



Mitzvat Asei 7: Swearing in God's Name
By David Silverberg

The seventh entry in Maimonides' listing of the *mitzvot asei* (affirmative commands) ranks among the more ambiguous passages in *Sefer Ha-mitzvot*, and we find among later scholars numerous different approaches in identifying the precise obligation to which it refers. Maimonides writes:

The seventh command is that which He commanded us to swear in His Name when he must affirm or deny a given matter, for this gives prestige, honor and distinction [to God]. And this is what is said, "and in His Name shall you swear" (Devarim 6:13 & 10:20). And they [the Sages] said in explaining [this verse], "The Torah said to swear in His Name, and the Torah said not to swear in His Name." Meaning, just as it warns against [taking] unnecessary oaths, and this is a negative command (*mitzvat lo ta'aseh* 62), so is an oath a *mitzva* when it is necessary, and it is an affirmative command.

Therefore, it is not permissible to swear by any creature, such as angels and stars, except in the manner of omitting a connecting term, such as if one swears by the sun, and he refers to the Master of the sun. And in this manner our nation swears by the name of our teacher Moshe – how glorious is his name! – whereby the one swearing [actually intends to] swear by [Moshe's] Master, or the One who sent him. But whenever one who takes an oath does not have this intention and swears by one of the creatures, believing that this item has intrinsic truth to the point where he swears by it, he has transgressed by including something else together with the Name of Heaven... And to this matter the verse refers – "and in His Name shall you swear"; meaning, in Him alone shall you believe the truth by which it is worthy for a person to swear...

Two Possible Readings

Maimonides describes here a *mitzva* to "swear in His Name" when there arises the need to swear, such as in the context of a Bet Din (rabbinical court), where very often a defendant will be required to respond to the plaintiff's claim by taking an oath. The confusion surrounding this passage involves the question of which part of this process constitutes a *mitzva*. At first glance, one might explain that Maimonides considers it a *mitzva* to take an oath when circumstances require it. When a person is taken to court by a plaintiff demanding payment for an alleged debt, he bears a Torah obligation – "and in His Name shall you swear" – to obey the court's order to make an oath. This might be the implication of Maimonides' comment, "Just as it warns against [taking] unnecessary oaths, and this is a negative command, so is an oath a *mitzva* when it is necessary, and it

is an affirmative command." The Torah forbids uttering oaths unnecessarily, but obligates us to take oaths when the situation requires it.

Alternatively, however, one might explain that Maimonides defines this *mitzva* as requiring that when one makes an oath, he does so only in the Name of God, to the exclusion of anyone or anything else. According to this reading, never does the Torah deem one obligated to make an oath; even in the context of Bet Din, there is no specific *mitzva* requiring that one respond to the plaintiff's claim on oath. Rather, the Torah here demands that when a person swears – in circumstances where swearing is appropriate – he does so with the Name of God. This understanding of Maimonides' comments better accommodates the latter section of this passage: "And to this matter the verse refers – 'and in His Name shall you swear'; meaning, in Him alone shall you believe the truth by which it is worthy for a person to swear..." Here it appears that the *mitzva* demands not taking an oath, but ensuring to take an oath by invoking specifically the Name of God, and not the name of any other being.

Indeed, Nachmanides, in his critique of *Sefer Ha-mitzvot*, understood that Maimonides here expresses two different views. Nachmanides read the earlier section of this passage as indicating that swearing itself constitutes a *mitzva*, and vehemently objects to this notion. He then writes, "And the rabbi himself [Maimonides] rethought this and said: And to this matter the verse refers – 'and in His Name shall you swear'; meaning, in Him alone shall you believe the truth by which it is worthy for a person to swear..." Nachmanides' impression was that Maimonides somehow changed his position when he came to the closing section of this passage, and concluded that the *mitzva* entails only ensuring to swear by the Name of God, and not making an oath.

Of course, it is hardly conceivable that Maimonides would present two different definitions of this *mitzva* within the same passage; it is more likely that our reading of one of the two segments must be altered to accommodate the implication of the other.

But the more difficult problem in understanding Maimonides' view is the fact that compelling arguments can be raised against either of the two readings. Let us begin with the first reading, whereby Maimonides considers it a *mitzva* to take an oath in situations where an oath becomes necessary. Rabbi Chananya Kazis, author of the *Kin'at Sofrim* commentary to *Sefer Ha-mitzvot*, noted the unlikely conclusion yielded by this reading, namely, that a defendant who, despite his innocence, prefers to pay the claimed sum rather than swear, transgresses a *mitzvat asei*. If, indeed, the Torah casts swearing as a *mitzva* where it is warranted, then a person would be charged with neglecting a *mitzva* should he prefer to pay the plaintiff rather than utter a truthful oath to avow his innocence. As the *Kin'at Sofrim* demonstrates, the Talmud indeed addresses cases of litigants who prefer paying over swearing, and gives no indication that such a gesture transgresses a Biblical command. Seemingly, then, it is hard to conceive of swearing as a Torah obligation, even under circumstances where an oath is mandated.

The second understanding of this *mitzva*, as requiring not the oath itself, but rather that one not swear in the name of any being other than God, likewise encounters considerable difficulty. After all, in his list of the Torah's *mitzvot lo ta'aseh* (negative commandments, or prohibitions), Maimonides includes the prohibition against swearing in the name of an idolatrous deity (*lo ta'aseh* 14). He extracts this prohibition from a verse in the Book of Shemot (23:13): "You shall not mention the name of other gods; it shall not be heard upon your mouth." Once Maimonides lists a prohibition against

swearing in the name of other gods, it seems difficult to explain why he would designate a separate entry for an obligation to swear by God's Name. As Nachmanides contends, these are but two formulations of the same law; requiring that one swear specifically in the Name of God is functionally equivalent to forbidding swearing by an idolatrous deity. Why, then, would Maimonides assign two *mitzvot* for a single command?

For this reason, Nachmanides objects to the inclusion of swearing in the list of the 613 Biblical commands. There cannot, in his view, be an obligation to swear, and it is not necessary to designate a separate *mitzva* to forbid swearing by other gods. Both readings of Maimonides thus seem very difficult to explain.

In the sections that follow, we will discuss each of the two approaches mentioned, and explore possible solutions for the difficulties raised.

A *Mitzva* to Swear

At least two prominent writers followed the first approach in explaining Maimonides' comments, whereby he indeed considers swearing a *mitzva* under the appropriate circumstances. The anonymous *Sefer Ha-chinukh* (435) writes explicitly that according to Maimonides, one who refuses to take an oath when it becomes necessary to do so violates this *mitzva*. He clearly understood Maimonides as referring to an obligation to swear, and not merely to ensure not to swear in the name of false deities. This is also the implication of Rabbi Yosef Karo, in his *Kesef Mishneh* commentary to *Mishneh Torah*. Commenting on Maimonides' brief listing of the commandments in his introduction to *Mishneh Torah*, the *Kesef Mishneh* addresses a Midrashic passage cited by Nachmanides where the Sages discourage making oaths before one achieves a certain degree of spiritual excellence. Nachmanides seeks to prove on the basis of this passage that the Torah could not possibly consider swearing a *mitzva*: if only the nearly-perfect are licensed to take an oath, then surely the Torah cannot issue a command to swear. The *Kesef Mishneh* refutes this proof by suggesting "that it is a *mitzva* for God-fearing people to swear, whereas for other people it is forbidden." The *Kesef Mishneh* accepts the premise that Maimonides considered swearing itself a *mitzva*, and that he does not define this *mitzva* as merely demanding that one swear specifically in God's Name. The *Kesef Mishneh* was therefore compelled to limit this *mitzva*'s application to the especially righteous members of the nation, who have attained the spiritual stature at which swearing need not be discouraged.

As mentioned earlier, this reading yields the seemingly untenable conclusion that a litigant who agrees to pay the given sum rather than avow his innocence on oath has transgressed a Biblical command. How might the *Kesef Mishneh* and *Chinukh* respond to this challenge? How is it possible that one can be required by law to take an oath?

An answer to this question appears in a commentary to *Mishneh Torah* entitled *Cheil Ha-melekh* (Hilkhot Shevuot 11:1), which was authored and published in 1953 by an American scholar named Rabbi Chaim Yaakov Levine. Rabbi Levine explained that a litigant who offers to pay the claimed sum to avoid making an oath has certainly not transgressed this command. The *Chinukh* and *Kesef Mishneh* refer to a case where an individual does not have the given sum of money, and, though definitively aware of his innocence, nevertheless refuses to make an oath in response to the plaintiff's accusations. In this instance, there is no alternative to an oath, and the individual thus bears an

obligation to swear. But if he has sufficient resources and offers to pay the sum to avoid an oath, then this oath is not "necessary"; since the defendant is prepared to pay, the court has no need to solicit an oath. Thus, given that Maimonides considered swearing a *mitzva* only when an oath is necessary, no *mitzva* is involved if the litigant willingly offers to pay rather than swear.

Listing Both an *Asei* and a *Lo Ta'aseh*

Many other writers, however, understood Maimonides as referring to an obligation to swear only by the Name of God, rather than a *mitzva* to take an oath altogether. The *Kin'at Sofrim*, for example, in a lengthy discussion of this *mitzva*, strongly advocates this reading. Likewise, the Ra'avad, in his critique of Maimonides' brief listing of the *mitzvot* in the introduction to *Mishneh Torah*, speculates that Maimonides approached the verse "in His Name shall you swear" as a *lav ha-ba mi-khlal aseï* – a prohibition formulated by the Torah in the affirmative form. The Talmud generally classifies these prohibitions under the category of *mitzvot aseï*, affirmative commands, and thus Maimonides included this prohibition as one of the 248 *mitzvot aseï*.

But as we mentioned earlier, Maimonides also includes this prohibition in his list of *mitzvot lo ta'aseh*. How might we justify his allocation of two separate *mitzvot* in his listing of the commandments for a single prohibition?

The simplest answer, perhaps, is that Maimonides here follows his general approach that he formulated in his introduction to *Sefer Ha-mitzvot*, as the sixth of the fourteen rules by which he arrived at his listing of the 613 Biblical commands. There he writes that in cases where both an *aseï* and a *lo ta'aseh* are involved in a given *mitzva*, both earn separate entries in *Sefer Ha-mitzvot*. He brings as one example the commands concerning the observance of Shabbat and the festivals. The Torah both commands in the affirmative form that one desist from *melakha* (forbidden activity) on Shabbat and the festivals, and issues a prohibition against performing *melakha* on these occasions. Maimonides includes both admonitions in his listing of the *mitzvot* – both the obligation to observe a day of rest, and a prohibition against performing the forbidden activities. Nachmanides, in his critique to the introduction of *Sefer Ha-mitzvot*, notes other examples where Maimonides designates separate entries in *Sefer Ha-mitzvot* for the affirmative and negative formulations of a single *mitzva*, and disapproves of this method of classification. In any event, it should come as no surprise that Maimonides lists both the affirmative command to swear by God's Name and the prohibition against swearing in the name of false gods, given that this is his general pattern when confronting commands presented in the Torah as both an affirmative command and a prohibition.

According to this understanding of Maimonides' view, the debate between Maimonides and Nachmanides concerning the classification of the *mitzva* to swear must be seen in the broader context of their debate as to whether to list both the affirmative and negative formulations of a single Torah law.

Some writers, by contrast, claim that the *mitzvat aseï* listed by Maimonides to swear only by God's Name is not identical to the *lo ta'aseh* forbidding swearing in the name of foreign gods. Rabbi Dov Meisels of Warsaw (1798-1870), in his commentary to *Sefer Ha-mitzvot* entitled *Chiddushei Mahardam*, asserts that if one makes an oath without invoking the name of any being, he has, quite obviously, not transgressed the

prohibition against swearing in the name of a false deity. The *mitzva* listed by Maimonides adds to this prohibition the requirement to include the Name of the true God in one's oath. Additionally, Rabbi Avraham Feintuch, a contemporary writer, in his work *Pikudei Yesharim*, argues that the *mitzvat lo ta'aseh* forbids making an oath specifically in the name of a foreign god. If one utters an oath in the name of some being or force that is not acknowledged by any sect as a divine force, then he has not transgressed the *mitzvat lo ta'aseh*. Indeed, in describing the *mitzvat lo ta'aseh*, Maimonides speaks of one who "swears with one of the creatures that those who are mistaken think to be a god" (*mitzvat lo ta'aseh* 14). The *mitzvat ase* is therefore necessary to require that one invoke specifically the Name of God when uttering an oath, and not any other entity.

An Oath to Perform a *Mitzva*

Maimonides concludes his presentation of this *mitzva* by commenting, "And they [the Sages] have already stated at the beginning of [Tractate] Temura (3b), "From where [do we know] that one swears to fulfill the commandments? For it is written, 'in His Name shall you swear'." Maimonides here directs our attention to a relatively famous remark, which appears several times in the Talmud, sanctioning oaths taken to reinforce one's commitment to observe a given *mitzva*. Whereas an oath taken to perform a *mitzva* is generally deemed meaningless, given that we are already bound by the Torah's obligations, it is nevertheless legitimate to make an oath as a means of motivating oneself with regard to a particular *mitzva*. The Sages derived this rule from the verse, "and in His Name shall you swear."

Maimonides concludes his discussion of this *mitzva* with this remark, giving no indication of what he sought to prove from this Talmudic passage. Nachmanides understood that Maimonides cited this passage as proof that the Gemara considered it a *mitzva* to swear under the appropriate circumstances. Nachmanides proceeds to challenge Maimonides' inference from the Talmud; as noted by Rabbi Yitzchak De Leon, in his *Megilat Ester* commentary, divergent texts of the relevant passage in Masekhet Temura account for the variant conclusions drawn by Maimonides and Nachmanides.

But Maimonides' citation of the Talmud's remark in this context becomes very difficult to understand in light of his codification of that *halakha* in *Mishneh Torah*. In *Hilkhot Shevuot* (11:3), Maimonides writes, "It is permissible for a person to swear regarding a *mitzva*, that he will perform it, in order to motivate himself." Maimonides explicitly writes that this kind of oath is "permissible"; it is certainly not obligatory. How, then, does this *halakha* prove that the Sages saw it as an obligation to swear? If anything, that *Chazal* extracted from the verse "in His Name shall you swear" the law permitting making an oath to fulfill a *mitzva* proves that the Torah here grants license to make oaths, but imposes no obligation to do so.

And certainly if we adopt the second approach discussed earlier, that Maimonides defines this *mitzva* as requiring that one swear specifically in God's Name, the *halakha* allowing taking an oath to perform a *mitzva* gives no indication to this effect.

Rabbi Yitzchak Horowitz (rabbi in Hartford, Connecticut), in his commentary to *Sefer Ha-mitzvot* entitled *Yad Ha-levi* (1926), suggested that Maimonides adds this comment for an entirely different reason: to inform the reader that motivating oneself to perform a *mitzva* qualifies as a situation where an oath is deemed "necessary." While the

primary context where swearing involves a *mitzva* is that of a Bet Din, other occasions arise, as well, where swearing would constitute a *mitzva* – when one seeks to increase his religious motivation.

Of course, an important distinction exists between the *mitzva* of swearing in the context of Bet Din and situations where one swears to motivate himself towards religious observance. When Bet Din orders a litigant to take an oath, the *mitzva* (at least as understood by the *Sefer Ha-chinukh*) obligates him to swear; in the case of swearing to increase motivation, as discussed earlier, clearly no obligation exists. According to Rabbi Horowitz's reading, Maimonides recognized three general categories of oaths: entirely unnecessary oaths, which the Torah forbids; required oaths, which the Torah obligates one to make; oaths taken for the purpose of motivation, which a person has the option of making.

It goes without saying that this understanding of Maimonides' closing remark assumes the first approach discussed earlier, namely, that Maimonides defines the *mitzva* in terms of the oath itself, and not merely as requiring that one invoke specifically the Name of God. In this closing comment, as the *Yad Ha-levi* understood it, Maimonides extends the *mitzva* beyond the narrow framework of legal proceedings, to other situations where taking an oath would constitute a *mitzva*.