Studies in Mishnaic Hebrew and Related Fields

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Contents

Indexes

Deviations from Mishnaic Hebrew Syntax in Mishneh Torah Due to the Influence of Arabic: Subordination or Intentional Usage?

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In his introduction to *Sefer HaMitzvot* (Book of Commandments), Maimonides writes that he deliberated concerning the choice of language for writing Mishneh Torah. He ruled out Biblical Hebrew (=BH) because it was too limited, and he ruled out Talmudic language—Aramaic—because

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his audience was not sufficiently familiar with it. He decided to use the language of the Mishnah "to make it accessible for most people."[1]

The author's declaration that he chose to write his work in one particular stratum of language is a very valuable one. It is evidence of the author's acute linguistic awareness, and it allows us to compare the actual language of the work to his linguistic declarations. Was he successful in keeping to the stratum of language he had chosen? Are his departures from it deliberate or unintentional? Can we establish a link between Maimonides' linguistic divergences and his desire that people be able to read his work?

This article deals with four syntactic issues. Each issue is discussed separately and compared to previous strata of Hebrew and to the contact languages Aramaic and Arabic. Building on the separate analyses of these case studies, I will attempt to reach general conclusions regarding the methods that Maimonides used to formulate his unique style of language.

Maimonides' syntax is particularly interesting for two reasons. The first is related to the status of syntax in the Middle Ages. Today, the term "language" is understood as covering orthography, phonetics, morphology, syntax, lexicography, and semantics. Did Maimonides think that all of these subfields had the same importance?

Rabbi Jonah ibn Janaḥ, whose books on Hebrew language had a significant influence on Maimonides, dedicated most of his works to morphology (following Rabbi Judah Ḥayyuj) and to lexical issues, devoting only a few chapters in *Kitāb al-lumaʿ* (*Sefer ha-Riqma*) to some syntactic issues. It is thus possible that even though Maimonides declared his intention to write his book in Mishnaic Hebrew (=MH), his attention was primarily on the lexicon and less on syntax.

The second reason is that other writers throughout history who tried to write in a "pure" version of Hebrew—such as the authors of the Qumran sect[2]

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1   See Qafiḥ 1971:2. For discussion of the "missing option," Arabic, see Twersky 1980:333–37.

2   See, for example, Schniedewind 1999:243.

or the poets of the Golden Age in Spain[3]—have been found to have had greater success in the lexicon than in the syntax. In each of these periods, there was a clear influence of contact languages on the syntax of the texts. During the Second Temple period the influence originated in Aramaic, and during the Golden Age in Spain the influence was Arabic.

Two criteria may be suggested to help determine whether a deviation from MH due to Arabic influence is intentional or not:

(a) The Distribution of the Construction in Mishneh Torah as Compared to the Distribution of Its Alternative in Mishnaic Hebrew:
Differences in the distribution of a construction require an explanation. If a construction which is rare in Rabbinic Hebrew (=RH) becomes more frequent in Mishneh Torah and it also has a parallel in Arabic, one should suspect that its occurrence in Mishneh Torah may not be attributed to internal Hebrew development but rather to Arabic influence.

Changes in the distribution of constructions can hint at additional information as well. The wider the distribution a construction has in the language of Mishneh Torah, the greater the chances are that Maimonides was aware of his departure from MH grammar. If Maimonides chooses not to use a relatively frequent construction from MH, one has grounds to believe that this is his conscious linguistic choice.

(b) Writing Category:
As Ori Samet demonstrates,[4] it is possible to identify three categories of writing in Maimonides' work:
(1) His own prose
(2) Adaptations of Hebrew sources
(3) Translations of sources from Aramaic or Arabic

It seems likely that in passages where Maimonides adapted a Hebrew source, the change was intentional, since he could have cited the original without changing it. In contrast, his translations into Hebrew or his own

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3   See, for example, Fleischer 1975:414–15.
4   Samet 2004:1.

prose are more likely to stem from an unconscious influence of Arabic syntax.

1. The Future-Perfect

Let us demonstrate the first criterion with a paragraph that appears in the laws of Manner of Offering. The law is about a person who sanctified only one limb of an animal as a sacrifice, specifically a limb that the animal could live without.

הָאוֹמֵר "יָדָהּ שֶׁלָּזוֹ עוֹלָה" אוֹ "רַגְלָהּ שֶׁלָּזוֹ עוֹלָה" – תִּמָּכֵר לְחַיָּבֵי עוֹלוֹת, וְדָמֶיהָ חֻלִּין חוּץ מִדְּמֵי אוֹתוֹ אֵבֶר; וְהוּא שֶׁיִּהְיֶה זֶה הַמְּחֻיָּב עוֹלָה שֶׁקָּנָה אוֹתָהּ **נָדַר** עוֹלָה בְּדָמִים קְצוּבִים. (מעשה הקרבנות טו, ב)

If one said, "The hand of this beast shall be a burnt offering," or "the foot of this beast shall be a burnt offering," it had to be sold to one obliged to bring a burnt offering, while the purchase money was unhallowed except for the value of the consecrated limb. It could be sold thus only if the purchaser who was obliged to bring a burnt offering **had vowed** to bring the offering at a certain price.[5]

We encounter here a peculiar syntactic construction which exists in Arabic yet is foreign to Hebrew: "he will (יהיה)"—an auxiliary verb in the future tense—followed by "he vowed (נָדַר)"—a primary verb in past tense (future-perfect).[6] To date, I have not found another instance of this construction in Mishneh Torah. Even though this sentence is not a translation from Arabic, its foreign status in Hebrew on the one hand, and its rareness in Mishneh Torah on the other, probably bear evidence of an unconscious Arabic influence.

Indeed, the future-perfect is well documented in Judaeo-Arabic and specifically in Maimonides' Arabic (Blau 1980:185). A construction similar to the one in Mishneh Torah is found in Maimonides' commentary on *B. Qam* 5:3:

5   Lewittes 1957:225.
6   See Wright 1896–1898:II, 22; Fischer 2002:108.

ולד׳לך ילזמה כופר, ובשרט אן יכון רמי בנפסה הנאך למאכול ראי פי אלביר.
and therefore he must pay the ransom price, but only if it [the ox]
threw itself into the pit because it saw food inside.[7]

Further evidence that Maimonides was not conscious of the Arabic
influence in this instance comes from a comparison of the draft of the law,
which was found in the Cairo Geniza,[8] with its final version in Mishneh
Torah. The draft version states:

האומר ידה של‹זו› עולה או רגלה שלזו עולה
תמכר לחייבי עולות ודמיה ‹חולין› חוץ מדמי אותו אבר
והוא שיהא זה שחייב עולה נדר עולה °°°°°°°°°°°°°[9]

When Maimonides edited this law, he made several changes to the
sentence in defining to whom it is possible to sell the animal:

והוא	שיהא	זה	שחייב עולה		נדר עולה	°°°°°°°°°°
וְהוּא	שֶׁיִּהְיֶה	זֶה	הַמְחֻיָּב עוֹלָה	שֶׁקָּנָה אוֹתָהּ	נָדַר עוֹלָה	בְּדָמִים קְצוּבִים.

Despite these changes, Maimonides did not alter the future perfect
construction in the final version of the work, indicating that he did not
perceive this construction as problematic.

2. The Numeral Construction

Not all deviations from the MH syntax in Mishneh Torah were
unintentional. I will now discuss three syntactic constructions which
seem to show that Maimonides was aware of the Arabic influence, yet it
did not deter him from using a construction with clear affinity to Arabic
syntax. First, let us consider numerals.[10]

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7   And see additional examples, ibid., 4:5 (אן יכון קד קתל) and 5:6 (באן יכון קד ג׳אז אל
     ביר).
8   See Shailat 2011.
9   The rest of the line is effaced.
10   A brief description of the use of numerals appears in Sheḥadeh 2004:335.

One notable difference between BH and MH is the order of the components in cardinal numbers above the number twenty-one. In BH, the units may precede the tens or follow them.[11] However, MH dictates a fixed order: the tens must precede the units, while in Arabic the units precede the tens.[12]

How did Maimonides express numbers in Mishneh Torah? In general, he did not count from the larger number to the smaller number as in the Mishnah. An examination of all of the occurrences of the numbers 41 to 49 in Mishneh Torah (according to the Makbili edition) indicates that in seventy of eighty instances the units precede the tens—as they do in BH and Arabic and in contrast to MH.[13] The tens precede the units in only ten instances.

Here is an example of changes Maimonides made diverging from the original Talmudic language. The discussion in the Talmud pertains to the question of when the blood of a woman who has given birth makes her unclean. In the Talmud, the tens precede the units:

"המפלת יום ארבעים אינה חוששת לולד." למה הוזכר זכר? אי לימי טומאה הא קתני. נקבה. אי לימי טהרה הא קתני. נדה. שאם ראתה יום **שלשים וארבעה** ותחזור ותראה יום **ארבעים ואחד** תהא מקולקלת עד **ארבעים ושמנה.** וכן לעניין נקיבה שאם תראה ליום **שבעי' וארבעה** ותחזור ותראה ליום **שמו' ואחד** תהא מקולקלת עד **שמו' ושמונה.** (בבלי, נידה ל, א-ב)

"If a woman miscarried on the fortieth day, she need not take into consideration the possibility of a valid childbirth." Why was *male* mentioned? If in respect of the days of uncleanness, *female* was mentioned; and if in respect of the days of cleanness, was not menstruant mentioned?—In order that if the woman observed a discharge on the **thirty-fourth** (30+4) day and then observed one on the **forty-first** (40+1) day she shall remain unclean until the

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11   For details regarding the numerals in BH, see König 1895:215–17.
12   See Wright 1896–1898:I, 257.
13   Here is a list of all the exceptions: קידוש החודש יד, ד; איסורי ביאה ז, כב (x2); י, ב; ביכורים ה, ב; שם, ד; שם, ח (x2); שם, ט; שם, י.

forty-eighth (40+8) day. And so also in respect [of the possible birth of] a female [the last word had to be mentioned] so that if she observed any blood on the **seventy-fourth** (70+4) day and these again on the **eighty-first** (80+1) day she shall remain unclean until the **eighty-eighth** (80+8) day.[14]

Maimonides, on the other hand, uses units before tens:

כָּל מָקוֹם שֶׁאָמַרְנוּ "תֵּשֵׁב לְזָכָר וְלִנְקֵבָה וּלְנִדָּה" – כֵּיצַד דִּינָהּ? תִּהְיֶה אֲסוּרָה לְבַעְלָהּ אַרְבָּעָה עָשָׂר יוֹם כְּיוֹלֶדֶת נְקֵבָה. וְאִם רָאֲתָה דָם בְּיוֹם אֶחָד וּשְׁמוֹנִים – הֲרֵי זוֹ סְפֵק נִדָּה. וְכֵן אִם רָאֲתָה דָם בְּיוֹם אַרְבָּעָה וְשִׁבְעִים וּבְיוֹם אֶחָד וּשְׁמוֹנִים – הֲרֵי זוֹ סְפֵק נִדָּה. וְכֵן אִם רָאֲתָה דָם בְּיוֹם אֶחָד וְאַרְבָּעִים, אַף עַל פִּי שֶׁרָאַת בְּיוֹם אַרְבָּעָה וּשְׁלֹשִׁים – הֲרֵי זוֹ סְפֵק נִדָּה, וַאֲסוּרָה לְבַעְלָהּ עַד לֵיל שְׁמוֹנָה וְאַרְבָּעִים, כְּיוֹלֶדֶת זָכָר. וְאֵין נוֹתְנִין לָהּ יְמֵי טֹהַר כְּלָל, כְּנִדָּה, וַהֲרֵי הִיא כְּמִי שֶׁלֹּא יָלְדָה. (איסורי ביאה י, כא)

What is the procedure in cases where it was stated that she must continue unclean for the number of days prescribed for a male, a female, and a menstruant? She is forbidden to her husband for fourteen days after the birth, as though she has given birth to a female, and if she has a flow on the **eighty-first** (1+80) day she is considered a menstruant out of doubt. Similarly, if she has a flow on the **seventy-fourth** (4+70) and on the **eighty-first** (1+80) days she is considered a menstruant out of doubt. Likewise, if she has a flow on the **forty-first** (1+40) day, even if she had it on the **thirty-fourth** (4+30) day also, she is considered a menstruant out of doubt and is forbidden to her husband until the night of the **forty-eighth** (8+40) day, as though she had given birth to a male. She need observe no days of purification at all like a menstruant, and in this respect she is regarded as though she had not given birth.[15]

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14   The numbers within brackets are my addition.
15   Rabinowitz & Grossman 1965:73–74. The numbers within brackets are my addition.

A fascinating phenomenon appears in three-digit and four-digit numbers. Maimonides counts four-digit numbers from units to the thousands, as is the order in BH.

שֶׁהִיא שְׁנַת שְׁמוֹנֶה וּשְׁלֹשִׁים וּתְשַׁע מֵאוֹת וְאַרְבַּעַת אֲלָפִים לַיְצִירָה, שֶׁהִיא שְׁנַת
תֵּשַׁע וּשְׁמוֹנִים וְאַרְבַּע מֵאוֹת וְאֶלֶף לַשְּׁטָרוֹת, שֶׁהִיא שְׁנַת תֵּשַׁע וּמֵאָה וְאֶלֶף לְחֻרְבַּן
בַּיִת שֵׁנִי. (קידוש החודש יא, טז)

equal to the year 4938 (8+30+900+4000) of Creation, which is the year 1489 (9+80+400+1000) of the Era of Contracts, or the year 1109 after the destruction of the Second Temple.[16]

When he required three-digit numbers, he generally employed a mixed method which is not found in MH and is recorded only four times in BH.[17] The order in this method is hundreds, then units, and then tens:

וְרָאוּי הוּא לִהְיוֹת מוּכָן וְיָדוּעַ אֶצְלְךָ מַהֲלַךְ אֶמְצַע הַשֶּׁמֶשׁ לְתִשְׁעָה וְעֶשְׂרִים יוֹם,
וְלִשְׁלֹשׁ מֵאוֹת וְאַרְבָּעָה וַחֲמִשִּׁים יוֹם, שֶׁהֵם יְמֵי שְׁנַת הַלְּבָנָה בִּזְמַן שֶׁחֳדָשֶׁיהָ כְּסִדְרָם,
וְהִיא הַנִּקְרֵאת "שָׁנָה סְדוּרָה." (קידוש החודש יב, א)

It is, however, advisable for you to note and have ready at hand the mean rate of the sun's motion for 29 (9+20) days and for 354 (300+4+50) days. The latter is the number of the days of the lunar year with regular months.[18]

These two numerical orders are identical to two orders that are conventional in Arabic with numbers greater than 100.[19]

Why does Maimonides deviate here from MH grammar? I believe Maimonides preferred to use the Arabic numerical order since he and his readers found it easier to count as in their mother tongue. The fact that all the regular constructions in Arabic exist in BH (even though the order

16 Gandz 1967:46. The numbers within brackets are my addition.
17 1000+700+5+70 (Exod 38:25, 28); 600+5+70 (Num 31:37); 200+2+30 (I Kgs 20:15); 700+5+70 (Ezra 2:5). See König 1895:217–24.
18 Gandz 1967:47. The numbers within brackets are my addition.
19 See Wright 1896–1898:I259.

"hundreds, units, tens" is attested only four times), rendered this pattern legitimate for him.

Dr. Binyamin Elitzur drew my attention to the fact that this same construction is found in Maimonides' own wording of the *mishnah* in 'Ahelot, pertaining to the number of organs in the human body:

מאתים ושמונה וארבעים איברים באדם. (אהלות א, ח)

There are two hundred and forty-eight members in a human body.

It seems that the Arabic counting convention was rooted so deeply in Maimonides' language (or in the language of his Mishnah teachers) that the construction infiltrated his Mishnaic language. It is also possible that the occurrence of the construction "two hundred eight and forty" in Maimonides' version of the Mishnah helped him justify the use of this construction in Mishneh Torah.

3. יש ל... לפעול

Several studies have dealt with the dative predicative possessive construction "יש לו לפעול." Goshen-Gottstein, in his work on the syntax and vocabulary of Medieval Hebrew as influenced by Arabic, discusses the "*Lamed* of obligation and permission."[20] He compares the Hebrew construction יש לו לפעול to the Judaeo-Arabic construction לה אן יפעל and claims that the Hebrew construction carries the meaning of "obligation" as well as that of "permission." He brings two examples from Mishneh Torah (*Tefilla* 3:7, 11:14) which, in his opinion, demonstrate each meaning.

Fink, in his work on the language of Mishneh Torah,[21] writes that occurrences of this construction usually indicate "obligation" and only rarely mean "possibility." According to him, the construction originates in Late Biblical Hebrew (II Chr 26:18) and in the Babylonian Aramaic constructions איכא למידרשינהו לקולא "what can be said?" מאי איכא למימר (these [verses] may be interpreted leniently).

20 Goshen-Gottstein 2006:188–89.
21 Fink 1980:40–41.

Ben-Ḥayyim shows that in BH and RH this construction conveys "permission," "ability" or "possibility" but never "obligation," and claims that this is also the case in Mishneh Torah.[22] He argues that in adapting rabbinic sources Maimonides sometimes replaced ambiguous participle forms which denote either "permission" or "obligation" with the unambiguous construction יש לו לפעול in order to emphasize that the meaning must be "permission."

Sheḥadeh, who deals with the construction היה לו לפעול/יש לו לפעול in all periods of Hebrew,[23] is of the opinion that the meaning in Mishneh Torah is "ability, possibility and permission."

In the following section, I will discuss the meaning of this construction in Mishneh Torah, taking into consideration all of its occurrences in the text. In addition, by comparing the text of Mishneh Torah to its rabbinic and Arabic sources I will try to determine whether this construction originates in Hebrew, Aramaic, or Arabic.

The construction יש ל... לפעול occurs almost three hundred times in Mishneh Torah, out of which two hundred and eighty do not appear in the rabbinic sources that Maimonides integrated into his work.[24] The meaning of this construction in Maimonides' language is "permitted" or "allowed."

Here are two examples: the first deals with laws of the *zimmun* blessing, said before the blessing after the meal only if three or more people have eaten together. Members of the group may split into two groups only if the two new groups will be able to say the *zimmun* blessing:

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22   Ben-Ḥayyim 1992:81–82.

23   Sheḥadeh 1990:423.

24   In thirteen occurrences of the construction יש ל... לפעול, Maimonides is editing citations from rabbinic literature. Twelve such edited citations appear as יש לי ללמד... זכות/חובה "I am in a position to plead in favor of/against," for example in *Sanh.* 10:4. The thirteenth appears as יש לו לעמוד "He is able to rise" (*Nizqe Mamon* 13:10), which is a present-tense adaptation of the past-tense Talmudic source היה לו לעמוד "He was able to rise" (*B. Qam.* 31a). These thirteen cases are excluded from the count of two hundred and eighty for reasons that will be explained later.

שְׁלֹשָׁה שֶׁאָכְלוּ כְּאֶחָד   **אֵינָן רַשָּׁאִין** לַחֲלֹק, וְכֵן אַרְבָּעָה, וְכֵן חֲמִשָּׁה.
שִׁשָּׁה   **יֵשׁ לָהֶן** לַחֲלֹק, עַד עֲשָׂרָה.
עֲשָׂרָה   **אֵינָן רַשָּׁאִין** לַחֲלֹק, עַד שֶׁיִּהוּ עֶשְׂרִים.
שֶׁכָּל זְמַן שֶׁיֵּחָלְקוּ וְתִהְיֶה בִּרְכַּת הַזִּמּוּן לְכָל חֵלֶק וְחֵלֶק כְּזִמּוּן הַכֹּל –
יֵשׁ לָהֶם לַחֲלֹק   (ברכות ה, י)

Three who have eaten together may not divide up; so also four or
five people. A group between six and ten may divide up, but not a
group of ten or more until it reaches twenty. A group may divide
up if each subgroup recites the same invitational blessing as the
whole group.[25]

The second law deals with selling ritual artifacts or a change of designation
of a holy building. It is forbidden to sell a ritual artifact in order to buy an
article less holy than the one offered for sale:

מֻתָּר לַעֲשׂוֹת בֵּית הַכְּנֶסֶת בֵּית הַמִּדְרָשׁ,

אֲבָל בֵּית הַמִּדְרָשׁ   **אֵין עוֹשִׂין** אוֹתוֹ בֵּית הַכְּנֶסֶת, שֶׁקְּדֻשַּׁת בֵּית הַמִּדְרָשׁ יְתֵרָה עַל קְדֻשַּׁת בֵּית הַכְּנֶסֶת, וּמַעֲלִין בַּקֹּדֶשׁ וְלֹא מוֹרִידִין.

וְכֵן בְּנֵי הָעִיר שֶׁמָּכְרוּ בֵּית הַכְּנֶסֶת   **יֵשׁ לָהֶן** לִקַּח בְּדָמָיו תֵּבָה.
מָכְרוּ תֵּבָה   **יֵשׁ לָהֶן** לִקַּח בְּדָמֶיהָ מִטְפָּחוֹת אוֹ תִּיק לְסֵפֶר תּוֹרָה.
מָכְרוּ מִטְפַּחַת אוֹ תִּיק   **לוֹקְחִין** בְּדָמָיו חֻמָּשִׁין.
מָכְרוּ חֻמָּשִׁין   **לוֹקְחִין** סֵפֶר תּוֹרָה.
אֲבָל אִם מָכְרוּ סֵפֶר תּוֹרָה   **אֵין לוֹקְחִין** בְּדָמָיו אֶלָּא סֵפֶר תּוֹרָה אַחֵר, שֶׁאֵין שָׁם קְדֻשָּׁה לְמַעֲלָה מִקְּדֻשַּׁת סֵפֶר תּוֹרָה.
וְכֵן בְּמוֹתְרֵיהֶן. (תפילה וברכת כהנים יא, יד)

It is permissible to convert a synagogue into a study hall, but one
may not convert a study hall into a synagogue, since the sanctity of
a study hall is greater than the sanctity of a synagogue, and we raise
things in sanctity, but do not lower them. So also, if the inhabitants

25   Kellner 2004:136.

of a city sell a synagogue, they may use the money to purchase an ark. If they sell an ark, they may use the money to purchase vestments or a case for a Torah scroll. If they sell vestments or a case, they may use the money to purchase books of the Pentateuch. If they sell books of the Pentateuch, they may purchase a Torah Scroll. But if they sell a Torah scroll, they may only use the money to purchase another Torah scroll, since there is no sanctity higher than that of a Torah scroll. The same principle applies to money left over from the sale.[26]

A comparison between the positive construction יש להן ליחלק and the negative construction אינן רשאין ליחלק reveals its meaning. The construction used in the Laws of Prayer יש להן ליקח must be compared to the construction מותר לעשות at the beginning of the quoted law and to the negative construction אין לוקחין. As mentioned above, Goshen-Gottstein cited the example from the Laws of Prayer and explained יש להן ליקח as "they must take."[27] In my opinion, the context shows that it means "they are permitted to take," as Menachem Kellner translated: "They may use the money."

Examination of all occurrences indicates that it is very doubtful whether the meaning of obligation appears in Mishneh Torah.[28] It seems that in the vast majority of occurrences the meaning is not "ability" but specifically "permission."[29]

Having examined the meaning of the construction יש לו לפעול we will now try to trace its origin. In order to do so we will check whether its meaning in Mishneh Torah is identical to its meaning in RH and then we will examine the laws in which the construction appears in comparison to their Hebrew source.

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26   Kellner 2004:52–53.
27   Goshen-Gottstein 2006:189.
28   There is a single occurrence, discussed later in the article, in which it seems that the meaning is obligation and not permission.
29   Other than the thirteen paraphrases from rabbinic literature listed in footnote 24.

The construction יש לו לפעול is attested dozens of times in RH. However, in the majority of instances in RH it indicates "ability" rather than "permission." For example:

הלך ומצאו ר׳ עקיבה מיצ֫יר. אמ׳ לו. **יש לי ללמוד** שכל מה שעשה רב׳ גמליא׳ עשוי. (משנה, ראש השנה ב, ט)

R. Akiba went [to R. Joshua] and found him in great distress. He said to him: **I can bring proof** [from the scripture] that whatever Rabban Gamaliel has done is valid.

אמ׳ אחד מן התלמידים. **יש לי ללמד** עליו זכות. מעלין ומושיבין אותו עמהן ולא היה יורד משם כל היום. אם יש ממש בדבריו שומעין לו. אפילו אמ׳. **יש לי ללמד** על עצמי זכות. שומעין לו. ובלבד שיהא ממש בדבריו (משנה, סנהדרין ה, ד)

But if a disciple says, "**I have something to plead** in his favor," He is brought up and seated with them, and does not descend from there all that day. If there is substance in his statement he is heard. And even if he [the accused] himself says, "**I am in a position to plead** in my own defense, he is heard, provided there is substance in his statement.

אמ׳ לו ר׳ ישמעאל בר׳ יוסי. בבלאי. כל כך אתה מחמיר בעירובין. כך אמ׳ אבא. כל שיש לך להקל בעירובין הקל. (בבלי, עירובין פ, א)

"Babylonian," said R. Ishmael son of R. Jose to him (R. Hiyya), "are you so strict about the laws of 'erub. Thus said my father: "Wherever you see an opportunity of relaxing the laws of 'erub seize it."

תניא. היה ר׳ מאיר או׳. **יש לו לבעל הדין להשיבך** ולומר לך. אם אלהיכם אוהב עניים למה אינו מפרנסן. (בבלי, בבא בתרא י, א)

It has been taught: R. Meir used to say: **The critic [of Judaism] may bring against you the argument**, "If your God loves the poor, why does he not support them?"

In Babylonian Aramaic, two additional constructions are found: אית ליה למקטל which almost always appears with the verb אמר and expresses

a theoretical argument, and הוה ליה למקטל which expresses an unreal condition.[30] For example:

אמ׳ לך רב. דל אנא מהכא. מתנייתא קשיין אהדדי. אלא מאי אית לך למימר. תנאי היא. לדידי נמי תנאי היא (בבלי, עירובין ג, א)

Rab can answer you: Even if I am removed from here, are not the two Baraithas mutually contradictory? **All you can reply**, [however, is that they represent the views of different] Tannas; so also [the reply to the contradiction] against me may be [that our respective statements are the views of different] Tannas.

אמ׳ רב. **הוה ליה** לר׳ אלעזר בן מתיה **למידרש** בהאי קרא מרגניתא ודרש ביה חספא. (בבלי, יבמות צד, א)

R. Eleazar **could have produced** a pearl and produced but a potsherd.

אי הכי. אמאי פטור. תחלתו בפשיעה וסופו באונס חייב. דשמע אריא ועאל. אי הכי. אומדין אותו. מאי **הוה ליה למעבד. הוה ליה לקדם** ברועים ובמקלות ולא קדם. (בבלי, בבא מציעא צג, ב)

If so, why is he not responsible? Where there is negligence in the beginning, though subsequently an accident supervenes, he is liable!—It means that he heard the voice of a lion, and so entered. If so, why judge his strength? **What could he then have done?— He should have met it** with [the assistance of other] shepherds and staves.

As Goshen-Gottstein points out,[31] the construction יש לו לפעול in Geonic literature, in both Aramaic and Hebrew, conveys "permission."

One example is found in *Halaḵot Pesuqot* which was translated into Hebrew as early as the Geonic period:

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30 The irrealis is due to the verb הו״י and not to the entire construction; see Bar-Asher Siegal 2013:243.
31 Goshen-Gottstein 2006:189.

והילכתא, בין בעל חוב בין אשה לא גאבו מן יתמי מן העבדים. אבל מלוה[32] כד
איתיה בחיי – בעל חוב שקיל מניה מן העבדים, **דהא אית ליה למשקל מיניה**
ואפילו מגלימא דעל כתפיה. (הלכות פסוקות, הלכות הלוואה, מהדורת ששון,
עמ׳ נד)

והלכה, בין בעל חוב בין אשה אין גובין מיתומים מן העבדים. אבל מלוה כשישנו
בחיי בעל חוב גובה ממנו מן העבדים, **שהרי יש לו ליקח אפילו מטלת מעל**
כתפו. (הלכות ראו, ממונות, מהדורת שלוסברג, עמ׳ 43)

And the ruling is, that in the cases of both a lender and a wife,
the debt cannot be collected from the debtor's orphan children
from out of property that is slaves. However, during the debtor's
lifetime, the debt may be collected from property that is slaves
since the lender has permission even to take the garment from
off his shoulder.

Here, the meaning is "permission." The lender has permission to collect
from the debtor even the coat he is wearing.

We can further clarify this construction if we examine the categories
in which it appears in Mishneh Torah.

As mentioned, Goshen-Gottstein and Ben-Ḥayyim wrote that this
construction appears many times in the category of edited sources.[33]
On numerous occasions, Maimonides changed a participial expression
whose meaning "permission" is clear from the context, to the יש לו לפעול
construction. This also appears in the two examples presented previously
from Maimonides' work. Let us compare the version of the law in the
Laws of Blessings in Mishneh Torah with the origin of the law in the
mishnah of *Berakhot*:

שלשה שאכלו כאחת אינן רשיים לחלק. וכן ארבעה. וכן חמשה. ששה נחלקים.
עד עשרה. [ו]עשרה אינן נחלקין עד שיהוא עשרים. (משנה, ברכות ז, ד)

If three persons have eaten together they may not separate [for
grace]. Similarly with four and similarly with five. Six may divide,

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32   Read: מִלְוֶה.
33   Ben-Ḥayyim 1992:82; Goshen-Gottstein 2006:189.

[and higher numbers] up to ten. Between ten and twenty they may not divide.

Maimonides replaced the words ששה נחלקים from the *mishnah* with the phrase שִׁשָּׁה יֵשׁ לָהֶן לְחַלֵּק. Compare also the passage from the Laws of Prayer to its origin in *m. Megillah*:

בני העיר שמכרו רחובה שלעיר **לוקחים** בדמיו בית הכנסת. בית הכנסת **לוקחים** תיבה. תיבה **לוקחים** מטפחות. מטפחות **לוקחים** ספרים. ספרים **לוקחים** תורה. (משנה, מגילה ג, א)

If the townspeople sell the town square, **they may buy** with the proceeds a synagogue; [if they sell] a synagogue, **they may buy** with the proceeds an ark; [if they sell] an ark **they may buy** wrappings [for scrolls]; [if they sell] wrappings **they may buy** scrolls; [if they sell] scrolls **they may buy** a [sefer] Torah.

Also in this law Maimonides replaced the original Mishnaic לוקחים תיבה with יש להן ליקח בדמיו תיבה.

As Ben-Ḥayyim wrote, we can learn from the comparison between Maimonides' language and that of his sources that Maimonides intentionally used the construction יש לו לפעול, apparently in order to clarify the modal meaning.[34] It seems that Maimonides was of the opinion that the expression in MH was ambiguous, and chose to diverge from it. Where did Maimonides find the construction he substituted for the prevalent one in MH? Here we can make use of the translation category of text.

I will now adduce parallels between Maimonides' Arabic Mishnah commentary and his Mishneh Torah, which demonstrate a clear correlation between the following Hebrew and Arabic constructions:

la-hū	*ʾan yafʿala*	לה אן יפעל
DAT-3MSG	SUBJ act.SUBJ	

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34   See Ben-Ḥayyim 1992:82.

yeš	*l-o*	*li-fʿol*	יש לו לפעול
exist	DAT-3MSG	INF-act	

The examples below show that the meaning of both constructions is identical—"permission." Admittedly, there are two differences between the Hebrew and the Arabic. Due to syntactic constraints, the Hebrew construction includes an additional existential particle, יש.[35] In addition, instead of the subjunctive *ʾan yafʿala*, Hebrew uses the infinitive לפעול. Nonetheless, it seems that at least to Maimonides' mind there was no real difference between the two constructions.

As for the presence of the existential particle יש, a comparison to the locative existential sheds light on this difference:

	ṯamma	*ʾilāhu*	ת׳ם אלאה
	LOC	God	
yeš	*šam*	*ʾeloah*	יש שם אלוה
exist	LOC	God	

The Arabic ת׳ם אלאה and the Hebrew שם אלוה are cognates, respectively. Although the Hebrew translation of the locative existential requires the addition of the existential particle יש, its Arabic origin is indubitable, since the word שם (there) does not refer to a deictic place but rather serves as part of the existential construction, as Rabbi Samuel Ibn Tibbon (twelfth century) pointed out.[36]

35 It is noteworthy that in classical Arabic the construction *kāna lahū ʾan yafʿala* "it is possible, permitted to him to do a th," "it is to his advantage to do a th" (Ullmann 1983:13) also has the verb *kāna* that may be seen as parallel to יש.

36 See Goshen-Gottstein 2006:128. Also consider that in MH one can find existential sentences having יש and without יש in similar syntactical contexts. Cf. מת ולו אח "if he died, leaving a brother" without the existential particle (*Yebam.* 2:6) to ישראל שנשא ממזרת ויש לו אח ממזר "if an Israelite who married a bastard had a brother a bastard" with the existential particle (ibid. 9:2).

The locative existential, which is very common in Mishneh Torah clearly originates in Arabic, although the use of יש shows that the addition of יש to the Hebrew possessive construction was for Maimonides' contemporaries the natural choice to create the Hebrew counterpart for the Arabic construction.

As for the difference between the subjunctive and the infinitive verbal forms, it should be stated that according to Arabic grammarians, these two forms interchange freely.[37] In Mishneh Torah, Maimonides chose to use the infinitive form exclusively, apparently because he found it more appropriate to Hebrew since the infinitive appears in RH, unlike the subjunctive.

Let us consider some examples. In his commentary to *m. Mo'ed Qaṭan* and in the Laws of Mourning, Maimonides distinguishes between a man mourning his parents, whose obligations of mourning are stricter, and a man mourning other relatives, whose obligations are lighter.

> ולואזם אלתקטיע באכ׳תצאר מא אצף לך, וד׳לך אנה יקטע טפח מן אלת׳וב אלפוקי פקט, **ולה אן יקטעה** בכלי, ולא ילזמה אן יקטע אלטוק אלנעזל קטעה כד׳א וקטעה כד׳א, **ולה אן ידכ׳ל** ידיה תחת ת׳יאבה ויקטע. (פירוש המשנה, מועד קטן ג, ז)

I hereby lay out for you the laws of tearing in short. One must tear a *ṭefaḥ* in the upper garment only, **and he may tear** it with an instrument, and he is not obligated to tear the rim of the garment until it splits into two pieces, **and he may insert** his hand beneath his garment and tear.

> כַּמָּה שִׁעוּר הַקֶּרַע? טֶפַח. וְאֵינוֹ צָרִיךְ לְהַבְדִּיל שְׂפַת הַבֶּגֶד. **וּמֻתָּר לוֹ לִקְרֹעַ בִּכְלִי. וְיֵשׁ לוֹ לִקְרֹעַ בִּפְנִים** שֶׁלֹּא בִּפְנֵי אָדָם, לְפִיכָךְ **יֵשׁ לוֹ לְהַכְנִיס** יָדוֹ בִּפְנִים וְקוֹרֵעַ בְּצִנְעָה. וְאֵינוֹ חַיָּב לִקְרֹעַ אֶלָּא בֶּגֶד הָעֶלְיוֹן בִּלְבַד. (אבל ח, ב)

What is to be the size of the tear? A handbreadth. It is not required that the mourner sever the stiff border around the neck. **He may**

rend his garment with an instrument. The tear may[38] **be made on the inside**, and not in the presence of people. Therefore **he may put**[39] **his hand inside** and rend the garment away from the bystanders. He is bound to rend only his uppermost garment.[40]

In this case, it seems that Maimonides used the construction יש לו לפעול for variation. Instead of writing twice ומותר לו "he is allowed," he writes the second time יש לו להכניס "he may insert." Here, the consideration is one of style.

And here is another example from the laws of marital relations. The Talmud tells us that a woman has the right to demand a divorce from her husband if it is clear to her that he is infertile, since she can claim that she needs children to support her in her old age. What should the husband do if he believes his wife is lying? Here is what Maimonides says in his commentary to *Yebamot* and in the Laws of Marital Relations:

ויוציא ויתן כתובה אן קאלת אן אלסבב מנה ואנה אינו יורה כחץ, ולא יכ'לצה מן
וזן אלכתובה אלא אקראירהא אנה יורה כחץ, פלד'לך **לה אנה יחרים חרם סתם**
באסם מן תעלם אנה יורה כחץ ולא תעתרף בד'לך. (פירוש המשנה, יבמות ו, ז)
And he will divorce her and give her the *Ketubbah* if she has said that the reason is because of him since he does not eject with the force of an arrow, and he is not absolved from paying her *Ketubbah* unless she admits that the emission is forceful, thus **he may pronounce a general ban** upon she who knows that he does eject with the force of an arrow, but will not admit it.

הוּא אוֹמֵר ״מִמֶּנָּה נִמְנַע הַוָּלָד,״ וְהִיא אוֹמֶרֶת ״מִמֶּנּוּ נִמְנַע, מִפְּנֵי שֶׁאֵינוֹ יוֹרֶה
כַּחֵץ״ – הִיא נֶאֱמֶנֶת, **וְיֵשׁ לוֹ לְהַחֲרִים** עַל מִי שֶׁטּוֹעֶנֶת דָּבָר שֶׁאֵינָהּ יוֹדַעַת אוֹתוֹ
בְּוַדַּאי, וְאַחַר כָּךְ יִתֵּן כְּתֻבָּתָהּ. (אישות טו, ט)
If he says, "The lack of birth is due to her," while she says, "it is due to him, because he does not eject with the force of an arrow," she is believed. **He may,** however, **pronounce a general ban** upon

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38   The word "may" diverges from Hershman's translation: "should."
39   Hershman translated it as: "he puts."
40   Hershman 1949:184.

any woman who asserts something without knowing it a certainty, and then pay her the kĕtubbah.[41]

Let us examine another law from the Laws of Marital Relations. The *mishnah* in *Ketubbot* discusses the question of whether a person is allowed to travel away from home without receiving permission from his wife. In his commentary, Maimonides writes:

> ואעלם אן ללמראה אן תמנע זוג'הא אלספר אלא למוצ'ע קריב לא ימנעה עונתו,
> וכד'לך תמנעה מן אלתנקל מן צנאעה אלי צנאעה תנקץ ענה בהא אלעונה, אלא
> תלמוד תורה פקט. (פירוש המשנה, כתובות ה, ה)

And know that a woman can prevent her husband from going away, except to a nearby place which will not prevent marital relations. And she is also allowed to prevent him from switching from one craft to another in which the marital relations will diminish, except for the study of the Torah.

> יֵשׁ לְאִשָּׁה לְעַכֵּב עַל בַּעְלָהּ שֶׁלֹּא יֵצֵא לִסְחוֹרָה אֶלָּא לְמָקוֹם קָרוֹב, שֶׁלֹּא יִמְנַע
> מֵעוֹנָתָהּ, וְלֹא יֵצֵא אֶלָּא בִּרְשׁוּתָהּ. וְכֵן יֵשׁ לָהּ לְמָנְעוֹ לָצֵאת מִמְּלָאכָה שֶׁעוֹנָתָהּ
> קְרוֹבָה לִמְלָאכָה שֶׁעוֹנָתָהּ רְחוֹקָה, כְּגוֹן חַמָּר שֶׁבִּקֵּשׁ לַעֲשׂוֹת גַּמָּל אוֹ גַּמָּל לַעֲשׂוֹת
> מַלָּח. וְתַלְמִידֵי חֲכָמִים יוֹצְאִין לְתַלְמוּד תּוֹרָה שֶׁלֹּא בִּרְשׁוּת נְשׁוֹתֵיהֶן שְׁתַּיִם שָׁלֹשׁ
> שָׁנִים; וְכֵן רַךְ וְעָנֹג שֶׁנַּעֲשָׂה תַּלְמִיד חֲכָמִים – אֵין אִשְׁתּוֹ יְכוֹלָה לְעַכֵּב. (אישות
> יד, ב)

A wife may restrict her husband in his business journeys to nearby places only, so that he would not otherwise deprive her of her conjugal rights. Hence he may not set out except with her permission. Similarly, she may prevent him from exchanging an occupation involving a frequent conjugal schedule for one

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41   Klein 1972:95. It appears that this example may contain an allusion to the Bible. Maimonides writes that the claim is ממנה נמנע הוולד "she was denied an offspring"; he did not use other words such as בגללו "because of him" or מחמתו "due to him," maybe because he was reminded of the words of Jacob to his barren wife Rachel התחת אלהים אנכי אשר מנע ממך פרי בטן "Can I take the place of God, who has denied you fruit of the womb?" (Gen 30:2; NJPS 1985). But Maimonides changed the words פרי בטן "fruit of the womb" with the word הוולד "offspring."

involving an infrequent schedule, as for example, if an ass-driver seeks to become a camel-driver, or if a camel-driver seeks to become a sailor. Disciples of the wise, however, may absent themselves for the purpose of studying Torah without their wives' permission for as long as two or three years. Similarly, if a man leading a comfortable and pleasurable life decides to become a disciple of the wise, his wife may not hinder him.[42]

A comparison with Maimonides' Arabic, in which the construction *lahū ʾan yafʿala* is widely used with the meaning "permission," may explain why יש לו לפעול appears three hundred times in Mishneh Torah yet only three times in the entire Mishnah. It may also explain why its meaning in Mishneh Torah has been narrowed down from the general sense "ability" to "permission" specifically. We claim that יש לו לפעול has become the automatic translation of the Arabic *lahū ʾan yafʿala* and that is what affected its distribution and meaning.

However, it seems that we can go one step further. It is worthwhile to examine Maimonides' words in Mishneh Torah not only where they match his language in the commentary to the Mishnah but also with respect to the cases where they differ. Indeed, it turns out that there are cases in the commentary to the Mishnah where it seems that the meaning is obligation, and when Maimonides formulated these laws in Mishneh Torah, he used constructions other than יש לו לפעול.

Tractate *Baba Qamma* says that a deaf person, a fool, a child, a slave, and a woman who have hurt others are exempt from paying the damage they have caused.

> חרש שוטה וקטן פגיעתן רעה החובל בהן חייב והם שחבלו באחרים פטורין
> העבד והאשה פגיעתן רעה החובל בהן חייב והם שחבלו באחרים פטורים אבל
> משלמין לאחר זמן נתגרשה האשה נשתחרר העבד חייבין לשלם. (משנה, בבא
> קמא ח, ד)

A deaf-mute, an idiot and a minor are awkward to deal with, as he who injures them is liable [to pay], whereas if they injure others

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they are exempt, [so also] a slave and a [married] woman are awkward to deal with, as he who injures them is liable [to pay], whereas if they injure others they are exempt, though they may have to pay at a later date; for if the woman was divorced or the slave manumitted, they would be liable to pay.

If they cannot be required to pay, what can be done? Maimonides writes in his commentary to this *mishnah*:

הד׳א כלה בין. ולכן לאלחאכם אן יצ׳רבהם שדה ליקטע אלאד׳יאת ען אלנאס.
(פירוש המשנה, בבא קמא ח, ד)

All this is simple, but the judge should beat them forcefully to prevent damages to people.

רָאוּי לְבֵית דִּין לְהַכּוֹת אֶת הַקְּטַנִּים עַל הַגְּנֵבָה כְּפִי כֹּחַ הַקָּטָן, כְּדֵי שֶׁלֹּא יִהְיוּ רְגִילִין בָּהּ. וְכֵן אִם הִזִּיקוּ שְׁאָר נְזָקִין. וְכֵן מַכִּין אֶת הָעֲבָדִים שֶׁגָּנְבוּ אוֹ הִזִּיקוּ מַכָּה רַבָּה, כְּדֵי שֶׁלֹּא יִהְיוּ מְשֻׁלַּחַת לְהַזִּיק. (גנבה א, י)

It is proper for the court to impose corporal punishment upon minors for theft, the punishment being made in proportion to their strength, in order that they should not become accustomed to stealing. The same procedure should be followed if they do other damage. Similarly, if slaves steal or do damage, they should be severely beaten in order that they should not become accustomed to doing damage.[43]

In Mishneh Torah, Maimonides qualifies his words—only slaves are severely beaten, but children are beaten only up to the extent that they can endure. However, in both cases, he did not use the construction יש לו לפעול but the construction ראוי לבית דין and in the participial form.[44]

43   Klein 1954:61.
44   The meaning of obligation is not found in Ullmann's comprehensive dictionary of Classical Arabic (Ullmann 1983:14), nor in Wright's Arabic Grammar (Wright 1896–1898:II, 149). Goshen-Gottstein (2006:188–89) writes this meaning (הכרח) without mentioning its uniqueness and cites one example from the Karaite literature. According to Sheḥadeh (1990:416 n. 5), this meaning is missing in the Arabic dictionaries (except the Ayalon-Shinar dictionary under the root K-W-N, p. 324,

In Maimonides' commentary to the *mishnah* in *Yebamot*, he discusses the validity of betrothing a little girl who is independent. Maimonides rules that the law in the case of a girl whose age is between six years and ten years depends on how clever she is. The court should assess her decision-making abilities to determine whether the betrothal is valid.

"ר' חנינה בן אנטיגנס אומר, כל תינוקת שאינה יכולה לשמר את קדושיה אינה צריכה למאן." והד'ה אלתי אינה יודעת לשמר הו אן תכון מן סתה אעואם פמא דונהא, **ולנא אן נמתחנהא עלי קדר נבאהתהא ובלאדתהא מן בעד אלסת סנין אלי תמאם עשר סנין**, אמא בעד אלעשר סנין פהי צריכה למאן צ'דורה ולו כאנת פי גאיה אלג'הל, ואקל מן סת סנין אינה צריכה למאן ולו כאנת פי גאיה אלפהם ואלד'כא. (פירוש המשנה, יבמות יג, ב)

"R. Hanina b. Antigonus ruled: any child who is unable to take care of her token of betrothal need not make any declaration of refusal." And a girl is considered unable to take care of her token of betrothal until six years of age. And from the age of six years until the end of ten years we should examine her according to the level of her intelligence and her foolishness, but after ten years she should refuse regardless, even if she was most foolish, and younger than six years should not refuse, even if she was the smartest and the sharpest.

קָטָן שֶׁקִּדֵּשׁ – אֵין קִדּוּשָׁיו קִדּוּשִׁין. אֲבָל גָּדוֹל שֶׁקִּדֵּשׁ אֶת הַקְּטַנָּה הַיְתוֹמָה, אוֹ קְטַנָּה שֶׁיָּצְאָה מֵרְשׁוּת אָב: אִם הָיְתָה פְּחוּתָה מִבַּת שֵׁשׁ – אַף עַל פִּי שֶׁהִיא נְבוֹנַת לַחַשׁ בְּיוֹתֵר וּמַכֶּרֶת וּמַבְחֶנֶת, אֵין כָּאן שֵׁם קִדּוּשִׁין, וְאֵינָהּ צְרִיכָה לְמָאֵן; וְאִם הָיְתָה מִבַּת עֶשֶׂר וָמַעְלָה – אַף עַל פִּי שֶׁהִיא סִכְלָה בְּיוֹתֵר, הוֹאִיל וְנִתְקַדְּשָׁה לְדַעְתָּהּ, הֲרֵי זוֹ מְקֻדֶּשֶׁת לְמֵאוּן. הָיְתָה מִבַּת שֵׁשׁ עַד סוֹף עֶשֶׂר – **בּוֹדְקִין אֶת יְפִי דַעְתָּהּ**: אִם מַבְחֶנֶת וּמַכֶּרֶת עִסְקֵי הַנִּשּׂוּאִין וְהַקִּדּוּשִׁין – צְרִיכָה לְמָאֵן; וְאִם לָא – אֵינָהּ מִתְקַדֶּשֶׁת לְמֵאוּן, וְאֵינָהּ צְרִיכָה לְמָאֵן. (אישות ד, ז)

If a minor betrothes a woman, his betrothal is invalid. If, however, an adult betrothes a female minor who is an orphan or is no longer under her father's authority, the rule is as follows: If she is less

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which translates *kāna laka ʾan tafʿala* as an obligation phrase), but he found four examples of it in Judeo-Arabic texts (432–34; 438).

than six years old, and even if she is an exceedingly clever and can recognize and make distinctions, there is no betrothal, and she need not perform the act of refusal. If she is ten or more years old, and even if she is exceedingly simpleminded, her betrothal is valid insofar as it requires refusal, seeing that she was betrothed with her consent. **If she is aged between six years and the end of her tenth year, she must be examined as to the state of her mind:** if she is aware of, and can make distinctions in matters of marriage and betrothal, she requires refusal; if not, the betrothal is invalid insofar as to require refusal, and hence she does not require it.[45]

Maimonides uses the participial form בודקין instead of the construction ‫יש לנו לבודקה‬ * (‫ולנא אן נמתחנהא‬).

Here is another example of using the participle form. The law states that a woman is betrothed by money, by a marriage contract or by intercourse. However, the third way of betrothal is frowned upon:

‫לכנה מן קדש בביאה או דון כ׳טבה מתקדמה, לאלחאכם אן יצ׳רבהמא מלקות מדרבנן ללא יתסיב אלנאס, ואן כאן אלזואג׳ צחיח ויצ׳ם זוג׳תה. (פירוש המשנה, קידושין א, א)‬

But those who betroth by intercourse or without an arrangement, the judge should strike them by rabbinical authority so people will not be profligate, even though the betrothal is valid, and he marries his wife.

‫אֲבָל אֵין מְקַדְּשִׁין בְּבִיאָה לְכַתְּחִלָּה; וְהַמְקַדֵּשׁ בְּבִיאָה – מַכִּין אוֹתוֹ מַכַּת מַרְדּוּת, כְּדֵי שֶׁלֹּא יִהְיוּ יִשְׂרָאֵל פְּרוּצִין בְּדָבָר זֶה, אַף עַל פִּי שֶׁקִּדּוּשָׁיו קִדּוּשִׁין גְּמוּרִין. (אישות ג, כא)‬

But one may not at the outset betroth by an act of intercourse. If he does so nevertheless, even though the betrothal is perfectly valid, he is liable to flogging for disobedience, in order that the Children of Israel should not become wanton in this matter.[46]

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45   Klein 1972:24–25.
46   Ibid., 2:21.

Before turning to the last topic, let us look at one law from the laws of *tefillah* (prayer), where the use of the construction יש לו לפעול seems out of the ordinary.

In the commentary of *Berakhot*, Maimonides explains that the evening prayer is long since it is not mandatory, unlike the morning or afternoon prayers:

> וקולה תפלת הערב אין לה קבע, לאנהא ליסת לאזמה מת׳ל שחרית ומנחה, ואנמא
> הי רשות אעני מנדוב אליהא פקט, פלד׳לך לם ישאחח עלי אול וקתהא ואכ׳רה,
> **ולאלאנסאן אן יצליהא אלי אן תטלע אלשמס.** (פירוש המשנה, ברכות ד, א)
>
> And they said the evening prayer is not fixed in time because it is not mandatory like the morning prayer or the afternoon prayer, and is רשות, meaning it is only optional, thus they were not strict about its beginning and end, and one is allowed to pray it until the sun rises.

The status of the evening prayer as optional is the reason for the extended time allowed for praying.

However, in the laws of prayer, Maimonides' formulation is different:

> תְּפִלַּת הָעֶרֶב – אַף עַל פִּי שֶׁאֵינָהּ חוֹבָה, הַמִּתְפַּלֵּל אוֹתָהּ יֵשׁ לוֹ לְהִתְפַּלֵּל מִתְּחִלַּת
> הַלַּיְלָה עַד שֶׁיַּעֲלֶה עַמּוּד הַשַּׁחַר. (תפילה ג, ו)
>
> The evening ʿamidah prayer, even though it is not obligatory, the one who prays it should/may pray (*yēš lō ləhitpallēl*) from the beginning of the night until dawn.[47]

From the use of the concession אף על פי שאינה חובה it seems that the time allowed for the evening prayer is shorter than expected, and that the construction יש לו להתפלל in this case indicates obligation rather than possibility (as opposed to what he wrote in the commentary on the *mishnah*). However, it is very difficult to interpret the *halakha* this way.

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47 Kellner's translation here (p. 24) is based on a later version of the printed text (Rome 1480 ff.): המתפלל אותה זמנה מתחילת הלילה עד שיעלה עמוד השחר, translated as: "has a proper time; it should be recited from the beginning of the night until dawn." The translation brought here reflects the original text.

Is it plausible that people would pray the evening prayer even later—into the next morning—just because it is optional, and Maimonides has to warn us against doing so? This seems highly unlikely. Therefore, it seems that the words אף על פי שאינה חובה are parenthetical, independent of the following sentence.

As mentioned above, the clear analogy between the Arabic original and the translation in Mishneh Torah provides strong evidence of the influence of Arabic on the construction יש לו לפעול. At the same time, we cannot ignore the existence of this construction in the Hebrew and Aramaic of the sages, even if its meaning is not the same, as well as its existence in Geonic language with the same meaning. Taking all of these factors into account teaches us that Maimonides did not invent the construction יש לו לפעול in Hebrew. Rather, he utilized an existing construction from MH to express the narrower meaning "permission" found in Geonic times, which was the result of Arabic influence. In addition, he significantly increased the frequency of its use due to the Arabic influence and for the sake of disambiguity.

It is also possible that Maimonides was stricter with the meaning of the construction in his Hebrew than in his Arabic writings, so much so that in passages where the meaning of the Arabic construction לה אן יפעל is "obligation" he chose a different construction in Hebrew.

In summary, Maimonides' innovation has to do with semantics and distribution.

4. An Infinitive + Overt Subject

The final construction that we will explore is an infinitive form that acts as a verb immediately followed by its subject, such as the definition of positive commandment number 40:

לְהַקְרִיב כֹּהֵן גָּדוֹל מִנְחָה בְּכָל יוֹם.

That the High priest is to[48] offer a meal-offering daily.[49]

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48   The words "is to" diverge slightly from Hyamson's translation: "shall offer."
49   Hyamson 1937:6a.

Fink[50] considers this construction to be an internal Hebrew development. However, here too a systematic examination of the data may lead to a different conclusion.

The most impressive concentration of this phenomenon in Mishneh Torah appears in the counting of the commandments, or more specifically in the positive commandments. In the definitions of fifty-nine out of two hundred and forty-eight positive commandments, the construction לפעול or להיות פועל precedes its explicit subject.

We know that the counting of the commandments at the beginning of Mishneh Torah summarizes the Book of Commandments previously written by Maimonides in Arabic. Therefore, it is appropriate to examine the Arabic parallels in the Book of Commandments with the construction infinitive + subject in the Hebrew enumeration of the commandments. A comparison reveals that over half of the parallels–thirty-one–are written with an infinitive or subjunctive followed by an overt subject in two basic formats:[51]

(a) An Infinitive + Subject

מניין המצוות, עשה ריד: לְשַׂמֵּחַ חָתָן אֶת אִשְׁתּוֹ שָׁנָה

That a bridegroom is to rejoice [with] his wife for a year
(Counting of the Commandments, positive commandment 214)

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50   Fink 1980:47.

51   Here is a list of the definitions of fifty-nine out of two hundred and forty-eight positive commandments in Mishneh Torah having the construction לפעול or להיות פועל + subject and their Arabic parallels in the Book of Commandments (the minus sign indicates that the syntax of the Arabic parallel is totally different): 17 subjunctive; 18 subjunctive; 23 -; 24 -; 26; 33; 36 infinitive; 37 subjunctive; 38 -; 40 subjunctive; 60 subjunctive; 61 subjunctive; 68 subjunctive; 69 subjunctive; 70 subjunctive; 71 -; 74 subjunctive; 75 subjunctive;76 subjunctive; 77 subjunctive; 87 infinitive; 92 -; 93 -; 94 -; 96 infinitive; 97 infinitive; 98 -; 99 infinitive; 100 infinitive; 101 infinitive; 102 infinitive; 103 infinitive; 104 infinitive; 105 subjunctive; 106 infinitive; 107 infinitive; 108 -; 109 -; 110 subjunctive; 111 -; 112 infinitive; 113 -; 114 -; 115 -; 116 -; 117 -; 118 subjunctive; 119 infinitive; 129 -; 139 subjunctive; 201 infinitive; 214 infinitive; 218 -; 219 -; 226 -; 227 -; 228 -; 229 -; 236 -.

ספר המצוות, עשה ריד: אלאמר אלד׳י אמרנא   באנפראד אלערוס לזוג׳תה
סנה כאמלה

ר׳ משה אבן תיבון: היא שצונו   להתיחד החתן עם אשתו
שנה תמימה

We are commanded that a bridegroom is to remain united with his
wife (rejoicing with her) for the duration of full year.[52]

All Arabic instances with an infinitive followed by a subject were
translated by Ibn Tibbon as the form לפעול followed by a subject. This
includes three commandments where this format appears in the Book
of Commandments but not in the counting of the commandments in
Mishneh Torah.

(b) Subjunctive + Subject

מניין המצוות, עשה עו: לְהַקְרִיב הַיּוֹלֶדֶת קָרְבָּן אַחַר שֶׁתִּטְהַר

That a woman after childbirth is to bring an offering after she is
cleansed.

(Counting of the Commandments, positive commandment 76)

ספר המצוות: אלאמר אלד׳י אמרנא   אן תקרב כל יולדת קרבן.

ר׳ משה אבן תיבון: היא שצונו   שתקריב כל יולדת קרבן.

We are commanded that a woman on giving birth is to bring an
offering.[53]

In the listing of the positive commandments, if the subject is mentioned
explicitly, then the format is always לפעול + subject. What happens in
the enumeration of the negative commandments? In this list, when the
subject is not explicit, the infinitive and the subjunctive alternate position
freely:

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52   Chavel 1940:28.
53   Ibid., 14.

רנג: שֶׁלֹּא לְהוֹנוֹת אֶת הַגֵּר בְּמֶקַח וּמִמְכָּר	רן: שֶׁלֹּא יוֹנֶה בְּמֶקַח וּמִמְכָּר
253. Not to wrong the stranger in buying or selling (Hyamson 1937:15a)	250. [That one shall] not do wrong in buying or selling (ibid., 15a)
רנב: שֶׁלֹּא לְהוֹנוֹת אֶת הַגֵּר בִּדְבָרִים	רנא: שֶׁלֹּא יוֹנֶה בִּדְבָרִים
252. Not to wrong the stranger in speech (ibid., 15a)	251. [That one shall] not wrong anyone in speech (ibid., 15a)
רלב: שֶׁלֹּא לְהִמָּנַע מִלְּהַחֲיוֹת לֶעָנִי וּמִלְּתֵן לוֹ מַה שֶּׁהוּא צָרִיךְ	רלא: שֶׁלֹּא יִמָּנַע מִלְּהַלְווֹת לֶעָנִי מִפְּנֵי הַשְּׁמִטָּה
252. Not to refrain from maintaining a poor man and giving him what he needs (ibid., 14b)	231. [That one shall] not refrain from making a loan to a poor man because of the sabbatical year (ibid., 14b)

However, when the subject is explicit, the format שלא יפעל is used exclusively. The format לפעול + subject is used only once in the three hundred and sixty-five negative commandments:

רעב: שֶׁלֹּא לִהְיוֹת אֶצְלֵנוּ אֵיפָה וְאֵיפָה, אֶבֶן וָאֶבֶן, שֶׁנֶּאֱמַר: "לֹא יִהְיֶה לְךָ בְּבֵיתְךָ אֵיפָה וְאֵיפָה"

272. Not to be[54] in our possession diverse measures and weights, as it is said: "Thou shalt not have in thy house diverse measures, great and small."[55]

Two questions arise:

1. Why are both the infinitive and the subjunctive used in the Book of Commandments while only the infinitive is used when counting the commandments in Hebrew?

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54   The word "be" diverges slightly from Hyamson's translation, "have."
55   Hyamson 1937:15b.

2. Why are a quarter of the positive commandments written as infinitive + subject while only one instance of this construction occurs in the list of the negative commandments?

The answer is due to the Arabic style of the Book of Commandments and the Hebrew style of Mishneh Torah. In the Book of Commandments, the constructions of the infinitive or subjunctive followed by a subject only occur in the positive commandments and never in the negative commandments. In the negative commandments, the one being commanded is always mentioned before the detailed content of the commandment. For example:

ספר המצוות, לא תעשה קלה: אלנהי אלד׳י נהי אלערל ען אכל אלתרומה

We are commanded against an uncircumcised (priest) eating of the heave-offering.[56]

ר׳ יוסף קאפח: האזהרה שהוזהר הערל מלאכל תרומה

מניין המצוות: שֶׁלֹּא יֹאכַל עָרֵל תְּרוּמָה

135. That an uncircumcised person shall not eat of the heave-offering.[57]

Therefore, it is not surprising that in the Hebrew style the constructions of the infinitive or subjunctive followed by a subject are found in the list of the positive commandments and not in the negative commandments.

However, Hebrew style influenced the common usage of this construction as well. In the enumeration of the commandments, Maimonides chained himself to a rigid format—every definition of a commandment begins with the form לפעול, as in:

מִצְוָה רִאשׁוֹנָה מִמִּצְווֹת עֲשֵׂה – לֵידַע שֶׁיֵּשׁ שָׁם אֱלוֹהַּ [...] יט. לְבָרֵךְ [...] כ. לְבְנוֹת [...] כא. לְיִרְאָה [...] כב. לְשְׁמֹר [...] כג. לִהְיוֹת [...] כד. לְקַדֵּשׁ [...] כה. לַעֲרֹךְ [...].

The first commandment from positive commandments is to know

56   Chavel 1940:48.
57   Hyamson 1937:12b.

that there is a God […] 19. to recite grace […] 20. to build […] 21. to revere […] 22. to watch over; 23. to be; 24. to sanctify; 25. to set in order.[58]

It is possible that the use of the infinitive emphasizes that the commandment is so inclusive and absolute that it cannot be limited to a single person or a single group of people. On the other hand, in counting the negative commandments the set format is שֶׁלֹּא followed by a finite verb or an infinitive.

Traditional Arabic grammarians recognized the interchangeability of the infinitive, the maṣdar, and the subjunctive, ʾan yafʿala, and called the particle ʾan maṣdariyya.[59] In the counting of the positive commandments where his morphological template is rigid, Maimonides adopts the Arabic syntax common in the Book of Commandments: infinitive + subject in place of subjunctive + subject. On the other hand, with the negative commandments, where their morphological format is שלא and their definitions in the Book of Commandments do not appear with an infinitive or subjunctive + subject, Maimonides does not require this unique construction and thus uses it only once.

Mordechai Mishor, in his study of the tenses in MH, collected the rare occurrences of an infinitive followed by an overt subject.[60] This construction is indeed very rare in Hebrew.

A comparison of Maimonides' Hebrew with its Arabic foundation teaches us that the unique construction לפעול + subject was created under Arabic influence, and the widespread usage of this construction in counting the commandments stems from morphological restrictions. Thus, aside from the definition of the commandments, this construction is quite rare in Mishneh Torah.

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58   Ibid., 5a–b.
59   Wright 1896–1898:II, 26.
60   See Mishor 1983:338–39.

Summary

The title of this article has introduced a question: was the language of Maimonides subjugated to Arabic, or did it exploit it? In actuality, we find support for both phenomena: conscious exploitation of aspects of Arabic syntax, as well as seemingly unconscious influence of Arabic on Maimonides' Hebrew. Sometimes it seems that Maimonides' language has easily adopted a syntactic construction, as in the first example. The second example—numerals—shows a possible preference for an infrequent form in Hebrew, but common in Arabic, due to considerations of convenience. The last two constructions demonstrate a conscious use of an Arabic syntactic construction for purposes of clarification and disambiguation as well as due to stylistic considerations—beauty and form.

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