It is with profound respect and deep personal reflection that I stand here today to honor the memory and legacy of our extraordinary mentor and rebbe. Beyond his scholarly contributions, Professor Halivni was a mentor par excellence. His genuine warmth, humility, and willingness to engage with his students created an environment where intellectual curiosity could flourish. He was not just a teacher of texts but a teacher of life, imparting lessons on resilience, integrity, and the relentless pursuit of knowledge. My presentation today will focus on a topic that we frequently discussed, namely the attitude of Maimonides towards the *stam*.

This issue has been debated by scholars such as Meir Feldblum and Robert Brody, each offering different perspectives on how Maimonides approached the *stam* in his legal and interpretative works.

One of the first to address this issue was Meir Feldblum. In Feldblum's view, Maimonides differentiates between the apodictic material of attributed statements, and the *stam,* and he considered

the apodictic statements binding while he considered the material of the *stam*, not binding - since it consists to a large extent of late, post amoraic material. Feldblum notes that this rule is not always operative since in many instances Maimonides did not deviate from the rulings of the *stam* in his decisions. In the end, Feldblum does not provide a definitive criterion for explaining when Maimonides accepts or rejects the rulings of the *stam* nor does he provide enough evidence to back his claim.

Robert Brody on the other hand, argues that Maimonides attributes the compilation of the ***entire*** Babylonian Talmud to Rav Ashi, and that Maimonides' mechanism for differentiating between binding and non-binding law is not on the basis of *stam* vs. attributed, but rather on the basis of the function of the material in the *sugya*, irrespective of it being amoraic or *stam*. Maimonides duly noted whenever any statements were not amoraic but rather of saboraic origin, in other words originating from the sages who lived after Rav Ashi and the later Ravina. One such instance is

found in his commentary to *Masechet Zavim* 4:6 where he notes that the Talmudic interpretation of the term *tum'at madaf* found in Niddah 7b in his view is not amoraic, but rather a saboraic gloss incorporated into the text by a scribal error. It is evident that Maimonides deemed the rest of the Talmud to be of amoraic origin and not saboraic as Feldblum suggested. Furthermore, Brody notes that a similar remark is also present in the anonymous notes published from the geniza by Menashe Lewin and attributed to a disciple of Maimonides. In them, the anonymous disciple remarks that he heard from his master that **some** sugyot were not amoraic but rather saboraic and were mistakenly incorporated into the Talmudic text. He cites the beginning of Baba Metzia and Kiddushin as examples of saboraic material. Clearly this disciple was also of the view that the Talmud is in its vast majority of amoraic origin and not saboraic, without distinguishing between the various strata. In Brody's view, the key to understanding Maimonides's approach is contained in his remark to *hakhmei Lonil* in his famous responsum in source 1 of the handout, where

he was asked to explain his view that forbidden intercourse is only punishable by lashes if preceded by illicit marital union given that it contradicts the underlying assumption of Rav Papa's question in b. Ketubot 35b. He noted that "one should not reject dicta from the *Talmud Arukh* in favor of relying instead upon the discursive strata of the Talmud, the *mas'a umatan shel Talmud*." Maimonides distinguishes between the two components of the Talmud, *Talmud Arukh and Ma'sa umatan shel Talmud* and while giving authority to one at the same time he demotes the authority of the other. Brody understands that these two strata are differentiated by their *function* in the sugya, *Talmud Arukh* versus *Ma'sa umatan shel Talmud*, and not by the nature of the statement, attributed versus *stam*. In his view, *Ma'sa umatan shel Talmud* can be either attributed amoraic statements or the *stam*. Brody understands that the issue addressed by Maimonides in his responsum relates to a question asked by Rav Papa, an amora of the 4th century, as we can see in source 1 of the handout. What remains unclear, however, is what constitutes *Talmud Arukh* on one hand and *mas'a umatan shel*

talmud, the discursive strata, on the other. As already pointed by Yaakov Lewinger, at times Maimonides not only deviates from conclusions arrived through discursive *shakla ve tari'a* but in many instances also reinterprets apodictic dicta in a very different way than presented and discussed by the Talmud. Brody does not provide a clear rule for the identifying or differentiating between the two dicta and a proper classification remains a desideratum.

In this paper I would like to propose that there is overwhelming evidence that indeed Maimonides views the *stam* in particular as *shakla ve tari'a* and a *perush* on amoraic statements and therefore it is not normative, thus allowing one to interpret the same apodictic material in a different manner than the interpretation offered by the *stam,* as Maimonides regularly does. I will demonstrate that upon a careful review of the *sugya* in b. Ketubot 35b discussed by Maimonides, the statement in question is not Rav Papa's question but rather the *stam's interpretation* of his question, and thus it is not normative. In one aspect, however, I do

agree with Brody, that unlike Halivni, Feldblum and Aharon Adler in his book on the early versions of the Commentary on the Mishnah, Maimonides' reason for deviating from the *stam* has nothing to do with the lateness of the *stam*, but rather due to its *function* in the sugya, as *shakla ve tari'a* and interpretation of the proto-Talmud.

There is an overwhelming number of instances in all of Maimonides's writings, from Mishneh Torah to Sefer Hamitzvot and in the final recension of his commentary on the Mishna, where his halakhic rulings and interpretations deviate from the *stam's* analysis of the rulings and statements of the Amoraim. We have been learning tractate Ketubot over the past two years as part of the Daf Hashavua program, the in depth learning of a folio a week, and we have observed more than ten such instances in b. Ketubot alone. A good indication of his approach, is Maimonides' attitude towards the common phrases employed by the *stam* "ופליגא" and "ולא פליגי", and they disagree or they do not disagree, when the

stam frames and juxtaposes various amoraic statements while explaining whether they agree or disagree. Maimonides regularly deviates from the framing of the *stam*. As noted by Aharon Adler in his book "Al Kanfey Nesharim," Maimonides in his later recension of his commentary on the Mishnah in many instances diverges from his early recension and rejects the framing of the *stam*. He noted such instances in m. Baba Metsi'a 3:8, Baba Batra 1:6 among others. One notable example is the framing of the *stam* in b. Berakhot 34b in source 2 of the handout. The Talmud cites the statement of Rabbi Hiyya bar Abba amar Rabbi Yohanan that all the prophets only prophesied with regards to the days of the Messiah. However, with regard to the World-to-Come "No eye has seen it." The *stam* then remarks that this statement argues with the view of Shmuel who said that the only difference between this world and the Messianic Age is with regard to servitude to foreign kingdoms. In other words, the *stam* assumes that the prophecies were to be taken literally, and thus the miracles prophesied by the prophets were literal changes in nature to be expected in the

Messianic Age and therefore inconsistent with Shmuel's conception of a mostly natural world in the Messianic days. Maimonides paradoxically rules like both opinions in his Mishneh Torah, as you can see in sources 3 and 4 of the handout. Maimonides understands that these two views about the Messianic Age are **not** mutually exclusive. This idea follows his customary approach to view the prophecies metaphorically and not as precursors of actual events, as he ruled in Mishneh Torah in source 5 of the handout. Adler notes many more similar examples where Maimonides in his Commentary to the Mishnah retracted from his earlier version of the commentary to specifically deviate from the *stam's* interpretation in similar situations among many others.

In one aspect Brody is however right. In only one of those instances Maimonides justifies his deviation from the *stam* by noting that it was possibly a late saboraic gloss, in m. Keritot 3:5. Although Adler has found another fifteen similar instances of deviations from the *stam*, in no other instance does he remark

about the dating of the *stam*. In some cases, as in m. Kila'im 8:8, Maimonides explains his reason for deviating from the *stam* in a similar fashion to his responsum noted before by explaining: "That saying written in the gemara Niddah is not a saying of the Talmud, but rather [it is a] commentary." Maimonides' reasoning is predicated upon the functional role of the phrase rather than its lateness. Its function renders it "outside" of the Talmud. It is not a result of late dating but rather its function in the sugya, in a very similar fashion to his justification of ignoring the comment in b. Ketubot 35b as noted in his responsum in source 2 of the handout mentioned earlier.

Notably, upon a careful review of the sugya in Ketubot we can clearly appreciate the pattern and function of the *stam*, as a commentary and framing of amoraic material. In the sugya in source 7 of the handout, Rav Papa asked Abaye a simple question: "According to Rabba, Abaye's uncle, in accordance with whose opinion does the Mishna follow?" The simple explanation of the

query would be that precisely because there are multiple possible opinions that are consistent with the Mishnah, as already noted by many of the medieval commentators including the *Shittah Mequbetset* on the spot, Rav Papa asks Abaye, Rabbah's nephew, whether he heard any tradition about his uncle's understanding of the Mishnah. The Mishnah is consistent with many tannaitic positions and thus can follow multiple opinions, INCLUDING that of Rabbi Yitzchak. The *stam*, however, on the other hand reframes the question as if Rav Papa was not merely asking a question, but rather by elimination of other opinions, Rav Papa was trying to **make a point:** that Rabba in Babylonia would have to follow the opinion Rabbi Yohanan in Eretz Israel. In order to do that the *stam* had to assume that forbidden intercourse is punishable by lashes even if not preceded by illicit marital union, and therefore the Mishnah could not be in accordance with Rabbi Yitzchak's opinion or any other tannaitic position. As we can see in source 7 on the source sheet, and as the *Shittah Mequbetset's* question indicates, excluding the explanatory addition produces a SIMPLER reading

of Rav Papa's question to Abaye and easily resolves the problems noted by the *Rishonim*. Furthermore, as tosfot already points out, the stam's framing of Rav Papa's question is very problematic since Rav Papa is of the same view as Rabbah, and thus why would he make his point about Rabbah rather than about himself? It is thus obvious why Maimonides was ready to deviate from the underlying assumption of the *stam* - that forbidden intercourse is punishable by lashes even when not preceded by illicit marital union - and to reinterpret Rav Papa's query.

As I discussed many times with Professor Halivni, it is also clear that Maimonides's attitude towards the *stam* had nothing to do with the dating of the *stam*, but rather with its function and normative status. Maimonides only distinguishes between *Talmud Aruch* and *Ma'sa umatan shel Talmud*, without ever discussing the dating of the material. His contention is solely that *Ma'sa umatan shel Talmud* is not normative. Maimonides leaves unclear exactly what constitutes the difference between these two strata but never

alludes to a specific chronology, except in an isolated instance as we discussed before.

I would like to propose that Maimonides envisioned a dual model of redaction of the Talmud in which the distinction between *Talmud Arukh* and *ma'sa umatan shel Talmud* is evident. The first part consisted of a *proto-Talmud* entirely of Amoraic teachings and the second consisted of a fluid dynamic interpretative layer explaining and contextualizing the first. The *proto-Talmud* encompasses both apodictic statements and attributed discussions as well as short explanations. It shares in many aspects a similar structure to that of the Mishnah, and for this reason Maimonides writes in his Introduction to the Mishnah, that Rav Ashi's work was similar in scope to Rabbi Judah the Prince's Mishnah. This idea of a *proto-Talmud* can shed light upon the oft quoted, ambiguous passage in BT Bava Metzia 86a: רב אשי ורבינא סוף הוראה , Rav Ashi and Ravina are the end of *hora'ah.* Here the term *hora'ah* is used instead of the common term "Talmud".

Maimonides understood the term *hora'ah* to refer to the apodictic material and amoraic rulings which we define as *proto-Talmud* but *not* the entire Talmud. In Maimonides' view, this text was completed by Rav Ashi and there was communal acceptance of its normative authority, thus the term *hora'ah.*

On the other hand, the second stratum consists of a fluid and dynamic interpretative layer, which was only incorporated into the Talmudic text at a later time. In my opinion it was completed sometime during the eighth century. This interpretative oral discussion comes to elaborate and to clarify the *proto-Talmud*. It is presented in an anonymous voice since it consists of a developmental and evolutionary sequence developed over centuries beginning with the initial publication of the *proto-Talmud.* Part of this interpretative layer dates perhaps as early as Amoraic times and spanned the entire era of the *saboraim* and part of the early geonic era until sometime during the eighth century when their expositions were finalized and incorporated into the

Talmud as the *stam*. Although the text was then closed, nonetheless interpretative activity continued; however, these later interpretations were no longer incorporated into the Talmudic text but rather came to be separate works of commentary. Such a dual structure of the Talmud provides an effective approach to understanding the diverse literary styles of the *stam* and of the earlier apodictic material.

These two strata are referred to by Maimonides as *Talmud Arukh* and as *mas'a umatan shel Talmud.* Maimonides describes the *proto-Talmud* as *Talmud Arukh,* since the term relates to a fixed tradition as in BT Meilah 17b. According to Maimonides' view this part of the Talmud is normative and its conclusions are binding. The interpretative stratum on the other hand is referred by Maimonides as *mas'a umatan shel Talmud, the discursive layer,* and its interpretations are not normative since interpretation was never closed and there was no communal acceptance of its normative authority, given that it was not canonized and it was

constantly evolving. This interpretative activity continued even after the *stam* was fixed and incorporated into the text and it extended up to Maimonides' own time. However, once the *stam* was incorporated into the Talmud and written copies were distributed, interpretative activity was carried on outside the text. Unlike Feldbloom, Halivni and Adler, however, the lack of normative force in the discursive layer has nothing to do with the timing of its composition but rather with its open and evolving nature. The interpretative and discursive stratum in Maimonides' view was never canonized and therefore is not binding.

This dual method of transmission of the Talmudic text is plausible from a historic perspective as well. As the Talmud during its early era was taught exclusively in an oral fashion, as numerous scholars have argued, such a dual system would consist of a *proto-Talmud* recited in a fixed format by the *garsan*, the academy's reciter, and of an organic interpretative oral discussion led by the head of the academy, the *sabora*. The *garsan* would

recite a portion of the *proto-Talmud* and then the head of the Academy, the leader of what Halivni terms *stammaim*, would lead a discussion and elaborate on the topic. These two functions in the academy, the *tanna*, reciter of the fixed text and the *sabora*, the Head of the academy who led the discussions on the fixed texts, are alluded to in geonic writings. *Sefer ha-Miktso'ot*, a *halakhic* compendium from the late geonic era, mentions the rulings of two categories of rabbis in the academy, the *Rabanan Tan'aey* and *Savora'ei*. Considering the dual model that I proposed, these two functions in the academy are well understood.

This dual method of transmission is also quite plausible even if Maimonides was of the view that the Talmud was committed to writing as early as the time of its final compiling by Rav Ashi. As already noted by R. Yehuda of Barcelona the author of *Sefer Haitim*, the Talmud during early geonic times was *mikzato katuv umiktzato al-peh*, partially written and partially oral. It is thus quite plausible that only Rav Ashi's *Talmud Arukh* was written while the *stam*, was transmitted orally until these two strata were combined

at the end of the 8th century. Precisely such an integration by the exilarch Natronai bar Havivai, upon bringing it to Spain at the end of the 8th century, is already noted by *Sefer Haitim*.

As Maimonides understood the authority of the Talmud to emanate from the widespread communal acceptance of the Talmud resulting from the concentration of the rabbinical leadership and community in a confined geographical area at the time of Rav Ashi, it is well understood that the *stam* in his view never achieved normative halakhic authority. The *stam* was never fixed and it continued to evolve even after the amoraic era and by nature it was fluid and tentative, thus in Maimonides' view it was never accepted by the community as a canonical text with normative halakhic authority.

Even in his *Sefer Hamitzvot* Maimonides demonstrates his approach through his creative reinterpretation of the *proto-Talmud* in opposition to the traditional interpretation presented by the *stam*. One such example can be observed in principle 9 where

Maimonides argues that multiple and repeated prohibitions are not to be counted as separate commandments and do not incur any additional punishments. His opinion is in complete opposition to that of the *geonim* who argued that all verses of the Torah are omnisignificant. In Maimonides view, repetitions of commandments are extraneous, *yeterei*, whose sole purpose is to reinforce an idea, in opposition to that of his predecessors that omnisignificance dictates that each and every verse serves a purpose of either convening additional *halachik* features derived by exegesis or to inflict additional punishment. Nahmanides in his glosses adopts the earlier position of the *geonim* and severely criticizes Maimonides for his departure from the traditional view. Maimonides derives his radical idea from the Talmud itself, from a *sugya* in BT Pesahim 24a in source 7 of the handout:

The Talmud attempts to derive the prohibition of obtaining benefit from forbidden items from the following verse: “the flesh that touches any unclean thing shall not be eaten: it shall be burnt

with fire.” Rav Papa deems the verse to be superfluous since the prohibition of consuming unclean offerings can be deduced by analogy from a similar prohibition concerning *ma’aser*. In his view this extraneous verse thus comes to teach an unrelated rule concerning obtaining benefit from forbidden items. Ravina challenges Rav Papa’s teaching and asks Rav Ashi:

אמר ליה רבינא לרב אשי: ואימא לעבור עליו בשני לאוין

“ Let us say [instead that the verse comes to teach us that] one violates two prohibitions [on its account]?”

The *stam* then inserts a note which elaborates and augments Ravina’s question; however, as we shall see Maimonides deliberately ignores it and interprets Rav Ashi’s reply without it:

Rav Ashi answers:

אמר ליה: כל היכא דאיכא למדרש - דרשינן, ולא מוקמינן בלאוי יתירי

Wherever it is possible to expound [a new law from a verse] we expound it, and we do not establish the verse for an extraneous prohibition.

Maimonides adduces from the terminology employed, לאוי יתירי, *extraneous* prohibitions, that *whenever* a verse is indeed assigned for an additional prohibition, that prohibition is extraneous and does not incur *any* additional punishments.

Maimonides analysis however is problematic. As we mentioned, his analysis conveniently ignores and contradicts the *stam*'s explanation of Ravina's question which is included in all textual witnesses before Rav Ashi's answer:

לאו מי אמר אביי: אכל פוטיתא ־ לוקה ארבע, נמלה ־ לוקה חמש,

צירעה ־ לוקה שש

Did Abaye not say: If one ate a *putita*, he incurs four sets of lashes, if he ate an ant he incurs five while one who eats a hornet incurs six?

In other words, the *stam's* explanation augments Ravina's question by quoting Abaye as affirming that when a prohibition is repeated its punishment is also increased proportionally. This passage according to the *stam's* interpretation directly contradicts Maimonides' position. As Nahmanides notes in his critical annotations to *Sefer Hamitzvot*, it is clear from this passage that, unlike Maimonides' theory, any additional prohibitions *do* carry additional punishments. What is even more remarkable is that in addition to ignoring Abyee's ruling here, Maimonides interprets *Abaye's* dictum in a completely different light. Unlike the *geonim* who interpreted Abaye's multiple punishments as a result of repeated prohibitions, Maimonides who does not subscribe to the idea of multiple punishments constructs the putitah, the ant and the hornet as complex creatures with multifaceted characteristics incurring a separate prohibition on *each* of those unique characteristics. In his view Abaye does not refer at all to multiple prohibitions and thus has no association to Ravina's question. It is obvious that Maimonides reinterpreted the *proto-Talmud* in a

matter consistent with his own view and rejected the *stam*'s interpretation of Ravina's and its association to Abaye's dictum, since it followed the *geonim*'s tradition.

This understanding of Maimonides' halakhic method and of his interpretative independence has the ability to revolutionize how one deals with the many instances where he deviated from the Talmudic sugya and can provide a clear and consistent solution to the innumerous questions raised by the commentators throughout the ages. As Yitzchak Isaac Halevy insightfully noted: "in any situation where there are many questions and the approach has been to solve each one on an ad hoc basis, it is incumbent upon us to realize that the key to understanding has been lost. The sign of a true approach is when a method can be found where everything is coherent and harmonious." Maimonides's attitude towards the stam does exactly that. Thank you.