

# Did Maimonides Really Say That?

*The Widespread Claim That He Condoned Wife-Battering May Be Mistaken*

by David E. S. Stein

**ABSTRACT.** That the famous Rabbi Moses Maimonides (Egypt, 1178) condoned—or even recommended—spousal abuse has been widely reported. The present article finds that this standard, literal interpretation of the passage (*Ishut* § 21.10a) has little to support it. That reading ignores the text’s figures of speech. And it fits neither the dynamics of the case, the legal history of the issue, nor the literary context. Rebutting the published “proof” that medieval legal experts read the passage literally, this article suggests that Maimonides’ words may have implicitly taken a stand *against* spousal abuse. It concludes by pondering the meaning of the standard view’s popularity.

“It is the great and unfortunate perversity [of human beings]  
that whatever they find written in books, they presume to be true.”

—Maimonides, “Letter to Marseilles”

## 1. Introduction

Those who wish to gauge the historical place of spousal abuse in Jewish life surely pay attention when scholars say that Rabbi Moses Maimonides (1135–1204) “recommended” that husbands beat their wives under certain circumstances.<sup>1</sup> For Maimonides is one of the leading figures in Jewish law, having (among many other achievements) edited a renowned compilation, the *Mishnei Torah*. Completed 826 years ago in Hebrew, every serious student of Jewish lore must reckon with it, for it was accepted as an authoritative legal manual in many Jewish communities for centuries, and among some Jews to this day.<sup>2</sup>

That Maimonides condoned—or even recommended—spousal abuse is widely stated in contemporary literature, especially in English. It appears in more than twenty journals, books, and reference works addressing a wide range of topics.<sup>3</sup> The authors concerned are reputable scholars with impressive credentials—including prominent historians, famous rabbis, and well-regarded writers on women’s studies and on domestic violence.

All of these authors are referring to a terse sentence—fifteen words long—that comprises the first portion of the tenth entry in the twenty-first chapter

of the *Mishnei Torah*’s section on domestic relations (*Ishut* § 21.10a). Their writing states as fact that this passage allowed spousal abuse.<sup>4</sup>

A few scholars (writing in Hebrew) have posed an objection, albeit a simplistic one.<sup>5</sup> Far more, however, have accepted the aforementioned interpretation—even those who have noted that such a ruling is uncharacteristic of Maimonides, unprecedented in rabbinic literature, and ambiguous in practice.

How robust is the claim that Maimonides permitted husbands to hit wives? To answer that, we will now thoroughly examine the passage in question.

## 2. Overall Character of the Mishnei Torah

A defensible interpretation of any passage in the *Mishnei Torah* must take into account the nature, the style, and the goals of the book as a whole.

First of all, the *Mishnei Torah* is a restatement. Referring to it as the Compendium (*chibbur*) and a reformulation of “the entire Oral Torah,” its editor claimed repeatedly that he did not add anything new to Jewish lore (beyond a few places where he explicitly said, “It seems to me . . .”). Later researchers have generally corroborated that claim. Hence, in-

terpretation of the book ought to begin by presuming that its views are consistent with those of earlier teachers.

Paradoxically, for the sake of staying true to the content of the tradents, Maimonides often did not repeat them verbatim in his compilation. Rather, the editor synthesized into an artful mosaic nearly all of Jewish knowledge and belief as had been committed to writing in his day.<sup>6</sup> Thus, any one sentence may contain words whose source lies in several earlier works. Yet although he combined those words in novel ways, Maimonides claimed—and much research has since confirmed—that we can and should expect the result to be consistent with the prior material, and traceable to it. (While he knew that much of his audience wouldn't care about that traceability, he believed that it would be vital to scholars like himself.) Hence, an interpretation of the book should be able to correlate Maimonides' words with the earlier sources.

The second overall factor in interpretation is the style of writing. In this, the editor took as his model the Mishnah—the centerpiece text of rabbinic literature, completed nearly a thousand years before his time—which is a Hebrew characterized by pithiness and precision. Maimonides too strove for his work to be concise and amenable to memorization. This editor practiced what he preached: “In discussions of Torah and of wisdom, let a person's words be few, yet full of meaning” (*Deot* 2.4).<sup>7</sup> In the *Mishnei Torah*, as in the Mishnah, what is *not* stated is as meaningful as what is. A related attribute shared with the Mishnah is its intertextuality—allusions to other passages in either the same or in prior works; with these embedded “hyperlinks,” verbiage was further compressed. As Twersky concluded, “careful attention to language is definitely woven into the fabric of Maimonides' codificatory achievement. Nothing about it is haphazard.”<sup>8</sup>

Consequently, the *Mishnei Torah* is the kind of work whose text warrants a close and contextual reading, just as with the Mishnah (or the Bible, for that matter).<sup>9</sup> Because a given passage's meaning is not found in that passage alone, the act of reconstructing that meaning requires mining both the depth and breadth of the text. Those who look only

to the words in front of them will not only be impoverished but also misled.

A further desideratum for interpretation is the editor's purpose for the book. In various writings, he related that one motive for composing his masterpiece was to further the moral and spiritual development of all Jews.<sup>10</sup> This creates a yardstick for the book's interpretation: How well does a given reading explain the passage in a manner that is consistent with this goal?

Maimonides' motive bears emphasis because the *Mishnei Torah* is so often referred to as a “law code.” In fact, he believed that laws (and their study) were a tool for developing personal integrity—of perfecting body and soul; and so those concerns pervade the entire work. It's not accidental that he began this restatement of Jewish lore with a section on the recognition of spiritual reality and its implications, followed by a discourse on personal development—the self-regulation of one's emotional and ethical dispositions. Spiritual and ethical training are an integral part of what at first glance appears to be legal material.<sup>11</sup>

### 3. Legal Background

As a restatement of more than a thousand years' worth of rabbinic teaching on all aspects of life, the *Mishnei Torah* expressed its ideas in terms of pre-existing categories of thought, terminology, and hypothetical cases. Therefore, to properly understand the *Mishnei Torah* and its formulations, it helps to look at prior works that Maimonides was responding to and summarizing: the halakhic (rabbinic legal) background of our passage.

In a tractate titled *Ketubot* (Marriage Contracts), the Mishnah had presented a model of how marriage is structured, in terms of the rights and duties of each party. (That model was elaborated upon soon thereafter in a related work, the *Tosefta*.) According to the model, the wife and husband form a partnership; the partnership is characterized by reciprocity and mutuality. To that end, the model imposes constraints on the will of each party. For a marriage to be viable, the wife cannot do whatever she wants—nor can the husband. In various cases of conflicting desires, the Mishnah explored *whose will should*

prevail—in such a way as to maintain balance in the relationship.<sup>12</sup>

Because a main goal of the Mishnah was to generate thoughtful discussion, it was crafted literarily to raise at least as many questions as it answered in the halakhic “rules” that it gave. The sages of the two Talmuds then took up the challenge to pose and elucidate many of those questions. Yet the Talmuds, too, were designed more to stimulate thinking than to define law and declare a subject closed; so they did not answer many questions definitively, either. However, they did refine the categories of discussion, and they explored various considerations that had only been implicit in Mishnah and Tosefta.

Primarily it was the world of the Mishnah, Tosefta, and Talmuds that Maimonides inhabited as he composed his *Mishnei Torah*. In the section titled *Ishut* (in which our passage appears), he methodically articulated the idealized model of marriage presented in those earlier works, while integrating the many facets of the arguments that they raised.

Like the classic literature, Maimonides presented marriage as being in part an economic partnership, including a predefined (and legally regulated) contribution of labor by the wife, in part to generate income for the household. (For a summary of the rabbinic economic model of marriage, see Excursus 1.) In addition, the model included a noneconomic category of wife’s “work”: acts that connote emotional and sexual intimacy—such things as making the bed, mixing his drinks, handing him small things that he asks for, and rinsing the dust off his feet. Some saw these acts as not compromising the husband’s integrity, for temptations to infidelity might arise if someone else did these things for him. Others emphasized that they were vital opportunities to nurture marital intimacy.<sup>13</sup>

#### 4. The Issue at Stake

In *Ketubot* 5:7, after speaking of spousal duties, the Mishnah mentioned a category of spouse (female or male) called the Refuser.<sup>14</sup> The text didn’t define the term, it simply prescribed a remedy. In this typically oblique manner, the Mishnah prompted the question of what it means when one party chooses not to carry out its duties. *When a wife reneges in*

*participating fully in the partnership, what is the proper recourse?* This is the question that underlies our passage in § 21.10.<sup>15</sup>

Actually, that question has three parts, corresponding to the wife’s three types of contracted work:

- What if the wife refuses to do income-producing work, while still expecting to receive salary and benefits from her husband? (Would it be fair for the husband to put her on unpaid leave? What if she then cannot afford to support herself? Should she be treated like a debtor?)

- What if she refuses to see to the management of the household—what if suddenly the flour is not being ground, the bread is not being baked, the clothes are not being washed, the infant is not being nursed, and the family’s mount is not being fed? (Is she still entitled to receive her salary and benefits? What about engaging a replacement worker—for example, a domestic servant or a wetnurse? If so, which party should pay for this? How should the financing be arranged?)

- What if she refuses to perform the non-economic tasks? (Again, what about hiring a replacement worker? Does that worker’s gender matter?)<sup>16</sup>

#### 5. The Emotional Dynamic That Faces the Court

More fundamental—and only implicit in the early sources—is this question: what interpersonal emotional dynamic would lead to a wife’s categorical refusal to work? Presumably it wouldn’t be a matter of “going out on strike” for a higher salary or better benefits, because her legal rights (according to the model) imply that she could more effectively pursue such interests via a lawsuit as plaintiff rather than as defendant.

Nor would a wife’s refusal to work mean that she wants out of the marriage. For the classic model—especially as conveyed by Maimonides—includes an arrangement wherein a wife can be granted an immediate divorce by declaring to the court that she’s thoroughly disgusted with her husband.<sup>17</sup> If she wanted divorce, she would do better to take that route.

Rather, the category of Refuser seems to refer to a certain polarization within the marriage. As the

Bible continually reiterates (starting with Adam and Eve!), human beings tend to avoid taking responsibility for their own emotional and spiritual well-being and destiny; and they almost relentlessly seek pretexts to justify that avoidance. Thus occurs a common pattern in a marriage: spouses convince themselves that they cannot get on with their own lives until their mate changes in some way; they each start trying to change their partner—who duly resists being made to change. And in one version of this dynamic, the husband takes on the role of authority figure while the wife takes on the role of rebel against authority. Both parties are trying to change the other but in reciprocally reactive ways.

Seen in this light, a wife’s categorical refusal to work is designed to demonstrate—via an outrageous action that demands attention—that she has her own will and cannot be controlled by her spouse. In other words, she’s caught up in resisting his goals for her. (Meanwhile, for his part, the husband is caught up in “correcting” his wife. However, it’s her refusal that “grabs the headline,” because hers is a more flamboyant act.)<sup>18</sup>

At this point, the case ends up in court. The identified problem is the wife’s unwillingness to take responsibility. She has chosen to act within an arena that is at least partly economic; certain tasks *need to get done*—and that work has an economic value. Given the dynamics of the case, what sort of intervention should we expect?

Clearly, a coercive, authoritarian reaction by the court would only compound the polarization in the relationship. A heavy-handed resort to force would be counterproductive, furthering the wife’s sense of victimization and resentment.

Intervention rather has three goals: resolve any urgent economic issues fairly; confront the wife directly with the logical consequences of her own dramatic irresponsibility; and prompt both parties to shift their focus—snapping the rigid dynamic.

## 6. The Passage in Question

Thus far we have established the following guidelines to interpretation:

- we can expect Maimonides’ words to correlate with earlier rabbinic sources;

- a reading that disregards how the editor uses the same words elsewhere is likely to be inaccurate;
- the interpretation ought to be in accord with the express goals of the book; and
- the interpretation ought to bespeak a judicial intervention that productively addresses the underlying emotional dynamic.

Now we are ready to encounter our passage in the *Mishnei Torah*. The text appears to be stable across all extant manuscripts and printed editions; it reads as follows:

כל אשה שתמנע מלעשות מלאכה  
מז המלאכות שהיא חייבת לעשותן  
כופין אותה ועושה אפילו בשוט.

*Kol ishah she-timmana mi-laasot melakhah  
min ha-melakhot she-hi chayevet laasotan,  
kofin ot-ah ve-osah, afilu ve-shot.*

Contemporary literature reflects a literal rendering, that of Rabbi Isaac Klein (cited in note 2) being typical: “A wife who refuses to perform any kind of work that she is obligated to do, may be compelled to perform it, even by scourging her with a rod.” (The translator supplies the phrase “by scourging her,” which is not in the Hebrew.) If this interpretation is accurate, it suggests that Maimonides understood that halakha (Jewish law) permitted a violent response, possibly by the husband.

Does this reading reflect the echoes of past rabbinic teachings, as expected? Does it accord with the words’ meaning in the context of their usage elsewhere in the book? The answer is no on both counts, according to philological analyses of the sentence (Excursus 2) and its key term (Excursus 3). The results show that rabbinic source texts on domestic relations used these expressions figuratively, and also the *Mishnei Torah* used them figuratively. Both facts argue against reading § 21.10a literally.

Furthermore, the passage, according to its conventional interpretation, makes no contribution toward the book’s goal of furthering the moral and spiritual development of both husband and wife. And its application would only intensify the case’s underlying dynamic. For the husband in particular to be empowered to use force would violate one of

the tenets of the rabbinic marriage model: “nobody can live in the same basket with a snake.”<sup>19</sup>

What if we read our passage in a manner that understands its terms consistently with their meaning in rabbinic literature and in the *Mishnei Torah*? This yields the following plain-sense rendering:

Any wife who refrains from doing work from among those tasks that she is obliged to do: we hold her to account, for her responsibility is to do the work. We get her attention via reproof and even via substantive (yet nonpunitive) interventions.

Such a reading leaves room for spiritual and moral development, and for productively resolving the conflict.

### 7. How the Passage Fits the Legal History, Including Maimonides’ Previous Writing

The conventional (literal) reading is inconsistent with halakha prior to Maimonides. To grasp that legal history, let us focus on R. Joseph Ibn Migash (Lucena, Spain, 1077–1141), a master teacher for Maimonides’ father, who in turn was our editor’s main teacher. Maimonides claimed to have made a special effort to collect the teachings of Ibn Migash (who published relatively little) and to put great store in his opinions. What did Ibn Migash teach on the case at hand?

In the Talmud of Babylonia, *Ketubot* 58b, one rabbi cites another rabbi to say: “[the husband] may hold his wife to [her commitment to do] income-producing work” (*yakhhol le-khof-ah le-maaseh yadeha*). In a commentary on that complex passage, Ibn Migash concluded that this claim is indeed true—so long as the wife is maintained by her husband, although only up to the point that her income matches what other local women get for their work: *hu yakhhol le-khof-ah she-taaseh lo shiur maaseh yadeha ho-iy! ve-nizonet mi-menu*.<sup>20</sup>

Further, Ibn Migash commented elsewhere on what to do in the event of her refusal. He held that a wife who refused work was so unlike a wife who refused sex as to require a different remedial approach. Writing in the customary Aramaic-Hebrew mix that comprised rabbinic legal jargon, he justified his conclusion on the grounds that with regard to work, the husband “has nearly all that creates the legal obliga-

tion in the matter” (*de-havei leih ke-khol mi she-mechayyev min ha-din ba-davar*).<sup>21</sup> That is, in the case of a work-refuser, the court holds the wife to the commitment she made upon marriage. (In contrast, when a wife categorically refuses sexual relations, the court only urges verbally that she relent, because a wife is not expected to engage in sexual relations against her will. In that case, the Mishnah’s indirect remedy—progressively reducing her golden parachute [see Excursus 1]—is theoretically appropriate.) Therefore, explained Ibn Migash, the court may engage in a direct remedy: “we place her under the delinquent’s ban (*shamta*).”<sup>22</sup>

In short, the legal issue was whether or not to employ the Mishnah’s suggested remedy for a Refuser. Ibn Migash made a twofold reply. First, a wife could be held to her commitment to income-producing work, within reasonable limits. Second, in the eyes of the law, a work-refuser is different from a sex-refuser, such that some direct remedy (beyond reproof) is justified. Both points needed emphasis because the Talmud had left the matter unresolved.

As for Maimonides, given that he referred to this rabbi as “my teacher,” we ought to expect that his writing would reflect these same ideas. And indeed it does. In a commentary on the Mishnah that Maimonides wrote as a prelude to the *Mishnei Torah*, he likewise held that remediation for a work-refuser should be handled differently: “However, if she does not want to do any [of the work] that a wife does for her husband, she is not a sex-refuser [whose will prevails]; rather, [we] hold her [to her (earlier) promise] (*kofin ot-ah*) in this matter, [and we resort to] any [direct] means of remediation [rather than only reproof or the Mishnah’s specified procedure] (*kol minei khefiyyah*).”<sup>23</sup>

Regarding § 21.10a, if Maimonides’ words there are read literally, then they both contradict his teacher and fail to restate his earlier point. However, if read figuratively, then—as one would expect—he makes the same necessary points as conveyed by his own earlier words and those of Ibn Migash.<sup>24</sup>

## 8. The Passage In Its Immediate Literary Context

Although we have just alluded to a judicial aspect to the situation, it has so far been only one of the levels on which our passage has operated—the same as throughout the *Mishnei Torah*, which assumes that persons may be held accountable for their actions before a court of law, and which was composed partly as a manual for judges. Now the text goes on to make the judicial aspect explicit. For it might happen that a husband asserts that the wife has not been doing the required work, yet she demurs from formally declaring refusal:

He sues on the grounds that she is not doing [her work], whereupon she states that she is not refraining from doing [it]: we assign a woman or neighbors [to establish the facts] between them.<sup>25</sup> This case is [decided, after the facts are established] according to what the judge sees as possible [to accomplish].

If it is established that the wife is refraining from work, then the court has flexibility in its choice of remedy. That is, the last sentence in § 21.10 applies to both parts of the passage: the setting is a lawsuit, a court case.<sup>26</sup>

Most published accounts of § 21.10a read it as permitting the husband to initiate violence.<sup>27</sup> Such a literal reading is incompatible with the judicial setting;<sup>28</sup> a figurative reading is not.

Widening the scope of the literary context slightly, let us look at the subsection immediately before § 21.10. It turns out that § 21.9, which is situated “while she was doing her work within her home,” is the reciprocal mate of § 21.10, which takes place while she is *not* doing her work within her home. Now, § 21.9 clearly reflects a balance of the two party’s competing interests: a wife is exempt from liability for damage to her husband’s property; he must accept any losses. Why? For the sake of the smooth functioning of the household and to avoid strife, says the text explicitly. And from the literary link between the two subsections, we can expect the same spirit of mutuality in § 21.10.<sup>29</sup> Again, a literal reading of § 21.10a is incompatible with that theme; a figurative reading is not.

## 9. The Case for a Reading of Abuse in § 21.10a

What published evidence supports the conventional (literal) reading that Maimonides is permitting wife-battering?

Of the seventeen writers cited (note 2), only two present actual arguments. Both of those researchers dwell on the question of who “compels” the wife—is it the husband or the court? Both find the passage ambiguous on this score.<sup>30</sup> To resolve the apparent ambiguity, they investigate how other medieval rabbinic authorities handled the passage. The logic is this: we defer to the expertise of rabbis who in general understood the *Mishnei Torah* well, and thus can be relied upon to tell us what Maimonides’ words meant. After finding that other Rishonim (leading rabbis of the 12th–14th centuries) believed that Maimonides was allowing a husband to beat his wife, both researchers conclude that it’s what our passage means.

This approach faces certain pitfalls, so the next section will assess how well the adduced texts support the case. But before proceeding to that issue, it should be noted that proponents of the “wife-beating” interpretation can still do much in the way of analysis of our passage on its own terms, so as to bolster their case directly.<sup>31</sup> See Excursus 4.

## 10. Interpretations by Medieval Authorities

In order for an imputed meaning (that is, the meaning according to a later rabbinic author) to be valid, it must be shown that the rabbi’s writing was free of other agendas that would distort his assessment of § 21.10a. Furthermore, his later explanation must itself be unambiguous. (Otherwise, any interpretation offered is contaminated by either the eisegetic abilities—or if you prefer, the psychic projections—of the medieval rabbi, or the contemporary researcher, or both.) If these methodological criteria are not met, then a given interpretation can be considered little more than speculation.<sup>32</sup>

What scholars have cited to establish that “Maimonides permitted wife-beating” are texts by six prominent rabbis: a gloss (*hassagah*) on the *Mishnei Torah*, by Abraham ben David (RaBaD) of Posquieres (12th century);<sup>33</sup> a hortatory tract (*Iggeret ha-Teshuvah*) by Jonah ben Abraham of Gerona (13th

century);<sup>34</sup> a comment (*chiddush*) on the Talmud, by Moses Nahmanides (RaMBaN) of Barcelona (13th century);<sup>35</sup> a comment (*chiddush*) on the Talmud, by Menahem ben Solomon Meiri don Vidal of Perpignan (13th century);<sup>36</sup> a comment (*chiddush*) on the Talmud, by Solomon Ibn Adret (RaShBA) of Barcelona (c. 1300);<sup>37</sup> a responsum by RaShBA (c. 1300);<sup>38</sup> a comment on the *Mishnei Torah*, in *Maggid Mishnah*, by Vidal Yom Tov of Tolosa (14th century).<sup>39</sup> Let's examine these sources in light of the above criteria.<sup>40</sup>

First, RaBaD's terse remark is ambiguous on several levels.<sup>41</sup> Thus, it is of little help in confidently establishing what Maimonides meant.

Second, it has yet to be shown that the work by Jonah Gerondi, or RaShBA's responsum, anywhere mentions or even alludes to *Ishut* § 21.10a. Although they do say that a husband may theoretically be exempt from prosecution after hitting his wife, the special circumstances that they cite do *not* involve a wife's refusal to work. Thus, it appears that both of these works had another agenda—and that they shed no light on Maimonides.

Third, RaMBaN and RaShBA did both paraphrase the characteristic language of § 21.10a, but they placed it in a court context; arguably, too, their usage reflected a figurative—rather than literal—understanding of Maimonides. RaMBaN was explaining a passage in Talmud,<sup>42</sup> while RaShBA was collating the statements of various Rishonim with a talmudic opinion.<sup>43</sup> Not only do these passages have another agenda, but also they are ambiguous—if not actually contrary to the claim being made.

Fourth, Meiri at first glance does portray § 21.10a as referring to direct and violent action by the husband. At the same time, he exaggerates (one might even say: caricatures) the position of *all* of the sources that he cites in this passage—which suggests that he's intentionally doing the same to Maimonides—apparently for rhetorical effect.<sup>44</sup> Later on, at any rate, he treats those opinions (which include nonviolent, court-imposed measures) as different ways of saying the same thing.<sup>45</sup> This implies that he was not taking those earlier formulations literally—which perhaps explains why he felt free to exaggerate their language.

Lastly, Yom Tov's comment on § 21.10a can be understood as showing how other authorities (the Talmud commentaries of RaMBaN and RaShBA mentioned above) later employed its characteristic phrase figuratively. Moreover, it can be interpreted as asserting that the main issue in § 21.10a is the distinction between responses for the case of a work-refusing versus a sex-refusing wife—i.e., that it doesn't address when violence might be warranted, nor who might be the one to administer it. The comment is ambiguous at best.

In short, *all of these sources fail the validity test*. Consequently, we are left with nothing substantial or compelling to back up the claim that later rabbis believed that *Ishut* § 21.10a referred to a husband's literal use of a switch. And thus the modern and widespread claim that Maimonides accepted wife-beating is left without support—other than what a cursory and hyperliteral reading of the passage might suggest.

## 11. Summary of Findings

Although conventional wisdom holds that Maimonides permitted a husband to beat his wife if she failed to do her housework, supporting evidence for that view is surprisingly sparse.

The common interpretation of § 21.10a fails all tests: It does not accord with the nature, style, or goal of the *Mishnei Torah*. It is inconsistent with the dynamics of the case, with the prior usage of the key terms in halakhic literature and in the book itself, and with the thread of ongoing legal discussions. Nor does it suit the immediate literary context. And it has yet to be confirmed by the readings of other early medieval authorities. On all counts, it is a stretch.

In contrast, a figurative reading of Maimonides' words seems to meet all the criteria considered (although it could still be wrong, of course). Furthermore, it implicitly takes a stand *against* spousal abuse. For by expecting a discontented husband to resort to a lawsuit—and by containing nothing to justify wife-battering—§ 21.10 means that the case of a work-refusing wife must be addressed in light of Maimonides' default position that spousal assault, battery, and injury are each prosecutable offenses.<sup>46</sup>

In conclusion, *the “fact” that Maimonides condoned spousal abuse is uncertain at best.* While the conventional wisdom may be correct, the case is far from proven, and much evidence actually points in the other direction.

## 12. What Can We Learn from Conventional Wisdom?

That so many modern scholars have put their faith in a “fact” with so little to support it—this is in itself a phenomenon worthy of reflection: What is it that prompts people to firmly believe facts with little justification? What fuels the popularity of the view that Maimonides condoned wife-battering? Here let me offer three possible responses, with brief remarks, for your consideration.

In some cases, perhaps, authors have innocently repeated the claim as made by others who have credentials. The present case may then serve as a reminder of the pitfalls of doing so.

Another factor that may condition one’s attachment to a particular reading of *Isbut* § 21.10a is one’s emotional stance regarding the premodern world (including its patriarchal impulses). It would be natural enough for those who find safety in the modern world to then view the words of Maimonides—a towering symbol of the premodern world—as a lightning rod.

What may be the most pervasive factor emerges from noting that § 21.10a contains violent language (whether it be understood literally or figuratively): violence tends to be unsettling and thus can distort both perception and logic. Happily, determining an accurate reading of texts like this is a worthwhile exercise. For the more we cultivate our ability to encounter such texts with presence of mind and emotional neutrality, the better we are able to confront real violence in our own lives. (And vice versa.) *Let that holy work continue!*



**Rabbi David E. S. Stein** was a 1988–90 member of the Jewish Working Group on Domestic Violence (Philadelphia) when he began to research the material for this article. Now a freelance editor of Jewish books in Redondo Beach (California), he is the

author of *Ketubah Kit for Rabbits: A Reconstructionist Approach*, eBookShuk.com (2003). His last article for *JORA* was “Initiatives to Address Physical Violence by Jewish Husbands, 218 B.C.E.–1400 C.E.” (2001). Email: <ravsulomm@earthling.net>.



### Excursus 1. Rabbinic Economic Model of Marriage: More Familiar Than You Think

As I read the source texts and Maimonides’ economic model of marriage, the closest analogy in our contemporary society is today’s *employer–employee* relationship.<sup>47</sup> The model in effect gives the husband the role of entrepreneur. As “employer,” he offers his spouse a weekly salary, plus substantial fringe benefits: comprehensive health insurance; weekly survivor benefits (for her daughters); life insurance (for her sons); kidnapping insurance (that is, guaranteed ransom payment in case of brigands, pirates, and the like); burial insurance; and a golden parachute (*ikar ketubah*). In addition, the model specifies not only a minimum wage but also regulates the

benefits; beyond those thresholds, the salary and bonuses are expected to be commensurate with the husband’s wealth.

In consideration for receiving the above, the wife as “employee” offers her spouse the proceeds from her skilled labor (typified by spinning wool into yarn), and she takes responsibility for certain kinds of ongoing work. Some of this work is what we think of today as “household chores,” but other parts involve what many people today look to a supermarket, gas station, and a fast-food restaurant to provide—namely, milled flour, baked bread, a ready vehicle, and cooked meals. (Back then, most people worked at home: the household was where most of society’s goods and services were produced.)

The wife may choose to become self-employed if she wishes—that is, if she believes that she has the means to support herself and is willing to take the risk. If so, she keeps her own earnings and receives no salary or benefits from her husband.<sup>48</sup>

In various ways, the model proceeds to constrain what the “boss” can legitimately ask of his “employee,” in order that she maintain her dignity and not be exploited. For example, her quota for producing marketable goods is regulated by local custom regarding what wives do.

### Excursus 2. Translation: The Idiom and the Odyssey

The heart of the matter—the operative clause—is *kofin ot-ah ve-osah, afilu ve-shot*. Let’s look at each element in turn.

*The Absent Subject.* The subject of the plural verb *kofin* is only implied. In Hebrew, first-person and third-person participle inflections have the same form, so the intended subject is either a “we” or a “they”—but who? Given that this style was typical of the Mishnah’s rhetoric too, the *lack* of specificity should be construed as meaningful: the subject is intentionally amorphous.

Indeed, it is a rhetorical play. The implied subject of both the Mishnah and Maimonides is actually the reader—who is being called to join the ongoing conversation; it is the immediate “we” of the study hall, the “we” that creates a community.<sup>49</sup>

*Kofin ot-ah.* The verb *kofin* is common throughout the Mishnah’s discussion of the institution of marriage, picked up and used often in the Tosefta and Talmuds as well. Although usually translated “compel” or “force,” such renderings can be misleading in halakhic discussion of marriage, where *kofin* is a legal technical term.<sup>50</sup> For what’s exerting the “pressure” is *the situation*, that is, the institution of marriage as defined by the legal model: when parties marry, they tacitly agree to certain expectations that are spelled out in advance in these texts. Thus, neither the reader, husband, wife, or court need to literally apply pressure or coercion; the verb’s usage is figurative.

Maimonides uses *kofin* in the exact same way, as a figure of speech. In *Ishut*, the term *kofin* appears thirty times, and in two-thirds of those instances it

serves to constrain the husband’s will rather than the wife’s will.

In this particular case, *ot-ah* (“her”) is clearly the verb’s direct object, so that what *kofin ot-ah* means here is that her will is not followed (unlike the similar case in § 14.8–14). Or, using an analogous English trope: “[we] hold her [to account]”—which, if taken literally, would also sound violent (as if “hold” meant grabbing her body without her consent).

*Ve-osah.* Literally, “and [she] does,” that is, “for she should do [the work]”—it is her responsibility. (It could also mean “so that she does [the work],” but the rest of the analysis suggests an emphasis more on process than on outcome.)

*Afilu.* This adverb *afilu* (“even”) is an intensive to convey that the term that follows (*ve-shot*) is not the first resort: start with remonstrations and then move to *ve-shot* remedies.<sup>51</sup>

*Ve-shot.* The modifier *ve-shot* literally means “with a switch” (that is, a flexible twig, rod, or whip). *Shot* is an unusual and therefore specialized term. In biblical Hebrew, it referred to a device used to *command attention and interrupt unresponsiveness by stinging*—and not to cause lasting pain or injury, nor to punish.<sup>52</sup>

The term is not used at all in either Mishnah or Tosefta.

In the two Talmuds, it appears only once in a halakhic context (*Ketubot* 77a–b).<sup>53</sup> At issue is how far the court should go in prompting a husband to divorce his wife (when that outcome is deemed necessary). There, chastising him with *shotei* (plural of *shot*) is counterposed with verbal chastisement: the choice is either “with words” or “with switches.” The Sages of course knew that other means of persuasion were available besides those two! Thus, “with switches” was a figure of speech (specifically, a synecdoche) wherein “switches” represented the court’s entire repertoire of nonverbal interventions. Because a switch is a concrete term that gets people’s attention, it was employed figuratively in the discussion, to heighten the rhetorical effect.

This case is about inducement, not punishment. To paraphrase Rabbi Abba in that passage, the intent was this: the husband is temporarily a slave to his passions; what’s needed is an intervention that

jars the man's perception so that he sees the bigger picture and remembers his real priorities.<sup>54</sup>

That lone, yet dramatic, legal usage of the word *shot* becomes a trope in rabbinic discussions of court remedies.<sup>55</sup>

In short, in rabbinic literature, *shot* is used figuratively. It fits a context where inducement is the goal; and it means “substantive measures”—as opposed to reproof.

Maimonides uses *shot* in the *Mishnei Torah* in just one other place in *Ishut*, to restate the talmudic case: *kofin oto u-makkin oto be-shot* (literally, “we force him and beat him with a switch”; § 15.7). There he adds a crucial verb, *makkin* (beat), to what would otherwise have read *kofin oto . . . ve-shot*, an exact parallel to the wording in § 21.10a. The difference is telling. One might assume that in § 15.7 the word *makkin* is superfluous, but that is contrary to how *Mishnei Torah* is supposed to be read (see section 2). Playing by the rules of the game, we must conclude that the two key terms in § 21.10a (*kofin . . . ve-shot*) do not by themselves convey actual hitting; the expression is figurative.<sup>56</sup>

### Excursus 3. Why Did Maimonides Prefer to “Switch” Than Fight?

The conventional reading of our passage understands the term *shot* literally as a weapon. Yet the word's very rarity in Maimonides' work and in rabbinic literature (see Excursus 2) is a sure sign to the reader that it bears a special (figurative) meaning. That is, its figurative sense is protected by its not being the usual word used to name an implement for striking.

But that's not all. With regard to implements for striking, rabbinic literature also offered Maimonides four other terms: *retzua*, *chevel*, *shevet*, and *pizra* (Rashi: *makkel*). These would have been far better terms to convey either a husband's or a court's use of force—had that been the editor's intent—for they already bear strong connotations of that type.<sup>57</sup> Compared to *shot* this is a “striking” difference that further argues against a literal reading.

Moreover, a term conspicuous here by its absence is *makkat mardut* (disciplinary flogging), which a court employs when offenders resist doing

their duty.<sup>58</sup> The expression *makkin oto makkat mardut* (beat him with disciplinary flogging) appears more than a hundred times in the *Mishnei Torah*—three of them in *Ishut*—but not here.<sup>59</sup> If Maimonides had thought that the wife should literally be flogged, he could easily have said so. This further suggests that his goal here was not to physically force the wife to relent.<sup>60</sup>

Maimonides may have been the first to employ the term *ve-shot* in connection with a wife's refusing to work. Yet its use is consistent with his editorial approach. Succinct and easy to remember, the term conveys a unique, precise, and relevant talmudic connotation.

### Excursus 4. Recipe for Establishing that Maimonides Condoned Wife-Beating

To prove the existence in our passage of a husband's license to abuse, mix together the following ingredients: show how that reading fits the book's overall nature, style, and goals; show how it matches the usage of terms in halakhic literature and in the book; show how it matches the dynamics of the case; and show it suits the immediate literary context. Combine the mixture with an explanation of how it does these things more elegantly and plausibly than the alternative explanation presented in this article. Garnish with answers to the following questions. *Serve chilled.*

1. How is a literal reading of § 21.10a compatible with the model of marriage that Maimonides constructed incrementally throughout *Ishut*?<sup>61</sup>
2. On what grounds can and should *kofin* be interpreted in § 21.10a to refer to the husband, as opposed to similar cases where *kofin* clearly does *not* refer to the husband?<sup>62</sup>
3. On what grounds can the word “scourging” or “whipping” or “beating” or “flogging” be supplied in translating § 21.10a, given that any such verb is conspicuous by its absence there?<sup>63</sup>
4. What is the source in rabbinic tradition for this supposed teaching of Maimonides? (So far as I know, none of several qualified researchers has been able to clearly identify such a source—nor even a good hint.<sup>64</sup>)

## ENDNOTES

<sup>1</sup> Although repeatedly denied, spousal violence has long been part of the fabric of Jewish life. (For evidence based on early medieval victims' testimony and corroborated by rabbinic courts, see my "Initiatives to Address Physical Violence by Jewish Husbands, 218 B.C.E.–1400 C.E.," *JORA* 2/3 [2001], pp. 25–49.) The present article proceeds to consider the opposite phenomenon, the "flip side" of denial: a tendency to perceive spousal abuse in texts where it may not actually be present.

<sup>2</sup> At the same time, this masterpiece has always been controversial, for many reasons. The literature on it is enormous; see, for example, Joseph Kafach's preface (Hebrew) to *Mishnei Torah* (1983), and Isadore Twersky, *Introduction to the Code of Maimonides*, New Haven: Yale, 1980.

<sup>3</sup> The list includes, in reverse chronological order:

- Elliot N. Dorff,\* *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: JPS, 2003), 159, 289 n. 14
- Carol Goodman Kaufman,\* *Sins of Omission: The Jewish Community's Reaction to Domestic Violence* (Boulder, CO: Westview, 2003), p. 64
- Emily Taitz,\* Sondra Henry, and Cheryl Tallan, "Jewish Women Under Islam," *The JPS Guide to Jewish Women* (Phila.: JPS, 2003), 67–68, 289
- Elliot N. Dorff, "Aspects of Judaism and Family Violence," *Embracing Justice: A Resource Guide for Rabbis on Domestic Abuse*, ed. Diane Gardsbane (Washington, DC: Jewish Women International, 2002), 45
- Elliot N. Dorff, "Family Violence (HM 424.1995)," *Responsa, 1991–2000: The Committee on Jewish Law and Standards of the Conservative Movement* (NY: Rabbinical Assembly, 2002), 776–77
- Gus Kaufman, Jr.,\* Wendy Lipschutz, and Drorah O'Donnell Setel, "Responding to Domestic Violence," *Jewish Pastoral Care: A Practical Handbook from Traditional and Contemporary Sources* (Woodstock, VT: Jewish Lights, 2001), 239–40
- Naomi Graetz,\* *Silence Is Deadly: Judaism Confronts Wifebeating* (Northvale, NJ: Jason Aronson, 1998), pp. 104–106
- Dov Rappel, *Ha-Rambam Ke-Mechanekh* (Jerusalem: Yediot Acharonot, 1997), 122
- Elliot N. Dorff, "In God's Image: Aspects of Judaism Relevant to Family Violence," *Resource Guide for*

*Rabbis on Domestic Violence* (Jewish Women International, 1996), 94

- Aviva Cantor, *Jewish Women / Jewish Men: The Legacy of Patriarchy in Jewish Life* (HarperSanFrancisco, 1995), 130.
- Avraham Grossman,\* "Medieval Rabbinic Views on Wife-Beating, 800–1300," *Jewish History* 5/1 (Spring 1991), 56 [but see below, note 30]
- Joseph Telushkin, *Jewish Literacy* (NY: William Morrow and Co., 1991), 487
- Mordechai Frishtik, "Violence Against Women in Judaism," *Journal of Psychology and Judaism* 14 (Fall 1990), 137
- Debra Orenstein, "How Jewish Law Views Wife Beating," *Lilith* 20 (Summer 1988), 9
- Julie Ringold Spitzer, *When Love is Not Enough: Spousal Abuse in Rabbinic and Contemporary Judaism* (NY: Women of Reform Judaism, 1985; rev. 1991), 11–12, 17
- Rachel Biale, *Women and Jewish Law* (NY: Schocken, 1984; rev. 1995), 94–95
- Samuel Morrell, "An Equal or a Ward: How Independent is a Married Woman According to Rabbinic Law?" *Jewish Social Studies* XLIV (Summer-Fall 1982), 198
- S. D. Goitein, *A Mediterranean Society*, 6 vols. (Berkeley: Univ. of Calif., 1976), viii, C, 1 = vol. 3, 185
- Isaac Klein, "Introduction," *The Code of Maimonides. Book 4: The Book of Women* (New Haven: Yale, 1972), xxxv
- Louis Jacobs, "Woman," *Encyclopaedia Judaica* (1971), 16:627
- Meir Havazelet, "The Husband's Participation in Corporal Punishment of His Wife" [Hebrew], appendix to Chaim Tykocinski's *Takkanot Ha-Geonim* (NY: Yeshiva University, 1959), 132.

\*I thank these authors for privately challenging my thinking on the topic of this article while encouraging me to develop and publish my own view. Also deserving of thanks for those reasons are Carole Stein, Marcia Cohn Spiegel, and Rabbis Gail Diamond, Robert Gluck, Vivian Mayer, Yaakov Menken, and Avi Shafran.

<sup>4</sup> Some authors have made their point only by implication (e.g., Goitein). See also note 30.

<sup>5</sup> Kafach, *loc. cit.*; Nachum Rabinovitch, ed., *Mishnei Torah* (Jerusalem: Maaliyot, 1990), *loc. cit.* (449). They

maintain that Maimonides' use of a plural verb inflection (see Excursus 2) refers to the court and not the husband. However, this argument is not conclusive, partly because the legal literature both before and after Maimonides often couches the matter (and even restates his position) using the singular, as we shall see. Grossman cites both of these authors in explaining why he has reconsidered his position; see note 30.

<sup>6</sup> Twersky, *op. cit.*, 346, 51. He adds: "Maimonides could and did fuse words, phrases, and fragments of multiple documents into one unified seamless formulation" (52–53). See also Menahem Elon, "Codification of Law," *Encyclopaedia Judaica* 5:639–641.

<sup>7</sup> All translations in this article are by its author.

<sup>8</sup> Twersky, *op. cit.*, 354.

<sup>9</sup> Considerations of this particular book aside, let's recall that the rabbinic enterprise presumes that word choice *matters*. The Midrash is the record of rabbis pointing to the nuances of biblical word choice; the Talmud is filled with rabbis scrutinizing the wording of other rabbis' statements.

<sup>10</sup> See discussion in Twersky, 61 ff.

<sup>11</sup> Twersky concludes: "His aim was to . . . provide knowledge, understanding, and even inspiration, and not merely to summarize practical conclusions and obligatory instructions. . . . The best way to approach Maimonides is to view him as a scholar vigorously pursuing and creatively uniting two inseparable disciplines [namely, law and philosophy]" (78, 509).

<sup>12</sup> Today, partisans (typically: Orthodox vs. feminist) debate whether the rabbinic model of marriage is good or bad for women. In my view, this is a displacement issue that unduly divides contemporary Jews. If spouses are behaving responsibly, the model works fine; if spouses aren't behaving responsibly, changing the system will not help. (That's why spousal abuse exists in egalitarian households as well as in Orthodox ones.)

<sup>13</sup> *Ishut* §§ 21.3–4, 7–8; see also Maimonides' *Commentary on the Mishnah, Ketubot* 5:5. His sources here appear to be Talmud of the Land of Israel, *Ketubot* 5:5; and Talmud of Babylonia, *Kiddushin* 70a. (Note that in the rabbinic marriage model, the sexual relationship per se is treated as an entirely separate category of mutual responsibility.) That Maimonides was knowingly describing an idealized, heuristic model of marriage is suggested by its

being somewhat at odds with the historical reconstruction based on the myriad Geniza documents from his own time and place. See Goitein, *op. cit.*, I:127–29; III:132–33, 341–33, 359.

<sup>14</sup> Hebrew, *moredet* (f.) and *mored* (m.). The conventional, literal rendering as "rebel" is mechanical and doesn't fit this context; that English word connotes forceful opposition and lack of success, neither of which is inherently applicable here. Further, in the rabbinic model of domestic relations, rebellion alone does not count; the label of *moredet* or *mored* applies only after an explicit public declaration of refusal. Additionally, the most common denotation of "rebel"—to disobey an authority figure—is clearly out of place when speaking of a *mored*. In contrast, rendering as "refuser" works for both genders, which is a proper reflection of the Mishnaic construction of the issue.

<sup>15</sup> Elsewhere in chapter 21, Maimonides treats corresponding questions of what's at stake when the husband refuses to do his part.

<sup>16</sup> Some feminists may feel that the work-refusing wife deserves cheers for resisting what they see as rabbinic law's near-slavery of women. Arguably, however, challenging the wife to fulfill her commitments might do her more to promote her moral development. Some might retort, "He's a grown man—let him rinse his own feet!" But such actions, practical in their time and place, are also symbolic. Contemporary egalitarian equivalents might include giving a shoulder-rub (after a long day's work) or checking our partner's body for ticks (after a forest hike). What does it mean when we're *not* willing to do these things for our partner?

<sup>17</sup> *Ishut* § 14.8. There Maimonides famously remarks, "For [a wife] is not like a captive that she must engage in sexual relations with someone whom she loathes."

<sup>18</sup> Physical violence may well be an avenue of expression in these arguments—possibly going both ways. (The conflictual dynamic described here is akin to the stereotypical teenage rebellion against parents. It is different than when a tyrannical husband consistently or cyclically beats a compliant wife, which is what most contemporary observers mean by "spousal abuse.") If so, then (according to the rabbinic model) such assault, battery, or injury is handled as a separate claim—if either party chooses to make the violence an issue; see *Mishnei Torah, Chovel u-Mazzik*, chaps. 2–5.

<sup>19</sup> A proverb featured in the Talmud of Babylonia, *Ketubot* 86b, and frequently in domestic-relations literature thereafter. It precludes actions (including violence) that betray the basic trust underlying a viable marriage; see Tosafot *Ketubot* 62b s.v. “Rav Huna.”

<sup>20</sup> As adduced in R. Menahem Meiri, *Beit ha-Bechirah* on *Ketubot*, p. 235 (Sofer edition, Jerusalem 5702), as quoted in Rabinovitch, *op. cit.*, 448–49.

<sup>21</sup> As adduced in *Shitah Mekubbetzet*, *Ketubot* 63a; I was not able to find R. Ibn Migash’s talmudic comments firsthand. Ibn Migash is explaining the *Sefer ha-Halakhah* of his teacher, R. Isaac Alfasi (Fez and Lucena, 1013–1103), *Ketubot* 26b, on the Talmud of Babylonia’s 63a. Ibn Migash cited R. Hai Gaon (Pumbedita, served 998–1038) as having made the same point as Alfasi, about a century earlier. This claim correlates with the like-minded responsum by Hai Gaon’s father that will be considered shortly.

<sup>22</sup> As presented in the classic sources and in the *Mishnei Torah*, a delinquent’s ban (*shamta* or *niddui*) was available to confront a delinquent with the consequences of her (or his) irresponsibility, such as nonpayment of a debt. Like anyone declared a delinquent, a wife under the ban would have been expected to live in a state of mourning: neither bathing (except for rinsing her face, hands, and feet), cutting her hair, laundering her clothes, nor wearing shoes; and she would have lived in confinement with her family, without receiving visitors or engaging in outside conversation except for business purposes. A ban lasted for 30 days (or until redress occurred) and was renewable. See *Mishnei Torah*, *Talmud Torah* § 6.14 and chap. 7.

Rabbi Ibn Migash’s approach is consistent with a responsum that the authoritative Rav Sherira Gaon issued a century earlier in Babylonia. Sherira Gaon (Pumbedita, served 968–1006) had been asked to address only a wife’s domestic-production tasks, such as milling flour and baking bread. He opined that “the husband has [the right] to insist that she do tasks that she is obliged to [do]” (*mihu iyt la-baal le-mikhpiyyah le-maavad melakhah de-michayyeva bahi*); and therefore “if he petitions the court to place her under the delinquent’s ban until she does [the work], we do so.” *Otzar ha-Geonim*, *Ketubot* 59b, #429, pp. 170–171. (I thank Avraham Grossman for calling this responsum to my attention.) On this responsum, see further at the end of note 50.

<sup>23</sup> *Ketubot* 5:7, which I have rendered idiomatically from R. Joseph Kafach’s Hebrew translation from Maimonides’ original Arabic.

<sup>24</sup> We saw above that in his treatment of the issue, Maimonides’ “teacher,” Ibn Migash, had recommended a delinquent’s ban. Maimonides himself (according to a figurative reading) chose language that, while consistent with Ibn Migash’s teaching, is more general. Why? Several considerations could have prompted Maimonides to adopt language that bespoke a range of responses. They include:

1. *The wife’s “intimate” (noneconomic) tasks*: it’s not clear that Ibn Migash had those in mind in his discussion of a work-refusing wife. Maimonides, however, strongly worded within the same chapter a prohibition that the wife not delegate those tasks to servants (both at Mishnah *Ketubot* 5:5 and *Ishut* § 21.4; cf. Talmud of the Land of Israel, *Ketubot* 5:6 [33b]). I speculate that with regard to those tasks, Maimonides believed that a delinquent’s ban was inappropriate. (Meanwhile, he might have agreed with other authorities who reasoned that for economic tasks, direct remediation—such as hiring a servant—might be better than a ban.)

2. *The court’s role in resolving the case*: A show of outside “pressure” can sometimes enable opposing parties to climb out of their entrenched positions while still saving face. But what is appropriate “pressure” depends on the particulars.

<sup>25</sup> In § 21.10b, the court first establishes whether or not the wife is actually fulfilling her duty. (Maimonides suggests a female witness not as a gesture of sympathy to the wife; rather, in the classic rabbinic model it would be unthinkable to put a male alone in the house with her.) This resort to witnesses does not apply to the case in § 21.10a, where all parties agree that the wife refuses to work.

<sup>26</sup> Nahum Rabinovitch made a similar point, *op. cit.*

<sup>27</sup> According to another literal interpretation (see note 5), the text refers to a beating imposed by the court.

<sup>28</sup> For another literal reading that at first glance is compatible with the judicial setting, see note 30.

<sup>29</sup> Similarly, the following passage, §§ 21.11–13, also reflects a nuanced balance of the spouses’ competing interests. By interpolation, § 21.10 should match the theme.

<sup>30</sup> Naomi Graetz tacitly admits that she found Maimonides' words ambiguous, for she asks rhetorically regarding the wife, "Who compels her?" but never answers that question in terms of the text itself (*op. cit.*, 105). Avraham Grossman, who in 1991 had perceived in our passage "the husband's right to beat his wife" and translated *ve-shot* as "by means of whipping" (*op. cit.*), now thinks it unlikely that the husband was the intended subject ("Violence Against Women [chap. 10]," *Pious and Rebellious: Jewish Women in Europe in the Middle Ages* [Hebrew] (Jerusalem: Zalman Shazar Center for Jewish History, 2001; rev. 2003), 382–388, 554. Both authors posit without evidence—but with alarm, because of the supposed "opening" that it would give abusive husbands—that what Maimonides may intend is that the court gives the husband permission to go home and compel his wife via blows (Graetz, *ibid.*; Grossman, 380 and personal communication). Apparently this same reading was tacitly assumed by at least two authors before them. Spitzer (*op. cit.*) rendered *kofin otah* as "the Beit Din [court] should compel her," yet she concluded that this ruling permitted a woman to be beaten "by her husband." Likewise, Frishtik (*op. cit.*) wrote: "According to Maimonides, it is permissible to beat one's wife"; but after adducing § 21.10, he hastened to explain: "Compelling her . . . is not the responsibility of her husband, but of a rabbinic court." In other words, the court empowers the husband to "whip" her.

However, in the classic rabbinic model, when it comes to settling disputes, a local court's main role is to serve as an honest broker, inducing the parties to negotiate a reconciliation (*pesharah*). (See, e.g., *Mishnei Torah, Sanhedrin* § 22.4. For more on early medieval court procedure—including a flow chart—see my previous *JORA* article, *op. cit.*, 36–8, 40.) The above interpretation of § 21.10 is thus at odds with the court's function as portrayed by the model. Meanwhile, if (as I contend) no literal "whipping" is involved in § 21.10, then the whole question of who administers it is moot.

<sup>31</sup> Some scholars have objected to reading figuratively, arguing that because Maimonides was writing for a general audience, and because a typical reader would take the expressions in question literally, then he must have meant his words literally (Grossman and Taitz, personal communications). I disagree. Practically speaking, he could not define (nor erase) every figure of speech in an age-old legal literature. Granted that they do bear some risk of being misunderstood. But that does not relieve the reader

of responsibility for reckoning with them. In the end, in order to derive the plain sense, one must always read contextually.

<sup>32</sup> Paradigmatic unbiased evidence would be a responsum (*teshuvah*), authored by a juriconsult for a real (not hypothetical) case that involved wife-beating, who did not have a personal stake in the outcome of the case, and who discussed § 21.10a explicitly. Standing in contrast as an example of writing with another agenda is the genre of Talmud commentary. At best, such a work is like a law review article discussing hypothetical situations; as any attorney or halakhist knows, such musings shouldn't be confused with legal advice for actual cases, let alone with a verdict handed down by a judge in a court of law. More often, however, a Talmud commentary is simply trying to reconcile apparent contradictions in the text of the Talmud itself—while collating the opinions of other commentators on those same issues. Regarding domestic violence, the "problem" is that a husband's alleged right to beat his wife is nowhere discussed in the Talmud (rather, it is implicitly denied); not surprisingly, contemporary researchers have so far failed to find talmudic commentators among the Rishonim who addressed that subject directly.

<sup>33</sup> Literally: "I've never heard of chastisement via switches for wives [or: women]" (*loc. cit.*).

<sup>34</sup> Graetz cites p. 11 of *Iggeret ha-Teshuvah* in both its first and second printed editions.

<sup>35</sup> *Chiddushim, Ketubot* 63a. Graetz and Grossman refer to this passage by citing only its excerpt in *Maggid Mishnah, loc. cit.* (see below), not realizing its original source. The brief quotation within the later work admits of their interpretation but does not prove it, while the fuller (and less ambiguous) text argues against it.

<sup>36</sup> *Op. cit.*, pp. 249–250, 259–260.

<sup>37</sup> *Chiddushim, Ketubot* 64a, s.v. *u-le-inyan pesak halakhah ba-moredet* (p. 194). Graetz and Grossman refer to this passage by citing only its excerpt in *Maggid Mishnah, loc. cit.* The critique in note 35 also applies here.

<sup>38</sup> Graetz adduces 7:477 and #102 of *Responsa Attributed to RaMBaM*, which she sees as two versions of the same responsum (108–9).

<sup>39</sup> *Loc. cit.*

<sup>40</sup> Significantly, neither Graetz nor Grossman have pointed to any rabbinic authority who explicitly cited

Maimonides' opinion in favor of his own view that wife-beating was *acceptable* (and indeed most of them *explicitly opposed* wife-beating).

<sup>41</sup> Modern scholars confidently state what RaBaD meant, yet they disagree! Contrast, e.g., Rappel's view (*op. cit.*, 122) with that of Graetz (*op. cit.*, 176, 203), and both of those with that of Grossman (*Pious and Rebellious*, 384, 388). Unrecognized is just how ambiguous RaBaD's laconic gloss is. Did he understand *ve-shot* literally or figuratively? Is he even judging the appropriateness of *ve-shot* to this particular situation? (After all, the main goal of Ravad's *hassagot* was to illuminate Maimonides' sources and point to alternative opinions in the halakhic literature. See Kafach, *op. cit.*, and Isadore Twersky, *Rabad of Posquieres* [Cambridge: Harvard, 1962].) And regarding who supposedly applies "persuasion" to the wife (the "husband or court?" question), his words can be read either way (or even that he saw no need to differentiate). To grasp what RaBaD is saying, one would need to check against his other writings—particularly his *hassagot* to Alfasi, which dwell on the question of a work-refusing versus a sex-refusing wife—and against his opinion as recorded by his students. This basic effort has yet to be reported in the literature that I'm aware of.

<sup>42</sup> RaMBaN's explicit agenda was this question: "I wonder how it is that we hold that [the wife] is not [treated in the same way as] a sex-refuser." He did not address a contemporary question like Grossman's: "To whom is given the authority . . . to strike the wife . . . —to the husband or to the court?"

<sup>43</sup> Ibn Adret portrayed this hypothetical case as being initiated "when she says, 'I will not do [the work].'" This has the ring of a formal declaration in court (or in front of witnesses). As with RaMBaN, his main issue was whether or not a work-refuser is to be treated like a sex-refuser. That he understood *ve-shot* figuratively is evidenced by the way he (arguably) used it to describe both of the two practical (typical and converse) options that he discussed: either the husband does not maintain the work-refuser, or else the court ensures that he gets hired help at her expense. (He also seems to have used *ve-shot* figuratively in his comment on *Ketubot* 61b, s.v. *Rabbi Yosé*; p. 190, top.) Neither remedial option is a punishment; rather, they are logical consequences of the wife's refusal; by either means, her wish not to work is respected while the husband's interests are addressed.

<sup>44</sup> Similarly, Meiri uses exaggerated, superlative epithets for his sources, rather than calling them by name.

<sup>45</sup> In Meiri's own opinion (*loc. cit.*, 264), a wife who refuses to see to household tasks should be "held to account regarding them according to the approach that we explained." This appears to refer back to that list—as a unit—of exaggerated restatements of the language of several authorities, including Maimonides.

<sup>46</sup> *Mishnei Torah, Chovel u-Mazzik*, chaps. 2–5.

<sup>47</sup> For an extended discussion of this analogy with source texts, see my *Ketubah Kit for Rabbis* (eBookShuk.com, 2003), Appendix A, "What is Marriage?"

<sup>48</sup> From the classic sources and Maimonides, it's not clear whether exercising this option also exempts her from the home-based management responsibilities; later authorities were divided on this question.

<sup>49</sup> *Supporting evidence*: When the talmudic rabbis later formulated parallel statements to the Mishnah, they conversed in Aramaic, a cognate language in which first-person and third-person participle inflections do differ. Those talmudic formulations used a first-person plural verb form that unambiguously implies "we."

<sup>50</sup> *Kofin* comes from the root *k-f-h*. (*Kofin* is its plural participle, implying present continuous—that is, normative—action.) The root appears in the Bible only once, as an inflection of the same verb, where the context suggests "tone down, suppress, subdue" (Prov. 21:14). (On the Bible's relevance to Maimonides' audience for understanding the meaning of Hebrew words, see Goitein, *op. cit.*, II:205–7; V:429–30.) In rabbinic literature, the exemplar of the figurative legal usage is Tosefta *Ketubot* 5:5, where this same verb (in the singular!) is applied reciprocally to both wife and husband—and thus clearly not in the sense of applying physical force: "A husband shall not insist (*eyn . . . kofeh*) that his wife nurse his friend's child; and a wife shall not insist (*eyn . . . kofah*) that her husband [agree] that she may nurse her friend's child." (The husband's interest in nursing decisions arises from the legal requirement that he pay his nursing wife a higher salary.)

Nine hundred years later, Rav Sherira Gaon's responsum (note 22) used the Aramaic cognate to *kofeh*—again in the singular, with the husband as its subject. But the Gaon went on to discuss what happens if the husband "petitions the court to ban her"; if the husband really had the power to act on his own, such court intervention

would have been superfluous. Thus, the Gaon employed our verb as a trope.

<sup>51</sup> On why a range of options is warranted—and not spelled out—see section 5 and note 24. Remedies need to be flexible also on purely economic grounds. A particular wife’s obligation to work depends on local custom (§ 21.1) and her wealth (§§ 21.6–7); meanwhile, what her husband is paying her in salary and benefits depends upon *his* wealth (§§ 12.10–11).

<sup>52</sup> Its root means “to swing, be light, move to and fro.” In the Bible, the noun form is rare; concrete usages appear only in 1 Kings 12:11, 14; Nahum 3:2; and Proverbs 26:3.

<sup>53</sup> The term also appears in a tale wherein the Angel of Death brandishes *shota de-nura* (Aramaic: the fiery switch) to induce a reluctant rabbi to give up the ghost (*Moed Katan* 28a, end). And in a few playful settings, the Talmud uses the Aramaic cognate *shotita*, understood by Rashi as a branch of the myrtle shrub.

<sup>54</sup> See Maimonides’ similar paraphrase at *Gerushin* § 2.20. Cf. Talmud of Babylonia, *Yevamot* 106a, where the court’s *kofin oto* is distinguished from *al korcho* (against [the husband’s] will).

<sup>55</sup> Other authorities roughly contemporaneous to Maimonides preserved “switch” as a trope (vs. words). See Isaac b. Abba Mari of Marseilles, *Responsa of the Provençal Sages* I:84, p. 315; Tosafot *Ketubot* 70a s.v. *yotzi*; and *RaMBaN*, *Kiddushin* 13b s.v. *ve-od de-Rav*.

<sup>56</sup> In § 15.7, Maimonides surely uses the term *shot* only because of its direct tie to the Talmud, in lieu of the more usual term *makkat mardut*, which is actual flogging with the same intent. See also note 59. The term *shot* appears only twice more in the *Mishnei Torah*, in *Talmud Torah* § 2.2 and *Melakhim* § 3.8. As in *Ishut* § 15.7, both contexts make clear that a literal switch is meant and that the purpose is to induce cooperation, and the verb “strike” is used.

<sup>57</sup> Cf. *Mishnei Torah*, *Rotzeach* § 2.14; *Sanhedrin* § 16.8–9. The terms’ prior connotations are:

(1) *retzua* (strap [of leather]) connotes judicial flogging, for it is the term classically used to describe it in rabbinic literature; see Mishnah *Makkot* 3:12–13.

(2) *chevel* (rope) connotes judicial flogging, for it is the means by which punitive flogging in Maimonides’ day was actually administered (*teshuvah* of Hai Gaon [c. 1000], *Toratan shel Rishonim* II, p. 41; as adduced by S. Assaf, *Ha-Oneshin Acharei Chatimat ha-Talmud*, p. 55).

(3) *shevet* (rod) connotes the exertion of authority in a household, for it alludes to the biblical passage where a master strikes a slave (Exod. 21:20–21); see also Talmud of Babylonia, *Horayot* 11b.

(4) *pizra* (stick; this Aramaic word lacks a direct Hebrew cognate; Rashi rendered it as *makkel*) connotes a husband’s taking the law into his own hands, for it alludes to the classic expression for “judicial self-help” (Talmud of Babylonia, *Bava Kamma* 28a; *Bava Batra* 99b; cf. Tosafot *Ketubot* 62b s.v. “Rav Huna,” end).

<sup>58</sup> Based on Talmud of Babylonia, *Ketubot* 86a–b. To be distinguished from punishment for a crime already committed.

<sup>59</sup> So far as I know, in halakhic literature the term *makkat mardut* is never applied to a refusing wife. Disciplinary flogging is, however, prescribed for a husband who refuses to divorce his wife when obliged by law to do so (*Gerushin* § 2.20; see the explanation there). By his use of different language there and in *Ishut* § 15.7 versus the wording in § 21.10a, Maimonides invites us to ponder the essential difference between the divorce-refusing husband and the work-refusing wife. My own answer is that in the former case, physical coercion can improve the situation; in the latter case, it can only make things worse.

<sup>60</sup> Rabinovitch (*op. cit.*, 449) asserts that *kofin ot-ah . . . ve-shot* is grounded in the court’s exigency jurisdiction (*Sanhedrin* § 24.9). This is wrong. As generally in the *Mishnei Torah*, Maimonides deals here with regular law; a wife who refuses to work is not per se an exceptional case that requires invoking emergency powers to maintain social order!

<sup>61</sup> Consider especially the mutually corresponding rights, duties, and constraints on the will of each party—structurally balancing the interests of one party against the other—that add up to portray marriage as a partnership based in reciprocity (see, for example, §§ 12.1–4, 13.14, 15.19–20).

<sup>62</sup> *Kofin* cannot possibly refer to the husband, yet the wife is its object in § 15.15; the context is clearly the court. Likewise in § 21.17; the couple is divorced, so clearly the husband no longer has any authority over her. Cf. § 12.11 and § 15.7, where the husband is the object of *kofin*, yet nobody suggests that Maimonides gives a wife the right to hit her husband. (Also, identify places in the *Mishnei Torah* or in rabbinic literature where *kofin* is used to refer clearly to only one of the parties to a dispute.)

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<sup>63</sup> Compare § 21.10a to the only other appearance of *kofin* . . . *ve-shot* in the *Mishnei Torah*, where Maimonides adds the verb *makkin* (“hit, strike, beat”). See the end of Excursus 2.

<sup>64</sup> Various commentators, such as RaBaD, *Migdal Oz*, and *Marei Mekomot* (Brooklyn: Kehot, 1984), have explicitly sought sources but to no avail. True, Meir Havazelet (*op. cit.*) pointed to a passage in the late 14th-century commentary by Rabbenu Nissim (RaN) on Alfasi’s *Ketubot* 63b, s.v. “Rabbi Yosé.” The passage begins, “When she says, ‘I will not do [work],’ *kofeh ot-ah ve-shutim*”; and it concludes, “so said the ‘gaon’ (*ve-khakh omer ha-gaon*).” Havazelet claimed that this was Maimonides’ Gaonic source for allowing a husband to hit his wife. But from analyzing the passage’s literary structure and the

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legal history of its components, it becomes clear that like his predecessor Ibn Adret (note 37), Nissim was cataloguing the approaches put forward by various Rishonim; thus, “so said the *gaon*” must refer only to the last of the several options listed (which is known to be the opinion of Ibn Migash, Sherira Gaon, and perhaps Hai Gaon as well; see notes 21 and 22). “Gaon” cannot refer back to the start of the catalogue (which, ironically, is surely a restatement of Maimonides’ words, not their source). In his 1958 edition of *Mishnei Torah*, R. Samuel Tanhum Rubenstein made the same mistake as Havazelet, albeit more subtly; *Sefer Nashim*, p. 170, n. 40. Grossman (2001), although identifying the *gaon* as Hai, otherwise repeated the misreading of Nissim’s passage, pp. 380, 385; so did Dorff (2003), p. 289, n. 14.