּל תְּרִי"ג מִצְוֹת. כִּי הַכֻּלָּל הַזֶּה הוּא כְּלוּ כְּתוּב בְּתוֹרָה כִּי אֵין בּוֹ דְבָר מִדְּרָבָנָן כְּמוֹ שֶׁנִּבְּאֵר.</p>
<p>And this<sup>62</sup> that they count some things which are Rabbinic and left out others by choice, this is something that is impossible to accept, no matter who said it. Behold, we have explained this <i>Shoresh</i> and its proofs to the point that no one should have any doubts.</p>	<p>וְאִמְנָם הֵיּוֹתֵם מוֹנִים קֶצֶת הַדְּבָרִים שֶׁהֵם מִדְּרָבָנָן וְעוֹזְבִים קֶצֶתֵם בְּבַחֲרִיה מֵהֵם הוּא עֲנִין אֵי אֶפְשָׁר לְקַבְּלוֹ בְּשׁוּם פְּנִים, אָמְרוּ מִי שֶׁאָמְרוּ. הִנֵּה בְּאֵרְנוּ עֲנִין זֶה הַשְּׂרֵשׁ וּמוֹפְתָיו עַד שֶׁלֹּא נִשְׂאָר בּוֹ סִפֵּק כְּלָל אֶל שׁוּם אָדָם:</p>

<sup>56</sup> Ibid. 2:4.

<sup>57</sup> Ibid. 20a.

<sup>58</sup> If a married man dies without children, his paternal brother now has a *mitzvah* of *Yibum*, which is to marry this widow (*Aseh* § 216). If for whatever reason *Yibum* is undesired, the process to release this widow to marry another is called *Chalitzah* (Ibid. § 217). Rabbinically, the man that performed *Chalitzah* is now forbidden to marry this woman's sister, similar to the Biblical prohibition of marrying one's divorcee's sister.

<sup>59</sup> [TN] Literally: this group/rule/principle. It's clear the Rambam's intent is to the listing of the *mitzvos*. This also appears in *Ibn Ayub*.

<sup>60</sup> The Rambam here may be alluding to his *Shoresh* § 2, which states that only *mitzvos* explicitly written are included.

<sup>61</sup> [TN] Literally: As we will show. All four Hebrew translations of the Rambam used for this work have the same word. It's hard to understand it literally, as he spent this *Shoresh* trying to prove this exact point. He doesn't seem to address it again later. As such, we translated it non-literally.

<sup>62</sup> [TN] *Rav Kapach*.

## Appendix A

### The Rambam's understanding of the prohibition of *Lo Tasur*

As noted in *Shoresh* § 1, the Rambam makes a broad statement that everything the Sages decreed and enacted is included in the Biblical *mitzvah* of *Lo Tasur* (*Lo Sa'aseh* § 312). The Rambam isn't alone in this regard. The Ran (*Derashos Haran* § 5 (2) s.v. (וכבר נתבאר) writes explicitly like the Rambam. *Megillas Esther*, p. 26, agrees as well. However, the Ramban asks many questions on the Rambam, and holds that *Lo Tasur* simply requires us to follow their interpretations of the Biblical law, including their applications of the thirteen principles of derivation. Their decrees and enactments are not under this prohibition.

One of the questions the *Ramban*, p. 19, asks on the Rambam is if every Rabbinic law is inherently a Biblical one, why with Rabbinic laws are we lenient when it comes to a matter of doubt (*Beitzah* 3b)? We should treat them like Biblical laws, where we are stringent with doubts. The *Zohar Harakiah*, Introduction, *Shoresh* § 1 suggests a resolution to this question. Since the Rabbis have the ability to decree whatever they want, however they want, we can simply say that they included in every one of their decrees a clause that in the case of doubt, be lenient. The Ran (*Ibid.*), who concurs with the Rambam, utilizes this approach. *Megillas Esther*, p. 28, cites the *Zohar Harakiah's* resolution approvingly, and tries to answer the rest of the Ramban's attacks. *Lev Sameach*, p. 32, shows a precedent for this resolution from *Berachos* 25a, which explicitly states regarding a Rabbinic law that it was instituted only in a definite case, not in the case of doubt. The Rambam could hold that this wasn't a one-time exclusion, but rather a general principle. See *Rav Arieli*, *Hasagos Haramban Shoresh* § 1 note 94, who suggests that this clause could have been a later enactment of the Sages. Not necessarily was it included at the onset of their decrees.

However, this resolution isn't foolproof. The problem is, we also have a rule that when there's a dispute in a matter of Rabbinic law, we side with the lenient opinion (*Avodah Zarah* 7a). In the case of a decided law, if there's a doubt, we can say that the law included the clause to be lenient. However, when there's an uncertainty about how to rule, we can't say that there's a clause to be lenient. Behold, one opinion is sticking with his opinion that we should be stringent! Why then is the rule still to be lenient (*Shev Shematesa* 1:3)? Regarding potential retorts to this question, see *Milvei Shematesa*, ad. loc. note 22. In any event, the *Shev Shematesa*, loc. cit., reminds us that the Rambam is known for his opinion that being stringent in the case of doubt is itself a Rabbinic law (*Mishneh Torah*, *Hilchos Tumas Meis* 9:12). According to Torah law, one can be lenient in a case of doubt, even in a Biblical case. As such, the simple answer for the Rambam is when the Sages instituted the law to be stringent, it was only for Biblical laws. They left Rabbinic laws alone, so in cases of doubt, even when it's a dispute how to rule, we side with the lenient opinion.

A further problem with the *Zohar Harakiah* is that the *Ramban*, p. 22, himself suggested such a response to his questions, and wrote: "These matters are not proper, nor are they the correct answer". He leaves us guessing what the problem was. Maybe he was bothered with what the *Shev Shematesa* asked. *Lev Sameach* (*Ibid*) suggests that the Ramban himself is fine with suggesting that they installed a clause in their decrees in the case of a doubt, since they are merely Rabbinic laws. His problem is that for the Rambam, this shouldn't suffice, since every Rabbinic law is intrinsically a Biblical one. If so, who says they have the right to be lenient in their laws? He concludes that this isn't a question on the Rambam, as *Lo Tasur* as a Biblical prohibition merely refrains us from going against what they said. If they themselves say to be lenient, then what's the problem? For more on this latter point, see *Meshech Chochmah*, *Devarim* 17:11.

Rav Elchanan Wasserman had a different interpretation. The Ramban, based on a comment of his in *Shoresh* § 1, actually agrees that Rabbinic *mitzvos* are indeed Biblically binding (see ad. loc. note 3). However, there is a difference between the two. The Rambam holds that each Rabbinic law is intrinsically Biblical (*mitzad atzman*), due to *Lo Tasur*. However, the Ramban holds they are Biblical only as a *result* of the Rabbinic law (*b'toldah*). As such, the Ramban himself has no problem with being lenient with Rabbinic laws, as once the Rabbinic law is gone, the Biblical prohibition ceases to exist. This is unlike the Rambam, where it's not proper to say that the Sages added a clause to be lenient with their laws in case of doubt, as that would be essentially a leniency with a Biblical law (*Kuntres Divrei Sofrim* 1:41,42). See also *Sha'arei Yosher* 1:7.

Another problem with the Rambam's approach is the prohibition of *Lo Tasur* is intrinsically related to the death penalty for a *Zaken Mamrei*, a rebellious Sage. One who, under certain circumstances, argues with the accepting ruling of the Sages is killed by strangulation. *Sanhedrin* 87a limits this to prohibitions which if done intentionally warrant *Kares*, spiritual excision, and if done unwittingly are liable to a *Chatas* offering. Clearly, Rabbinic enactments carry no such consequences. As such, the *Ramban*, p. 19, cannot accept *Lo Tasur* including Rabbinic enactments, for a Sage arguing on such an enactment would not lead to a capital case of *Zaken Mamrei*.

Due to this issue, *Zohar Harakiah*, *Ibid.*, suggests that *Lo Tasur* isn't as intertwined with *Zaken Mamrei* as the Ramban held. Yes, every case of *Zaken Mamrei* violates *Lo Tasur*. However, there are cases of violating *Lo Tasur*, even if there's no death penalty. This approach is brought approvingly by the *Megillas Esther*, p. 30. See *Shoresh* § 1 note 26 which cites *Rav Perla* giving a slightly similar explanation, albeit with a different verse/prohibition.

To resolve the many problems listed by the Ramban, including the ones above, some want to suggest the latter misunderstood the Rambam's intent. *Lev Sameach*, p. 37, goes so far as to say the Rambam wasn't even stating his own opinion. He was simply stating the opinion of the Bahag. The Rambam himself could, in fact, agree with the Ramban. He brings (p. 39, 40) a responsa of the Rambam himself (*Teshuvos Pe'er Hador* § 2) which indicates that we aren't on oath from Sinai in matters of Rabbinic laws. This corroborates his approach in the Rambam that Rabbinic laws aren't included in *Lo Tasur*. Although, this latter point was already addressed by *Megillas Esther*, p. 26. See there.

*Lev Sameach* adds (p. 38) that the Rambam would only say that one transgresses *Lo Tasur* by rebelling against the authority of the Sages, even in matters that are Rabbinic. However, simply transgressing their enactments, while itself being a sin, isn't Biblical, nor included in *Lo Tasur*. *Kinas Soferim*, p. 25, offers a similar approach. He brings that Rav Eliyahu Mizrahi (*Re'eim on Semag, Hilchos Megillah* s.v. ויאו תאמר כיון דניתן) writes this as his own explanation of *Lo Tasur* and concludes that this is the opinion of the Rambam himself, as well as the *Semag, Lavin* § 217. *Chiddushei Mahardam*, p. 13a, agrees with this limitation of *Lo Tasur*, as well as Rav Elchanan Wasserman (*Ibid* 2:1). In fact, this approach fits closer with the wording of the Rambam in *Lo Sa'aseh* § 312, as well as his *Minyan Hakatzar*, ad. loc., at the beginning of *Mishneh Torah*. According to this approach, there's no need to give the forced answer the Ramban already rejected that all of their Rabbinic laws had built in a clause to be lenient in the case of doubt. For more on this approach, see below.

However, as already noted, the Ramban, Ran, *Zohar Harakiah*, and *Megillas Esther* understood the Rambam literally. Transgressing any Rabbinic enactment or decree violates *Lo Tasur*. Mahari Abuhav also understood the Rambam simply, as he tries to clarify and expand the questions and answers posed by the *Zohar Harakiah* and *Megillas Esther* (*Sefer Hazichronos* 1:2). See also *Lechem Yehuda, Hilchos Mamrim* 1:2, who argues vehemently against the above approach.

Rav Yaakov Weinberg brought an interesting proof for the simple reading of the Rambam, against the Ramban, from *Beitzah* 5a. A decree of a Jewish court must be followed even if the reasoning becomes irrelevant, unless a Jewish court of greater stature or number revokes it. The *gemarra* there brings a proof for this from G-d Himself, who forbade intimacy between husband and wife to ensure purity when the Torah was given (*Shemos* 19:15). The fact that G-d had to explicitly permit it again after the Revelation at Sinai (*Devarim* 5:26) shows that just because the reasoning went away, doesn't mean the prohibition is gone. Now, if Rabbinic laws don't carry weight unto themselves, as the Ramban opines, what is the *gemarra* proving? When G-d forbade relations between husband and wife, an actual prohibition was created. The Rambam must be right that the same is true when the Rabbis made their decrees. Each one carries with it a weight of *Lo Tasur*. Rav Yaakov was astounded that no one before him asked this question.

*Kiryas Sefer*, Introduction Chapter 5, brought by *Lechem Mishneh, Hilchos Mamrim* 1:1, has a different approach for the Rambam. The Ramban is correct in his understanding of the Rambam that *Lo Tasur* is all encompassing, including even Rabbinic enactments. However, the Rabbis at the onset stipulated that their enactments would carry a lower level of severity, such that their transgression wouldn't entail a Biblical prohibition. He adds that even if one were to transgress a Rabbinic enactment, they wouldn't transgress *Lo Tasur*. As noted by *Kinas Soferim*, p. 27, the *Kiryas Sefer* writes similar as above, that only a rebellion against the Sages constituted a violation of this prohibition. He brings this approach again in *Ibid.*, *Hilchos Mamrim* Chapter 1. See *Minchas Chinuch* 495:3, who writes that he doesn't understand the approach of the *Kiryas Sefer*, admitting that he doesn't have access to it to clarify. See also *Lechem Yehuda, Ibid.*, who somehow understood the *Kiryas Sefer* to be saying something different than the *Kinas Soferim*.

*Marganisa Tava* (p. 442) tempers the questions on the Rambam by limiting his opinion somewhat. Yes, Rabbinic laws are included in *Lo Tasur*. However, this only includes laws instituted by the High Court in Jerusalem, namely the Sanhedrin that sat in the *Lishkas Hagazis* (Chamber of Hewn Stone). Although the Sages still have authority after the destruction of the Temple, their decrees don't carry the same weight. They aren't included in the prohibition of *Lo Tasur*. As such, Rabbinic enactments and decrees instituted by the Sages of the Talmud aren't included in this discussion. *Lev Sameach*, p. 37, writes similarly, and Rav Elchanan concurs with this interpretation (*Ibid* 2:1). See there. See also *Sefer Hazichronos* 1:1. However, *Lechem Yehuda*, loc. cit., argues that there's no difference between the Sages of the Talmud and the Sanhedrin, since the Jewish people accepted upon themselves everything they decreed. He holds *Lo Tasur* applies equally to either type of enactment.

*Minchas Chinuch*, loc. cit., infers from the word choice of the Rambam in *Hilchos Melachim* like the *Marganisa Tava* understood. However, he somehow understood from the wording of the Rambam in *Sefer Hamitzvos*, in his introduction to *Mishneh Torah*, and the Ramban, that they are in agreement with the *Sefer Hachinuch*, ad. loc. The latter rules that *Lo Tasur* applies to any Torah authority in every generation, not just the High Court in Jerusalem. The

*Sefer Hachinuch* cites *Rosh Hashanah* 25b, that Yiftach in his generation is like Shmuel in his generation, and the source is from the *parsha* of *Lo Tasur*. However, Rav Perla, in his glosses on *Minchas Chinuch*, argues that there is no indication in any of the Rambam's words in *Sefer Hamitzvos*, in the introduction to *Mishneh Torah*, nor the Ramban, that they hold like the *Sefer Hachinuch*.