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“This is One of the Commandments that Devolve upon the Community”: *Hovot ha-Tzibbur* (Communal Obligations) as Resources for Imagining Jewish Community

Jon A. Levisohn & Marc Herman

Generally, in the Jewish tradition, a mitzvah is understood to be an obligation imposed upon, and carried out by, individuals. But some mitzvot operate differently. These mitzvot are not individual obligations; there is no one person responsible for carrying them out, and no one person can fulfill them. Instead, the community bears the burden of these responsibilities.

*These communal obligations are distinct from individual obligations to serve the community (e.g., paying taxes). They are also distinct from individual obligations that, when fulfilled, contribute to developing a certain kind of community. Instead, in these cases, Jewish legal authorities declare that the obligations themselves are communal, calling them *Hovot ha-Tzibbur* (“Obligations of the Community”) or *Mitzvot ha-Mutalot ‘al ha-Tzibbur* (“Commandments that Devolve on the Community”).*

This article names this category, identifies the relevant classical sources, discusses the central conundrum of the operationalization of communal obligations (i.e., who fulfills the obligation in practice?), and then—to promote the idea that communal obligations may serve as a resource for imagining Jewish community—distinguishes three modes in which these mitzvot function. An appendix presents the full dataset of over fifty communal mitzvot.

Introduction¹

The authors of the Jewish legal tradition understand most *mitzvot* as commandments or obligations incumbent upon individuals—most but not all. A variety of classical sources also describe communal obligations, that is, obligations that devolve upon the community as a whole, rather than on particular individuals. However, this class of obligations is under-theorized in both primary and secondary sources. That is, we have uncovered no attempt to compile a comprehensive list of such *mitzvot*. While we found references to communal *mitzvot* as a category, we did not find much conceptualization of this category, nor any general description of how such laws are operationalized, nor any delineation of its boundaries.²

The present inquiry intends to begin to fill that gap. We will work through some examples of communal *mitzvot*, clarify the bounds of this category, and probe the questions that surround its operationalization. But we intend more than descriptive historiography. Instead, we propose that this intriguing category might serve as a resource for constructive Jewish philosophy. Towards the end of the article, we turn to a somewhat more speculative effort to articulate three functional “modes” of communal *mitzvot*, in order to consider the possible implications

¹ This project emerged out of an earlier project, Jon A. Levisohn, “Community as a Means and an End in Jewish Education,” in *Jewish Day Schools, Jewish Communities: A Reconsideration*, eds. A. Pomson and H. Dietcher (London: Littman Library, 2009), 90–105. That earlier work benefited from contributions by Aaron Bayer, Steven Cohen, Elie Kaunfer, Shuli Passow, Dan Pekarsky, Alex Pomson, Israel Scheffler, Chaim Strauchler, and David Wolkenfeld. The category of communal *mitzvot* first came to the attention of the lead author of this paper when a student, Adam Mayer-Deutsch, asked about it. The authors also thank Jay Berkowitz, Adina Gerver, Jill Jacobs, David Rosenn, and the anonymous reviewers.

² There is abundant literature on communal authority in the Jewish tradition and in Jewish history, and on the obligations of the individual to the community. Those are distinct phenomena from the obligations that devolve upon the community.

for imagining Jewish community.

We begin with a prototypical case. Deuteronomy 16:18 instructs the Israelites to create a legal system:

You shall appoint judges and officers in all your towns that the Lord your God is giving you, according to your tribes, and they shall judge the people with righteous judgment.³

The instruction seems unambiguous at first, mandating the appointment of judges in each town. But whom does this instruction address with the collective “you?” Which specific individuals are commanded to establish a judicial system?

We might turn for clarification to Maimonides, the great Jewish jurist of the twelfth century. “It is a positive commandment in the Torah,” he declares at the outset of his *Laws of Sanhedrin*, “to appoint judges and officers in every province [*medinah*] and every district [*pelekh*].”⁴ The notion of “positive commandments,” *mitzvot ‘aseh*, is familiar from the Jewish legal tradition, denoting obligations that must be fulfilled, as opposed to negative commandments, injunctions to avoid certain practices. But, again, a positive commandment for whom? Maimonides does not specify.

In the thirteenth century, however, the anonymous author of *Sefer ha-Hinukh* answers our question: “This is one of the commandments that devolve upon the entire community [*ha-mutalot ‘al ha-tzibbur kulan*] in each and every place.”⁵ No lone individual is responsible for the establishment of a judicial system. If a judicial system does not exist in my town, that is surely a problem according to the Jewish legal tradition—but it is unclear to what extent it is *my* problem, nor what I must do to correct it. Instead, this *mitzvah* is the responsibility of the collective.⁶

³ Translations of biblical and rabbinic texts are the authors’ own.

⁴ Maimonides, *Mishneh Torah, Hilkhot Sanhedrin*, 1:1.

⁵ *Sefer ha-Hinukh*, Commandment 491.

⁶ Which collective? Who precisely is obligated? Answers to these questions are not yet available. Indeed, this is part of what we mean when we say that

Thus, the Jewish legal tradition posits that the commandment to establish a judicial system is different than most other *mitzvot*, which individuals must fulfill. These latter obligations are both ritual and ethical, and, as noted, both positive and negative. Each individual Jew is obligated to visit the sick, not to labor on Shabbat, to love God, not to place a stumbling block before the blind, and so on. Jewish legal and moral literature refers to all of these as *mitzvot*, with each individual Jew charged to fulfill a certain number of these *mitzvot*, depending on one’s identity (e.g., gender, priestly status) as well as personal or historical circumstances (e.g., the obligation to perform circumcision only obtains with the birth of a male child; certain agricultural obligations only obtain in the Land of Israel). Non-Jews are also understood to be obligated in a certain number of *mitzvot*, the seven so-called “Noahide” commandments.⁷ When a person enacts an obligation that pertains to her or him, she or he has “fulfilled” that *mitzvah*.⁸

This individualistic focus is not just happenstance. The concept of *mitzvah* itself seems to apply, paradigmatically, to

the operationalization of communal *mitzvot* lacks clarity. We can say, however, that rabbinic sources do not seem to indicate any distinction between the various Hebrew terms for “community” (*tzibbur*, *kahal*, *edah*, etc.). Likewise, the sources do not seem to indicate any distinction between the various terms for “obligation” (*mitzvah*, *hovah*, *hiyyuv*, etc.).

⁷ See b. Sanhedrin 56a. Of the seven Noahide commandments, all seem to be individual, with the exception of the communal obligation to establish a judicial system.

⁸ In this paragraph and throughout this article, we intentionally blur the line between the narrower term “commandment” and the term “obligation.” The Jewish tradition takes a brief, homiletic reference to 613 commandments in the Talmud (b. Makkot 23b–24a) and exerts enormous energy into enumerating a definitive list of the biblically mandated *mitzvot*. However, no enumeration achieved consensus. In addition, halakhic literature, and even the Talmud itself, does not always use the term *mitzvah* to denote a distinct, enumerated commandment. Given our interest in the broad category of obligations incumbent upon the entire community, we do not restrict ourselves to biblical commandments or to commandments enumerated in any list of the 613.

an individual (a *metzueh*, a “commanded person”) obligated regarding a particular matter. After all, “obligation” is a moral and normative term that implies the possibility of choosing not to comply with the purported obligation. We do not say that a stone has an “obligation” to fall to the ground. The notion of obligation implies a choice to fulfill or not to fulfill the claimed obligation. Choice implies agency, which is assigned, paradigmatically although not exclusively, to an individual agent. Corporations may be treated as people, but the idea of the corporation is a legal invention that extends agency (and responsibility) from the paradigm of the individual to a collective.

Furthermore, the very idea of religious or ethical obligations appears to suggest a conception of a religious or ethical life in which those obligations are significant features—that is, it points to the the religious or ethical life of an individual. These individual obligations represent not just technical laws; indeed, most *mitzvot* are not merely arbitrary directives from one person to another. Rather, classical interpreters of Jewish tradition have typically understood many *mitzvot* to be expressions of values and ideals.⁹ To say that a person is obligated in the *mitzvah* of *bikkur ḥolim*, visiting the sick, is also to express *bikkur ḥolim* as a positive value. We might even go further and, with Aristotelian virtue ethics as our model, suggest that the ideal person is a *mevaker/et ḥolim*, a habitual visitor of the sick. In other words, beyond the performance of the specific deed lies the ideal of embodying the

⁹ This assertion—which relies upon, and implicitly endorses, inquiry into *ta’amei ha-mitzvot*, the rationales behind the commandments—does not accord with the view of those who embrace a theory of *mitzvot* focusing exclusively on subservience to the Divine will. For example, Israeli philosopher Yeshayahu Leibowitz writes: “The only genuine reason for the *mitzvot* is the worship of God.” Yeshayahu Leibowitz, “Commandments,” in *Contemporary Jewish Religious Thought*, eds. A. Cohen and P. Mendes-Flohr (New York: Scribner’s, 1987), 71. This is not the place to engage that debate; the philosophical project represented in this article assumes that it is possible to develop a conception of community out of the halakhic sources (indeed, a normative conception) in a way that Leibowitz would not accept.

underlying ethical principle. In this respect, too, our paradigm seems to be the individual virtuous person.

This individualism should not be misinterpreted to mean that *mitzvot* are paradigmatically private. Some surely are; the commandment to love God takes place, we might say, within the confines of one's own heart. But many *mitzvot* involve others as intended beneficiaries. We have already referred to the obligations to visit the sick and not to place a stumbling block before the blind. We might also consider more general ethical obligations such as that found in Leviticus 19:9, which instructs the farmer to leave a corner of the field unharvested as a charitable contribution for the poor. Each individual owner of a field is obligated by the commandment, and the poor of the community are the beneficiaries.

We might also think of obligations that fall to individuals due to the situation of the community as a whole. When the community is mobilized to fight a defensive war, for example, the Torah commands each (male) individual to serve.¹⁰ More generally, one might argue that every fulfillment of an obligation constitutes an act of upholding a communal norm rather than subverting it. Moreover, one might develop an implicit conception of community that emerges from the aggregation of ideal individual *mitzuvot*-performers.

But the example with which we began, the *mitzvah* of establishing a judicial system, seems to operate differently, and

¹⁰ Deuteronomy 20:5-9; see the set of exemptions listed there. We suggest that while fighting a defensive war is a kind of communal project, it is *not* a communal obligation in the sense that we are describing. This is because every member of the community, with some exceptions, is obligated to fight. It is noteworthy, however, that the author of *Sefer ha-Hinukh* uses his familiar formula, "This is among the *mitzvot* that devolve on the community," when describing it (Commandment 527). It is possible that in this case, this phrase indicates that every individual in the community is obligated, not that there is an amorphous "communal" obligation. Alternatively, perhaps the author of *Sefer ha-Hinukh* is somewhat less precise in applying this formula. Either way, this example reinforces the claim that this category is well-attested but under-theorized.

is an example of an intriguing subset of *mitzvot* that likewise seem to operate differently. These *mitzvot* lie outside the paradigm of individual obligations that we have been describing, as it is not the case that *everyone* must participate in their fulfillment. On the contrary, there is no particular person responsible for carrying them out, and no one person can fulfill them. Instead, they are communal obligations, and the community, as a corporate body, bears the burden of these responsibilities. According to the perspective outlined above, when the community fulfills these responsibilities, it enacts a collective ideal.

Mining the Jewish Legal Tradition

What is the significance of the existence of this category of communal *mitzvot*? How have others thought about this category, and how should we? To be explicit about the limitations of our inquiry, this article does not claim that these *mitzvot* serve as a code that, once deciphered, provides an underlying theory of Jewish community or Jewish theory of community, even if we modify this claim with caveats like “as understood by rabbinic Judaism” or “as enacted by Jewish communities over time.” To make such a claim would ignore the diversity of Jewish textual sources and Jewish communities over time and space. We want to avoid any hint of essentialism and refrain from making any historical claims whatsoever.

Instead, we follow the footsteps of *The Jewish Political Tradition* project undertaken by Michael Walzer and his colleagues, which has produced to date two volumes by that name (with two others in development).¹¹ Walzer characterizes that project as having three

¹¹ Michael Walzer et al., eds., *The Jewish Political Tradition, Vol. 1: Authority*, (New Haven: Yale University Press, 2000) and Michael Walzer et al., eds., *The Jewish Political Tradition, Vol. 2: Membership* (New Haven: Yale University Press, 2006). Forthcoming volumes are *Vol. 3: Community* and *Vol. 4: Political Vision*. The *Jewish Political Tradition* project builds on the work of Daniel Elazar, the father of Jewish political studies. See, e.g., Daniel Elazar, ed., *Kinship and Consent: The Jewish Political Tradition and Its Contemporary Uses* (Lanham, MD: University

purposes: retrieval of sources from the tradition; integration of those sources with other modes of thought; and critique of the arguments in the sources, “to argue among ourselves and to encourage others to argue about which of them can usefully be carried forward under the modern conditions of emancipation and sovereignty.”¹² The project thereby undermines any essentialist claims and blurs the line between historical analysis and constructive re-imagination.

This approach guides the present inquiry. What, we ask, might we learn about a conception of community from the category of communal *mitzvot*? How might the sources in the tradition regarding communal *mitzvot* support an articulation of, or re-envisioning of, a conception of community? How might these sources provide a window into what that community wishes to be? How might they serve as resources for imagining Jewish community?¹³

Where Does the Category of Communal *Mitzvot* Appear in the Literature?

Above, we saw that Maimonides does not explicitly invoke the category of communal *mitzvot* in the case of the *mitzvah* of establishing a judicial system. The author of *Sefer ha-Hinukh* does invoke communal *mitzvot* by using the formula “commandments that devolve on the community.” *Sefer ha-Hinukh* repeats

Press of America, 1981).

¹² Walzer et al., *The Jewish Political Tradition*, Vol. 1, xxiii.

¹³ It should be acknowledged that for Walzer the Jewish political tradition is composed of *arguments*, paradigmatically. He writes, for example, that his project is “an effort to retrieve the arguments that have gone on within the Jewish world and to make them available to modern readers—on the assumption that the arguments can still be joined and should be joined.” Michael Walzer, “Retrieving Arguments within the Jewish Political Tradition,” *The Institute Letter* (Spring 2010): 1, 4–5. This article retrieves sources, not arguments; our claim, at the most general level, is that these sources may serve as resources for arguments that the sources themselves do not explicitly make, and that we do not ourselves make. We will return to this point below.

variations of this formula at least six other times.¹⁴ Besides *Sefer ha-Hinukh*, where does the communal *mitzvot* category appear?

In fact, the concept of communal *mitzvot* has deep roots in the Jewish legal tradition. Many have understood the category of *parashiyot*, which appears in early enumerations of the 613 commandments, to denote commandments that devolve upon the entire community. The great tenth-century jurist Sa'adia Gaon seems to be the earliest thinker to explicitly link the term *parashiyot* with communal *mitzvot*. He suggests that there are sixty five commandments within the category, but the surviving texts are somewhat unclear.¹⁵ In the eleventh century, Samuel ben Hofni Gaon refers to twenty commandments within the category of communal *mitzvot*.¹⁶ At the conclusion of his list of positive commandments (in his *Sefer ha-Mitzvot*), Maimonides explains that among the positive commandments are “commandments which are an obligation on the community rather than on each person.” In addition, Maimonides frequently makes explicit that a given commandment is the responsibility of the court, a point to which we will return a bit further on. In the thirteenth century, Nahmanides refers to ten specific requirements, listed in the Mishnaic tractate Megillah 4:3, as *hovot ha-tzibbur*, “obligations of the community.”¹⁷ Other sources likewise refer to the idea of communal obligation in discussions of specific *mitzvot*.¹⁸

In one sense, then, the category of communal *mitzvot* is a familiar one, attested in a variety of sources in a variety of ways.

¹⁴ Commandments 107, 408, 520, 526, 527, 604.

¹⁵ For the medieval discussion of the term *parashiyot*, see Marc Herman, “Systematizing God’s Law: Rabbanite Jurisprudence in the Islamic World from the Tenth to the Thirteenth Centuries,” (PhD diss., University of Pennsylvania, 2016), 241–44.

¹⁶ See Samuel ben Hofni Gaon’s *Kitāb fi al-Sharā’i’* in David Sklare, *Samuel ben Hofni Gaon and his Cultural World: Texts & Studies* (Leiden: Brill, 1996), 25–26, lines 795–849 (Hebrew pagination).

¹⁷ *Milhamot Hashem*, Tractate Megillah, folio 3a (Alfasi pagination). For the Talmudic discussion of these commandments, see b. Megillah 23b.

¹⁸ For a full list of references that we have uncovered, see the Appendix to this article.

We are not talking about an obscure phenomenon; anyone with a robust exposure to the Jewish legal tradition has experience with some of the more obvious examples. At the same time, the sources rarely describe or theorize this category at any length, and do not use consistent terms to refer to it. The classical, medieval, early modern and modern sources instead often do little more than mention this category in passing. For example, the formula "devolves on the community" seems to function as something of a technical term in *Sefer ha-Hinukh*, but the author never explains it or clarifies its function. There is likewise little discussion of what the category of communal *mitzvot* includes and what it excludes, or of the criteria of inclusion.¹⁹ Typically, references to communal obligation appear to function as a kind of fallback: if a given obligation does not devolve on the individual, an author will write that it is the responsibility of the community, and leave it at that.

How Are Communal Obligations Operationalized?

This lacuna is particularly curious due to seemingly obvious, practical questions about how to operationalize a communal obligation. If an individual homeowner is obligated to place a parapet around his roof (cf. Deuteronomy 22:8), we may certainly have a lot of questions about how to fulfill that obligation: What constitutes a satisfactory parapet? What kinds of roofs are included in the obligation and what kinds are excluded? What happens to violators? But the basic dynamic, the fundamental logic of religiously-motivated obligation, is clear: the Torah instructs an individual to perform an action, or refrain from

¹⁹ We have not been able to uncover any academic scholarship about the concept of communal *mitzvot* that might help elucidate where it is applied, what it encompasses, how it might have been operationalized in the case of specific *mitzvot* in specific historical times and places, or how it may have drawn on ideas found in other legal systems. To note one parallel worthy of further investigation, Islamic law also distinguishes between individual and communal obligations, *farḍ al-'ayn* and *farḍ al-kifāya*.

doing a certain action. The corollary regarding communal *mitzvot*, however, is far from obvious. Thus, one twentieth-century rabbinic commentator suggests that just as an individual must erect a parapet on his roof, so, too, a community must erect fences or guide rails in public spaces.²⁰ But who must do so? Which corporate entity bears this obligation? And how are we to think about the nature of those obligations?

Given these questions, it is noteworthy that Maimonides, when discussing communal obligations, frames those obligations in terms of the activities of the *bet din*, the communal court, as representative of the community.²¹ Maimonides is somewhat less abstract than other medieval jurists, who employ looser formulae, like Nahmanides's *hovot ha-tzibbur* ("obligations of the community") or the author of *Sefer ha-Hinukh's mitzvot ha-mutalot 'al ha-tzibbur* ("commandments that devolve upon the community"). Perhaps due to his interest in formulating a legal guidebook, Maimonides typically employs more concrete language. For example, when elaborating the commandment to

²⁰ Yeruham Fischel Perla, *Sefer ha-Mitzvot le-Rasag* (Jerusalem: Keshet, 1973), 2:109.

²¹ We will refer to the *bet din* with its Hebrew term, rather than in translation ("court"), because the authors in question discuss functions of the *bet din* that go far beyond the adjudication of disputes. The *bet din*, in other words, is imagined to be a kind of local government, or perhaps more specifically, the executive and judicial branches of government. This will become clear in the sources we will quote from Maimonides, for whom the *bet din* functions as a political-legal institution with distinct powers and authority, enforcing certain administrative practices. Relatedly, Joseph Soloveitchik depicts the court's role in the sanctification of the new months and related matters as representatives of the nation as a whole. Interpreting Maimonides, Soloveitchik suggests that if the court ceases to function, the responsibility to fulfill these commandments would return to the people. It is not entirely clear, however, how "the people" would fulfill many of these requirements. For his depiction and similar interpretations found in the writings of other modern rabbinic authorities, see the sources in Aaron Cohen, "The Parameters of Rabbinic Authority: A Study of Three Sources," *Tradition: A Journal of Orthodox Jewish Thought* 27, no. 4 (1993): 118–119n14.

establish cities of refuge, as commanded in Deuteronomy 19:1–10, he writes, “The *bet din* is obligated to orient the roads towards the refuge cities, and to fix them and expand them, and remove from them any obstacles.”²² For Maimonides, this infrastructure project is a communal obligation, and it is not incumbent on any particular individual to pick up a shovel and get to work. The communal obligation instead rests upon the designated agents of the community, the *bet din*. By assigning the communal *bet din* the role of fulfilling communal *mitzvot*, Maimonides tackles the implicit problem of how to discharge these obligations.

Likewise, when Maimonides discusses the commandment to establish accurate weights and measures, he describes a detailed administrative structure:

The *bet din* is obligated to appoint inspectors in every province and district, who will survey the shops and correct the scales and prices ... They are permitted to [impose corporal punishment] and to impose a fine upon anyone in whose possession is found a deficient weight or measure or an imperfect scale.²³

A third example is Maimonides’ discussion of the obligation to accompany travelers—which, in his conception, is not merely an act of generosity but a matter of public safety:

[The local *bet din*] may coerce traveler-accompaniment [i.e., it may coerce participation in a traveler-accompaniment regime], just as it coerces [contributions to] communal charity, and the *bet din* would arrange for representatives for the purpose of accompanying someone who is passing from place to place.²⁴

Maimonides does not explicitly say that this is a communal obligation. In practice, however, the *bet din* is responsible for protecting travelers. In order to fulfill this responsibility, the *bet*

²² Maimonides, *Mishneh Torah, Hilkhhot Rotzeah u-Shemirat Nefesh*, 8:5.

²³ Maimonides, *Mishneh Torah, Hilkhhot Genevah*, 8:20.

²⁴ Maimonides, *Mishneh Torah, Hilkhhot Avel*, 14:3.

din has license to conscript individuals to do the necessary work.

Maimonides seems to be an outlier in his consistent translation of communal obligations into the administrative framework of a functioning local political-legal institution known as the *bet din*. But there is another institution that plays an analogous role to the *bet din* in other sources, namely, the Temple. Many writers describe various sacrifices and practices of the Temple cult as communal obligations. For example, an early rabbinic source refers to certain Temple sacrifices as “an obligation of the community” (*hovat ha-tzibbur*).²⁵ In one location in his commentary on the Talmud, Rashi contrasts the water libation with the wine libation, asserting that the former is “an obligation of the community.”²⁶ The author of *Sefer ha-Hinukh* writes that the *mitzvah* to appoint a high priest “obtains when the Temple stands, and the obligation to do so devolves on the community, like building the Temple [itself] and [creating] its vessels.”²⁷ These communal obligations are linked to—indeed, their fulfillment is only possible with the existence of—a functioning institution with its own set of administrative practices. Setting aside the historical question of how the Temples functioned, or how some future Temple is envisioned, these texts assume that if there is a Temple, there will be an administrative structure and a set of administrative practices that may enact communal obligations.

Maimonides thus tethers communal obligations to an envisioned representative governmental institution, the *bet din*. In some other texts we find communal obligations tethered to an envisioned ritual institution, the Temple. Yet in other cases, the sources fail to explicate who is responsible for fulfilling a given obligation. What does it mean that there is a communal obligation to appoint a king? To redeem captives? To educate children? Who is supposed to carry out these obligations, given

²⁵ Sifra, *Dibura de-Nedava*, 2:3, 13:7.

²⁶ Rashi, b. Zevahim 111a (s.v. Ravina).

²⁷ *Sefer ha-Hinukh*, Commandment 107.

that no particular individual is responsible? Does the entire category of communal *mitzvot* rest on an assumption about sovereignty, at least local sovereignty if not national sovereignty? Does it rest on the existence of political institutions to carry out the “will of the people”?²⁸ If so, should these *mitzvot* fall on the representatives of the community, like the councils or other leadership positions that governed the medieval and early modern Jewish communities?

Imagine that the text of the Preamble to the US Constitution were not an explanation of what the Constitution (and the government that it calls into being) is designed to do, but a free-standing statement of communal responsibility: The framers declare an obligation “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.” These goals are admirably aspirational, but how would we pursue them? Who would be responsible, and in what ways? That, more or less, is what we find in much of the Jewish legal literature on communal *mitzvot*.

What is Included in the Category of Communal Obligations?

What we have, then, are cases or instances. To expand the data set beyond the examples already mentioned, a well-known rabbinic text claims that Israel as a collective was commanded to fulfill three *mitzvot* when they entered the Land of Israel: appointing a king, eradicating the Amalekites, and building

²⁸ There is a vast literature on the governance of medieval and early modern Jewish communities, including the basis for communal decision-making. The most recent review is Haim Shapira, “Majority Rule in the Jewish Legal Tradition,” *Hebrew Union College Annual* 82 (2012): 161–201. Note that a small number of communal obligations are linked to national sovereignty. For example, the author of *Sefer ha-Hinukh* writes, regarding the establishment of cities of refuge, “this commandment is enacted when Israel resides on its land, and it is one of the commandments that devolve upon the king and the whole community” (emphases added; Commandment 520).

the Temple.²⁹ Another talmudic passage indicates that the community is obligated to perform circumcision of a newborn boy if the father is unable or unwilling to do so.³⁰ Most medieval authorities affirm the view that public recitation of the Torah is a communal obligation, rather than an obligation upon any particular individual.³¹ Similarly, some sources indicate that public recitation of the seven marital blessings at a wedding feast is a communal obligation that rests on the assembled as a collective.³² As we discussed at the outset, the Jewish legal tradition has understood the establishment of a judicial system to rest upon the community rather than on the individual,³³ an obligation that is traditionally imagined to extend to non-Jewish communities.³⁴ Other jurists have identified communal

²⁹ See b. Sanhedrin 20b and Maimonides, *Mishneh Torah, Hilkhot Melakhim*, 1:1. The Hebrew phrase, *be-kenisatan la-aretz* “upon their entering the land,” is ambiguous, like its English translation. It may refer to the moment of commandment (i.e., that they were commanded upon entering the land) or the moment of intended fulfillment (i.e., that they were commanded earlier to do these things upon entering the land).

³⁰ See b. Kiddushin 29a.

³¹ See Mendel Shapiro, “*Qeri’at ha-Torah* by Women: A Halakhic Analysis,” *Edah Journal*, 1, no.2 (2001): 5–7.

³² See Yehuda Herzl Henkin, *Responsa Benei Banim*, 3:27.

³³ b. Sanhedrin 17b cites a *baraita* that lists ten requirements for a city in which a scholar may live, including the establishment of a court of justice. These requirements may be taken as indicators of a civilized culture, but they may also express specific communal obligations to provide these services. The list appears in Maimonides, *Mishneh Torah, Hilkhot De’ot*, 4:23.

³⁴ As noted above, it is the only one of the seven Noahide laws in b. Sanhedrin 56a that is communal, rather than individual.

obligations to relieve poverty,³⁵ provide health care,³⁶ educate children,³⁷ establish a communal calendar,³⁸ build a communal house of prayer,³⁹ and provide for the burial of the dead.⁴⁰

How many communal obligations are there? That depends on how one counts, both how one individuates distinct obligations (for example, there are a number of communal sacrifices) and what sources one examines to identify an “obligation.” Perhaps most problematically, jurists seem to invoke this category inconsistently; we are struck by the way certain *mitzvot* appear in the writings of one authority but not others. And, finally, it depends on what one makes of some ambiguous cases.

For example, Maimonides codifies the commandment, stated in Deuteronomy 31:9–13, to gather the entire nation for a communal reading of the Torah (known as *Hakhel*): “It is a positive commandment to assemble the entire people of Israel, men,

³⁵ The list of ten requirements for a city, cited above in n. 32, includes the presence of a communal charitable fund. Shuli Passow, “The Compassionate Society: Jewish Law and Communal Responsibility Toward the Poor” (unpublished, 2006), describes the dual nature of the obligation to address poverty: individual, via the biblical injunctions to provide agricultural products (Leviticus 19:9–10; Deuteronomy 24: 19–21; see also m. Pe’ah ch. 8); and communal, via the establishment of relief funds to provide food, clothing, and dowries and trousseaux for brides (e.g., in b. Bava Batra 8a–b).

³⁶ The list of ten requirements for a city, cited above in n. 32, includes the presence of a physician. See also *Shulhan Arukh, Yoreh De’ah*, 249:16. Fred Rosner, “Physicians’ Strikes and Jewish Law,” *Journal of Halacha and Contemporary Society* 25 (1993): 37–48, notes that the obligation to save lives is both individual and communal.

³⁷ The list of ten requirements for a city, cited above in n. 32, includes the presence of a teacher of children; see also b. Bava Batra 21b, which indicates that the primary responsibility to educate lies with the parents, while the secondary responsibility lies with the community. See also Michael Broyde, “Why Educate? A Jewish Law Perspective,” *Journal of Catholic Legal Studies* 44 (2005): 179–94.

³⁸ Maimonides, *Mishneh Torah, Hilkhot Kiddush ha-Hodesh*, 1:5; 1:7. Note that this example, unlike others, may rest on simple necessity: individuals cannot establish a calendar that must be shared by the whole community.

³⁹ Maimonides, *Mishneh Torah, Hilkhot Tefillah*, 11:1.

⁴⁰ b. Mo’ed Katan 27b.

women, and children, at the conclusion of the sabbatical year.”⁴¹ It is unclear if this is a communal obligation or if it falls on a particular person or institution, such as a leader who is supposed to carry out the act of assembling. Or consider the *mitzvah* of visiting the sick: The Jewish community of Avignon in sixteenth-century France required members to visit the sick, imposing a penalty for non-compliance.⁴² This may be a communal obligation, or it may constitute the communal enforcement of individual obligations—no different than the contemporary communal enforcement of the individual obligation to pay taxes. In these and other cases, the absence of a shared definition of communal obligations leaves us with ambiguous criteria of inclusion.

How Communal Obligations Function: Three Modes

When we examine the laws considered to be communal obligations, identified in the appendix to this article, there are some that may be characterized as obligations that fall to the community when an individual is unable or unwilling to fulfill them. This is one way that communal obligations work, one *functional mode*. Under certain circumstances, the community must step in as a social or ritual “safety net.” In some instances, the non-compliant or unavailable individual is the parent, and the community acts, quite literally, *in loco parentis*. Thus, the community is obligated to step in to circumcise or educate a child whose parents did not do so. Maimonides, following the Talmud, likewise declares that should an individual die without leaving anybody obligated to mourn on their behalf, the community must appoint ten “mourners” to receive condolences for their “loss.”⁴³ In this example, the unavailable individual is not the

⁴¹ Maimonides, *Mishneh Torah, Hilkhhot Hagigah*, 3:1

⁴² See the 1558 *takkanot ha-kahal* of Avignon, published in R. Maulde, ed., “Les Juifs dans les États français du Pape au moyen âge,” *Revue des études juives* 8 (1884): 105–106.

⁴³ Maimonides, *Mishneh Torah, Hilkhhot Avel*, 13:4. For the Talmudic

parent, so the “safety net” functions more broadly than when the community acts *in loco parentis*. In other circumstances, if the person with the primary obligation is unavailable or unwilling, it is the community’s responsibility to figure out how best to satisfy the obligation.⁴⁴

To clarify, this concept appears to be distinct from the more general concept of *‘arevut*, a technical term indicating the mutual responsibility of individuals within the community for each other—including the responsibility of individuals for the fulfillment of others’ obligations. The concept of *‘arevut* is surely relevant to any Jewish conception of community. However, the *‘arevut* paradigm diverges from communal *mitzvot* that operate in a “safety net” mode, because the obligated party within the *‘arevut* paradigm is an individual and not the community as a whole.

One possible implication for thinking about communal obligations as a “safety net” is that jurists implicitly recognize that any community will be comprised of not just strict adherents to the law, but also the more lax—sinners as well as saints. There will always be a diversity of capacity or will to fulfill individual obligations, and membership in a community means acknowledging this reality and accepting the obligations that flow from it. A community must see its members’ obligations—or at least, *some* of the obligations of its members—as, ultimately, its own. This conception may carry seeds of paternalism; some may take it as providing a license for communal coercion that would trample the autonomy of individuals. That is a danger of which we must be aware. But the point remains: communities

discussion, see b. Shabbat 152a–b.

⁴⁴ The performance of the *‘eglah ‘arufah* ritual, in Deuteronomy 21, might be tangentially related to this conception as well: since the (unknown) murderer has not fulfilled his responsibility (not to harm the victim), the community, represented by its elders, must now step in—not to protect the victim, but to carry out the atonement ritual to compensate for the unresolved murder. It is not a complete fit, however, because the communal *mitzvah* that is triggered by the individual’s non-compliance (i.e., to atone for the crime) is different than the individual *mitzvah* itself (i.e., not to kill).

step in when individuals cannot do what they must.

In other cases, communal *mitzvot* seem to operate differently. Rather than operating as a “safety net” when individuals cannot, or will not, fulfill their obligations, Jewish legal sources in this second category seem to envision the community functioning as a corporate agent that can enter into relationships with others. Paradigmatically, the Jewish community is understood to have established a covenantal relationship with God, a *corporate* covenantal relationship, in which the covenant is established with the people as a whole. In this respect, the concept of covenant is no different than any state treaty. While individuals may join the corporate covenant, they do not create individual covenants on their own. A similar idea may be found in a *midrash* on Deuteronomy 29:14, which declares that every Jewish soul, present and future, stood at Sinai.⁴⁵ This *midrash* does not suggest that every Jew establishes an independent covenant, but rather that every Jew participates in the collective covenant.

This conception is not merely lofty theology, but appears to underlie particular communal obligations, such as obligations concerning Temple rituals or public recitations of the Torah. According to a variety of sources, the community is obligated to perform these communal *mitzvot* as a corporate entity, just as a state as a corporate entity, as opposed to an individual citizens of the state, is obligated by virtue of a treaty. Unlike the communal *mitzvot* in the first category, individual failings to fulfill one’s duties do not trigger these obligations. Instead, obligations within this category appear to be generated by some understanding by the relevant legal authority of what the covenant entails, and what the Divine partner in that covenant demands.

This is not to say that there is no purpose to these *mitzvot* beyond obedience or compliance with the covenant. The selection of a king, for example, has its own logical rationale beyond its Divine mandate. Once one frames the selection of a king as a communal *mitzvah*, as some texts do, the selection process is no

⁴⁵ Midrash Tanhuma, *Nitzavim* 3.

longer merely a struggle for power or a beneficial act by a person or a group imposing order on the larger society. Instead, the selection process enters the conceptual realm of the community acting as a corporate agent, fulfilling its covenantal mandates.

There are additional communal obligations that do not seem to fit in either the "safety net" mode or the "corporation" mode. For example, the communal obligation to establish a judicial system with which we began this article is clearly not based on a conception of the community as fulfilling an obligation that rightly ought to be fulfilled by an individual, as in the "safety net" conception. Nor is the obligation to establish a judicial system fully explained by the conception of the community as a corporate entity in relationship to a Divine Other. It is true, of course, that there is a practical consideration here. Even if an individual wanted to create a judicial system independent of the community, why would anyone pay attention? There is logical entailment: the obligation cannot be individual, so it must devolve to the community. But there would seem to be more to it than that. A third conception seems to be at work, or a third functional mode, according to which communal obligations function as the expression, or enactment, of what we may call "communal virtues."

Why is the community obligated to establish a judicial system? Not because individuals have failed to do so, as with the communal obligation to educate a child, and not merely because the establishment of a judicial system represents the community acting as a corporate body, as in the performance of the Temple rituals or the selection of a king. Rather, the establishment of a judicial system may constitute the enactment of an ideal community. Individuals must act justly, but the requirement to establish a judicial system transcends those individual obligations. It reflects, instead, the ideal of a *just community*.

We might think about other communal *mitzvot* in a parallel fashion. The community, and not just the individuals that comprise it, ought to be generous, and so the community is

obligated to establish a communal charity fund.⁴⁶ The community ought to be united around shared festivals, and so the community is obligated in the establishment of a communal calendar. The community ought to be secure, and so the community is obligated in acts of self-defense.

There is certainly some ambiguity here. Some of the communal obligations may fall into either the second category or the third, depending on how we understand them. Or, conversely, the *functional modes* may act as interpretive lenses, helping us to see alternative possible framings of the meaning of particular *mitzvot*. The communal obligation to eradicate Amalek is an intriguing example. If we consider this communal obligation in the second mode, then we will focus on protecting the corporate body from the historical enemies that threaten it, or on realizing the divinely ordained annihilation of the Amalekites. On the other hand, if we consider this communal obligation in the third mode, we may identify a less-obvious value: that communities must be particularly attuned to the ways in which the weakest members are the most vulnerable to threats, whether external or internal. Perhaps that communal ideal, then, which we might consider a version of the “preferential option for the poor”⁴⁷ or the priority of the worst-off, is what lies underneath the communal *mitzvah*.

While each of the three modes are significant to the development of a conception of community that employs the resources of the Jewish legal tradition, the third mode is the most generative for imagining or re-imagining Jewish community. When we look at communal obligations as expressions or enactments of values—viewed through the eyes of the authors of the community’s authoritative legal texts—we do not emerge

⁴⁶ See, for example, Maimonides, *Mishneh Torah*, *Hilkhot Matanot ‘Aniyim*, 9:1.

⁴⁷ See, for example, the Apostolic Letter of Pope Paul VI, “Octogesima Adveniens,” from 1971: “In teaching us charity, the Gospel instructs us in the preferential respect due to the poor and the special situation they have in society.”

with a full-blown theory of Jewish community. But we do gain a window into what that community wishes to be.

Conclusion

In pursuing our inquiry into this topic, we do not mean to suggest that we must restrict our thinking about communal ideals to the communal *mitzvot* that we have discussed here. Surely, communal *mitzvot* do not exhaust our ideals. Likewise, we do not mean to suggest the category of communal *mitzvot* is inherently more important as a resource for imagining or re-imagining Jewish community than other textual resources. But we find the category fascinating, sometimes puzzling, and frequently generative.

We initially asked what might we learn about a conception of community from Jewish legal texts about communal *mitzvot*, how those texts might provide a window into what that community wishes itself to be, and how they might serve as resources. Our investigation has not answered these questions in a definitive way. But we believe that we have shown some of the rich potential within these texts for imagining Jewish community, and we hope that others will follow this initial exploration with more general and systematic analyses of the category, as well as more focused explorations of particular communal obligations.

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Appendix: Laws designated as obligations that devolve on the community

This thematically-organized appendix represents the fruits of our exploration of rabbinic literature for laws that particular authors or texts categorize as communal commandments. We define “rabbinic literature” broadly, not restricting ourselves to late antiquity. We identified these cases through searches of primary literature for key terms (e.g., *hovat bet din*, *hovat ha-tzibbur*, *kol yisrael*, etc.) and by utilizing selected secondary literature. We do not restrict ourselves to obligations that appear in the medieval lists of enumerated biblical commandments. Rather, we take our cues from the data themselves, including any articulation of a communal obligation. While we cannot be sure that the list below is comprehensive, the fifty-odd examples represent our best effort at this time.

The table below cites only one or two of the widely-known sources for each case, with a preference for earlier sources. Naturally, each case receives treatment in many more sources and each may be worthy of its own investigation. In cases in which we cited more recent literature, we could not locate explicit sources in earlier texts. Finally, as mentioned in the body of this article, the classification of particular cases remains ambiguous and subject to disagreement. We have tried to be precise about our criterion of inclusion. In each case, we have uncovered some indication that the obligation is understood to devolve on the community as a whole, rather than on individuals within the community.

A. Temple-related laws		
1.	Build the Temple	Maimonides, <i>Sefer ha-Mitzvot</i> , Conclusion of Positive Commandments; <i>Mishneh Torah</i> , <i>Hilkhot Melakhim</i> , 1:1; <i>Sefer ha-Hinukh</i> , Commandment 95
2.	Offer communal sacrifices [particular sacrifices are also frequently labeled communal obligations; this entry refers to the general obligation]	Sifra, <i>Dibura de-Nedava</i> , 2:3, 13:7; Samuel ben Hofni, <i>Sefer ha-Mitzvot</i> (Judeo-Arabic), Part II, chap. 14; Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Klei ha-Mikdash</i> , 6:1; <i>Sefer ha-Hinukh</i> , Commandment 401
3.	Offer the paschal sacrifice	Rashi, b. Zevaḥim 117a, s.v. <i>kol ha-nidar</i>
4.	Make priestly garments	Yeruham Fischel Perla, <i>Sefer ha-Mitzvot le-Rasag</i> , 3:439
5.	Evaluate the price of land donated to the Temple	Naḥmanides, <i>Milhamot Hashem</i> , Tractate Megillah, 3a (Alfasi pagination)
6.	Anoint high priests	<i>Sefer ha-Hinukh</i> , Commandment 107
7.	Anoint high priests of war	<i>Sefer ha-Hinukh</i> , Commandment 526

B. Communal leadership

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| 8. Appoint a king | b. Sanhedrin 20b; Maimonides, <i>Sefer ha-Mitzvot</i> , Conclusion of Positive Commandments; <i>Mishneh Torah</i> , <i>Hilkhot Melakhim</i> , 1:1; <i>Sefer ha-Hinukh</i> , Commandment 497 |
| 9. Avoid appointing a non-Jewish king | <i>Sefer ha-Hinukh</i> , Commandment 498 |

C. Justice, Defense, Economy and General Societal Flourishing

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| 10. Redeem captives | Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Malveh ve-Loveh</i> , 1:6; see also <i>Hilkhot Naḥalot</i> , 7:5 |
| 11. Ensure that a Jewish slave is freed | Perla, <i>Sefer ha-Mitzvot le-Rasag</i> , 3:253 |
| 12. Establish a judicial system (see Deut. 16:18) | Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Sanhedrin</i> , 1:1; <i>Sefer ha-Hinukh</i> , Commandment 491; see also b. Sanhedrin 17b |
| 13. Establish an educational system | b. Bava Batra 21a; see Perla, <i>Sefer ha-Mitzvot le-Rasag</i> , 1:244 |
| 14. Eradicate Amalek (see Deut. 25:17–19) | Maimonides, <i>Sefer ha-Mitzvot</i> , Conclusion of Positive Commandments; <i>Mishneh Torah</i> , <i>Hilkhot Melakhim</i> 1:1 (see however there, 5:4–5); <i>Sefer ha-Hinukh</i> , Commandment 604 |
| 15. Establish cities of refuge (see Deut. 19:1–10) | <i>Mishneh Torah</i> , <i>Hilkhot Rotzeah u-Shemirat Nefesh</i> , 8:5; <i>Sefer ha-Hinukh</i> , Commandment 520 |

cont'd

16. Establish Levite cities (see Lev. 25:32–34; Num. 35:1–8)	<i>Sefer ha-Hinukh</i> , Commandment 408
17. Appoint guardians for the property of orphans	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot To'en ve-Nit'an</i> , 5:9; <i>Hilkhot Naḥalot</i> 10:4–5
18. Act "beyond the letter of the law"	Moses Schreiber, <i>Responsa Hatam Sofer</i> , 2:239 §9; Isaac Weiss, <i>Responsa Minḥat Yitzhak</i> , 5:121
19. Collect charity	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Matanot 'Aniyim</i> , 9:1, 9:3; <i>Hilkhot Naḥalot</i> , 11:11; see also b. Bava Batra 8a–8b
20. Provide health care	b. Sanhedrin 17b; see Eliezer Waldenberg, <i>Responsa Tzitz Eliezer</i> , 5:4
21. Visit the sick	See the 1558 <i>takkanot ha-kahal</i> of Avignon, published in R. Maulde, ed., "Les Juifs dans les États français du Pape au moyen age," <i>Revue des études juives</i> 8 (1884): 105–106
22. Police the market	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Genevah</i> , 8:20
23. Fix prices	b. Bava Batra, 8b; Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Mekhirah</i> , 14:1, 14:9; <i>Shulḥan Arukh</i> , <i>Hoshen Mishpat</i> , 231:27
24. Protect public domains	Perla, <i>Sefer ha-Mitzvot le-Rasag</i> , 2:108
25. Accompany travelers	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Avel</i> , 14:3

26. Appoint mourners for those who lack family to mourn	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Avel</i> , 13:4
27. Bury the dead	Samuel ben Hofni, <i>Sefer ha-Mitzvot</i> , Part II, chap. 14
28. Perform various rituals after burial	Nahmanides, <i>Milhamot Hashem</i> , Tractate Megillah, 3a (Alfasi pagination)
29. Proclaim publically when the community faces a crisis	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Ta'aniyot</i> , 1:1, 1:3
D. Ritual Laws	
30. Sanctify new months	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Kiddush ha-Hodesh</i> , 1:5, 1:7; <i>Sefer ha-Hinukh</i> , Commandment 4
31. Blow the <i>shofar</i> during Musaf of Rosh ha-Shanah	Abraham Karelitz, <i>Sefer Hazon Ish</i> , <i>Orah Hayim</i> , <i>Hilkhot Rosh ha-Shanah</i> , 137 §4
32. Calculate <i>shemita</i> and <i>yovel</i> , blow the <i>shofar</i> to inaugurate those years	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Shemithah ve-Yovel</i> , 10:1, 10:10
33. Deliver a sermon on Shabbat before Passover (<i>Shabbat ha-Gadol</i>)	Jacob Moelin, <i>Sefer Maharil</i> , <i>Sheloshim Yom Kodem le-Pesah</i> , §1
34. Perform the red heifer ritual (see Num. 19)	<i>Sefer ha-Hinukh</i> , Commandment 397
35. Establish an <i>eruv</i>	Schreiber, <i>Responsa Hatam Sofer</i> , 1:99

36. Recite Torah publicly	Nahmanides, <i>Milhamot Hashem</i> , Tractate Megillah, 3a (Alfasi pagination)
37. Recite seven marital blessings	Nahmanides, <i>Milhamot Hashem</i> , Tractate Megillah, 3a (Alfasi pagination)
38. Read <i>megillot</i> on festivals	See Ovadiah Yosef, <i>Yabi'a Omer</i> , <i>Orah Hayim</i> , 1:29
39. Establish a <i>minyán</i>	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Tefillah</i> , 11:1; Nathaniel Weil, <i>Korban Netanel</i> , Megillah 3:7, subparagraph no. 80
40. Maintain ten people in synagogue	Tzvi Pesah Frank, <i>Responsa Har Tzvi</i> , <i>Orah Hayim</i> , 2:131
41. Read Torah portion of Amalek	Menasheh Klein, <i>Responsa Mishneh Halakhot</i> , 16:134
42. Recite certain communal prayers	Nahmanides, <i>Milhamot Hashem</i> , Tractate Megillah, 3a (Alfasi pagination)
43. Circumcise a newborn boy (when not performed by father)	b. Kiddushin 29a; Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot Milah</i> , 1:1
44. Ritually atone for unsolved murder (see Deut. 21:1–9)	<i>Sefer ha-Hinukh</i> , Commandment 530
45. Recite God's name in invitation to recite grace after meals	Nahmanides, <i>Milhamot Hashem</i> , Tractate Megillah, 3a (Alfasi pagination)
46. Destroy an idolatrous city (see Deut. 13:13–19)	Maimonides, <i>Mishneh Torah</i> , <i>Hilkhot 'Avodat Kokhavim</i> , 4:6

E. General enforcement of the law

47. Prevent others from sinning	Maimonides, <i>Mishneh Torah, Hilkhhot Ma'akhalot Asurot</i> , 17:8; <i>Hilkhhot Nezirut</i> , 4:16, <i>Hilkhhot Sanhedrin</i> , 24:4
48. Impose punishments	Perla, <i>Sefer ha-Mitzvot le-Rasag</i> , 3:4
49. Fulfill capital punishment (if the witnesses, the primary executioners, do not succeed)	Maimonides, <i>Mishneh Torah, Hilkhhot Sanhedrin</i> , 15:1
50. Execute extra-judicial punishments	Samuel ben Hofni, <i>Sefer ha-Mitzvot</i> , Part II, chap. 14
51. Appoint “blood avenger” (see Num. 35:11–35)	Nahmanides, “Forgotten” Positive Commandment 13, <i>Animadversions to Maimonides, Sefer ha-Mitzvot</i>