

*Reflections on Legal Interpretive Creativity by Moses Ibn Ezra and Maimonides:
Perspectives of a Poet and a Halakhist*
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A. “The Sage is greater than the Prophet” (BT *Baba Bathra* 12a)

1. **Moses Ibn Ezra (al-Andalus, c. 1055-1138)**, *Book of Discussion and Conversation (Kitāb al-muḥāḍara wa-l-mudhākara)*, 19b-20a. “The sage is greater than the prophet” —because the prophet transmits the communication (*risāla*)... or prophecy (*nubūwa*)... as revealed to him, whereas **the sage... extrapolates laws (*yafrā‘u*) [from Scripture] in accordance with what the Law allows him to extrapolate (*tafrī‘*), and he utilizes his own mental capacity, and draws conclusions (*yuntiju*) from his intellectual premises.** [In relation to the prophet] he has the distinction (*faḍl*) of creative ability (*al-ibdā‘*).
2. **Isaac Ibn Ghayyath (Lucena, 1038-1089)**, in his commentary on Qohelet said: ...the sages have greater distinction than the transmitters of prophecy, because they draw upon their innate instinct and their hard thinking and **they draw forth conclusions (*natā‘ij*) fruits from their sources, and they draw the derivative laws (*furū‘*) from the principle laws (*uṣūl*).** But [the prophets] merely follow the divine revelation and are guided by the substance of the prophecy... and this was the intention of the one who said “The sage is greater than the prophet.” (Citation from Abraham ben Solomon, Yemen, 14th century, MS JTS 1011).

B. Moses Ibn Ezra on the Poetic and Rhetorical Creativity of the Prophets

3. *Book of Discussion (Kitāb al-muḥāḍara)* 9b-15a. The art of rhetoric (*khitāba*) is called rhetorica in Greek... According to the philosopher Aristotle it is speech that persuades... And rhetoric[al addresses] are found in our sacred prophetic books... The art of poetry (*shi‘r*) is called *poetica* in Greek... **The term for poet (Ar. *shā‘ir*) in our [Hebrew] language is *navi* (=prophet)...** [For example:] “a group of *nevi‘im*” (I Sam 10:5) – *a gathering of poets*; “you shall engage in *nevu‘ah* with them” (I Sam 10:6) – *you shall extemporize poetry*.
4. *Book of Discussion* 118a-119a. The first category of the embellishments of poetry is metaphor (*isti‘āra*)... Even though precise [i.e., non-metaphorical] language (*muḥkam*) is most reliable, in that it is fundamental (*aṣlan*), and metaphor is merely [derived] from it, nonetheless [metaphor] has grace. When a composition is enrobed in the cloak of metaphor, its silken garment becomes beautiful and its glaze refined. And the difference between metaphorical speech (*kalām*) and bare [speech] is like the difference between the stammering (*‘ayy*) and the eloquent (*bayān*). And those among the intelligent people of our time who disavow metaphor resist the plainly manifest truth and turn aside from the straight path, for metaphor is manifold in our Scriptures...

5. *Book of Discussion 62a-64a*. It was said that “the best of speech is its most true (*aşdaquhu*),” and this is a valid statement, but it doesn’t apply to the poet, for... **“the best of poetry is its most false (*akdhabuhu*).”** ...And in the Qur’an of the Arabs it says: “As for the poets, they are followed only by the strayers... they say what they do not [actually] do” (Q. 26:224-226)... And Abu Naşr al-Fārābī said: The poet... makes a design that marvels the eye, **but has no truth (*ḥaqīqa*) to it.**

6. *Book of Discussion 77b*. The wording (*lafz*) is a vessel for the idea (*ma‘nā*)... the idea is the spirit (*ruh*) and the word is the body (*badan*) of the idea. And it was said that **the prophet cannot fulfill his mission except through wording with which he can be understood, even if it differs from the wording that he heard.** But what does not change is the idea.

7. *I Kings 22: And [Miciah] said:* ...I saw the LORD sitting on his throne, and all the host of heaven standing by him on his right hand and on his left. And the LORD said: “Who shall persuade Ahab, that he may go up and fall at Ramoth-gilead?” ...And there came forth a spirit... and said: “I will persuade him... I will... be a lying spirit in the mouth of all his prophets”... **Now therefore, behold, the LORD hath put a lying spirit in the mouth of all these thy prophets, and the LORD hath spoken evil concerning thee.**

8. *David Kimhi* (Narbonne, 1160-1235), commentary *ad loc*. This matter is perplexing for one who takes it literally (*ke-mashma‘o*). Now the truth (*emet*) is that God induced the false prophets to mislead Ahab... but not that any of them attained prophecy... and that is what Miciah said, “behold, the LORD hath put a lying spirit in the mouth of all these thy prophets, and the LORD hath spoken evil concerning thee.” And all of the rest of the matters [in this vision], such as “one said on this manner, and another said on that manner. And there came forth a spirit... and said: ‘I will go forth, and I will be a lying spirit [in the mouth of all his prophets],’” **all of these are [merely] words of eloquence (*divrei meliṣah*), which Miciah said rhetorically (*derekh ḥaşa‘at devarim*; lit. by way of presenting [his] words)—not that Miciah saw any of these things, nor heard them—since prophecy from God must be true.**

9. **Judah ha-Levi, (Toledo, 1075-1141),** *Kuzari* III:73. [Regarding what] Miciah said to Ahab, “I saw the LORD sitting on his throne...,” there was no truth (*ḥaqīqa*; or: literally true language) in this vision beyond what he said: “the LORD hath put a lying spirit in the mouth of all these thy prophets.” **And all the rest is simply an introduction and rhetorical preparation (*muqaddima wa-tawṭi‘a khiṭābiyya*; Heb. *ḥaqdmah we-ḥaşa‘ah ḥalaṣiyyit*) to confirm and emphasize that this utterance is true.**

C. “Roots” and “Branches” in Muslim Legal Hermeneutics

10. Compare Moses Ibn Ezra (source 1) with Bernard Weiss, *The Spirit of God’s Law*, 22-23.

The Arabic term *uṣūl* literally means “roots.” The rules that the jurists produce are called, on the other hand, “branches” (*furūʿ*) or “fruit” (*thamara*). The extraction of rules from the sources is often called “harvesting” (*istithmār*). The work of the jurists is thus described by means of agricultural metaphors. Only the roots (that is, the sources) are given; the branches, or fruit, are not but rather must be made to appear; and for this human husbandry is required. The jurist is the husbandman who must facilitate the growth of the law... out of the roots. In carrying out this task, the jurist must first explore... the meaning of the texts in order to determine what rules are contained within that meaning. This task requires him to employ the skills of a philologist and to be well versed in Arabic lexicography, morphology, syntax and stylistics.... When he is satisfied that he has harvested whatever rules of law lie within the text’s meaning thus conceived, he may then... attempt to see what further rules may be gleaned by way of *qiyās* with rules already determined.

D. Two types of Legal “Interpretation”: Maimonides and his Predecessors

11. **Maimonides**, *Introduction to the Mishnah*, Shailat ed., 327 (Ar.); 27 (Heb.). Know that every law that God revealed to Moses was only revealed to him with its interpretation (*tafsīr*). Now God told him the text (*naṣṣ*), and then told him **(1) its *tafsīr* and (2) its *taʿwīl*, and (3) all that this firmly established (i.e., permanently legally binding) text (*al-naṣṣ al-muḥkam*)¹ includes.** And they (i.e., Israel) would write the text and commit the [interpretive] tradition (*naql*) to memory. And thus the Sages, peace be upon them, say: the Written Law (*Torah she-bi-khtav*) and the Oral Law (*Torah she-be-ʿal peh*).

12. *Introduction to the Mishnah*, Shailat ed., 328, 335 (Ar.); 28-29, 36-37 (Heb.) What... the elders received [from Moses] was not subject to... disagreement. But the applications (*furūʿ*) not heard from the Prophet were subject to discussion, the laws being extrapolated (*tustakhrāju*) through *qiyās*, with... “the thirteen *middot* by which the Torah is interpreted”... And there was no time without intensive study of *halakhah* (*tafaqquh*) and drawing new [halakhic] conclusions (*tantīj*). And the people of each generation made the words of those who came before them a principle (*aṣl*; lit. “root”), and [laws] would be extrapolated (*yustakhrāju*) from it, and new conclusions would be drawn (*yuntaju natāʿij*).

¹ This expression is mistranslated by Kafih and Shailat as המקרא המרוכב (the wise/profound text), a sense unattested in Arabic or Judeo-Arabic. Maimonides reflects the usage of the term in Qurʾan 11,1, “This is a book whose verses have been made unchangeable (*uḥkimat*).” According to Muslim commentators, the verses of the Qurʾan are referred to as *muḥkam* to connote the fact that “they are compared to a solid building that protects its dwellers, to a fastened not that cannot be untied”; they are “verses that clarify what is allowed (*ḥalāl*) and what is prohibited (*ḥarām*), verses that are not abrogated.” See Leah Kinberg, “Muḥkamāt and Mutashābihāt (Koran 3/7): Implication of a Koranic Pair of Terms in Medieval Exegesis.” *Arabica* 35 (1988): 143-172. Citations from pp. 148-149.

13. **Saadia Gaon** (Egypt, Baghdad, 882-942), *Kitāb Taḥṣīl al-Sharāʿi ʿal-Samāʿiyah*. **The Rabbis, of blessed memory, did not write down these thirteen [middot] because they infer (yastadilluna) [anything] through them,** but rather because they found that the laws they already had correspond to [what can be derived from] them... not that they... are the foundation that established [i.e., the true source of] the laws.²
14. **Judah ha-Levi**, *Kuzari*, III:73. They [must have] had secrets hidden from us in their ways of the interpretation (*tafsīr*) of the Torah, which came to them as a tradition in the usage of the “thirteen *middot*.”
15. **Baḥya Ibn Paquda** (Saragossa, late eleventh century), *Duties of the Heart*, introduction. When a question occurred regarding the applications (*furūʿ*) of the laws and their peculiarities (i.e., unusual cases), they reflected (*naẓarūʿ*) upon them (i.e., the laws) at that time with their analogical reasoning (*qiyās*), and they extracted (*istanbatūʿ*) the law from the principles (*uṣūl*) that they safeguarded [i.e., as part of the sacred tradition].... When the need arose to implement the law, if the law was plainly clear from the principles (*uṣūl*) transmitted by the Prophets, peace be upon them, then they would implement the law accordingly. And if the question was [a matter] of the applications (*furūʿ*), the laws of which are to be extracted from the principles (*uṣūl*) of the transmitted tradition, they applied their *raʿy* and *qiyās* to them. And if all of the leading scholars agreed about their law, then it was decided according to their word. And if their *qiyāsāt* (pl. of *qiyās*) disagreed over the law, then the opinion of the majority among them was adopted. And this is based on their dictum regarding the Sanhedrin (the high court in Jerusalem): “If a question was posed before them and they had (lit. heard) [a tradition about the matter] they told [it to] them [i.e., to the questioners]. And if not, they took a vote, if the majority declared it ritually clean, they declared it ritually clean, if the majority declared it ritually unclean, they declared it ritually unclean” (b.*Sanhedrin* 88b).
16. **David b. Saadia ha-Ger** (al-Andalus, 11th century) on the sources of halakhah: (1) the text of Scripture (lit. the revealed book; *naṣṣ al-kitāb al-manzūl*); (2) the transmitted tradition (*al-ḥadīth al-manqūl*); (3) interpretation of the matters (*sharḥ al-maʿāni*) by the Sages (lit. folk) of the Talmud... [and] this occurs in two ways: some of them are **(a) interpretations transmitted (*manqūl*) explicitly; and others are (b) interpretations extrapolated (*mustakhrāj*) through unadulterated judgment (*raʿy*) and sound analogy (*qiyās*).** And about this they say: “If it is a tradition (*halakhah*) we must accept it; but if it is a logical inference (*din*), there may be an objection to it” (m.*Keritot* 3:9).³

² Moshe Zucker, “Fragments of the *Kitāb Taḥṣīl al-Sharāʿi ʿal-Samāʿiyah*” [Hebrew], *Tarbiz* 41 (1972): 378.

³ Yehudah Zvi Stampfer, “Jewish Law in Eleventh-Century Spain – The *Kitāb al-Hawi* of Rabbi David Ben Saadia” [Hebrew], *Shenaton ha-Mishpat ha-Ivry* 25 (1998), 221, 223.

E. Maimonides' Innovation: Rabbinic status of midrashically derived laws

17. **Maimonides, *Book of the Commandments*, Principle #2. Anything which you do not find as a[n explicit] text (*naṣṣ*) in the Torah and you find that the Talmud deduces it through one of the thirteen *middot*... it is rabbinic (*de-rabbanan*),** as there is no text (*naṣṣ*) indicating (*yadullu*) it... [in accordance with] the principle that the [Sages], peace be upon them, taught us... **“a biblical verse does not leave the realm of its *peshat*,”** and the Talmud in many places inquires: “the verse itself (*gufeh di-qera*), of what does it speak?” when they found a verse from which many matters are deduced by way of commentary and inference (*istidlāl*)... For all laws [so] derived are “branches from the roots” (*furū' min al-uṣūl*) that were told to Moses at Sinai explicitly, and they are the 613 commandments.
18. *Mishnah Commentary, Qiddushin* 1:1. We deduced that [a woman] is betrothed with money from what it says, “If a man takes a woman for a wife...” (Deut 22:13, 24:1) and it says in connection with [the field of] Ephron, “I have given you the money for the field, take it from me,” one deduces [one] “taking” [from another] “taking” [by way of *gezerah shawah*]. And betrothal by a document... the allusion to it is the dictum “And when she has departed [out of his house, she may go] and be [another man’s wife]” – it associates, by way of *heqqesh*, “becoming” [betrothed] to “departing” [i.e., divorce]; just as the “departure” is by a document—as it says in Scripture: “and he shall write her a bill of divorcement”—so too “becoming” is with a document. And... betrothal by intercourse is the type stated most clearly... [and is] explicit in the Torah, and this is the most binding of them, and this is the one considered [lit. called] betrothal from the Torah (*de-orayta*), as it says “[If a man marries a woman] and cohabits with her” (Deut 22:13, 24:1) – with intercourse she becomes a married woman.
19. *Book of the Commandments*, Negative Commandment #181. We were prohibited from eating an animal torn up by beasts, and that is His dictum: “You shall not eat flesh torn up by beasts in the field” (Exod 22:30)... As for an animal suffering from (lit. in which occurred) one of the *terefot* [i.e., defects, illnesses] derived though *qiyās* (*al-muqāyasa*), it is prohibited to eat even if slaughtered properly, and one who slaughters it properly and eats of its flesh is given lashes [the punishment for violating a rabbinic decree, rather than a biblical law].
20. *Introduction to the Mishnah*, Shailat ed., 329-330 (Ar.); 29-31 (Heb.). Know that prophecy is of no utility in speculation (*naẓar*) regarding the interpretation (*tafsīr*) of the Torah, and extrapolating (*istikhrāj*) the derivative laws (*furū'*) through the thirteen *middot*... And this is the dictum [of Scripture about the law]: “It is not in the heavens... [No, the thing is very close to you,] in your mouth and in your heart” (Deut 30:12-14). The meaning is: the texts (*nuṣūṣ*) preserved [i.e., committed to memory] in the mouth, and the [legal] syllogisms (*qiyāsāt*) extrapolated through speculation, which... originates in the heart.