

Rabbi David Fried teaches Judaics at the Hebrew High School of New England in West Hartford, CT.

## THE IDEA OF A UNIVERSAL COVENANT IN THE THOUGHT OF RAV AHARON LICHTENSTEIN

A fundamental theme running through the thought of Rav Aharon Lichtenstein is that the particular responsibilities the Torah places on us as Jews supplement, but do not supplant, the universal responsibilities we have as members of humankind. This is evident from his 1975 classic essay, “Does Judaism Recognize an Ethic Independent of Halakhah?,” where he states “Natural Morality establishes a standard below which the demands of revelation cannot possibly fall.”<sup>1</sup> In a 1984 essay he reiterates:

Jewish values exist on two levels. In one sense, Judaism demands the perfection of universal values, moral and religious. In another, it posits new categories, broaching novel and largely particularistic demands. Sinai constitutes both the culmination of an antecedent historical process and a wholly fresh departure.<sup>2</sup>

In a 1986 address, “To Cultivate and to Guard: The Universal Duties of Mankind,” he begins with the unequivocal declaration:

When seeking to shape our personalities according to Torah values, we must relate to at least three levels of expectation and responsibility. These can be regarded as concentric circles, moving from the broader to the more specific:

- 1) the universal demands placed upon one simply as a human being;
- 2) the demands of a Jew;
- 3) the responsibilities of a *ben-Torah*, one who makes Torah study a central part of his life and embodies its values.

<sup>1</sup> Aharon Lichtenstein, *Leaves of Faith* II (Jersey City: Ktav, 2004), 36.

<sup>2</sup> *Leaves of Faith* II, 226.

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I wish to deal now with the first level. What are the basic, cardinal, universal values for which every person should strive?<sup>3</sup>

It is absolutely clear from this introduction, and certainly from the discussion that follows it, that R. Lichtenstein believes the special covenant we have with God as Jews does not excuse us from the basic responsibilities we have as human beings.

In an appendix to that same address,<sup>4</sup> R. Lichtenstein explicitly reflects on this idea and seeks to adduce support for it from the words of our sages. Analyzing each of the sources he quotes deepens our understanding of how the material on which he draws support his thesis.

### *Mi Ikka Midi*

The strongest support R. Lichtenstein adduces is from the Mekhilta, addressing the possibility that a Jew might only be liable for murdering a fellow Jew:

Issi ben Akiva says: Before the giving of the Torah, we were prohibited to murder. After the giving of the Torah, instead of being more stringent, are we now more lenient!?<sup>5</sup>

R. Lichtenstein further comments:

The *gemara* applies this reasoning with regard to various laws, asking simply, “Is it possible that there is anything at all (*mi ikka midi*) which is permitted to a Jew, yet nonetheless is prohibited to a non-Jew?”<sup>6</sup>

However, using this principle to support the idea that the Torah supplements our universal obligations but does not replace them is no simple matter. The Gemara deals with many exceptions to this rule that must be addressed.

### The Challenge of Shabbat

R. Lichtenstein deals with one of these exceptions, which was brought by his teacher, Rav Yitzchok Hutner as a proof to the opposite of R. Lichtenstein’s idea, namely that the Torah does indeed come to replace

<sup>3</sup> Aharon Lichtenstein, *By His Light* (Jersey City: Ktav, 2003), 1.

<sup>4</sup> *By His Light*, 19-26. See also “Does Judaism Recognize an Ethic Independent of Halakhah?” (*Leaves of Faith* II, 36-37), which cites many of the same sources to support his idea.

<sup>5</sup> *Mekhilta de-Rabbi Yishma’el*, s.v. *ve-khi yazid*.

<sup>6</sup> *By His Light*, 23.

the universal values that came before it.<sup>7</sup> The Gemara in *Sanhedrin* 58b derives that a non-Jew is prohibited from observing Shabbat. Jews, of course, are required to observe it. Thus, R. Hutner claimed that the universal value of not ceasing from work has been superseded by the Torah's value of Shabbat.

Tosafot<sup>8</sup> already noticed the apparent contradiction between the prohibition on non-Jews observing Shabbat and the principle of *mi ikka midi*. They answer that we do not say *mi ikka midi* on things that Jews are required to do, only on things they are merely permitted to do. If our Torah obligations do not supersede our universal ones, this idea seemingly makes little sense. If we cannot be allowed to violate a universal value, all the more so we should not be required to do so. Tosafot seem to understand that *mi ikka midi* does not mean that we remain obligated to our pre-Sinai obligations. It means merely that our new covenant cannot, on the whole, make things easier for us. It may sometimes, however, replace one value with another one. This would be consistent with R. Hutner's idea.

R. Lichtenstein, not surprisingly, offers a different solution to the apparent contradiction between *mi ikka midi* and the prohibition on a non-Jew observing Shabbat. He writes, without elaboration, "The sanctity of Shabbat does not abrogate the universal value of work, but rather adds an additional element to the picture."<sup>9</sup> He seems to understand that a Jew observing Shabbat is fundamentally different from a non-Jew refraining from work. While the latter would undermine the value of work, the former enhances it.<sup>10</sup>

Though R. Lichtenstein does not elaborate further on this issue, one could suggest another answer to the challenge based on the commentary of the Me'iri on *Sanhedrin* 59a. Explaining the prohibition on a non-Jew observing the Shabbat, he writes, "For this would appear as if he was one of our nation."<sup>11</sup> The Me'iri appears to understand that Shabbat is a special sign of the Jewish people's covenant with God<sup>12</sup> and the prohibition on a non-Jew observing concerns itself with not trying to usurp that special covenant (without converting and taking on the full responsibilities of a Jew). In this regard, the prohibition for a non-Jew to observe Shabbat

<sup>7</sup> *By His Light*, 20-21.

<sup>8</sup> *Sanhedrin* 59a s.v. *leka mide'am* and *Hullin* 33a s.v. *ehad oved kokhavim*.

<sup>9</sup> *By His Light*, 21.

<sup>10</sup> This is consistent with the religious value R. Lichtenstein places on work throughout chapter 1 of *By His Light*, see, e.g., 8-15.

<sup>11</sup> s.v. *ben noah*.

<sup>12</sup> As can be readily seen from Exodus 31:16-17.

would itself not have been in effect until Sinai, and is therefore not a universal value that the Torah would be commanding us to violate.<sup>13</sup>

### *Ever Min ha-Hai* from Non-Kosher Animals

There are several other exceptions to the principle of *mi ikka midi* that we find throughout the Talmud. Some of these are easier to explain than others. *Hullin* 102a makes it clear that, according to the majority opinion, for Jews the prohibition of eating a limb from a living animal (*ever min ha-hai*) applies only to kosher animals, whereas for non-Jews it applies to all animals. This is easily dealt with, since *ever min ha-hai* from a non-kosher animal is not permitted for Jews, it merely falls under a different prohibition. As R. Lichtenstein writes:

When trying to understand what are the normative demands placed upon us, there is not a great difference between saying that the old *berit* is gone and the new one comprehends all of the contents of the old, and saying that there exists a dual level of responsibility. Practically speaking, both positions agree that whatever is demanded of a person on a universal level is *a priori* demanded of a Jew as well; Torah morality is at least as exacting as general morality.<sup>14</sup>

### The Challenge of *Yefat To'ar*

The real challenges come from cases that are forbidden to non-Jews and genuinely permitted to Jews. The first of these appears in *Sanhedrin* 59a which explicitly raises the *yefat to'ar* as an objection<sup>15</sup> to the idea of *mi ikka midi*—that is the permission granted to Jewish soldiers to take captive women as spoils of war (albeit with a strict set of requirements to discourage them from doing so [Deut. 21:10-14]). This permission is granted only to Jews and not to non-Jews. The Talmud posits that “non-Jews are not involved in military conquest.” It is not entirely clear what this answer means, as non-Jews certainly have been involved in military

<sup>13</sup> The fact that the Gemara bases the prohibition on the verse, “Day and night shall not cease,” (Genesis 8:22) and not on Exodus 31:16-17 seems to indicate against the Me’iri, that it is indeed based on a universal value of work.

<sup>14</sup> *By His Light*, 23.

<sup>15</sup> The Gemara there also raises an objection from theft of less than a *peruta*, which a non-Jew would be required to return and a Jew would not. As the Gemara already explains, this is not because the Jew is fundamentally permitted to keep it, but because we can assume a Jew would forgive a debt of less than a *peruta* but we do not have that assumption regarding non-Jews.

conquests throughout history.<sup>16</sup> R. Chaim Soloveitchik explains that when the Gemara states that the leniency of *yefat to'ar* does not apply to non-Jews, it is referring specifically to the case when the woman involved is previously married.<sup>17</sup> *Mi ikka midi*, he explains, is only if the very essence of the prohibition does not apply to Jews, for instance if Jews were not prohibited from committing adultery, or if Jews were not prohibited from committing adultery with non-Jewish women. However, the specific mechanisms of how to effectuate or dissolve the bonds of matrimony may differ between Jews and non-Jews. He posits that military conquest is recognized for Jews as a mechanism that can dissolve a marriage, but not for non-Jews. Hence, the *yefat to'ar* is permitted not because a Jew is permitted to have relations with a non-Jewish married woman, but because being taken captive in the military conquest dissolves the bonds of matrimony with her husband, just as divorce would. Thus, at the time the Jewish man would have relations with her, she is no longer seen as married. We should no more wonder about why this works than we should wonder about why non-Jewish marriages in general do not follow all of the Jewish laws of *gittin* and *kiddushin*.<sup>18</sup> While this approach does not answer the inherent moral challenge of *yefat to'ar* (and it is doubtful any approach would do so satisfactorily), it does provide us a way of maintaining that the Jewish laws do not abrogate universal values, even if we might sometimes have different mechanisms of relating to them.<sup>19</sup>

### Meat from Animals in Post-*Shebita* Convulsions

The next challenge to *mi ikka midi* comes from a complicated Gemara in *Hullin* 32b-33a. Rabbi Shimon ben Lakish maintains that even though a

<sup>16</sup> It certainly cannot refer to the mitzvah of the conquest of the Land of Israel, since *yefat to'ar* applies in voluntary wars. (Either *only* in voluntary wars, according to Rashi and Tosafot, or *even* in voluntary wars according to Rambam; see *Minhat Hinukh* 532:1.)

<sup>17</sup> *Hiddushei ha-Grah Al ha-Shas*, *Hullin* 33a.

<sup>18</sup> See also Rabbi Elchonon Wasserman, *Kovetz Shemu'ot* 23.

<sup>19</sup> See Hatam Sofer on *Hullin* 33a, s.v. *shani bnei noah*, who explains similarly that military conquest would not dissolve a marriage for non-Jews. He explains the reason this is so is because the military conquest itself is forbidden. He further makes the radical claim that were there to be a permitted military conquest for a non-Jew, for instance when Nebuchadnezzar was commanded through the prophet to attack Egypt, *yefat to'ar* would in fact be permitted to them. However, if the Hatam Sofer is right that all military conquest is prohibited for non-Jews, there seems to be an even bigger problem. Instead of challenging *mi ikka midi* from *yefat to'ar*, the Gemara should have challenged it from military conquest itself, which is forbidden to non-Jews and permitted to Jews.

punctured lung would normally render an animal un-kosher, if the lung is punctured after the trachea has already been cut, the animal would remain kosher, because it is as if the lungs are already detached from the animal. Based on this assertion, the following discussion ensues:

R. Aha bar Ya'akov said: From Rabbi Shimon ben Lakish we learn that one may invite Jews to partake of intestines, but one may not invite non-Jews to partake of intestines. What is the reason? For Jews, [the prohibition of *ever min ha-hai*] is defined by [the act] of *shehita*. Since it was a proper *shehita*, [the intestines] are permitted. Non-Jews are permitted to eat an animal that was killed in any manner, so [the prohibition of *ever min ha-hai*] is defined by [the state of] the animal being dead. [Therefore, once the esophagus is cut, the intestines] become *ever min ha-hai*. Rav Papa said: I was sitting before R. Aha bar Ya'akov and I wanted to say to him, "Can there be anything (*mi ikka midi*) which is forbidden to a non-Jew, yet permitted to a Jew?" But I did not say it, because he had stated his reasoning. We have learned a *beraita* that goes against R. Aha bar Ya'akov: One who wants to eat from an animal before its life-force has departed should cut a *kezayit* of meat from near the place of the *shehita*, salt it well, soak it well, wait until the life-force of the animal has departed, and eat it. Both non-Jews and Jews are permitted to eat it.

This is significant for two reasons. It is the first time we have seen *mi ikka midi* used as a basis for claiming something should be permitted to non-Jews, as opposed to claiming it should be forbidden to Jews. Additionally, it is the first time we have seen anyone who disagrees with the principle of *mi ikka midi*.

### Two Understandings of *Mi Ikka Midi*

Using *mi ikka midi* as a basis for permitting something to non-Jews can be understood in one of two ways. The first is that the fact that it is permitted to Jews serves as a proof (*siman*) that it was never forbidden to non-Jews. This is consistent with Issi ben Akiva's idea that the Torah came to make things stricter, not more lenient, and R. Lichtenstein's idea that the Torah supplements our universal obligations. The second way we can understand it, though, is that *mi ikka midi* is the cause (*sibab*) of it being permitted to non-Jews. In this understanding, it was originally prohibited to non-Jews before the Torah was given. The Torah created a leniency for Jews. Almost as a technicality, since we are lenient for Jews, we must be lenient for non-Jews from then on as well. This understanding is completely different from Issi ben Akiva and R. Lichtenstein because it maintains that the Torah actually did make things more lenient

than the original universal obligations (even if following the giving of the Torah, we are lenient for non-Jews as well).

These two approaches are dealt with by R. Yehudah Rosanes (author of the *Mishneh la-Melekh*) in his book, the *Parashat Derakhim*.<sup>20</sup> He relates to the midrash in *Beresheet Rabba*<sup>21</sup> that Joseph told his father that his brothers were eating *ever min ha-hai*. He cites a dispute between R. Elyahu Mizrahi and R. Shmuel Yafeh Ashkenazi about how to understand this. Mizrahi explains that Joseph saw his brothers cutting meat off the animal after *shehita* while it was still convulsing, but did not realize this was permitted.<sup>22</sup> Ashkenazi objects to this understanding and contends that the children of Jacob still had the status of non-Jews. To him, the only reason why such meat would be permitted to non-Jews, is because of *mi ikka midi*. Since the Torah was not given yet, the meat of animals in post-*shehita* convulsions had not yet been permitted to Jews. Therefore, it would still have been prohibited to non-Jews. Rosanes explains that Mizrahi and Ashkenazi are arguing on precisely this point. Mizrahi's view is that *mi ikka midi* is a *proof* that it was never prohibited to non-Jews, whereas Ashkenazi believes that it becoming permitted to Jews is the *cause* for it to become permitted to non-Jews. This same debate plays out in the interpretation of the aforementioned passage from *Hullin*. R. Aha bar Ya'akov made the claim that *shehita* would define an animal as dead for Jews but not for non-Jews. The *beraita* rejected his opinion, presumably because of *mi ikka midi*. Based on these two ways of understanding *mi ikka midi*, we can interpret this rejection in one of two ways:

- 1) *Mi ikka midi* indicates to us (*siman*) that the idea that *shehita* does not define an animal as dead for non-Jews was wrong, and *shehita* in fact would have always defined an animal as dead for non-Jews as well.<sup>23</sup>
- 2) The idea that *shehita* does not define an animal as dead for non-Jews is fundamentally right. The meat really should be considered *ever min ha-hai* for non-Jews, but once it becomes permitted to Jews, *mi ikka midi* makes it permitted to non-Jews as well. (*sibab*).

<sup>20</sup> Chapter 1, s.v. *od nakdim mah she-amru be-bereshit rabbah*.

<sup>21</sup> 84:7

<sup>22</sup> Genesis 37:2

<sup>23</sup> The full *beraita*, which comes from Tosefta *Ohalot* 2:1, and is quoted on *Hullin* 121b, makes it clear that only a kosher *shehita* would define an animal as dead. This would have to be done by a Jew on a kosher animal. Thus, there is little practical relevance to saying it was permitted to non-Jews prior to the giving of the Torah, except according to the position that Rosanes adopts, that the descendants of Abraham were able to create a kosher *shehita* even before the giving of the Torah.

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Rashi (*Hullin* 33a, s.v. *ehad oved kokhavim*) explicitly adopts the first approach. He writes, “We don’t say [*ever min ha-hai* for non-Jews] is defined by [the state of] the animal being dead and therefore it would be *ever min ha-hai* for them.” In direct contrast to Rashi, Nimukei Yosef writes:

[*Ever min ha-hai*] for a non-Jew is dependent on [the state of] the animal being dead, and this would be *ever min ha-hai* since it was cut before its life-force departed. Nevertheless, [the *beraita*] teaches us that it is permitted because there is nothing that is permitted to a Jew, but forbidden to a non-Jew.<sup>24</sup>

For Rashi, *mi ikka midi* is a *proof* that R. Aha bar Ya’akov’s idea was wrong. For the Nimukei Yosef, his idea was fundamentally right, but *mi ikka midi* is nevertheless a *cause* for it to be permitted. Thus, what Rosanes presented as a dispute between Mizrahi and Ashkenazi can be seen to be a dispute between Rashi and Nimukei Yosef as well. While R. Lichtenstein will need to concede that not everyone agrees with his idea that the Torah does not create leniencies for Jews that they did not have before, he certainly has strong support for it, at least from the words of Rashi.

### Rambam’s Position

Based on the two possibilities for what *mi ikka midi* means, we can also gain greater insight into what exactly R. Aha bar Ya’akov disagrees with. If we follow Rashi’s approach, *mi ikka midi* is fundamentally the same as Issi ben Akiva’s view that leniencies were not created at Sinai. Thus, R. Aha bar Ya’akov must disagree with Issi ben Akiva and believe that the Sinaitic covenant completely replaces what came before it, and there is no reason to assume it can never be more lenient. If, however, Nimukei Yosef’s approach is right, R. Aha bar Ya’akov could actually fundamentally agree with Issi ben Akiva that, in general, the Sinaitic covenant needs to be stricter than what came before it, and disagree only with the idea that a leniency for the Jews can create a new leniency for non-Jews that did not exist previously.

Understanding R. Aha bar Ya’akov’s opinion is especially important, since Rambam seems to rule in accordance with him. In *Hilbkot Melakhim* (9:12-13), he writes:

One who slaughters an animal, even if he has cut both signs [the trachea and the esophagus], as long as it is still convulsing, limbs and meat detached from it are forbidden to *bnei noah* because of *ever min ha-hai*.

<sup>24</sup> Found in the *Shitot Ha-Kadmonim*, s.v. *ve-ehad goy*.



Everything which is forbidden to a Jew because of *ever min ha-hai* is forbidden to *bnei noah*. There are things that *bnei noah* are liable for that Jews are not. *Bnei noah*, regardless of whether the animal is kosher or not kosher, are liable for *ever min ha-hai* and *basar min ha-hai*. And limbs or meat that are detached from a convulsing animal, even if a Jew has already slaughtered both signs, is forbidden to a non-Jew because of *ever min ha-hai*.

Rashba (and many others following him) express astonishment that Rambam seems to rule according to R. Aha bar Ya'akov against the *beraita*.<sup>25</sup> Meshekh Hokhma<sup>26</sup> identifies a *beraita* in the Sifrei<sup>27</sup> that seems to have no problem (at least in theory) with the idea that the requirements for Jews could be more lenient than those for non-Jews. He claims that the *beraita* in the Gemara in *Hullin* is following the opinion of Issi ben Akiva, which the Rambam rejects on the basis of this Sifrei. This follows the first approach we mentioned that R. Aha bar Ya'akov (and by extension the Rambam) rejects any notion of *mi ikka midi*, and R. Lichtenstein would be forced to admit that his idea, while supported by some opinions, is against the Rambam.

Meshekh Hokhma's approach, however, is not the conventional approach to understanding Rambam. The more conventional approach is found in Lehem Mishneh.<sup>28</sup> He asserts that Rambam fundamentally does accept *mi ikka midi*. However, just like the Gemara in Sanhedrin was able to explain the exception of *yefat to'ar* by saying *lav bnei kibush ninhu*, here Rambam would explain this exception by saying *lav bnei shehita ninhu*. This would mean, as we explained earlier, that the essence of the prohibition applies equally for Jews and non-Jews. Nevertheless, there are different mechanisms for negotiating the boundaries between alive and dead, just as there were for the boundaries between married and single. While these mechanisms may sometimes lead to a leniency for Jews on a technicality, the essential values are not impacted. Within this approach, the possibilities for the precise point of disagreement between R. Aha bar Ya'akov and the *beraita* are numerous, but it is not about the fundamental idea of whether the covenant at Sinai builds on or replaces what came before it. Therefore, if he follows Lehem Mishneh's approach, R. Lichtenstein can still adduce R. Aha bar Ya'akov and Rambam as supporters of his fundamental thesis.

<sup>25</sup> *Torat ha-Bayit ha-Arokh* 2:3 (30a) and on *Hullin* 33a s.v. *tanya*.

<sup>26</sup> Deut. 12:23.

<sup>27</sup> Deut. 76, s.v. *ve-lo tokhal*.

<sup>28</sup> *Hilkhot Melakhim* 9:13.

It is worth noting that all of this assumes Rambam indeed rules in accordance with R. Aha bar Ya'akov. While this assumption is widely held, it is not universal. Maharam Shif, in a lengthy (and confusing) piece, expresses such astonishment that Rambam would rule according to R. Aha bar Ya'akov against the *beraita* that he tries to reinterpret Rambam in a way that does not contradict the *beraita*.<sup>29</sup> How exactly he interprets Rambam is not entirely clear. Rabbi Yaakov Nissan Rosenthal, in his commentary on Rambam, understands him to be saying that when Rambam forbade the meat of an animal in its post-*shehita* convulsions to a non-Jew, he meant only while the animal was still convulsing.<sup>30</sup> However, once the animal ceases convulsing, the meat would become permitted. As the *beraita* made clear, a Jew is similarly required to wait until the animal stops convulsing before eating the meat. Rambam understands this to be a Biblical prohibition based on the verse, "You shall not consume it with the blood."<sup>31</sup> If this is the correct interpretation of Rambam, then it is exactly parallel to the other case he gave in *halakha* 13. Just as the non-Kosher animal is *ever min ha-hai* for the non-Jew, but nevertheless prohibited to the Jew under a different prohibition, so too eating the meat while the animal is still convulsing would be *ever min ha-hai* for the non-Jew, but nevertheless prohibited to the Jew under a different prohibition. The Rambam could then serve unambiguously as a precedent that the Torah did not create any new leniencies for Jews (though it sometimes rebranded them under a different prohibition).

### A New Challenge from Rambam's Understanding of *Gid ha-Nasheh*

R. Lichtenstein also notes a challenge to his idea from the Rambam's interpretation of a Mishna in *Hullin* (7:6). The Mishna reads:

It [the prohibition of *gid ha-nasheh*; the sciatic nerve] applies on kosher animals but not on non-kosher animals. Rabbi Yehuda says it applies even on non-kosher animals. Rabbi Yehuda said, "Was it not prohibited to the children of Jacob, and non-kosher animals were still permitted to them?" They said to him, "It was said at Sinai and written in its appropriate location."

In Rambam's commentary to this Mishna, he writes:

Pay attention to the important principle that is brought in this Mishna, namely that it was prohibited at Sinai. You must know that all that we are

<sup>29</sup> *Hullin* 33a, s.v. *tanya*.

<sup>30</sup> Mishnat Yaakov on *Hilkhot Shehita* 1:2.

<sup>31</sup> *Hilkhot Shehita* 1:2 based on Lev. 19:26

prohibited or commanded to do today, we do only because God commanded Moses, not because God commanded it to other prophets who preceded him.<sup>32</sup> For example, we refrain from eating *ever min ha-hai* not because God prohibited *ever min ha-hai* to the descendants of Noah, but because Moses prohibited *ever min ha-hai* based on what he was commanded at Sinai for it to remain prohibited. Likewise, we do not circumcise because Abraham circumcised himself and his household. Rather, we do it because God commanded us through Moses that we should be circumcised in the same manner that Abraham was. So too *gid ha-nasheh*, we are not continuing a prohibition that was given to Jacob. Rather, it is a command given to Moses.

Within this formulation, the question of whether the Sinaitic covenant supplements or supplants responsibilities that came before it seems to be a dispute amongst the *tanna'im*. R. Lichtenstein's preferred position winds up being a minority opinion and one forcefully rejected by Rambam. However, R. Lichtenstein notes, in the *Mishneh Torah*, Rambam seems to reverse his position:

Six precepts were given to Adam... An additional commandment was given to Noah... So it was until the appearance of Avraham, who, in addition to the aforementioned commandments, was charged to practice circumcision. Moreover, Avraham instituted the Morning Prayer. Yitzchak tithed and instituted the Afternoon Prayer. Ya'akov added [the prohibition of eating] the sciatic nerve and he inaugurated the Evening Prayer. In Egypt, Amram (Moshe's father) was commanded additional *mitzvot*, until our master Moshe arrived and the Torah was *completed* through him.<sup>33</sup>

The phrase, “[it] was completed through him,” R. Lichtenstein writes, “suggests that there were various stages and that Moshe is the pinnacle, not that Moshe's Torah simply disposes of everything which had preceded it.”<sup>34</sup>

We must remember, though, that the Mishna was not discussing a purely theoretical matter, but one with real halakhic consequence. If we wish to pin our hopes on Rambam having changed his mind in the *Mishneh Torah*, it behooves us to see if the shift is merely rhetorical or if he

<sup>32</sup> The idea that only Mosaic prophecy has law-giving authority is consistent with the emphasis Rambam places on the uniqueness of Mosaic prophecy in his principles of faith.

<sup>33</sup> *Hilkhot Melakhim* 9:1.

<sup>34</sup> *By His Light*, 22.

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genuinely follows through with the practical consequences such a shift would entail. Unfortunately, at first glance, we seem to come up short. In *Hilkhot Ma'akhalot Assurot* (8:5), Rambam writes:

One who eats the *gid ha-nasheh* of a non-kosher animal is exempt because it [the prohibition] does not apply to a non-kosher animal. Rather, it applies only to an animal the rest of which is permitted. And [furthermore] it is not like eating from the remainder of the flesh [of the non-kosher animal] because the nerves are not included in the flesh, as we have already explained.

However, if we examine the Gemara on the Mishna in question, the situation is a bit more complicated. Whatever the simple meaning of the debate in the Mishna might have been, the Gemara (*Hullin* 100b) clearly understands it as being related to the principle of *ein issur hal al issur*, an object that is already prohibited by one prohibition does not become included in a second, with certain exceptions. Thus, the Gemara understands, both opinions in the Mishna agree to the following:

- 1) The nerves are included in the prohibition of eating a non-kosher animal (*yesh be-gidin be-noten ta'am*).
- 2) A second prohibition could take effect on something already prohibited if the second prohibition makes it forbidden to more people.

The point of disagreement is that Rabbi Yehuda believes that while non-kosher animals were not forbidden until Sinai, *gid ha-nasheh* was already forbidden to the children of Jacob. Since more people are included in the second prohibition than the first one, it can take effect. The anonymous first opinion in the Mishna, on the other hand, believes that both prohibitions were not forbidden until Sinai. They therefore include the same number of people, and the second one cannot take effect on something already forbidden by the first.

From the Gemara's analysis, it would seem clear that anyone who believes the nerves are not included in the prohibition of eating a non-kosher animal (*ein be-gidin be-noten ta'am*), would certainly think the prohibition of *gid ha-nasheh* applies to non-kosher animals, since the nerves were not previously prohibited. However, in addition to the opinions cited in the Mishna, the Gemara quotes a *beraita* with the opinion of Rabbi Shimon, who also believes *gid ha-nasheh* does not apply to a non-kosher animal. However, unlike the first opinion in the Mishna, R. Shimon believes you would not be liable for violating the prohibition of eating a non-kosher animal either. The Talmud (*Hullin* 101a) cites Rava's explanation of R. Shimon's opinion as follows:

In truth, he believes that nerves are not included in the prohibition of eating a non-kosher animal (*ein be-gidin be-noten ta'am*), but that case is different for the verse says, "Therefore the children of Israel shall not eat the *gid ha-nasheh* [Gen. 32:33]." [This refers to] one whose nerve is prohibited, but whose flesh is permitted and would exclude this case where the nerve would be forbidden and the flesh is [also] forbidden.

Thus, in R. Shimon's view, the real reason why the prohibition of *gid ha-nasheh* does not apply to a non-kosher animal is because the verse from the Torah, the way he reads it, specifically excludes that case. It has nothing at all to do with the debate around *ein issur hal al issur*.

Rambam, as quoted above, clearly indicates that the nerves are not included in the prohibition of eating a non-kosher animal. Since this is the case, when the Rambam rules that *gid ha-nasheh* does not apply to a non-kosher animal, it can only be for R. Shimon's reasoning. Once we know that Rambam is following R. Shimon's reasoning, the original debate in the Mishna about when *gid ha-nasheh* became forbidden is irrelevant to his ruling here. We are, therefore, free to assume that passage quoted above from *Hilkhot Melakhim* does, in fact, indicate that he changed his mind from the time he wrote the commentary on the Mishna until he wrote the *Mishneh Torah*. R. Lichtenstein is thus free to use Rambam's position as found in the *Mishneh Torah* as genuine precedent for the idea that the Sinaitic covenant supplements but does not supplant the responsibilities that came before it.

A close analysis of the sources R. Lichtenstein adduces in support of his idea that our Torah obligations add onto, but do not supplant, our basic human obligations, reveals it to be a more complicated picture than what he initially presents. He must acknowledge that there are major voices that disagree with him within the Jewish tradition. Nevertheless, he does have ample precedent of those who agree with him that, indeed, the Torah's values build on, and do not replace, our universal ones.